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FEDERAL REGISTER

Vol. 86 Thursday

No. 244 December 23, 2021

Pages 72779–73104

OFFICE OF THE FEDERAL REGISTER

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Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–SC–21–0022]

Blueberry Promotion, Research and Information Order; Change in Membership, Nomination Procedures, and Term of Office

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule changes the membership of the U.S. Highbush Blueberry Council (Council) under the Blueberry Promotion, Research and Information Order (Order), by removing the first handler member and alternate position and adding two exporter member and alternate positions. Conforming changes will be made to the nomination procedures. In addition, this rule will allow members and alternates to remain in office until a successor is appointed. The Council administers the Order with oversight by the U.S. Department of Agriculture (USDA).

DATES: *Effective date:* December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Mid Atlantic Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Telephone: (202) 720–5976; or Email: *Jeanette.Palmer@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Order (7 CFR part 1218). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The Agricultural Marketing Service (AMS) has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations was shared during a quarterly call, and tribal leaders were informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this change to the Order.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This final rule changes the Council's membership under the Order. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This final rule will remove the first handler member and alternate position and add two exporter members and alternate positions. This will help ensure that the Council reflects the distribution of domestic blueberry production and imports into the United States (U.S.) Conforming changes will be made to the nomination procedures. This rule will also allow members and alternates to remain in office until a successor is appointed. This change will permit the Council to continue administration of the Order should appointments be delayed beyond the specified term of office. The two actions were unanimously recommended by the Council at its meetings on November 18, 2020, and June 9, 2021.

Change in Membership

Section 1218.40(a) of the Order currently specifies that the Council be comprised of no more than 20 members and alternates appointed by the Secretary of Agriculture (Secretary). Twelve of the 20 members and alternates are producers. One producer member and alternate are from each of the following regions within the U.S.: Region #1 Western Region; Region #2 Midwest Region; Region #3 Northeast Region; and Region #4 Southern Region.

One producer member and alternate are from each of the top eight blueberry producing states, based upon the average of the total tons produced over the previous three years. Currently, these states include California, Florida, Georgia, Michigan, New Jersey, North Carolina, Oregon, and Washington.

Of the remaining eight Council members and alternates, four members and alternates are importers. Two members and alternates must be an exporter, defined in § 1218.40(a)(4) as a blueberry producer currently shipping blueberries into the U.S. from the two largest foreign blueberry production areas, based on a three-year average (currently Chile and Canada). One member and alternate must be a first handler, defined in § 1218.40(a)(5) as a U.S. based independent or cooperative organization which is a producer/shipper of domestic blueberries. Finally, the Order provides that one member and alternate must represent the public. The public member representation on research and promotion boards is optional as provided for in the 1996 Act.

Section 1218.40(b) of the Order specifies that, at least once every five years, the Council will review the geographical distribution of the production of blueberries in the United States and the quantity of imports. The review is conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that its membership be altered to reflect changes in the geographical distribution of domestic blueberry production and the quantity of imports.

The Council met on November 18, 2020, and then again on June 9, 2021, to review domestic production data, import data, and assessment data for the past three years (2017–2019). This data is summarized in Table 1 below:

TABLE 1—U.S. AND IMPORT QUANTITIES AND ASSESSMENT DATA

Year	U.S. crop-utilized production [1] (1,000 lbs)	Imports (1,000 lbs) [2]	Domestic (U.S.) assessments [3]	Import assessments [3]
2017	512,740	398,190	$3,968,438	$3,577,559
2018	562,300	473,073	4,263,177	4,229,333
2019	673,050	579,181	5,172,055	5,040,722
3-year average	582,697	483,481	4,467,890	4,282,538

Sources: [1] National Agricultural Statistics Service (NASS); [2] U.S. Customs and Border Protection; [3] Council Financial Audit Records 2019–2020.

As shown in Table 1, the quantity of imported blueberries, as well as import assessments collected, has increased in recent years.

In that time, there has been a substantial increase of imported product From both Peru and Mexico, with Peru exports into the U.S. surpassing Canada in 2019, as shown in Table 2.

TABLE 2—QUANTITY OF BLUEBERRIES FROM FOREIGN PRODUCTION AREAS

Foreign blueberry production areas shipping into the United States	Quantity (1,000 lbs)			
	2017	2018	2019	3-year average
Chile	162,932	181,951	164,872	169,918
Canada	111,979	110,755	142,425	121,720
Peru	41,516	82,273	154,288	92,692
Mexico	54,212	72,537	93,840	73,530
Argentina	26,099	23,581	22,130	23,937
All Other Countries	1,451	1,976	1,627	1,685

Source: U.S. Customs and Border Protection.

In 2015, the Council, after reviewing import and domestic production and assessment data, recommended changes to the membership; one such change included adding an additional exporter seat. At that time, data indicated considerable increased imports from Chile. The addition of the second exporter member allowed exporters from both Chile and Canada, the two countries shipping the greatest volume of blueberries into the U.S., to be represented on the Council. The Council took a similar approach when reviewing and recommending this recent change in membership. It recognized the significant volume of imports from Peru and Mexico, discussing the need to add representatives from those production areas to the Council. Given the decision to try to maintain its current size and based on the data reviewed, it concluded it was important to have foreign producer representation similar to the structure of the state producer representation. Therefore, it recommended the addition of two exporter members. Four exporter member positions will provide the four largest foreign producing areas importing into the U.S., which represents ninety-five percent of the total volume of blueberries imported into the U.S., a voice on the Council. This will realign the Council's membership to better reflect the distribution of domestic production and the quantity of imports into the U.S.

The Council conducts nominations two out of every three years. The Council is currently conducting nominations for seven member and alternate positions (year-one cycle) whose three-year term of office begins January 1, 2022, ending December 31, 2024. These include the four regional producer members, one exporter member, one importer member, the

public member, and respective alternates. The Council will conduct nominations in 2022 for 13 member and alternate positions (year-two cycle) whose three-year term of office begins January 1, 2023, ending December 31, 2025. This will include one member from each of the top eight producing states, three importer members, one exporter member, the first handler member, and respective alternates. To help ensure a smooth transition, while aligning with the Council's nomination schedule, the term of office for the recommended additional exporter member positions will begin January 1, 2023. Therefore, solicitation for the two additional exporter position nominees will be included in the nominations scheduled to be conducted in 2022. Since the first handler member position is being removed, nominations for this position will not be conducted during the 2022 solicitation period. The first handler member and alternate member positions will terminate December 31, 2022.

USDA has recommended that the initial term of office for the two additional exporter positions will be two years, instead of the prescribed three-year term of office for all Council member and alternate positions. The additional two exporter member and alternate term of office will begin January 1, 2023, ending December 31, 2024. As noted above, the Council conducts nominations two out of every three years, with seven positions to be filled in year-one, and thirteen in year-two. With including the nominations for the exporter positions in the year-two cycle, total positions to be filled will be 14 of the 21-member Council. Having an initial two-year term will align these two additional exporter positions with the year-one nomination cycle, reestablishing the distribution between the two nomination cycles. Year-one nomination cycle will include solicitation for nine positions: four regional producer member positions, one importer member position, three exporter member positions, one public member position, and respective alternates. The year-two nomination cycle will include solicitation for 12 positions: one member from each of the top eight producing states, three importer members, one exporter member, and respective alternates.

The 2022, 20-member Council would consist of one producer member from each of the four regions (Western, Midwest, Northeast, Southern), one producer member from each of the top eight producing states, four importer members, two exporter members, first handler member, public member, and respective alternates.

The 2023 and subsequent 21-member Council will consist of one producer member from each of the four regions (Western, Midwest, Northeast, Southern), one producer member from each of the top eight producing states, four importer members, four exporter members, one public member, and respective alternates. The provisions at 7 CFR 1218.40 will be revised accordingly.

Nomination Procedures

Section 1218.41 establishes the procedures for nominations to obtain Council nominees for appointment by the Secretary. Section 1218.41(c) provides for the nomination process for importer, exporter, first handler, and public member and alternate positions. Section 1218.41(d) requires producer, handlers, and importer nominees to be compliant with the Order provisions regarding payment of assessments and filing of reports. With the proposed removal of the first handler position, references to first handler member will be removed from these sections.

Term of Office

Section 1218.42 provides that Council nominations and appointments will take place in two out of every three years, with each term of office ending on December 31, and new terms of office beginning January 1. The Council recommended allowing members and their alternates to remain in office until a successor is appointed. Currently, if successors are not appointed by the January 1 date, those positions remain vacant until the successors are named. The Order requires a minimum of 11 members to hold a Council meeting. For the nomination year with 12 positions expiring, if not appointed by the January 1 start date, the Council will be unable to meet until such appointments were made. This could cause a lapse in the Council's ability to properly administer the provisions of the Order. Allowing members to serve until their successor is appointed will allow the Council to continue administration should appointments be delayed beyond the specified term of office. This change is similar to authority provided for in other research and promotion orders.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the final rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1,000,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $30 million.

There are approximately 1,547 domestic producers, 71 first handlers and 271 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2019, $919 million,[1] by the number of producers (1,547) yields an average annual producer revenue estimate of $594,053. It is estimated that in 2019, about 99 percent of the first handlers shipped under $30 million worth of highbush blueberries. Based on 2019 U.S. Border and Customs (Customs) data, it is estimated that over 99 percent of the importers shipped under $30 million worth of highbush blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities. We do not have information concerning the number of exporters and their size.

Regarding value of the commodity, as mentioned above, based on 2019 NASS data, the value of the domestic highbush blueberry crop was about $919 million. According to Customs data, the value of 2019 imports was about $1.04 billion.

It is not anticipated that this action will impose additional costs on industry members. Eligible producers, importers and exporters interested in serving on the Council will have to complete a background questionnaire. Those requirements are addressed later in this rule.

This rule is revising §§ 1218.40, 1218.41, and 1218.42 of the Order regarding Council membership, nominations, and term of office, respectively. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This rule will remove the first handler and alternate position and add two exporter member and alternate positions. This will help ensure that the Council reflects the distribution of

[1] Noncitrus Fruits and Nuts 2019 Summary.

domestic blueberry production and imports into the U.S. Conforming changes will be made to the nomination procedures. This rule will also allow members and alternates to remain in office until a successor is appointed. This change will allow the Council to continue administration of the Order should appointments be delayed beyond the specified term of office. Authority for this action is provided in §§ 1218.40(b) and 1218.47(m) of the Order and section 7414 of the 1996 Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093 and 0505–0001. Eligible producers, importers, exporters, first handler and public member interested in serving on the Council are required to complete a background questionnaire (Form AD–755) to verify their eligibility. Adding an exporter member and alternate member to the Council will require four additional exporters to submit background questionnaire (AD–755) to USDA, once every three years, in order to be considered for appointment to the Council. The Secretary requires two names to be submitted for each open seat on the Council. The public reporting burden is estimated to increase the total burden hours by less than one hour. This additional burden will be included in the existing information collection approved for use under OMB control number 0581–0093. In addition, serving on the Council is optional, and the burden of submitting the background questionnaire will be offset by the benefits of additional representation on the Council.

The previously approved background questionnaire will be revised eliminating the first handler section. It will impose an increase of the total reporting and recordkeeping burden hours by less than one hour on blueberry producers, importers, or exporters.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Regarding alternatives, the Council has been discussing its membership and potential changes to reflect the distribution of domestic production and imports for the past few years. The Council's Executive Committee met to formulate and consider various options. One option was to replace two of the four regional producer positions, with the exporter positions, reallocating the two regions as East and West, with one position for each region. Another option considered was to eliminate the first handler and public member positions; reallocate the regions to East and West, with one position for each region; and add two importer positions and two exporter positions. The Council also considered maintaining the status quo. It concluded, upon reviewing the domestic production and import statistics, that it was important to have foreign producer representation from the top four countries importing highbush blueberries into the U.S. represented on the Council. Thus, the Council recommended revising the Order to remove the first handler and alternate position and add two exporter member and alternate positions.

Regarding outreach efforts, this action was discussed by the Council at meetings in October 2018, as well as by the Council and committees in 2019 and 2020. The Council met in November 2020 and in June 2021 and unanimously made its recommendation. All of the Council's meetings are open to the public and interested persons are invited to participate and express their views.

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

USDA has determined that this rule is consistent with and would effectuate the purpose of the 1996 Act.

A proposed rule concerning this action was published in the **Federal Register** on July 22, 2021 (86 FR 38590). A 60-day comment period ending September 20, 2021, was provided to allow interested person to respond to the proposal. The proposal was made available through the internet by USDA and the Office of the Federal Register. One comment was received, but it did not pertain to this proposal. Accordingly, no changes were made to the rule as proposed, based on the comments received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until one day after publication in the **Federal Register** because the Council begins their 2022 nomination process in December of 2021. This will allow for the two new exporter seats created by this regulation to be filled in the 2022 nomination cycle and be seated in January 2023. In addition, soliciting nominees for these two new exporter seats will realign the Council's membership to better reflect the distribution of domestic production and the quantity of imports into the U.S.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Agricultural research, Blueberries, Consumer protection, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1218 as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

■ 1. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 2. Revise the heading for part 1218 to read as set forth above.

Subpart A—Blueberry Promotion, Research, and Information Order

■ 3. Revise § 1218.13 to read as follows:

§ 1218.13 Part and subpart.

The Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order comprise this part. The Order is this subpart.

■ 4. In § 1218.40, paragraph (a) is revised to read as follows:

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, shall be comprised of no more than 20 members and alternates for the 2022 Council, and comprised of no more than 21 members and alternates for the 2023 Council and each subsequent Council, appointed by the Secretary from nominations as follows:

(1) The 2022 Council shall be comprised of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Two exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the two largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(vi) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

(2) The 2023 and subsequent Council shall be composed of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Four exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the four largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

* * * * *

■ 5. In § 1218.41, paragraphs (c) and (d) are revised to read as follows:

§ 1218.41 Nominations and appointments.

* * * * *

(c) *Importer, exporter, and public members.* Nominations for the importer, exporter, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be recommended to the Secretary for consideration. Other qualified persons interested in serving in these positions but not recommended by the Council will be designated by the Council as additional nominees for consideration by the Secretary.

(d) *Producers and importers.* Producer and importer nominees must be in compliance with the Order's provisions regarding payment of assessments and filing of reports. Further, producers and importers must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually.

* * * * *

■ 6. Section 1218.42 is revised to read as follows:

§ 1218.42 Term of office.

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, the state representatives, first handler member, and their respective alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1. Council members and alternates shall serve during the term of office for which they have been appointed and qualified, and until their successors are appointed.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–27572 Filed 12–22–21; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 104, and 110

[Notice 2021–12]

Technical Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical corrections to various sections of its regulations.

DATES: Effective December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Terrell D. Stansbury, Paralegal, *tstansbury@fec.gov,* (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the

Commission has promulgated to implement the Federal Election Campaign Act, 52 U.S.C. 30101 through 45 (''FECA''). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the ''good cause'' exemption of the Administrative Procedure Act (''APA''). 5 U.S.C. 553(b)(B) The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the ''good cause'' exception to the delayed effective date provisions of the APA and the Congressional Review Act. 5 U.S.C. 553(d)(3) and 808(2).

Moreover, because these corrections are exempt from the notice and comment procedure of the APA under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2) and 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 through 13, or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 through 42. *See* 52 U.S.C. 30111(d)(1) and (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law''); 26 U.S.C. 9009(c)(1) and (4), 9039(c)(1) and (4) (same). Accordingly, these corrections are effective upon publication in the **Federal Register**.

Corrections to FECA Rules in Chapter I of Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 1.2

In 2018, the Commission relocated to a new building with a different street address. The Commission is updating this section by removing references to the relocation and the Commission's prior address.

B. Correction to 11 CFR 104.2

Most filers now utilize electronic filing rather than paper forms to submit reports to the Commission. Accordingly, the Commission is revising this section to add that forms may be obtained electronically from the Commission's website as well as in paper format at the updated street address identified in the definition of ''Commission'' at § 1.2.

C. Correction to 11 CFR 110.1

The Commission is revising paragraph (b)(3)(ii)(C) of this section because it erroneously refers to § 116.11(b) as the citation for the definition of ''personal loans.'' The correct definition is located at § 116.11(a).

List of Subjects

11 CFR Part 1

Privacy.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I as follows:

PART 1—PRIVACY ACT

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

Authority: 5 U.S.C. 552a.

■ 2. Amend § 1.2 by revising the definition of ''Commission'' to read as follows:

§ 1.2 Definitions.

* * * * *

Commission means the Federal Election Commission, its Commissioners, and employees. The Commission is located at 1050 First Street NE, Washington, DC 20463. The Commission's website is *www.fec.gov.*

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 3. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(g) and (i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

§ 104.2 [Amended]

■ 4. Amend § 104.2(b) by adding ''*https://www.fec.gov/help-candidates-and-committees/forms/* or at'' before the words ''the street address identified''.

PART—110 CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 5. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2) and (g), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

§ 110.1 [Amended]

■ 6. Amend § 110.1(b)(3)(ii)(C) by removing ''116.11(b)'' and adding in its place ''116.11(a)''.

Dated: December 20, 2021.

On behalf of the Commission,

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2021–27885 Filed 12–22–21; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 703

RIN 3133–AF12

Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule provides a simplified measure of capital adequacy for federally insured, natural-person credit unions (credit unions) classified as complex (those with total assets greater than $500 million). Under the final rule, a complex credit union that maintains a minimum net worth ratio, and that meets other qualifying criteria, is eligible to opt into the complex credit union leverage ratio (CCULR) framework if they have a minimum net worth ratio of nine percent. A complex credit union that opts into the CCULR framework need not calculate a risk-based capital ratio under the NCUA Board's October 29, 2015 risk-based capital final rule, as amended on October 18, 2018. A qualifying complex credit union that opts into the CCULR framework and maintains the minimum net worth ratio is considered well capitalized. The final rule also makes several amendments to update the NCUA's October 29, 2015 risk-based capital final rule, including addressing asset securitizations issued by credit unions, clarifying the treatment of off-balance sheet exposures, deducting certain mortgage servicing assets from a complex credit union's risk-based capital numerator, revising the treatment of goodwill, and amending other asset risk weights.

DATES: The final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: *Policy and Accounting:* Thomas Fay, Director, Division of Capital Markets, Office of Examination and Insurance, at (703) 518–1179; *Legal:* Rachel Ackmann, at (703) 548–2601 or Ariel

Pereira, at (703) 548–2778; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. The NCUA'S Risk-Based Capital Requirements

The NCUA ensures the safety and soundness of federally insured credit unions (FICUs) by examining and supervising federally chartered credit unions (FCUs); participating in the examination and supervision of federally insured, state-chartered credit unions in coordination with state regulators; and insuring members' accounts at all FICUs up to the statutorily prescribed limits.

Capital adequacy standards are an important prudential tool to ensure the safety and soundness of individual credit unions and the credit union system as a whole. Capital serves as a buffer for credit unions to prevent institutional failure and dramatic deleveraging during times of stress. During a financial crisis, a buffer can mean the difference between the survival or failure of a financial institution. Capital levels commensurate with risk insulate credit unions from the effects of unexpected adverse developments in their financial condition, reduce the probability of a systemic crisis, allow credit unions to continue to serve as credit providers during times of stress without government intervention, and provide benefits that outweigh the associated costs.

Following the 2007–2009 recession, the NCUA substantially reevaluated its capital adequacy standards, which are codified in 12 CFR part 702. On October 29, 2015, as amended on October 18, 2018, the NCUA Board (Board) published a final rule restructuring its capital adequacy regulations (2015 Final Rule).[1] The effective date of the 2015 Final Rule was originally January 1, 2019. The overarching intent of the 2015 Final Rule was to reduce the likelihood that a relatively small number of high-risk credit unions would exhaust their capital and cause large losses to the National Credit Union Share Insurance Fund (NCUSIF). Under the Federal Credit Union Act (FCUA), FICUs are collectively responsible for capitalizing and replenishing losses to the NCUSIF.[2] The 2015 Final Rule restructured the NCUA's current capital adequacy regulations and made various revisions, including amending the agency's risk-based net worth requirement by replacing a credit union's risk-based net worth ratio with a risk-based capital ratio. The risk-based capital requirements in the 2015 Final Rule are more consistent with the NCUA's risk-based capital ratio measure for corporate credit unions, consistent with the FCUA, and more comparable to the risk-based capital measures implemented by the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Federal Reserve Board), and Office of the Comptroller of Currency (OCC) (collectively, the other banking agencies) in 2013.[3]

On November 6, 2018, the Board published a supplemental final rule that raised the threshold level for a complex credit union to $500 million (2018 Supplemental Rule).[4] The 2018 Supplemental Rule also delayed the effective date of the 2015 Final Rule for one year (from January 1, 2019, to January 1, 2020).

The effective date was delayed a second time through a final rule published on December 17, 2019 (2019 Supplemental Rule).[5] The 2015 Final Rule is now scheduled to become effective on January 1, 2022. The delay has provided credit unions and the NCUA with additional time to implement the 2015 Final Rule. Further, as explained in the 2019 Supplemental Rule, the delay enabled the Board to holistically and comprehensively evaluate the NCUA's capital standards for credit unions.[6] Among the items highlighted by the Board for possible consideration during the delay were adoption of a community bank leverage ratio (CBLR) analogue, the treatment of asset securitizations issued by credit unions, finalization of the Subordinated Debt rule and implementation of the current expected credit loss (CECL) standard.[7]

B. The Other Banking Agencies' Risk-Based Capital and CBLR Framework

As discussed in the proposed rule, the other banking agencies adopted in 2013 a revised risk-based capital rule, which was designed to strengthen their capital requirements and improve risk sensitivity.

In 2018, section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act directed the other banking agencies to propose a simplified, alternative measure of capital adequacy for certain federally insured banks.[8] On November 13, 2019, the other banking agencies issued a final rule implementing this statutory directive (CBLR Final Rule).[9]

Under the CBLR Final Rule, the CBLR framework is an option for depository institutions and depository institution holding companies that meet the following criteria:

[1] 80 FR 66626 (Oct. 29, 2015). *See also,* 83 FR 55467 (Oct. 18, 2018).

[2] *See* 12 U.S.C. 1782(c). The FCUA requires each insured credit union to pay an insurance premium equal to a percentage of the credit union's insured shares when the Board, subject to statutory parameters, assesses a premium. The FCUA also requires each insured credit union to pay and maintain a deposit with the NCUSIF equaling one percent of the credit union's insured shares. The NCUSIF's funds are available to pay share insurance claims, to aid in connection with the liquidation or threatened liquidation of credit unions, and for administrative and other expenses the Board incurs in carrying out the purposes of the share insurance subchapter of the FCUA. *See* 12 U.S.C. 1783(a).

[3] The Federal Reserve Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

[4] 83 FR 55467 (Nov. 6, 2018).

[5] 84 FR 68781 (Dec. 17, 2019).

[6] *Id.* at 68782.

[7] *Id.*

[8] Public Law 115–174 (May 24, 2018). Section 201 is codified at 12 U.S.C. 5371 note.

[9] 84 FR 61776 (Nov. 13, 2019).

(1) A CBLR greater than nine percent; [10]

(2) Total consolidated assets of less than $10 billion; [11]

(3) Total off-balance sheet exposures of 25 percent or less of its total consolidated assets;

(4) Trading assets plus trading liabilities of five percent or less of its total consolidated assets; and

(5) Not an advanced approaches banking organization (advanced approaches banking organizations are generally those with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance sheet foreign exposure, and depository institution subsidiaries of those firms).

In March 2020, the CBLR was temporarily set to eight percent by statute.[12] Accordingly, effective the second quarter of 2020, the CBLR requirement was eight percent or greater.[13] In early 2021, the CBLR requirement was increased to 8.5 percent or greater. During the grace period, the minimum requirement is 7.5 percent.[14] Effective January 1, 2022, the CBLR requirement will return to nine percent and the minimum requirement during the grace period will return to eight percent.

C. The NCUA's Advance Notice of Proposed Rulemaking

At its January 14, 2021 meeting, the Board issued an advance notice of proposed rulemaking and solicited comments on two approaches to simplify the 2015 Final Rule.[15] Almost all commenters supported the stated goal of simplifying the 2015 Final Rule. In general, commenters favored the NCUA developing a CCULR complement to risk-based capital. Almost all commenters who favored the CCULR framework noted that its flexibility is attributable to the option complex credit unions have in calculating the more complex risk-based capital measure, which produces a more precise, and generally lower, overall capital requirement. A few commenters also stated that a benefit of the CCULR framework is its similarity to the capital framework of the other banking agencies.

II. Legal Authority

This final rule provides a simple measure of capital adequacy for credit unions classified as complex based on the principles of the CBLR framework. The CCULR relieves complex credit unions that meet specified qualifying criteria from having to calculate the risk-based capital ratio.[16] In exchange, the credit union is required to maintain a higher net worth ratio than is otherwise required for the well-capitalized classification. This trade-off is akin to the decision qualifying community banks make under the CBLR. A qualifying complex credit union that has a net worth ratio of nine percent or greater is eligible to opt into the CCULR framework.

The Board received no comments on its legal authority to issue the final rule and thus affirms its conclusions and interpretations in the proposed rule. The Board is issuing this final rule pursuant to its authority under the FCUA. The FCUA grants the NCUA a broad mandate to issue regulations governing both FCUs and all FICUs. Section 120 of the FCUA is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCUA.[17] Section 207 of the FCUA is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[18] Section 209 of the FCUA is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[19] Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

The FCUA also expressly grants authority for the Board to develop capital adequacy standards for credit unions. In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).[20] Section 301 of CUMAA added section 216 to the FCUA,[21] which required the Board to adopt by regulation a system of prompt corrective action (PCA) to resolve the problems of insured credit unions when the net worth of credit unions declines below certain levels.[22] Section 216(b)(1)(A) requires the Board to adopt by regulation a system of PCA for credit unions consistent with section 216 of the FCUA and comparable to section 38 of the Federal Deposit Insurance Act (FDI Act).[23] Section 216(b)(1)(B) requires that the Board, in designing the PCA system, also consider the ''cooperative character of credit unions''.[24] The Board initially implemented the required system of PCA in 2000,[25] primarily in part 702. As discussed previously, the Board most recently made substantial updates to the regulation in the 2015 Final Rule.

Among other things, section 216(c) of the FCUA requires the NCUA to use a credit union's net worth ratio to determine its classification among five net worth categories set forth in the FCUA.[26] Section 216(o) generally defines a credit union's net worth as its retained earnings balance as determined under generally accepted accounting principles (GAAP); [27] and a credit union's net worth ratio as the ratio of its net worth to its total assets.[28] As a credit union's net worth ratio declines, so does

[10] Under section 4012 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020), the CBLR was temporarily set to eight percent. *See,* 85 FR 22924 (Apr. 23, 2020). Under the statute, the temporary CBLR of eight percent ended on December 31, 2020. The CBLR transitions back to nine percent on January 1, 2022. *See,* 85 FR 22930 (Apr. 23, 2020).

[11] *See,* 85 FR 77345 (Dec. 2, 2020), providing temporary relief from December 2, 2020 through December 31, 2021 for purposes of determining the asset size of an institution.

[12] Public Law 116–136.

[13] *See,* 85 FR 22924 (Apr. 23, 2020).

[14] *See,* 85 FR 22930 (Apr. 23, 2020). The grace period is the two-calendar quarter period a depository institution or depository institution holding company has to satisfy the requirements to be a qualifying institution or to calculate a risk-based capital ratio.

[15] *See,* 86 FR 13498 (March 9, 2021).

[16] See *Section IV.B. Qualifying Credit Unions* for more information on the qualifying criteria.

[17] 12 U.S.C. 1766(a).

[18] 12 U.S.C. 1787(b)(1).

[19] 12 U.S.C. 1789(a)(11).

[20] Public Law 105–219, 112 Stat. 913 (1998).

[21] 12 U.S.C. 1790d.

[22] The risk-based net worth requirement for credit unions meeting the definition of complex was first applied based on data in the Call Report reflecting activity in the first quarter of 2001. 65 FR 44950 (July 20, 2000). The NCUA's risk-based net worth requirement has been largely unchanged since its implementation, with the following limited exceptions: revisions were made to the rule in 2003 to amend the risk-based net worth requirement for member business loans, 68 FR 56537 (Oct. 1, 2003); revisions were made to the rule in 2008 to incorporate a change in the statutory definition of ''net worth,'' 73 FR 72688 (Dec. 1, 2008); revisions were made to the rule in 2011 to expand the definition of ''low-risk assets'' to include debt instruments on which the payment of principal and interest is unconditionally guaranteed by NCUA, 76 FR 16234 (Mar. 23, 2011); revisions were made in 2013 to exclude credit unions with total assets of $50 million or less from the definition of complex credit union, 78 FR 4033 (Jan. 18, 2013); and revisions were made in 2020 to reflect loans issued under the Paycheck Protection Program, 85 FR 23212 (Apr. 27, 2020).

[23] 12 U.S.C. 1790d(b)(1)(A); see also 12 U.S.C. 1831o (section 38 of the FDI Act setting forth the PCA requirements for insured banks). In discussing the statutory requirement for comparability, the 2019 Supplemental Rule stated that ''the FCUA requires the Board to adopt a PCA framework comparable to the PCA framework in the FDI Act. The FCUA, however, does not require the Board to adopt a system of risk-based capital identical to the risk-based capital framework for federally insured banking organizations.''

[24] That is, credit unions are not-for-profit cooperatives that do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers. 12 U.S.C. 1790d(b)(1)(B).

[25] 12 CFR part 702; see also 65 FR 8584 (Feb. 18, 2000) and 65 FR 44950 (July 20, 2000).

[26] 12 U.S.C. 1790d(c).

[27] 12 U.S.C. 1790d(o)(2).

[28] 12 U.S.C. 1790d(o)(3).

its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.[29]

Section 216(d)(1) of the FCUA requires the NCUA's system of PCA include, besides the statutorily defined net worth ratio requirement, ''a risk-based net worth [30] requirement for credit unions that are complex, as defined by the Board.'' [31] The FCUA directs the NCUA to base its definition of complex credit unions ''on the portfolios of assets and liabilities of credit unions.'' [32] If a credit union is not classified as complex, as defined by the NCUA, it is not subject to a risk-based net worth requirement. Besides granting the NCUA broad authority to determine which credit unions are complex, and thus subject to a risk-based net worth requirement, the FCUA also grants the NCUA broad authority to design a risk-based net worth requirement to apply to such complex credit unions.[33] Specifically, unlike the terms ''net worth'' and ''net worth ratio,'' the term ''risk-based net worth'' is undefined in the FCUA. Accordingly, section 216 grants the Board the authority to design risk-based net worth requirements, so long as the regulations are comparable to those applicable to other federally insured depository institutions and consistent with FCUA requirements.

The CCULR framework is comparable to section 38 of the FDI Act, as implemented by CBLR Final Rule.[34] As discussed previously, section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amended part of the other banking agencies' capital adequacy framework to direct the other banking agencies to propose a simplified, alternative measure of capital adequacy for certain federally insured banks.[35] The other banking agencies implemented this requirement, including amendments to their PCA regulations under section 38 of the FDI Act, in the CBLR Final Rule.

Besides satisfying the comparability requirement in section 216, the CCULR framework also meets the requirements in section 216 of the FCUA for the NCUA's risk-based net worth framework. Section 216 has two express provisions that authorize an NCUA analogue to the CBLR—the definition of complex credit unions and the mandate for the Board to design a risk-based net worth requirement. In designing its CCULR framework, the Board considered both its legal authority to exclude credit unions from risk-based net worth requirements under the definition of complex, and its authority to design a system of risk-based net worth that includes a higher net worth ratio in place of calculating a ratio based on risk-adjusted assets.[36]

The Board considered its express authority under section 216 to define which credit unions are complex, and thus exclude noncomplex credit unions from the risk-based net worth requirement.[37] The express delegation grants the Board significant discretion to determine which credit unions are considered complex. Under this legal basis, the Board would continue to limit the definition of complex to only those credit unions with quarter-end total assets that exceed $500 million dollars. In using asset size as a proxy for complexity, the Board complied with the statutory directive that the definition of complex be based on the portfolios of assets and liabilities of credit unions. Specifically, the Board relied on a complexity index that counted the number of complex products and services provided by credit unions.[38] The complexity index demonstrated that credit unions with greater than $500 million in total assets held more complex assets and liabilities as a larger share of their total assets than smaller credit unions.[39]

The Board, however, could also have drafted a definition of complex that looks at the individual portfolios of credit unions with total assets greater than $500 million rather than examining the assets and liabilities of credit unions in the aggregate. This approach is also consistent with the statutory provision that the complex definition should be based on the portfolios of assets and liabilities of credit unions. The Board would have used the same qualifying criteria as in the final rule as measures of complexity. If a credit union would otherwise meet the definition of a qualifying credit union, it would be considered not complex. Thus, it would not be subject to risk-based capital, as implemented by the 2015 Final Rule. This alternative approach would have created a functionally equivalent requirement to the one set forth in this final rule, with the only difference being the technical details of the implementing regulatory text in part 702.

The Board also considered its express authority and mandate to design the CCULR on the basis that the CCULR constitutes a risk-based net worth requirement, as required for complex credit unions in section 216(d). As noted previously, the FCUA does not define the term ''risk-based net worth requirement'' and sets forth only general guidelines for the design of the risk-based net worth requirement mandated under section 216(d)(1). Specifically, section 216(d)(2) requires that the Board ''design the risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.'' Under section 216(c)(1)(B) of the FCUA, the net worth ratio required for a credit union to be adequately capitalized is six percent.

[29] 12 U.S.C. 1790d(c)–(g); 12 CFR 702.204(a)–(b).

[30] 12 U.S.C. 1790d(d)(2). For purposes of this rulemaking, the term risk-based net worth requirement is used in reference to the statutory requirement for the Board to design a risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection. The term risk-based capital ratio is used to refer to the specific standards established in the 2015 Final Rule to function as criteria for the statutory risk-based net worth requirement. The term risk-based capital ratio is also used by the other banking agencies and the international banking community when referring to the types of risk-based requirements that are addressed in the 2015 Final Rule. This change in terminology throughout the final rule would have no substantive effect on the requirements of the FCUA and is intended only to reduce confusion for the reader.

[31] 12 U.S.C. 1790d(d)(1).

[32] 12 U.S.C. 1790d(d).

[33] *Id.*

[34] 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve Board), and 12 CFR part 324 (FDIC).

[35] 12 U.S.C. 5371.

[36] The Board also briefly considered an additional independent legal basis for the CCULR framework. As discussed in the section III.D. Calibration of the CCULR, the CCULR framework results in complex credit unions generally holding more capital than under the 2015 Final Rule. Because of the higher capital requirements under the CCULR framework, the Board also considered whether the framework could be considered an alternative method to demonstrate compliance with the 2015 Final Rule, instead of an alternative measure of risk-based net worth. This approach would be within the Board's general discretion to determine the means and manner by which it measures compliance with its regulations, including the risk-based net worth requirement. Considering the express statutory authority to define complex and design a risk-based net worth framework, however, the Board believes this alternative basis, while valid, is unnecessary to support the final rule.

[37] When Congress expressly authorizes or directs an agency to define a statutory term, it grants the agency broad discretion. Under these circumstances, an agency is permitted to interpret a term so long as its interpretation is not manifestly contrary to the statute. The interpretation need not conform to the ordinary meaning of the term. *See Am. Bankers Ass'n* v. *Nat'l Credit Union Admin.,* 934 F.3d 649, 663 (D.C. Cir. 2019) (''An express delegation of definitional power ''necessarily suggests that Congress did *not* intend the [terms] to be applied in [their] plain meaning sense,'' *Women Involved in Farm Econ.* v. *U.S. Dep't of Agric.,* 876 F.2d 994, 1000 (D.C. Cir. 1989), that they are not ''self-defining,'' *id.,* and that the agency ''enjoy[s] broad discretion'' in how to define them, *Lindeen* v. *SEC,* 825 F.3d 646, 653 (D.C. Cir. 2016)).

[38] *Supra* note 4 at 55470.

[39] *Id.*

The plain language of section 216(d)(2) supports the NCUA's interpretation that Congress intended for the NCUA to design the risk-based net worth requirement to factor any material risks beyond those already addressed through the statutory six percent net worth ratio required for a credit union to be adequately capitalized. In other words, the language in section 216(d)(2) simply identifies the types of risks that the NCUA's risk-based net worth requirement must address—that is, those risks not already addressed by the statutory six percent net worth requirement. Notably, the FCUA does not require the risk-based net worth requirement include risk-adjusted assets as part of its calculation.[40] Instead, the Board interprets ''risk-based'' to require an accounting for risks in some manner—that is, the measure must be based on a consideration of risks—but not any particular manner of doing so.[41] Thus, if the Board determines that the CCULR considers all material risks not addressed by the six percent net worth ratio, then the Board has satisfied the statutory requirements for a risk-based net worth ratio.[42]

The Board believes that either the complex-based approach or the risk-based approach to designing the CCULR framework are supported by the FCUA. The Board, however, chose to draft the final rule under its authority to design a risk-based net worth requirement. The Board believes that considering the CCULR as an alternative way to calculate a risk-based net worth requirement is more straightforward, consistent with the structure of section 216, and simpler for complex credit unions to implement.

III. Proposed Rule

The Board issued the proposed rule to provide a simplified measure of capital adequacy for complex credit unions at its July 22, 2021, meeting.[43] The proposed rule provided for a 60-day comment period that ended on October 15, 2021. The Board received 21 comments from credit unions, both state and federal; credit union leagues and trade associations; a banking trade organization; individuals; and an association of state credit union supervisors. Many of the commenters supported the goal of providing a simplified, alternative measure of capital adequacy for certain highly capitalized complex credit unions. Most commenters, however, expressed some concerns about specific aspects of the proposal. The final rule and a discussion of the Board's responses to the comments are discussed in the following sections.

IV. Final Rule

A. Overview of the CCULR Framework

The final rule provides a simplified measure of capital adequacy for credit unions classified as complex (credit unions with total assets greater than $500 million). Under the final rule, a qualifying complex credit union that meets the minimum CCULR, which is equal to its net worth ratio, is eligible to opt into the CCULR framework and is considered well capitalized. The CCULR framework is based on the principles of the CBLR framework. As discussed previously in this preamble, it relieves complex credit unions that meet specified qualifying criteria and have opted into the CCULR framework from having to calculate a risk-based capital ratio, as implemented by the 2015 Final Rule. In exchange, the qualifying complex credit union is required to maintain a higher net worth ratio than is otherwise required for the well-capitalized classification. This is a similar trade-off to the one qualifying community banking organizations can make under the CBLR.

Most commenters generally supported the CCULR framework. Several commenters noted that credit unions could choose to comply with the current risk-based capital rule or the CCULR. One commenter stated that, with the CCULR framework, the Board can maximize synergy with the risk-based capital rule, maintain flexibility, and achieve greater consistency with sound public policy and the FCUA. In contrast, another commenter opposed the optionality in the CCULR framework and stated that allowing credit unions to opt-in to the CCULR framework creates two populations of credit unions based on nothing but the compliance of internal actors of the credit unions. The Board believes that implementing a CCULR framework furthers the goal of the FCUA's PCA requirements by ensuring complex credit unions continue to hold sufficient capital, while minimizing the burden associated with complying with the NCUA's risk-based capital requirement. In response to comments, however, the final rule makes several material changes to the CCULR framework. These changes include: (1) Calibrating the CCULR at nine percent instead of 10 and forgoing any transition period; (2) removing the written notification requirement for exiting the CCULR framework after opting in; (3) permitting a grace period for credit unions that no longer meet the qualifying criteria due to a supervisory merger; and (4) amending the treatment of goodwill in both the CCULR framework and risk-based capital framework. The Board has not amended the effective date in response to the comments; the final rule, along with the 2015 Final Rule, is effective on January 1, 2022. Several commenters stated that this date should be delayed because the effective date of risk-based capital is in less than three months after the comment period closed for the proposed rule. Other commenters discussed the need to comment on Call Report changes. Commenters also stated that the NCUA should factor in the effective date of CECL, which will have a significant impact on net worth and the current economic conditions related to COVID–19.

Commenters recommended different alternative effective dates for the CCULR framework. Several commenters

[40] Case law research revealed no decisions discussing the meaning of ''risk-based'' under the FCUA or other statutes that impose risk-based capital requirements on financial institutions.

[41] By contrast, in 2010, Congress specifically elaborated on the risk-based measures applicable to banks by providing that the generally applicable risk-based capital requirements for those institutions must include risk-weighted assets in the denominator of the ratio. Public Law 111–203, codified at 12 U.S.C. 5371. Congress did not elect to amend the FCUA to add a similar elaboration on the risk-based net worth requirement applicable to complex credit unions, which is consistent with the Board's interpretation that the term risk-based by itself does not necessarily entail risk-weighted assets. This reading is consistent with judicial interpretations of the closely related phrase ''based on,'' which the Supreme Court has held to indicate a causal or but-for-causation relationship between the phrase ''based on'' and the term it modifies. *Babb* v. *Wilkie,* 140 S.Ct. 1168, 2020 WL 1668281, at *4 (Apr. 6. 2020). Similarly, a ''risk-based'' requirement can be understood as a requirement that bears a causal relationship to the relevant risks but does not require a specific form for the calculation of this requirement.

[42] Similarly, the Board initially explored a non-risk-adjusted approach in the advance notice of proposed rulemaking that the Board issued following CUMAA's enactment in 1998, in which it requested comments on addressing this provision through increased net worth requirements as well as through risk-adjusted measures. 63 FR 57938 (Oct. 29, 1998). This approach is also consistent with the Senate report accompanying CUMAA, which stated: ''The NCUA must design the risk-based net worth requirement to take into account any material risks against which the *6 percent net worth ratio* required for an insured credit union to be adequately capitalized may not provide adequate protection. Thus, the NCUA should, for example, consider whether the six percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved.'' S. Rep. No. 105–193 at 14 (May 21, 1998) (emphasis added). The report indicates that Congress did not intend to prescribe how the Board accounts for any relevant risks that the six percent net worth ratio does not adequately address.

[43] 86 FR 45825 (Aug. 16, 2021).

recommended January 1, 2023. Other commenters recommended six months after publication of the final rule in the **Federal Register**.

In contrast, one banking trade organization recommended that the Board first subject credit unions to the risk-based capital standards before implementing an opt-in to the CCULR framework. This argument appeared to be based primarily or solely on the fact that banks complied with risk-based capital before Congress enacted and the other banking agencies implemented the CBLR. The Board found no new evidence or information that would warrant it refraining from adopting the CCULR framework now. As discussed in the proposed rule and this final rule preamble, a complex credit union which opts into the CCULR framework will generally increase the overall capital requirement. The Board continues to find that implementing the CCULR framework alongside the 2015 Final Rule will balance flexibility and choice for complex credit unions with safety and soundness and overall capital adequacy.

The Board is not delaying the implementation of either the CCULR framework or the 2015 Final Rule. The Board did not propose to delay the 2015 Final Rule and does not believe that credit unions need additional time to comply with either framework.[44] The Board acknowledges that January 1, 2022, is less than the standard effective date of 30 days following the publication of this final rule. There are, however, several factors that persuade the Board that credit unions will not be disadvantaged. First, credit unions are not required to comply with the CCULR framework as it is an optional framework to the 2015 Final Rule. Also, credit unions do not have to select their framework until the end of the first quarter in 2022, which is a few months after the publication of the final rule in the **Federal Register**. The final rule does not include any new calculations for complex credit unions and relies on the net worth ratio, an existing capital measure that credit unions report each quarter. Finally, the Board is not persuaded that credit unions are unprepared to choose between the CCULR framework and the risk-based capital framework due to Call Report amendments. The proposed rule included sample Call Report illustrations. While the Board did not seek specific comments in the proposed rule on the Call Report changes, credit unions knew of the potential changes and no comments were received expressing general confusion. The agency also published a Notice and Request for Comment on the proposed Call Report changes on September 27, 2021.[45] Thus, the Board believes a January 1, 2022 effective date for the CCULR framework is reasonable and not disadvantageous to credit unions.

B. Qualifying Complex Credit Unions

Under the final rule, a qualifying complex credit union is defined as a complex credit union under 12 CFR 702.103 that meets the following criteria (qualifying criteria), each as described further as follows:

(1) Has a CCULR (net worth ratio) of 9 percent or greater;[46]

(2) Has total off-balance sheet exposures of 25 percent or less of its total assets;

(3) Has the sum of total trading assets and total trading liabilities of 5 percent or less of its total assets; and

(4) Has the sum of total goodwill and total other intangible assets of 2 percent or less of its total assets.

The Board believes complex credit unions that do not meet any one of the qualifying criteria should remain subject to risk-based capital to ensure that such credit unions hold capital commensurate with the risk profile of their activities. The Board will continue to evaluate the qualifying criteria over time to ensure it continues to be appropriate.

1. CCULR of Nine Percent or Greater

The final rule requires a complex credit union to have a CCULR of at least nine percent to be classified as a qualifying complex credit union. Given this change from 10 percent in the proposal, the Board is not adopting the proposed transition provision, which would have set the CCULR at 9 percent initially, then increased it to 10 percent by January 1, 2024. For a discussion of the relevant comments, see *Section D. Calibration*.

2. Off-Balance Sheet Exposures

The Board did not receive substantial comment on the proposed off-balance sheet exposure criterion. One commenter requested further guidance on this criterion. Another credit union said this criterion is better addressed through the examination process. The proposed rule provided substantial detail on the eight off-balance sheet exposures. The Board also disagrees that this criterion is better addressed through the supervisory process; rather, the Board believes the off-balance sheet criterion is essential in determining the appropriateness of the CCULR framework for a specific credit union. If a complex credit union has substantial off-balance sheet exposures, the Board believes the more precise risk-based capital framework is necessary to determine its capital adequacy.

Under the final rule, a qualifying complex credit union is required to have total off-balance sheet exposures of 25 percent or less of its total assets, as of the end of the most recent calendar quarter. The Board is including these qualifying criteria in the CCULR framework because the CCULR includes only on-balance sheet assets in its denominator. Thus, it does not require a qualifying complex credit union to hold capital against its off-balance sheet exposures. This qualifying criterion is intended to reduce the likelihood that a qualifying complex credit union with significant off-balance sheet exposures would be required to hold less capital under the CCULR framework than under the risk-based capital ratio.[47]

The other banking agencies' CBLR framework also excludes banking organizations with significant off-balance sheet exposures. The other banking agencies' definition of off-balance sheet exposures, however, has several differences from the current definition of off-balance sheet exposures in the 2015 Final Rule. Thus, to make the CCULR framework more comparable to the CBLR and to improve on the effectiveness of the 2015 Final Rule, the final rule amends the NCUA's definition of off-balance sheet exposures. The amendments to the definition of off-balance sheet exposure apply to both the CCULR framework and the risk-based capital framework.[48]

Under the CCULR framework, off-balance sheet exposures mean:

(1) For unfunded commitments, excluding unconditionally cancellable commitments, the remaining unfunded portion of the contractual agreement.

(2) For loans transferred with limited recourse, or other seller-provided credit enhancements, and that qualify for true sale accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For loans transferred under the Federal Home Loan Bank (FHLB) mortgage

[44] Because the Board did not propose any change to the 2015 Final Rule's effective date, a change in this final rule would not be within the scope of the proposed rule.

[45] 86 FR 53351 (Sept. 27, 2021).

[46] For an additional discussion on why the Board set the ratio to nine percent, see *Section D. Calibration of the CCULR.*

[47] The amendments to § 702.104, Risk-Based Capital Ratio, include credit conversion factors and risk-weights for off-balance sheet exposures.

[48] The final rule also includes risk weights for each new exposure in the definition of off-balance sheet exposure. See, *Section L. Amendments to the 2015 Final Rule.*

partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(4) For financial standby letters of credit, the total potential exposure of the credit union under the contractual agreement.

(5) For forward agreements that are not derivative contracts, the future contractual obligation amount.

(6) For sold credit protection through guarantees and credit derivatives, the total potential exposure of the credit union under the contractual agreement.

(7) For off-balance sheet securitization exposures, the notional amount of the off-balance sheet credit exposure (including any credit enhancements, representations, or warranties that obligate a credit union to protect another party from losses arising from the credit risk of the underlying exposures) that arises from a securitization.

(8) For securities borrowing or lending transactions, the amount of all securities borrowed or lent against collateral or on an uncollateralized basis.

Each element of the off-balance sheet definition is discussed in detail in the proposed rule.

3. Trading Assets and Liabilities

Commenters raised no objections to the proposed criterion related to trading assets and labilities. Thus, the Board is finalizing this provision as proposed. Under the final rule, a qualifying complex credit union is required to have the sum of its total trading assets and total trading liabilities be five percent or less of its total assets, each measured as of the end of the most recent calendar quarter. This criterion, including related definitions, is discussed in detail in the proposed rule.

4. Goodwill and Other Intangible Assets

Under the proposal, a qualifying complex credit union was required to have the sum of total goodwill and other intangible assets of two percent or less of its total assets. As proposed, qualifying complex credit unions were required to include excluded goodwill and excluded other intangible assets in this calculation.[49] Five commenters objected to the inclusion of a criterion related to goodwill and intangible assets. One commenter stated that previous accounting changes resulted in increased amounts of goodwill related to supervisory mergers. This commenter stated that credit unions that support the NCUA and the NCUSIF by assisting in supervisory mergers should not be penalized by subsequent restrictions on the holding of supervisory goodwill.[50] Several commenters requested that supervisory goodwill and elective goodwill should be treated differently. Another commenter stated that only impaired goodwill should be deducted. Another commenter preferred that the goodwill criterion be removed but stated that, at the very least, the Board should not include excluded goodwill and excluded other intangible assets. Finally, one commenter stated that goodwill is not an eligibility criterion for the CBLR. The Board notes that goodwill is deducted from insured banks' numerator for purposes of the CBLR. Other commenters generally supported the inclusion of goodwill as a criterion.

In response to the comments received, the Board has revised the treatment of goodwill in the final rule. The final rule will not include excluded goodwill and excluded other intangible assets as part of the calculation for the two percent eligibility requirement. As a result of these changes, a complex credit union need not include excluded goodwill or excluded other intangible assets for purposes of calculating the two percent goodwill qualifying criterion under the CCULR framework. Related to this change, the 2015 Final Rule has been amended to permanently grandfather excluded goodwill and excluded other intangible assets. Thus, under the 2015 Final Rule, a complex credit union will not deduct excluded goodwill or excluded other intangible assets from its risk-based capital numerator after the sunset date of January 1, 2029. For additional information on this change, see *Section L. Amendments to the 2015 Final Rule.*

The Board made these changes in response to commenters' concerns about equity related to subsequent changes to the treatment of supervisory goodwill. Certain commenters expressed concern about unforeseen capital implications related to goodwill acquired as part of a supervisory merger or combination before December 28, 2015. In this case, the Board agrees that credit unions that assisted in previous supervisory mergers and combinations should not be unduly penalized by subsequent restrictions on excluded goodwill. Thus, the Board will not require credit unions to include such exposures when calculating the two percent threshold under the CCULR framework.

The Board, however, still believes a qualifying criterion related to goodwill and other intangible assets should be included in the final rule. The Board also recognizes that other intangible assets contain a high level of uncertainty regarding a credit union's ability to realize value from these assets, especially under adverse financial conditions. Due to the uncertainty of recognizing value from goodwill and other intangible assets, the other banking agencies require insured banks to deduct goodwill and intangible assets from tier one capital.[51] The Board believes it is prudent to assess the credit union's balance of goodwill and other intangible assets to ensure comparability with the banking industry. Without this criterion, a qualifying credit union could violate the principles of the CBLR framework by using the CCULR despite substantial goodwill and intangible assets. The Board also notes that, under the 2015 Final Rule, goodwill and other intangible assets are deducted from both the risk-based capital ratio numerator and denominator.

The Board believes that complex credit unions with two percent or less of their assets in goodwill and other intangibles assets would not hold less capital under the CCULR framework than under the risk-based capital ratio. In addition, as of June 30, 2021, it is estimated that the two percent threshold would not exclude any complex credit unions from the CCULR framework. Thus, the Board believes a two percent threshold balances regulatory relief for most qualifying complex credit unions with recognizing the uncertainty and volatility of goodwill and other intangible assets. The Board believes that complex credit unions with substantial goodwill and other intangible assets should calculate their capital adequacy using the risk-based capital ratio, as their portfolios may require higher capital levels.

5. Other CBLR Eligibility Criteria

Total Assets of Less Than $10 Billion

Under the other banking agencies' CBLR framework, only depository institutions or depository institution holding companies with total consolidated assets of less than $10 billion are eligible to use the CBLR.

The Board did not include this qualifying criterion in the proposed rule. Several commenters supported this position. Commenters reiterated the

[49] Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015. Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015.12 CFR 702.2 (effective Jan. 1, 2022).

[50] Supervisory goodwill is goodwill originating from a supervisory merger or combination, as defined in the 2015 Final Rule.

[51] *See e.g.,* 12 CFR 324.22.

Board's justification in the proposed rule. For example, commenters noted that credit unions' stringent portfolio-shaping rules mitigate many of the risks associated with larger institutions in the banking sector. Also, credit unions with $10 billion or more in assets are generally required to conduct capital planning, and credit unions with $15 billion or more in assets are generally required to conduct stress testing.[52]

One commenter objected to the inclusion of all qualifying credit unions by noting that Congress limited the asset size threshold for a qualifying community bank to less than $10 billion in assets. The commenter presented no new information or considerations beyond those the Board addressed in the proposed rule. The Board disagrees and, for the reasons discussed in the proposed rule preamble, continues to believe the CCULR is an appropriate capital framework for all complex credit unions as the FCUA limits the types of assets an FCU can hold compared to banking organizations. The Board also finds that the legislative cap on eligibility for the CBLR does not require the Board to impose the same cap on the CCULR framework, which is tailored to the requirements of the FCUA and the risks associated with complex credit unions. Thus, the Board is finalizing this provision as proposed.

Other Qualifying Criteria

In the proposed rule, the Board asked whether the final rule should include other qualifying criteria. Several commenters stated they did not support expanding the qualifying criteria to include certain categories discussed in the proposed rule, including ''heightened risk'' asset categories, investments in CUSOs, or concentrations of mortgage servicing assets (MSAs). Several commenters stated that the other banking agencies do not have similar qualifying criteria.

One banking trade organization stated that the CCULR framework should only be made available to those credit unions that do not originate or hold a significant amount of member business loans.

The Board is not adding any additional qualifying criteria with a CCULR of nine percent. The Board believes that a CCULR of nine percent is appropriate because most complex credit unions would be required to hold more capital under the CCULR framework than under the risk-based capital framework. This would be true even if a complex credit union's portfolio included greater than average amount of assets with higher risk weights under the 2015 Final Rule, such as concentrations in junior-lien mortgages and commercial loans, investments in CUSOs, or concentrations of MSAs. The Board considered adding qualifying criteria to account for adopting the CCULR at 9 percent instead of 10 percent but does not believe it is necessary now as credit unions do not hold less capital under the CCULR framework than the risk-based capital framework.

The Board may consider future qualifying criteria as it gains experience in supervising complex credit unions under the CCULR framework or if the risk-profile of credit union assets change. For example, if the credit union industry begins to hold larger concentrations of high-risk assets, including junior lien mortgages, commercial loans, MSAs, corporate credit unions investments, or CUSO investments, then the Board may reconsider whether additional qualifying criteria are necessary. If an individual credit union holds significant concentrations of these assets, then the Board may exercise its reservation of authority to require the credit union to calculate its capital adequacy under the risk-based capital framework.[53]

C. The CCULR Ratio

Under the proposal, the CCULR would be the net worth ratio, which is defined under the 2015 Final Rule as the ratio of the credit union's net worth to its total assets rounded to two decimal places (for example 9.32 percent).[54]

The Board proposed to use the net worth ratio for the CCULR for its simplicity. Complex credit unions are required to calculate their net worth ratio regardless of whether they opt into the CCULR framework. Thus, complex credit unions are not required to calculate a unique ratio for purposes of opting into the CCULR framework. Also, complex credit unions are already familiar with the net worth ratio, which reduces compliance costs compared to a unique ratio designed for the CCULR framework.

Several commenters supported using the net worth ratio for the CCULR for the reasons stated in the proposed rule. But three commenters recommended that the Board create a new measure of capital for the CCULR framework. Specifically, commenters recommended the inclusion of subordinated debt for credit unions that are not low-income designated credit unions. Alternatively, commenters also recommended the inclusion of other types of capital shares akin to the perpetual contributed capital shares issued by corporate credit unions. An association of credit union supervisors stated that subordinated debt should be included because during times of economic dislocation, even healthy institutions may not be able to accelerate their capital replenishment. This commenter further stated that allowing for additional sources of capital such as subordinated debt strengthens the credit union system and protects the NCUSIF. One commenter stated that goodwill should be deducted from net worth for purposes of CCULR.

The Board considered an alternative measure of capital in the proposed rule that included subordinated debt parallel to the risk-based capital ratio numerator from the 2015 Final Rule.[55] The Board has not adopted a new measure of capital in the final rule. First, the Board believes that the numerator to the 2015 Final Rule is a more conservative measure of capital compared to the numerator in the net worth ratio. Second, as the proposed rule preamble stated, a new measure of capital would likely include several deductions, including deductions for the NCUSIF capitalization deposit, goodwill, other intangible assets, and identified losses and would be more complicated to calculate than the net worth ratio.

Regarding commenters' characterization of subordinated debt as a useful tool to build capital when a credit union is experiencing a capital hardship, the Board acknowledges the benefits of issuing subordinated debt, but also notes that subordinated debt can be an expensive form of capital, both in the terms of the cost of issuing it and in terms of necessary rate of return to investors. Also, it may not be readily available during times of stress.

D. Calibration of the CCULR

The proposed rule would have allowed a qualifying complex credit union to opt into the CCULR framework if it met the minimum CCULR at the time of opting into the CCULR framework. The proposed rule initially set the CCULR at 9 percent and transitioned to 10 percent over two years. Almost all commenters objected to calibrating the CCULR ratio at 10 percent, and instead recommended a 9 percent measure in conformance with the ratio used for the CBLR. Other commenters were concerned that fewer credit unions could take advantage of the CCULR framework if it is set at 10

[52] 12 CFR part 702, subpart E.

[53] See, *Section J. Reservation of Authority.*

[54] 12 CFR 702.2 (effective Jan. 1, 2022).

[55] 12 CFR 702.104(b) (effective Jan. 1, 2022).

percent. Some commenters stated that a nine percent CCULR would provide greater regulatory relief. Several commenters generally discussed that higher capital may restrict credit union growth and mean less resources to invest in products and services that benefit the member-owners. One commenter stated that a 10 percent calibration could restrict credit unions' ability to expand access to the underserved and underbanked. One commenter discussed that accelerated asset growth as a result of COVID–19 should favor a lower CCULR. Another commenter recommended that the Board set CCULR at less than nine percent and recommended a ratio closer to eight percent.

In contrast, one credit union commenter supported a CCULR of 10 percent. One banking trade organization generally supported sufficient capital requirements.

The Board understands the commenters' concerns about a 10 percent CCULR, due in part to the recent downward pressure on credit union net worth ratios from the rapid growth in assets during 2020 and 2021. The Board also understands that a higher capital requirement may restrict credit union ability to invest in member products and services. As the proposed rule explained, the Board initially considered setting the CCULR between 9 and 11 percent and presented analysis on the potential impact in terms of safety and soundness and burden reduction for potential CCULRs at 9 and 10 percent.

In recognition of this fact, and in response to the comments received, the Board has adopted a CCULR of nine percent and is forgoing the transition provision. The Board finds that this calibration of the CCULR will provide appropriate regulatory burden relief and serve as further incentive for complex credit unions to opt into the CCULR with the benefit of maintaining strong capital levels in the credit union system and ensuring safety and soundness.

Guided by the goals stated in the proposed rule's calibration discussion—maintaining strong capital levels in the credit union system, ensuring safety and soundness, and providing appropriate regulatory relief to as many credit unions as possible—the Board considered several factors in adopting a CCULR of nine percent.

First, the Board considered aggregate levels of capital among complex credit unions. The CCULR framework does not result in a reduction of the minimum required amount of capital held by complex credit unions and results in an overall increase in the minimum amount of required capital held by complex credit unions. Based on reported data as of June 30, 2021, approximately 70 percent of complex credit unions qualify to use the CCULR framework and would be well capitalized under a 9 percent calibration. This was a significant decrease in the number of eligible credit unions at 9 percent when compared to pre-pandemic net worth ratios, when approximately 90 percent would have been eligible. Of the total 680 complex credit unions as of June 30, 2021, 473 have a net worth ratio greater than nine percent and would be well capitalized under a nine percent CCULR standard. Of those 473 credit unions, the Board estimates that all of them meet the qualifying criteria, and are thus eligible to opt into the CCULR framework. Under the CCULR, if all 473 credit unions opted into the CCULR and held the minimum nine percent net worth ratio required to be well capitalized, the total minimum net worth required is estimated at $111.8 billion, an increased capital requirement of $24.3 billion over the minimum required under the 2015 Final Rule. The Board is not aware of any qualifying complex credit unions that would reduce their capital requirement with a CCULR of nine percent as compared to the 2015 Final Rule.

The Board also considered the extent of the burden relief provided by the CCULR framework. The Board believes a CCULR of 9 percent is preferable to a CCULR of 10 percent as it permits an additional 173 complex credit unions (473 eligible at 9 percent versus 300 at 10 percent) to opt-into the CCULR framework, which supports the Board's goal of reducing regulatory burden for as many complex credit unions as possible.

Next, the Board considered that the 8 to 10 percent range established by Congress for the CBLR is 300 to 500 basis points higher than the 5 percent leverage ratio required for well-capitalized status under the other banking agencies' PCA framework.[56] As detailed in the proposed rule preamble, the Board reviewed the basis for the 7 percent net worth ratio for insured credit unions and considered a range between 9 and 11 percent for the CCULR. The Board's analysis established that setting the CCULR 300 basis points higher than the seven percent net worth ratio while the other banking agencies have set the CBLR 400 basis points higher than the comparable leverage requirements for insured banks would be appropriate because of changes in credit union investments in corporate credit unions since Congress established the seven percent net worth ratio in 1998. But the proposed rule did not conclude that a 9 percent CCULR would be inappropriate and specifically analyzed the merits of 9 and 10 percent in the calibration discussion.

Upon reconsideration, the Board is adopting a nine percent CCULR based on its effect on capital levels and burden reduction, rather than calibrating CCULR based on the analysis of the seven percent net worth ratio and relative difference between the CBLR and the leverage ratio for insured banks. The Board acknowledges, however, that setting CCULR at nine percent is only 200 basis points above the statutory well-capitalized threshold for the net worth ratio absent consideration of the reduced corporate credit union investments. The Board also recognizes it is less than the 400 basis point differential established by the other banking agencies in setting the CBLR when compared to the leverage ratio. The Board, however, believes a CCULR of nine percent is prudent and does not present undue safety and soundness risk. A primary reason that other banking agencies chose a CBLR of nine percent was to ensure qualifying community banks generally maintain their current level of capital. As discussed previously, a CCULR of nine percent increases the total minimum net worth required to $111.8 billion, an increased capital requirement of $24.3 billion over the minimum required under the 2015 Final Rule. The Board also notes that the analysis in the proposed rule comparing bank and credit union net worth and leverage ratios was not a decisive factor but one of several factors forming the overall proposal, which included a nine percent CCULR in the range of consideration.

Also, as a separate point that confirms the Board's approach and conclusion, the other banking agencies also designed the CBLR framework to reduce the likelihood that a banking organization would not hold less capital under the CBLR framework than under the risk-based capital framework. The Board estimates that no qualifying complex credit union would reduce its capital requirement with a CCULR of nine percent as compared to the 2015 Final Rule. Thus, the Board does not believe a reduced CCULR of nine percent will result in the potential for regulatory arbitrage between the two frameworks.

Finally, as noted in the proposed rule preamble, the Board specifically considered comparability to the other

[56] 12 CFR 6.4 (OCC), 12 CFR 208.43 (Federal Reserve Board), and 12 CFR 324.403 (FDIC).

banking agencies' CBLR framework when designing the CCULR framework. The other banking agencies established a CBLR of nine percent—that is, if an insured bank has a CBLR of nine percent and meets other requirements, it is considered well capitalized. Adopting the CCULR at nine percent will make the two frameworks generally consistent in the actual level of capital required.

In sum, the Board believes a CCULR of nine percent is prudent and does not present undue safety and soundness risk. This calibration is also within the range of consideration from the proposed rule and meets the goal of reducing regulatory burden when appropriate. Also, a CCULR of nine percent is comparable to the calibration of the CBLR. Thus, based on a reconsideration of the perspective on the calibration level relative to the CBLR and credit union net worth requirements, and a further analysis of net worth levels at 9 and 10 percent net worth ratios, the Board finds that adopting a 9 percent CCULR provides adequate protection for the NCUSIF. The Board intends to continue to monitor the impact of CCULR and RBC on credit unions and the NCUSIF going forward.

E. Opting Into the CCULR Framework

Most commenters supported a credit union's ability to opt into CCULR at the end of each calendar quarter. A few credit unions also requested that they be permitted to freely switch between the risk-based capital framework and CCULR framework and the NCUA not to limit how frequently a credit union opts into the CCULR framework. The Board has made no changes to the opt-in procedures. Under the final rule, a qualifying complex credit union with a CCULR of nine percent or greater may opt into the CCULR framework at the end of each calendar quarter. A qualifying complex credit union choosing to opt into the CCULR would indicate its decision by completing a CCULR reporting schedule in its Call Report.

F. Voluntarily Opting Out of the CCULR Framework

Under the proposal, after a qualifying complex credit union opted into the CCULR framework, it may voluntarily opt out of the framework by providing written notice to the appropriate Regional Director or the Director of the Office of National Examinations and Supervision.

Most commenters on the opt-out procedures stated that prior notice to NCUA should not be required and qualifying credit unions should be able to perform the required analysis and switch between the two options with the same ease as banking organizations. One commenter stated it is reasonable to expect that any complex credit union would not choose to opt-out of the CCULR framework without first performing a preliminary risk-based ratio calculation. The commenter wrote that if there is any possibility a credit union would skip performing such calculation, that possibility is not a justification for subjecting all complex credit unions to a notification requirement. Another commenter stated if the Board is concerned that qualifying complex credit unions are not prepared to implement risk-based capital, an alternative may be for the agency to only require advance notice in the first year of CCULR's implementation.

The Board has removed the written notice requirement for opting out of the CCULR framework. Under the other banking agencies' CBLR framework, qualifying banks that have opted into the CBLR may opt out of the framework at any time. The Board agrees with commenters and has aligned the final rule with the CBLR. The Board has reconsidered its position for several reasons. First, the Board believes that switching between CCULR and risk-based capital would be an infrequent activity and, potentially, of little benefit to the credit union. For any credit union that raises potential concerns, the NCUA can review its capital adequacy, including its choice of capital framework, through the normal supervisory process. And, the notice requirement in the proposed rule only provided the NCUA 61 days prior notice as compared to the timeframe notice would be provided through the Call Report under the final rule. The Board does not believe this 61-day period justifies subjecting all credit unions to the proposed notification. There is also no general requirement for credit unions to submit a Call Report schedule with risk-based capital before the first reporting period of March 2022, or whenever a credit union becomes complex and must calculate risk-based capital. The Board believes if it can manage the transition of newly complex credit unions to the risk-based capital framework without notification, notification is unnecessary for credit unions switching from the CCULR framework.

The Board also notes that, although a credit union may choose to use the CCULR framework, a credit union that frequently switched between CCULR and risk-based capital may raise supervisory concerns.

G. Compliance With the Criteria To Be a Qualifying Complex Credit Union

Under the proposed CCULR framework, complex credit unions have a two-calendar quarter grace period if they no longer meet one of the qualifying criteria to either begin calculating a risk-based capital ratio or to meet all the CCULR eligibility criteria. Commenters who discussed the grace period generally supported it and did not support creating a separate prompt corrective action framework for CCULR. One commenter objected to the required notice if the credit union is not likely to remain eligible for the CCULR framework. One commenter suggested a three-year grace period for a credit union that fails to comply with an eligibility requirement due to a merger, rather than immediately subjecting the credit union to the risk-based capital requirements. As discussed in the following paragraphs, the Board has made two changes to the proposed grace period in response to commenters.

Under the final rule, after a qualifying complex credit union has adopted the CCULR framework and then no longer meets the qualifying criteria, it is required, within a limited grace period of two calendar quarters, either to once again meet the qualifying criteria or comply with the risk-based capital ratio requirements. The grace period begins at the end of the calendar quarter in which the credit union ceases to satisfy the criteria to be a qualifying complex credit union and ends after two consecutive calendar quarters. For example, if the complex credit union ceases to satisfy one of the qualifying criteria after December 31st (and still does not meet the criteria as of the end of that quarter), the grace period for this credit union would begin at the quarter ending March 31st and would end at the quarter ending September 30th. The complex credit union could continue to use the CCULR framework as of June 30th but would need to fully comply with the risk-based capital ratio and the associated reporting requirements as of September 30th, unless at that time the qualifying complex credit once again met the qualifying criteria of the CCULR framework. The Board believes this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a credit union's risk profile from quarter to quarter, while capturing more permanent changes in the risk profile.

During the grace period, the credit union continues to be treated as a qualifying complex credit union and

must continue calculating and reporting its CCULR, unless it has opted out of using the CCULR framework. Also, the qualifying complex credit union continues to be considered to have met the capital ratio requirements for the well-capitalized capital category during the grace period. If the qualifying complex credit union has a CCULR of less than seven percent, however, it is not considered to be well capitalized. Instead, its capital classification is determined by its net worth ratio. For additional discussion on the treatment of a qualifying complex credit union when its CCULR falls below nine percent, see Section H—*Treatment of a Qualifying Complex Credit Union That Falls Below the CCULR Requirement.*

The two-quarter grace period is akin to the other banking agencies' CBLR framework. The proposed rule differed from the CBLR framework because a qualifying complex credit union that may fail to meet the requirements to be a qualifying complex credit union by the end of the grace period was required to submit written notification to the appropriate Regional Director or the Director of Office of National Examinations and Supervision. Consistent with the reasons discussed for credit unions voluntarily opting out of the CCULR framework, the Board has decided to remove the notification requirements in the final rule. The Board no longer believes notification is necessary and will monitor compliance and a credit union's adoption of risk-based capital through the supervisory process.

Under the CBLR Final Rule, a qualifying community banking organization that ceases to meet the qualifying criteria as a result of a business combination is not provided a grace period. The proposed rule included a similar limitation. One commenter suggested a three-year grace period for a credit union that fails to comply with an eligibility requirement due to a merger, rather than immediately subjecting the credit union to the risk-based capital requirements. In general, the Board believes credit unions that no longer meet the CCULR eligibility requirements due to a merger do not need a grace period, as complex credit unions should consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements.

The Board, however, believes that supervisory mergers should be an exception to this general policy. As defined in the 2015 Final Rule, a supervisory merger or combination is a transaction that involved the following:

(1) An assisted merger or purchase and assumption where funds from the NCUSIF were provided to the continuing credit union;

(2) A merger or purchase and assumption classified by the NCUA as an ''emergency merger'' where the acquired credit union is either insolvent or ''in danger of insolvency'' as defined under appendix B to part 701; or

(3) A merger or purchase and assumption that included the NCUA's or the appropriate state official's identification and selection of the continuing credit union.[57]

The Board believes it is reasonable to provide a limited grace period for this select group of mergers because continuing credit unions in supervisory mergers may not have the benefit of time to plan for the capital implications of a merger. As a result, continuing credit unions may need additional time to meet the CCULR eligibility criteria following a supervisory merger. The Board believes a limited, two-quarter grace period is reasonable.

H. Treatment of a Qualifying Complex Credit Union That Falls Below the CCULR Requirement

A qualifying complex credit union that has opted into the CCULR framework and has a CCULR of nine percent or greater is considered well capitalized. A qualifying complex credit union's CCULR may deteriorate due to a decline in its level of retained earnings, growth in its total assets, or a combination of both. In this case, a credit union may choose to stop using the CCULR framework and instead become subject to the risk-based capital requirement. The Board recognizes, however, that some qualifying complex credit unions may find it unduly burdensome to begin complying with the more complex risk-based capital requirements while the credit union is experiencing a decline in its CCULR.

Under the proposed rule, a minimum CCULR is one of the qualifying criteria. Thus, if a qualifying complex credit union has a CCULR that falls below the minimum requirement, it would receive the same grace period of two calendar quarters, as applicable when a credit union ceases to meet the other qualifying criteria. The Board received no comments on this provision and is finalizing it as proposed.

Thus, under the final rule a credit union is permitted a two-quarter grace period when its CCULR falls below the minimum requirement. After the two-quarter grace period, the qualifying complex credit union must either once again meet the minimum CCULR ratio or comply with the risk-based capital requirements. During the grace period, the credit union is deemed to have met the well-capitalized capital ratio requirements for PCA purposes, provided its net worth ratio remains at seven percent or greater.

If a credit union's net worth ratio falls below seven percent, it is not considered to have met the capital ratio requirements for the well-capitalized capital category and its capital classification is determined by its net worth ratio.

I. Transition Provision

The Board proposed a two-year transition provision to delay the introduction of a 10 percent CCULR. All commenters who discussed the transition period favored a longer transition, and most recommended four years. Commenters generally discussed uncertainty due to COVID–19, upcoming CECL implementation, and the need for additional time to build capital. A few commenters who recommended a nine percent CCULR also recommended setting CCULR at eight percent during the transition period. One commenter recommended the agency commit to future retargeting of a fully phased in CCULR once additional data is collected during the transition period.

Because the Board is finalizing the CCULR at 9 percent instead of 10, it is not adopting the transition provision. As proposed, the transition provision would have applied if the permanent CCULR were 10 percent. Thus, the change in the CCULR in the final rule makes the transition provision unnecessary and of no effect.

The Board is not adopting a transition provision with an initial CCULR of eight percent, as several commenters suggested, for two reasons. First, the Board does not believe there is sufficient logical outgrowth from the proposal to adopt a CCULR of eight percent. Separately from the transition provision, the proposed rule posed a question on calibrating the CCULR at eight percent but did not otherwise discuss it or provide a basis to support this level of capital being sufficient to protect the NCUSIF. Second, the Board does not believe a CCULR of eight percent is necessary to ensure most complex credit unions are eligible to opt into the CCULR framework. As previously mentioned, an estimated 70 percent of complex credit unions will be eligible to opt into the CCULR framework on January 1, 2022.

J. Reservation of Authority

The proposed rule included a reservation of authority for the Board to require a credit union to use the risk-

[57] 12 CFR 702.2 (effective Jan. 1, 2022).

based capital framework in specific cases. As detailed in this section, the final rule adopts this provision as proposed. Most commenters who discussed the reservation of authority did not object to it. A few noted it was analogous to the reservation of authority for the other banking agencies under the CBLR. Several commenters recommended the Board provide greater detail on how this process will work, who at NCUA makes the decision, and what information would be provided to the credit union. Three commenters also requested an appeal process. Two commenters objected to the reservation of authority. One commenter characterized the provision as providing NCUA with ''subjective judgment'' to establish minimum capital levels which should be left out of any minimum capital threshold. The final rule adopts the reservation of authority as proposed. Additional information is discussed in the following paragraphs in response to commenters.

In general, a complex credit union that meets the eligibility criteria may opt into the CCULR framework. There may be limited instances, however, whereby the CCULR framework would be inappropriate and not require sufficient capital to adequately protect the NCUSIF. To address such situations, the final rule includes a reservation of authority that can be exercised by the Board. Under the reservation of authority, the Board can require a complex credit union that has opted into the CCULR framework to use the risk-based capital framework to calculate its capital adequacy if the Board determines that the complex credit union's capital requirements are not commensurate with its credit or other risks. When deciding, the Board would consider all relevant factors affecting the complex credit union's safety and soundness. Also, the Board expects to provide a credit union potentially subject to use of the reservation of authority with an opportunity to present evidence on why the CCULR framework is appropriate for that institution.

The Board expects to apply the reservation of authority only in limited circumstances. Under the reservation of authority, credit unions are entitled to a two-quarter grace period before being required to comply with the risk-based capital framework. No appeal process is being provided, however, because under this final rule, the Board would exercise the reservation of authority.

K. Effect of the CCULR on Other Regulations

1. Member Business Loan Cap

The Board did not receive any comments on the proposed member business loans (MBL) analysis and thus, affirms its conclusions and interpretations in the proposed rule. Section 107A of the FCUA generally limits the aggregate amount of MBLs that an insured credit union may make, subject to exceptions for some categories of loans, such as loans granted by a corporate credit union to another credit union.[58] In addition, the FCUA exempts certain credit unions from complying with the aggregate MBL limit. Specifically, an insured credit union chartered to make MBLs, or has a history of making MBLs to its members, as determined by the Board, is not subject to the aggregate MBL limit.[59] Also, an insured credit union that serves predominantly low-income members, as defined by the Board, or is a community development financial institution, as defined in 12 U.S.C. 4702, is also not subject to the aggregate MBL limit.[60]

An insured credit union that is subject to the aggregate MBL limit may not make an MBL that would result in the total amount of outstanding MBLs at the credit union being more than the lesser of 1.75 times the actual net worth of the credit union or 1.75 times the minimum net worth required for a credit union to be well capitalized under section 216(c)(1)(A) of the FCUA.[61] Section 107A defines net worth for purposes of that section, providing that it includes the retained earnings balance, as determined under GAAP. Under this section, for credit unions that serve predominantly low-income members, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the NCUSIF.[62]

For credit unions that are not complex and thus are not subject to a risk-based net worth requirement under section 216(d) of the FCUA, MBLs are limited to 1.75 times the net worth required for the credit union to meet the seven percent net worth ratio under section 216(c)(1)(A)(i), assuming the credit union's actual net worth is greater than the minimum required to be well capitalized. To determine its maximum allowable outstanding balance of MBLs, a credit union multiplies 1.75 by seven percent of its total assets.

Until 2016, the Board calculated the MBL limitation in the same manner for complex credit unions that are subject to a risk-based net worth requirement under section 216(d) without considering any greater amount of net worth that a complex credit union might need to hold to be well capitalized under a risk-based net worth requirement.[63] In the 2015 proposed rule on MBLs, the Board proposed to amend the MBL regulation to incorporate section 107A more faithfully and noted that complex credit unions could have a different limitation caused by the need to hold more net worth under the risk-based requirement.[64] The preamble to the 2016 Final Rule on MBLs and commercial loans analyzed this issue in response to comments on the rule and explained that under the 2015 Final Rule on risk-based capital, the MBL limitation would be calculated in the following manner. When actual net worth is greater than the minimum to be well capitalized, the limit on MBLs is 1.75 times the greater of the following calculations: (i) The minimum amount of capital (in dollars) required by the net worth ratio, which is 7 percent times total assets; and (ii) the minimum amount of capital (in dollars) required by the risk-based capital ratio, which is 10 percent times total risk-weighted assets. Then, the credit union must solve for the minimum amount of net worth needed after accounting for other forms of qualifying capital allowed under the 2015 Final Rule.[65]

Thus, a complex credit union subject to a risk-based capital requirement under the 2015 Final Rule would have to calculate the minimum amount of net worth required by both its net worth ratio and risk-based capital requirement. First, the net worth ratio requires a

[58] 12 U.S.C. 1757a(c)(1)(B).

[59] 12 U.S.C. 1757a(b)(1).

[60] 12 U.S.C. 1575a(b)(2).

[61] 12 U.S.C. 1757a(a).

[62] This definition does not expressly cover two elements that were added to the definition of net worth in section 216(o)(2) for PCA purposes in a 2011 enactment: (1) Amounts that were previously retained earnings of any other credit union with which the insured credit union has combined; and (2) assistance that the Board has provided under Section 208. Public Law 111–382, 124 Stat. 4135 (Jan. 4, 2011). In the 2016 MBL final rule, the Board included these elements in net worth for purposes of the MBL limitation by defining net worth in the MBL regulation through a cross-reference to the current part 702 definition of net worth, which includes all the elements in section 216(o)(2). The 2015 Final Rule amended the definition of net worth in part 702 effective January 1, 2022 but did not add or remove any of the components of net worth in the current regulation.

[63] Before amendments that the Board adopted in the 2016, the MBL regulation limited MBLs to 12.25 percent of an insured credit union's total assets—1.75 times the seven percent net worth ratio.

[64] 80 FR 37898, 37909 (July 1, 2015).

[65] 81 FR 13530, 13548 (Mar. 14, 2016).

complex credit union to hold net worth (in dollars) equal to seven percent of its total assets. Second, for purposes of computing the MBL cap,[66] the risk-based capital ratio requires a complex credit union to hold net worth (in dollars) equal to 10 percent of the credit union's risk-weighted assets as calculated under 12 CFR 702.104. The complex credit union would then compare the two net worth amounts as calculated in the preceding discussion. The credit union would take the larger of the two net worth amounts, which is the minimum amount of net worth necessary to be well capitalized under either the net worth ratio or the risk-based capital ratio and compare that to actual net worth. The lesser of these two net worth amounts is used to compute the complex credit union's MBL cap, which would be 1.75 times the lesser of these two net worth amounts. While the 2015 Final Rule is not yet effective, the agency currently implements this approach for the small number of complex credit unions that are required to hold more net worth under the current risk-based net worth requirement than the net worth ratio.

The Board continues to find this approach reflects the correct reading of sections 107A and 216 and re-affirms this interpretation over any prior interpretation that disregarded the risk-based net worth requirement for this purpose.[67] For complex credit unions, the amount to be well capitalized under section 216(c)(1)(A) is seven percent of total assets (the net worth ratio) or the amount required by the risk-based net worth requirement, which could be either the risk-based capital ratio under the 2015 Final Rule or the CCULR framework. A complex credit union must satisfy both of these requirements to be well capitalized under section 216(c)(1)(A), which means that, in section 107A's terms, the minimum net worth required to be well capitalized is the higher of the amount required by the net worth ratio or the risk-based net worth requirement. The Board finds this is a clear, plain language reading of both provisions. Section 107A(a) points to section 216(c)(1)(A) to determine the minimum net worth required for complex credit unions, and in turn, section 216(c)(1)(A) includes both the seven percent net worth ratio and the net worth required by any applicable risk-based net worth requirement. Reading section 107A(a) to exclude the net worth required for complex credit unions under section 216(c)(1)(A)(ii) would ignore a key component of the plain language of section 216(c)(1)(A) contrary to principles of statutory interpretation.

The Board also finds that even if sections 107A and 216(c)(1)(A) were considered ambiguous or unclear, it would interpret them in the same way. For instance, the Board observes two key textual indicators that Congress did not intend to limit this calculation to the seven percent net worth ratio. First, section 107A was enacted in the same legislation as section 216. Thus, Congress was aware that section 216(c)(1)(A) set a seven percent net worth ratio to be well capitalized. Yet in section 107A(a), Congress chose not to specify that the MBL limitation is determined by the amount of net worth required to achieve a seven percent net worth ratio. Instead, Congress provided more broadly that the limitation is determined by reference to the minimum net worth required under section 216(c)(1)(A). Second, Congress could have limited this calculation to the seven percent net worth ratio by providing the MBL limitation is determined by reference only to the minimum net worth required under section 216(c)(1)(A)(i), which would have excluded the risk-based net worth requirement. Instead, section 107A points to section 216(c)(1)(A), which encompasses both applicable net worth requirements for complex credit unions.

The Board acknowledges that the Senate Report associated with the legislation that enacted sections 107A and 216 refers to the MBL limitation as being based on the seven percent net worth ratio in a parenthetical statement. A statement by an individual Senator also refers to the limitation as being determined by the seven percent net worth ratio.[68] But this discussion in the Senate Report is brief and does not touch upon the risk-based net worth requirement or explain how the Senate believed the MBL limitation should work for complex credit unions, which are subject to additional net worth requirements. In any event, this general discussion does not expressly contradict the language and structure of sections 107A and 216, which the Board finds to be better indicators of the meaning and purpose of these provisions.

Applying this approach to the CCULR framework, qualifying complex credit unions opting into the CCULR framework would calculate a different limitation on MBLs from their current calculation under the seven percent net worth ratio. This is because, as discussed previously in the Legal Authority section, the CCULR is considered a risk-based net worth requirement, and thus falls under section 216(c)(1)(A)(ii) as a measure of the minimum net worth required to be well capitalized. Accordingly, under the final rule, a qualifying complex credit union that opts into the CCULR determines its MBL limitation by reference to the amount of net worth required to be well capitalized under the CCULR. Complex credit unions that do not qualify or do not opt into the CCULR framework determine their MBL limitation by reference to the 10 percent risk-based capital ratio, as described in the 2016 MBL final rule. In either scenario, if a complex credit union has actual net worth below those measures, its actual net worth would determine its MBL limitation.

2. Capital Adequacy

Under the 2015 Final Rule, a complex credit union must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.[69] While a qualifying complex credit union opting into the CCULR framework is required to have a comprehensive written strategy for maintaining an appropriate level of capital, this strategy may be straightforward and minimally state how the credit union intends to comply with the CCULR framework, including minimum capital requirements and qualifying criteria. In contrast, complex credit unions that do not opt into the CCULR framework will be required to have a more detailed written strategy. One commenter expressed concern about the subjective nature of this provision, and whether the agency has the statutory authority to adopt the provision if it would require individual credit unions to hold capital above those required by the rule or the FCUA. The Board disagrees. As discussed in the 2015 Final Rule, the NCUA has a long-established policy that FICUs should hold capital commensurate with the level and nature of the risks to which they are exposed. In some cases, this may entail holding capital above

[66] The Board notes that the amount of capital a complex credit union needs to be well capitalized under the 2015 Final Rule for PCA purposes is a different calculation than the amount of net worth required to be well capitalized for purposes of the MBL cap. The reason is the 2015 Final Rule permits complex credit unions to include several forms of capital for purposes of determining its PCA status that do not meet the statutory definition of net worth. The MBL cap, however, is limited by statute to net worth.

[67] Thus, the current language in part 723 remains valid, and the Board is not currently adopting any changes to part 723.

[68] S. Rep. No. 105–193 (May 21, 1998), at 5, 10, 29.

[69] 12 CFR 702.101(b)(2) (effective Jan. 1, 2022).

the minimum requirements, depending on the nature of the credit union's activities and risk profile. The FCUA grants NCUA broad authority to take action to ensure the safety and soundness of credit unions and the NCUSIF and to carry out the powers granted to the Board. Requiring credit unions to maintain capital adequacy is part of ensuring safety and soundness and is not a new concept. This provision is focused on the credit union's own process and strategy for assessing and maintaining its overall capital adequacy in relation to its risk profile and does not affect credit unions' PCA capital category. The provision is only intended to support the assessment of capital adequacy in the supervisory process, for example when assigning CAMELS and risk ratings.[70]

L. Amendments to the 2015 Final Rule

The Board stated its intent to holistically and comprehensively reevaluate the NCUA's capital standards for credit unions in the 2019 Final Rule. A principal component of this review is the CCULR framework. The Board also stated it would consider whether to make more substantive revisions to the 2015 Final Rule.[71] The Board has completed this analysis and is including several changes to the 2015 Final Rule. Each change is discussed in the following sections. The proposed changes are generally adopted as final without change.

1. Off-Balance Sheet Exposure Risk Weights

The 2015 Final Rule states that the risk-weighted amounts for all off-balance sheet items [72] are determined by multiplying the off-balance sheet exposure amount [73] by the appropriate credit conversion factor and the assigned risk weight. But the definition of off-balance sheet items is not aligned with the definition of off-balance sheet exposure. Under the 2015 Final Rule, only commitments, loans transferred with limited recourse, and loans transferred under the FHLB mortgage partnership finance program are provided explicit exposure amounts. The rule is silent on the appropriate treatment for the remaining items included in the definition of off-balance sheet items, for example contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements. In addition, the 2015 Final Rule does not include a credit conversion factor or risk weight for the off-balance sheet items that are not provided a specific exposure amount in the definition of off-balance sheet exposure.

The final rule makes several changes to clarify the treatment of off-balance sheet items. First, as discussed previously, the final rule amends the definition of off-balance sheet exposures. This definition is used as one of the CCULR eligibility criteria and is amended to more closely align with the other banking agencies' CBLR framework. As a consequence of amending the definition of off-balance sheet exposure for the CCULR framework, the off-balance sheet exposure definition also more closely aligns with the existing definition of off-balance sheet items.[74] Thus, several items currently defined as an off-balance sheet item, but not included in the current definition of off-balance sheet exposure, are now provided an exposure amount. This change reduces ambiguity in the 2015 Final Rule. Further, each item included in the definition of off-balance sheet exposure in the final rule is provided an explicit credit conversion factor and risk weight for purposes of the risk-based capital rule. The Board did not receive any comments on the proposed off-balance sheet risk weights and is adopting them as final without change. Each change to the risk-based capital rule is discussed in detail in the following paragraphs.

The final rule states that unconditionally cancellable commitments have a zero percent credit conversion factor. Thus, any unconditionally cancellable commitment is excluded from a credit union's risk-based capital calculation. Under the 2015 Final Rule, these exposures receive a minimum of a 10 percent credit conversion factor and could receive up to a 50 percent credit conversion factor. The Board believes that many of credit unions' commitments qualify as unconditionally cancellable and that credit unions are currently subject to a more conservative treatment for unfunded commitments than banking organizations. Thus, the Board believes providing a zero percent conversion factor will not only make the 2015 Final Rule more comparable to the other banking agencies' 2013 capital rule but will also provide a significant burden reduction for credit unions calculating their capital adequacy under the 2015 Final Rule.

The 2015 Final Rule does not provide a credit conversion factor for financial standby letters of credit. Including an explicit 100 percent conversion factor provides parity between the other banking agencies and the NCUA. The final rule provides that financial standby letters of credit are given a 100 percent credit conversion factor.

The 2015 Final Rule does not provide a credit conversion factor for forward agreements that are not derivative contracts. Including an explicit 100 percent conversion factor provides parity between the other banking agencies and the NCUA. For forward agreements that are not derivative contracts, the final rule provides for a 100 percent credit conversion factor.

The 2015 Final Rule does not provide a credit conversion factor for sold credit protection through guarantees or credit derivatives. The final rule provides different risk weights for guarantees and credit derivatives. Guarantees would receive a 100 percent risk weight. For credit derivatives, the risk weight is determined through the applicable provisions of the FDIC's capital rules. A credit union offering credit protection through a credit derivative risk weights the exposure according to 12 CFR 324.34 (for derivatives that are not cleared) or 12 CFR 324.35 (for derivatives that are cleared exposures). For sold credit protection through guarantees and credit derivatives, the final rule provides for a 100 percent credit conversion factor.

The Board understands the treatment of credit derivatives is complex and compliance with these requirements increases the regulatory burden for credit unions that offer credit protection through credit derivatives. But credit derivatives are complex instruments. And, credit derivatives are not a permissible activity for FCUs, and the Board believes that state-chartered credit unions should only offer credit

[70] 86 FR 59282 (Oct. 27, 2021). The final rule updating the CAMEL system to CAMELS becomes effective April 1, 2022.

[71] 84 FR 68781, 68783 (Dec. 17, 2019).

[72] Off-balance sheet items are defined as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes. 12 CFR 702.2 (effective Jan. 1, 2022).

[73] Off-balance sheet exposure means: (1) For loans transferred under the Federal Home Loan Bank mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance; (2) For all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance; and (3) For unfunded commitments, the remaining unfunded portion of the contractual agreement. 12 CFR 702.2 (effective Jan. 1, 2022).

[74] The only item included in the current definition of off-balance sheet item that is not provided an explicit exposure amount is contingent items. As discussed subsequently in this preamble, however, the Board is amending the definition of off-balance sheet item and no longer includes contingent items.

derivatives if the credit union has the appropriate resources and capabilities to manage the associated complexity. The Board believes any credit union that has offered credit protection through credit derivatives should also be capable of complying with the complexity in the FDIC's capital rules. Thus, the Board believes it is appropriate to reference the other banking agencies' 2013 capital rules when determining the appropriate risk weights for credit derivatives.[75]

For off-balance sheet securitization exposures, the credit conversion factor is 100 percent. The 2015 Final Rule does not currently provide a credit conversion factor for the off-balance sheet portion of securitization exposures. The risk weight is determined as if the exposure is an on-balance sheet securitization exposure. Under the 2015 Final Rule, the risk weight for securitization exposures is dependent upon whether the exposure is a subordinated or non-subordinated tranche. Non-subordinated tranches can receive a 100 percent risk weight (credit unions again have the option to use the gross up approach).[76] In contrast, a subordinated tranche receives a 1,250 percent risk weight. Credit unions also have the option to use the gross-up approach.[77]

The 2015 Final Rule does not provide a credit conversion factor for securities borrowing or lending transactions. Including an explicit 100 percent credit conversion factor provides parity between the other banking agencies and the NCUA. Unlike the other banking agencies' rules, the final rule includes a risk weight of 100 percent for these transactions. The Board is aware this may be a more conservative risk weight than for securities borrowing and lending transactions under the other banking agencies' 2013 capital rule. For securities borrowing or lending transactions, the credit conversion factor is 100 percent.

The final rule includes a 100 percent risk weight for simplicity. A credit union, however, may recognize the credit risk mitigation benefits of financial collateral by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37. Any collateral recognized must meet the definition of financial collateral under the other banking agencies 2013 capital rules.[78]

The final rule also includes a specific credit conversion factor and risk weight for the off-balance sheet exposure amount of repurchase transactions.[79] Under the final rule, the off-balance sheet exposure amount for a repurchase transaction equals all of the positions the credit union has sold or bought subject to repurchase or resale, which equals the sum of the current fair values of all such positions. The off-balance sheet exposure amounts of repurchase transactions are not provided a credit conversion factor under the 2015 Final Rule. The final rule provides a 100 percent risk weight for the off-balance sheet exposure amounts of repurchase transactions. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined by 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.[80]

The Board notes that repurchase transactions are not included in the definition of off-balance sheet exposure. This exclusion of repurchase transactions from the definition of off-balance sheet exposure is because the other banking agencies did not include repurchase transactions in their related measure of CBLR and the definition of off-balance sheet exposure is used for purposes of the CCULR eligibility criteria.[81]

Even though, for purposes of the CCULR framework, repurchase transactions are excluded from the off-balance sheet criterion, the Board believes that the off-balance sheet portion of repurchase transactions should be risk-weighted under the risk-based capital ratio. First, repurchase transactions are included in the current definition of off-balance sheet items. Second, the other banking agencies risk-weight the off-balance sheet portion of repurchase transactions in their risk-based capital framework.[82]

The Board, however, does not believe that repurchase transactions are a material exposure for credit unions. As of June 30, 2021, there are 26 complex credit unions with repurchase transactions on their balance sheets. Thus, the final rule includes the off-balance sheet portion of repurchase transactions for purposes of risk-based capital, even though such transactions are not included as part of the off-balance sheet eligibility criteria under the CCULR framework.[83]

Finally, the final rule includes a ''catchall'' category. Under the final rule, all other off-balance sheet exposures not explicitly provided a credit conversion factor or risk weight that meet the definition of a commitment are given a credit conversion factor of 100 percent and a risk weight of 100 percent. The Board believes a catchall category is necessary given that the definition of commitment is broad. Commitments include any legally binding arrangement that obligates the credit union to extend credit, purchase or sell assets, enter into a borrowing agreement, or enter into a financial transaction.[84] To ensure all off-balance sheet exposures that met the definition of commitment are provided a credit conversion factor and risk weight, the final rule includes a new catchall category for such exposures.

2. Asset Securitizations Issued by Complex Credit Unions

The 2019 Supplemental Rule included asset securitizations as one of the reasons the Board sought a holistic reevaluation of the 2015 Final Rule. The Board has further considered asset

[75] The Board is adopting these references for consistency and believes they are appropriate, but the Board will review these references in the future if the FDIC makes changes and will consider any adjustments as necessary.

[76] 12 CFR 702.104(c)(2)(v)(B)(8) (effective Jan. 1, 2022).

[77] 12 CFR 702.104(c)(2)(x) (effective Jan. 1, 2022).

[78] *See* 12 CFR 324.2. Financial collateral means collateral: (1) In the form of: (i) Cash on deposit with the FDIC-supervised institution (including cash held for the FDIC-supervised institution by a third-party custodian or trustee); (ii) Gold bullion; (iii) Long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) Equity securities that are publicly traded; (vi) Convertible bonds that are publicly traded; or (vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and (2) In which the FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

[79] Repurchase transactions means either a transaction in which a credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price or a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

[80] The Board is adopting references to the FDIC's regulations for consistency and believes that these references are appropriate, but the Board will review these references in the future if the FDIC makes changes and will consider any adjustments as necessary.

[81] 12 CFR 324.12(a)(2)(iii).

[82] 12 CFR 324.33(b)(4)(ii).

[83] The final rule also revises the definition of off-balance sheet items. The definition of off-balance sheet items includes off-balance sheet exposures and the off-balance sheet exposure amount of repurchase transactions. This change is necessary to ensure repurchase transactions are not included as part of the off-balance sheet criteria for eligibility in the CCULR framework.

[84] 12 CFR 702.2 (effective Jan. 1, 2022).

securitizations issued by credit unions and has decided to amend the 2015 Final Rule to explicitly address credit union issued securitizations.

The proposed rule required credit unions that issue securitizations to use the other banking agencies' 2013 capital rules when determining whether assets transferred in connection with a securitization are excluded from risk-based capital. The Board reviewed these standards and found they would be appropriate as applied to credit union securitizations, with the minor differences noted below. Specifically, under the final rule, a credit union must follow the requirements of the applicable provisions of 12 CFR 324.41 when it transfers exposures in connection with a securitization. A credit union may only exclude the transferred exposures from the calculation of its risk-weighted assets if each condition in 12 CFR 324.41 is satisfied. The conditions for traditional securitizations in 12 CFR 324.41 are as follows (adapted for credit unions):

(1) The exposures are not reported on the credit union's consolidated balance sheet under GAAP;

(2) The credit union has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls (a defined term under the other banking agencies' 2013 capital rules); [85] and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

A credit union that meets the conditions, but retains any credit risk for the transferred exposures, must hold risk-based capital against the credit risk it retains in connection with the securitization.

The other banking agencies' 2013 rule includes conditions for both traditional securitizations and synthetic securitizations.[86] The Board believes almost all securitizations issued by credit unions would be traditional securitizations and subject to the conditions in 12 CFR 324.41(a). The Board does not believe that credit unions are likely to engage in synthetic securitizations; however, if a credit union issues a synthetic securitization, it is subject to the conditions in 12 CFR 324.41(b).

The Board also notes that 12 CFR 324.41(c) includes explicit due diligence requirements for banking organizations' investments in securitizations. The Board is not currently adopting these requirements. The final rule only references 12 CFR 324.41 to incorporate the factors a credit union must consider when excluding assets transferred in connection with a securitization from risk-weighted assets. The Board intends to use its supervisory authority to monitor securitizations for safety and soundness purposes and is not currently adopting any new regulatory requirements for such transactions.

The other banking agencies' 2013 capital rule has an explicit treatment for any gain-on-sale in connection with a securitization exposure and any credit-enhancing interest only strips (CEIOs) retained by a banking organization that do not qualify as a gain-on-sale. Any gain-on-sale in connection with a securitization exposure is deducted from a banking organization's common equity tier 1 capital.[87] CEIOs that do not qualify as a gain-on-sale are given a 1,250 percent risk weight.[88] The other banking agencies provided punitive treatments for these exposures because of historical supervisory concerns with the subjectivity involved in valuations of gains-on-sale and CEIOs. And though the treatments for gains-on-sale and CEIOs can increase an originating banking organization's risk-based capital requirement following a securitization, the other banking agencies believe that such anomalies are rare where a securitization transfers significant credit risk to third parties.

The 2015 Final Rule does not include specific treatments for gain-on-sales or CEIOs because, as discussed previously, in 2015 credit unions had not issued any securitizations. Under the 2015 Final Rule, however, most CEIOs would still receive a 1,250 percent risk weight because they constitute a subordinated tranche, but the 2015 Final Rule permits a credit union to use the gross-up approach as an alternative. The Board believes that credit union-issued securitizations should be given a similar capital treatment under the 2015 Final Rule as under the other banking agencies' risk-based capital rule.

Thus, the final rule includes a specific risk weight for certain exposures associated with securitization activities. While the Board believes the capital treatment for credit union-issued securitizations should be akin to bank-issued securitizations, the final rule is slightly different than the other banking agencies' 2013 risk-based capital rule for simplicity. Under the final rule, the gain-on-sale amount from a securitization transaction, generally the CEIO, will be included in the numerator in calculating a credit union's net worth. This is a different approach than the other banking agencies' rule, which excludes gains-on-sale in calculating a bank's common equity tier 1 capital. Instead, the Board has chosen to address the risks associated with a gain-on-sale amount by requiring that a 1,250 percent risk weighting be applied to retained non-security beneficial interests.

One commenter specifically supported the securitization framework, which generally references the capital rule of the other banking agencies. Another commenter questioned why the Board did not adopt the entirety of the other banking agencies' framework and recommended granting complex credit unions the option to use the gross-up approach for risk weighting non-security beneficial interest of a securitization. The commenter stated that this would ensure that credit unions have at least the same flexibility as non-advanced approaches banks. The other banking agencies do not permit the use of the gross-up approach for a securitization gain-on-sale, and require the full deduction of the gain-on-sale from the tier 1 capital numerator.[89] Further, the Board believes its approach is simpler and provides a more conservative overall risk weight. The Board believes this approach is warranted given the limited

[85] Under the other banking agencies' 2013 capital rules, eligible clean-up call means a clean-up call that: (1) Is exercisable solely at the discretion of the originating institution or servicer; (2) is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and (3)(i) for a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or (ii) for a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

[86] Under the other banking agencies' 2013 capital rule, a synthetic securitization means a transaction in which: (1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure); (2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority; (3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and (4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities). *See,* 12 CFR 324.2.

[87] *See,* 12 CFR 324.22(a)(4) and 12 CFR 324.42(a)(1).

[88] *See,* 12 CFR 324.42(a)(1).

[89] 12 CFR 324.22(a)(4).

securitizations issued by credit unions at this time.

Under the final rule, a non-security beneficial interest is defined as the residual equity interest in the special purpose entity that represents a right to receive possible future payments after specified payment amounts are made to third-party investors in the securitized receivables. Thus, under the final rule, if a credit union has a non-security beneficial interest, such as a CEIO or cash collateral account, it cannot be risk-weighted with the gross-up approach and instead would be given a 1,250-risk weight. The Board believes this treatment is akin to the treatment provided by the other banking agencies in their 2013 risk-based capital rule.

The Board notes that subordinate tranches, either retained by the securitization sponsor or offered to investors as securities, that are also senior in payment priority to the non-security beneficial interest, can be risk-weighted using the gross-up approach.

The Board also notes that although the final rule is currently adopting the FDIC's approach to securitization through a cross reference, as with other FDIC provisions referenced elsewhere in this final rule, the Board will review the FDIC's treatment of securitizations in the future if it makes changes and will consider any adjustments as necessary.

3. Mortgage Servicing Assets

The Board proposed to amend 12 CFR 702.104(b), risk-based capital numerator, to deduct mortgage servicing assets that exceed 25 percent of the sum of the capital elements in 12 CFR 702.104(b)(1), less deductions required under 12 CFR 702.104(b)(2)(i) through (iv) of this section. A few commenters did not support the proposed deduction of MSAs. One commenter noted that CCULR lacks a comparable restriction and the risk-based capital rule is primarily designed for credit risk and not operational or market risk.

The Board is not making changes in response to the commenters.

The Board is including a deduction to the risk-based capital numerator for MSAs that exceed 25 percent of the risk-based capital numerator for two primary reasons. First, this change will make the NCUA's risk-based capital calculation more consistent with the other banking agencies' revised risk-based capital rules as the other banking agencies simplified their MSA calculation post-issuance of the 2015 Final Rule.[90] Under the other banking agencies' revised risk-based capital rule, banking organizations deduct MSAs that exceed 25 percent of the banking organization's common equity tier 1 capital.[91] The Board believes the simplification of the other banking agencies' approach allows the NCUA to be consistent with the other banking agencies' risk-based capital rule. Also, the Board believes it is important to implement prudential conditions around MSAs as the Board is considering a final rule to amend parts 703 and 721 to allow FCUs to purchase mortgage servicing rights[92] from other FICUs.[93] This rule may potentially increase MSA holdings for complex credit unions.

The Board believes that, by including a deduction to the risk-based capital numerator for MSAs in risk-based capital, complex credit unions will be encouraged to avoid excessive exposures in MSAs relative to the other risks on their balance sheets. As mentioned in the preamble of the 2015 Final Rule, the risks of MSAs contribute to a high level of uncertainty regarding the ability of credit unions to realize value from these assets. Thus, the Board believes it is appropriate to add the risk-based numerator deduction to address the potential of complex credit unions purchasing MSAs from other FICUs.

The treatment would not have an immediate effect on complex credit unions. As of June 30, 2021, the largest concentration in MSAs held by complex credit unions was just under 12 percent of the credit union's net worth. While net worth and the risk-based capital numerator are different calculations, the two calculations are similar enough to state, with a high degree of certainty, there are no complex credit unions as of June 30, 2021, that would be required to deduct MSAs from the risk-based capital numerator.

Finally, the Board is aware that some commenters believe deducting exposures of MSAs over 25 percent of their risk-based capital numerator is punitive. The Board notes both the Board and other banking agencies have stated that MSAs have a relatively high level of uncertainty regarding the ability to both value and realize value from these assets.[94] The Board also believes including the MSA deduction from the risk-based capital numerator is prudent for potential balance sheets complex credit union may have in the future.

To determine if a complex credit union would be subject to the MSA deduction from the risk-based capital numerator, the complex credit union first needs to calculate the risk-based capital numerator before the MSA deduction. This calculation is in the 2015 Final Rule and requires the complex credit union add all the capital elements of the risk-based capital numerator and subtract all risk-based capital numerator deductions, not including the MSA deduction. The complex credit union would then determine if its MSA exposure exceeds 25 percent of the previous calculation. If its MSAs do not exceed 25 percent, the previous calculation is the risk-based capital numerator. If its MSAs exceed 25 percent, the complex credit union will need to deduct the amount of MSAs that exceed 25 percent from the previous calculation. All MSA exposures that are not deducted from the risk-based capital numerator are risk-weighted in the risk-based capital denominator at 250 percent.

4. Supranational Organizations and Multilateral Development Banks

The Board proposed amending the risk-based capital rule to assign a risk weighting of zero percent to an obligation of the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, and multilateral development banks (MDBs). The 2015 Final Rule did not specifically discuss MDBs, which would have a risk weight of 100 percent under the catchall category for all other assets not specifically assigned a risk weight.[95] Assigning a risk-weight of zero percent is consistent with the other banking agencies' risk-based capital rule and the Board believes the zero percent risk weight is appropriate due to the generally high-credit quality of the issuers. A few commenters specifically supported the zero percent risk weight for supranational entities, and none opposed it. The Board is finalizing this provision without change. The Board notes that MDBs are not permissible investments for FCUs under the general investment authorities but may be permissible for federally insured, state-chartered credit unions under state investment authorities. But FCUs may invest in MDBs under 12 CFR 701.19

[90] 84 FR 35234 (July 22, 2019).

[91] 12 CFR 324.22(d).

[92] The terms mortgage servicing rights and MSAs are used interchangeably.

[93] 85 FR 86867 (Dec. 31, 2020).

[94] Report to Congress on the Effect of Capital Rules on Mortgage Servicing Assets, Report to the Congress on the Effect of Capital Rules on Mortgage Servicing Assets, June 2016, *available at https://www.federalreserve.gov/publications/other-reports/files/effect-capital-rules-mortgage-servicing-assets-201606.pdf.*

[95] 12 CFR 702.104(c)(2)(v)(C) (effective Jan. 1, 2022).

and 721.3(b), subject to some conditions.

5. Paycheck Protection Program Loans

As discussed previously in connection with the other banking agencies' CBLR regulation, the CARES Act was enacted in 2020 to provide aid to the U.S. economy during COVID–19.[96] The CARES Act authorized the Small Business Administration (SBA) to create a loan guarantee program, the Paycheck Protection Program (PPP), to help certain affected businesses meet payroll needs and utilities as a result of COVID–19, including employee salaries, sick leave, other paid leave, and health insurance expenses. Provided credit union lenders comply with the applicable lender obligations set forth in the SBA's interim final rule, the SBA fully guaranteed loans issued under the PPP. Most FICUs were eligible to make PPP loans to members. Under the CARES Act, PPP loans must receive a zero percent risk weighting under the NCUA's risk-based capital requirements.[97]

The NCUA issued a 2020 interim final rule to explicitly state that PPP loans under the risk-based net worth requirement receive a zero percent risk-weight.[98] The 2020 interim final rule stated the NCUA's risk-based capital regulations would be amended in the future. The Board proposed to update the 2015 Final Rule to reflect that PPP loans receive a zero percent risk weight. No comments were received on this proposed change and the Board is now finalizing it as proposed.

6. Updates to Derivative-Related Definitions

The Board recently amended its rule on derivatives to modernize the rule and make it more principles-based while retaining key safety and soundness components.[99] The rulemaking amended several defined terms that are also included in the 2015 Final Rule. For consistency, the proposed rule updated those definitions that are also included in the 2015 Final Rule. The Board received no comments on these changes and is now finalizing it without additional change. First, under the final rule, the term derivative is defined as ''a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.'' [100] Second, the rule makes minor changes to the definitions of a derivative clearing organization and swap dealer by including a more general reference to the Commodity Futures Trading Commission (CFTC)'s regulations. For both definitions, the 2015 Final Rule references the definitions used by the CFTC.[101] The Board is adopting references to the CFTC regulations for consistency and believes these definitions appropriately define the terms, but the Board will review these references in the future if the CFTC makes changes and will adjust as necessary.

7. Definitions of Consumer Loan and Current

The Board proposed to amend the definitions for Consumer Loan and Current in 12 CFR 702.2. The Board received no comments on this proposed change and is now finalizing it without change. The Board is amending these definitions to clarify the 2015 Final Rule. The 2015 Final Rule does not include leases in the definition of Consumer Loan, although the 2014 Risk-Based Capital notice of proposed rulemaking stated ''[c]onsumer loans (unsecured credit card loans, lines of credit, automobile loans, and leases) are generally highly desired credit union assets and a key element of providing basic financial services.'' [102] Without this change the treatment of consumer leases is unclear and, thus, may be risk-weighted in the catchall category of 100 percent. The change makes clear that consumer leases receive a 75 percent risk weight. Due to the amendment in the definition of a consumer loan, the definition of current is also amended for consistency and includes the term leases.

8. Treatment of Goodwill in the 2015 Final Rule

The 2015 Final Rule requires complex credit unions to deduct goodwill [103] from the risk-based capital numerator. The proposed rule did not include any changes to the deduction of goodwill under the 2015 Final Rule. The proposed rule, however, asked about the advantages and disadvantages of deducting goodwill from regulatory capital under the 2015 Final Rule. The proposed rule also asked commenters whether not deducting goodwill from regulatory capital would adequately protect the NCUSIF in the event of a failure and liquidation given that goodwill is not a tangible asset. Several commenters urged the agency to permit credit unions to include goodwill in the risk-based capital numerator. One commenter stated that deducting supervisory goodwill restricts growth and decreases the likelihood that a healthy, well-capitalized credit union will assist with a supervisory merger of an under-capitalized credit union. Another commenter said the deduction penalizes credit unions that have just gone through a merger.

Under the 2015 Final Rule, the Board permitted credit unions to exclude certain goodwill and other intangible assets from the deduction in the numerator that occurred on or before December 28, 2015. The proposed rule asked whether this date should be updated considering the subsequent delays to the risk-based capital rule. A few commenters encouraged the agency to alleviate any potential confusion by amending this date. Several commenters suggested grandfathering all goodwill prior the effective date of the CCULR framework or the risk-based capital framework. Another commenter recommended establishing a formal approval process for grandfathered goodwill with required criteria such as annual goodwill impairment testing. Another commenter stated that the relief provided by the original 13-year period, in which grandfathered goodwill is not deducted, has been diminished due to the delayed effective date for the risk-based capital rule.

As discussed previously, in response to comments about the proposed treatment of goodwill, the Board has made two changes in the final rule. The first change modifies the CCULR qualifying criteria by not including excluded goodwill and excluded other intangible assets as part of the calculation of the two percent qualifying

[96] Public Law 116–136 (Mar. 27, 2020).

[97] Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020)

[98] 85 FR 23212 (Apr. 27, 2020).

[99] 86 FR 28241 (May 26, 2021).

[100] The 2015 Final Rule defines a derivative contract as ''a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.'' 12 CFR 702.2 (effective Jan. 1, 2022).

[101] The 2015 Final Rule states a derivative clearing organization is ''as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d).'' The final rule defines a derivative clearing organization ''as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.'' Essentially the final rule removes the ''(d)''. Similarly, the more specific reference in the 2015 Final Rule is updated with the more general reference included in the recent derivative rule.

[102] 79 FR 11184, 11198 (Feb. 27, 2014).

[103] Note that under the 2015 Final Rule, the term goodwill does not include excluded goodwill. See, 12 CFR 702.2 (effective Jan. 1, 2022).

criteria. This change aligns the treatment of goodwill in CCULR with the treatment in risk-based capital. For additional discussion on this change, see *Section B. Qualifying Complex Credit Unions*.

The final rule also amends the treatment of goodwill under the 2015 Final Rule. Specifically, the final rule removes the 2029 sunset date for excluded goodwill and excluded other intangible assets. Under the final rule, credit unions will not be required to deduct excluded goodwill from the risk-based capital numerator, even after January 1, 2029. Credit unions would not be required to deduct other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015. The Board believes credit unions that previously supported the NCUSIF by assisting in supervisory mergers should not be penalized for these decisions. Specifically, the Board is amending the 2015 Final Rule in response to commenters' concerns relating to the deduction of excluded goodwill from the risk-based capital numerator after the completion of supervisory mergers. The Board does not believe the subsequent change in capital treatment will unduly penalize credit unions.

M. Technical Amendments

The final rule includes several technical amendments to part 702, including some discussed in the proposed rule and others that the Board has identified in finalizing this rule. First, the definition of total assets in 12 CFR 702.2 is amended to carry forward the PPP-related change made in the 2020 interim final rule. Specifically, under the final rule, the definition of total assets would be amended to explicitly state that PPP loans pledged to the Federal Reserve Board's PPP Lending Facility to support PPP lending are excluded from the definition of total assets.[104] This 2020 interim final rule made this change to the definition of total assets in the currently effective version of 12 CFR 702.2, but did not make the change to the definition of total assets as implemented by the 2015 Final Rule. This technical correction will ensure the definition carries past 2021 as intended. The definition will also include an amended citation. The 2015 Final Rule stated that, for each quarter, a credit union must elect one of the measures of total assets to apply except for 12 CFR 702.103 through 702.106 (risk-based capital requirement). The exception should be for 12 CFR 702.103 through 702.105. This change has been made in the final rule.

The second technical amendment adjusts the definition of the net worth ratio from the 2015 Final Rule. The change clarifies that the net worth ratio is rounded to two decimal places, but the rounding occurs only after the ratio is expressed as percentage.

The final rule also includes two technical amendments to 12 CFR part 703 that were included in the proposed rule. Both amendments make minor corrections related to the 2015 Final Rule. The Board received no comment on the proposed amendments and is finalizing them without change.

N. Other Comments Beyond the Scope of the Proposed Rule

Several commenters offered recommendations that went beyond the scope of the proposed changes to the 2015 Final Rule. For example, several commenters recommended the Board consider rescinding or delaying the 2015 Final Rule. The Board continues to believe the current risk-based net worth standards have weaknesses and revised standards with enhanced risk sensitivity are appropriate for complex credit unions. The Board is not currently rescinding the 2015 Final Rule. Delaying the 2015 Final Rule is also outside the scope of the proposed rule, which did not discuss amending the effective date of the 2015 Final Rule. Also, the Board continues to believe that a delay to the effective date of the 2015 Final Rule is unnecessary, as discussed previously.

Another commenter recommended the Board consider refinements to the subordinated debt framework contemporaneously with changes to the risk-based capital rule. Neither the subordinated debt final rule nor the 2015 Final Rule are yet effective. The Board will separately monitor implementation of the subordinated rule and consider any appropriate changes in the future.

Other commenters urged the Board to eliminate the higher risk-weighting for concentrations of first-lien mortgages, junior-lien mortgages, MSAs, and commercial loans. One commenter stated these concentration limits are not generally comparable to the risk-based capital rules of the other banking agencies or the Basel Framework. One commenter requested investments in CUSOs be risk-weighted at no more than 100 percent. Another commenter stated MSAs should not be subject to a higher risk weight under the risk-based capital rule, which is currently 250 percent. The commenter recommended 150 percent. The Board believes these recommendations are beyond the scope of the proposed rule. As discussed previously, amendments to risk-weights can be considered anytime in the future by the Board, or during the Board's regular process to review regulations every three years.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act [105] requires the NCUA to prepare an analysis describing any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[106] This final rule affects only credit unions with over $500 million in assets, which are subject to the 2015 Final Rule and the 2018 Supplemental Rule when they go into effect in January 2022. As a result, credit unions with under $100 million in total assets would not be affected by this final rule. Accordingly, the NCUA certifies this final rule does not have a significant economic impact on substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or amends an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure or recordkeeping requirement, each referred to as an information collection. The final rule will revise existing information collection requirements to the Call Report (Office of Management and Budget control number 3133–0004). These revisions will be addressed in a separate **Federal Register** notice and will be submitted for approval by the Office of Information and Regulatory Affairs at the Office of Management and Budget.

C. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.[107] The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to

[104] Specifically, the 2020 interim final rule updated the currently effective § 702.2 and the definition of total assets, however, the interim final rule did not update the definition of total assets that will be effective January 1, 2022.

[105] 5 U.S.C. 601 *et seq.*

[106] 5 U.S.C. 603(a).

[107] 64 FR 43255 (Aug. 4, 1999).

adhere to fundamental federalism principles. The final rule applies to all federally insured natural-person credit unions, including federally insured, state-chartered natural-person credit unions. Accordingly, the Final Rule may have, to some degree, a direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board believes this impact is minor, and it is an unavoidable consequence of executing the statutory mandate to adopt a system of PCA to apply to all federally insured, natural-person credit unions. The NCUA has consulted with representatives of state regulators regarding the impact of the final rule during the rulemaking process.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[108] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.[109] Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a ''major rule.'' As required by SBREFA, the NCUA will submit this final rule to the Office of Management and Budget for it to determine if it is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

F. Administrative Procedure Act

The Administrative Procedure Act typically requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[110] Because qualifying complex credit unions that opt into the CCULR framework under the final rule are exempt from compliance with the 2015 Final Rule, the final rule is exempt from the Administrative Procedure Act's delayed effective date requirement.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 16, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends 12 CFR parts 702 and 703, as follows:

PART 702—CAPITAL ADEQUACY

■ 1. The authority for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. Amend § 702.2 by:
■ a. Adding in alphabetical order the definitions of ''*CCULR*'';
■ b. Revising the definition of ''*Consumer Loan*'',
■ c. Adding in alphabetical order the definition of ''*Credit derivative*'';
■ d. Revising the definitions of ''*Current*'', ''*Derivative contract*'', ''*Derivatives Clearing Organization*'', ''*Excluded goodwill*'', ''*Excluded other intangible assets*'';
■ e. Adding in alphabetical order the definitions of ''*Forward agreement*'', ''*Multilateral development bank*'';
■ f. Revising the definition of ''*Net worth ratio*'';
■ g. Adding in alphabetical order the definition of ''*Non-security beneficial interest*'';
■ h. Revising the definition of ''*Off-balance sheet exposure*'', ''*Off-balance sheet items*'';
■ i. Adding in alphabetical order the definition of ''*Repurchase transaction,*''
■ j. Revising the definitions of ''*Swap dealer*'', and ''*Total assets*''; and
■ k. Adding in alphabetical order the definitions ''*Trading assets*'', ''*Trading liabilities*'', and ''*Unconditionally cancelable*''.

The revisions and additions read as follows:

§ 702.2 Definitions.

* * * * *

CCULR means the complex credit union leverage ratio. It is calculated in the same manner as the net worth ratio under § 702.2.

* * * * *

Consumer loan means a loan or lease for household, family, or other personal expenditures, including any loans or leases that, at origination, are wholly or substantially secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan or lease. Consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of one or more vehicles to be part of a fleet of vehicles.

* * * * *

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

* * * * *

Current means, with respect to any loan or lease, that the loan or lease is less than 90 days past due, not placed on non-accrual status, and not restructured.

* * * * *

Derivative contract means a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.

Derivatives Clearing Organization has the meaning as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.

* * * * *

Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015.

Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015.

* * * * *

Forward agreement means a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts.

* * * * *

Multilateral development bank (MDB) means the International Bank for

[108] 5 U.S.C. 551.

[109] *Id.*

[110] 5 U.S.C. 553(d).

Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member.

* * * * *

Net worth ratio means the ratio of the net worth of the credit union to the total assets of the credit union, expressed as a percentage rounded to two decimal places.

* * * * *

Non-security beneficial interest is defined as the residual equity interest in the Special Purpose Entity (SPE) that represents a right to receive possible future payments after specified payment amounts are made to third-party investors in the securitized receivables. For purposes of this definition, a SPE means a trust, bankruptcy remote entity or other special purpose entity which is wholly owned, directly or indirectly, by the credit union and which is formed for the purpose of, and engages in no material business other than, acting as an issuer or a depositor in a securitization.

* * * * *

Off-balance sheet exposure means:

(1) For unfunded commitments, excluding unconditionally cancellable commitments, the remaining unfunded portion of the contractual agreement.

(2) For loans transferred with limited recourse, or other seller-provided credit enhancements, and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For loans transferred under the Federal Home Loan Bank (FHLB) mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(4) For financial standby letters of credit, the total potential exposure of the credit union under the contractual agreement.

(5) For forward agreements that are not derivative contracts, the future contractual obligation amount.

(6) For sold credit protection through guarantees and credit derivatives, the total potential exposure of the credit union under the contractual agreement.

(7) For off-balance sheet securitization exposures, the notional amount of the off-balance sheet credit exposure (including any credit enhancements, representations, or warranties that obligate a credit union to protect another party from losses arising from the credit risk of the underlying exposures) that arises from a securitization.

(8) For securities borrowing or lending transactions, the amount of all securities borrowed or lent against collateral or on an uncollateralized basis.

Off-balance sheet items means off-balance sheet exposures and the off-balance sheet exposure amount of repurchase transactions.

* * * * *

Repurchase transactions means either a transaction in which a credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price or a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price. The off-balance sheet exposure amount for a repurchase transaction equals all of the positions the credit union has sold or bought subject to repurchase or resale, which equals the sum of the current fair values of all such positions.

* * * * *

Swap Dealer has the meaning as defined by the CFTC in 17 CFR 1.3.

* * * * *

Total assets means a credit union's total assets as measured by either:

(1)(i) Average quarterly balance. The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;

(ii) Average monthly balance. The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;

(iii) Average daily balance. The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or

(iv) Quarter-end balance. The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

(2) For each quarter, a credit union must elect one of the measures of total assets listed in paragraph (1) of this definition to apply for all purposes under this part except §§ 702.103 through 702.105 (risk-based capital requirement).

(3) Notwithstanding paragraph (1) of this definition, a credit union may exclude loans pledged as collateral for a non-recourse loan that is provided as part of the Paycheck Protection Program Lending Facility, announced by the Federal Reserve Board on April 7, 2020, from the calculation of total assets for the purpose of calculating its net worth ratio. For the purpose of this provision, a credit union's liability under the Facility must be reduced by the principal amount of the loans pledged as collateral for funds advanced under the Facility.

* * * * *

Trading assets means securities or other assets acquired, not including loans originated by the credit union, for the purpose of selling in the near term or otherwise with the intent to resell in order to profit from short-term price movements. Trading assets would not include shares of a registered investment company or a collective investment fund used for liquidity purposes.

Trading liabilities means the total liability for short positions of securities or other liabilities held for trading purposes.

* * * * *

Unconditionally cancelable means with respect to a commitment, that a credit union may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

* * * * *

■ 3. In § 702.101, revise paragraph (a)(2) to read as follows:

§ 702.101 Capital measures, capital adequacy, effective date of classification, and notice to NCUA.

(a) * * *

(2) If determined to be applicable under § 702.103, either the risk-based capital ratio under § 702.104(a) through (c) or the CCULR framework under § 702.104(d).

* * * * *

■ 4. In § 702.102, revise paragraphs (a)(1)(i) and (ii), and Table 1 to read as follows:

§ 702.102 Capital classification.

(a) * * *

(1) * * *

(i)(A) *Net worth ratio.* The credit union has a net worth ratio of 7.0 percent or greater; and

(B) *Risk-based capital ratio.* The credit union, if complex, has a risk-

based capital ratio of 10 percent or greater; or

(ii) *Complex credit union leverage ratio.* (A) The complex credit union is a qualifying complex credit union that has opted into the CCULR framework under § 702.104(d) and it has a CCULR of 9.0 percent or greater; or

(B) The complex credit union is a qualifying complex credit union that has opted into the CCULR framework under § 702.104(d), is in the grace period, as defined in § 702.104(d)(7), and has a CCULR of 7.0 percent or greater.

* * * * *

TABLE 1 TO § 702.102—CAPITAL CATEGORIES

Capital classification	Net worth ratio		Risk-based capital ratio, if applicable		CCULR, if applicable	And subject to following condition(s) . . .
Well Capitalized	7% or greater	And	10% or greater	Or	9% or greater*	
Adequately Capitalized.	6% or greater	And	8% or greater	Or	N/A	And does not meet the criteria to be classified as well capitalized.
Undercapitalized	4% to 5.99%	Or	Less than 8%	Or	N/A	
Significantly Undercapitalized.	2% to 3.99%		N/A		N/A	Or if ''undercapitalized at <5% net worth and (a) fails to timely submit, (b) fails to materially implement, or (c) receives notice of the rejection of a net worth restoration plan.
Critically Undercapitalized.	Less than 2%		N/A		N/A	

*A qualifying complex credit union opting into the CCULR framework should refer to 12 CFR 702.104(d)(7) if its CCULR falls below 9.0 percent.

* * * * *

■ 5. Revise § 702.103 to read as follows:

§ 702.103 Applicability of risk-based capital measures.

For purposes of § 702.102, a credit union is defined as ''complex'' and a risk-based capital measure is applicable only if the credit union's quarter-end total assets exceed five hundred million dollars ($500,000,000), as reflected in its most recent Call Report. A complex credit union may calculate its risk-based capital measure either by using the risk-based capital ratio under § 702.104(a) through (c), or, for a qualifying complex credit union opting into the CCULR framework, by using the CCULR framework under § 702.104(d).

■ 6. In § 702.104:

■ a. Revise the introductory text;

■ b. Remove the word ''and'' at the end of paragraph (b)(2)(iii);

■ c. Remove the period at the end of paragraph (b)(2)(iv) and add in its place ''; and;

■ d. Add paragraph (b)(2)(v);

■ e. Add paragraphs (c)(2)(i)(B)(*3*) and (c)(2)(i)(D);

■ f. Revise paragraphs (c)(2)(vii) and (x);

■ g. Revise paragraph (c)(4) introductory text;

■ h. Redesignate paragraphs (c)(4)(iii)(A) through (E) as (c)(4)(iii)(B) through (F) and add new paragraph (c)(4)(iii)(A);

■ i. Add paragraphs (c)(4)(iv) through (x); and

■ j. Add paragraphs (c)(6), (d), and (e).

The revisions and additions read as follows:

§ 702.104 Risk-based capital ratio.

A complex credit union must calculate its risk-based capital measure in accordance with this section. A complex credit union may calculate its risk-based capital measure either by using the risk-based capital ratio under paragraphs (a) through (c) of this section, or, for a qualifying complex credit union opting into the CCULR framework, by using the CCULR framework under paragraph (d) of this section.

* * * * *

(b) * * *

(2) * * *

(v) Mortgage servicing assets that exceed 25 percent of the sum of the capital elements in paragraph (b)(1) of this section, less deductions required under paragraphs (b)(2)(i) thorough (iv) of this section.

(c) * * *

(2) * * *

(i) * * *

(B) * * *

(*3*) An obligation of the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

(D) Covered loans issued under the Small Business Administration's Paycheck Protection Program, 15 U.S.C. 636(a)(36).

* * * * *

(vii) Category 7—250 percent risk weight. A credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets not deducted from the risk-based capital numerator pursuant to § 702.104(b).

* * * * *

(x) *Category 10—1,250 percent risk weight.* A credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach in paragraph (c)(3)(iii)(A) of this section. However, a credit union may not use the gross-up approach for non-security beneficial interests.

* * * * *

(4) *Risk weights for off-balance sheet items.* The risk weighted amounts for all off-balance sheet items are determined by multiplying the off-balance sheet exposure amount by the appropriate CCF and the assigned risk weight as follows:

* * * * *

(iii) * * *

(A) For a commitment that is unconditionally cancelable, a 0 percent CCF.

* * * * *

(iv) For financial standby letter of credits, a 100 percent CCF and a 100 percent risk weight.

(v) For forward agreements that are not derivative contracts, a 100 percent CCF and a 100 percent risk weight.

(vi) For sold credit protection through guarantees and credit derivatives, a 100 percent CCF and a 100 percent risk weight for guarantees; for credit derivatives the risk weight is determined by the applicable provisions of 12 CFR 324.34 or 324.35.

(vii) For off-balance sheet securitization exposures, a 100 percent CCF, and the risk weight is determined

as if the exposure is an on-balance sheet securitization exposure.

(viii) For securities borrowing or lending transactions, a 100 percent CCF and a 100 percent risk weight. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined under 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

(ix) For the off-balance sheet portion of repurchase transactions, a 100 percent CCF and a 100 percent risk weight. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined by 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

(x) For all other off-balance sheet exposures not explicitly provided a CCF or risk weight in this paragraph (c) that meet the definition of a commitment, a 100 percent CCF and a 100 percent risk weight.

* * * * *

(6) Asset Securitizations Issued by Complex Credit Unions. A credit union must follow the requirements of the applicable provisions of 12 CFR 324.41 when it transfers exposures in connection with a securitization. A credit union may only exclude the transferred exposures from the calculation of its risk-weighted assets if each condition in 12 CFR 324.41 is satisfied. A credit union that meets these conditions, but retains any credit risk for the transferred exposures, must hold risk-based capital against the credit risk it retains in connection with the securitization.

(d) *Complex Credit Union Leverage Ratio (CCULR) Framework.* (1) *General.* A qualifying complex credit union that has opted into the CCULR framework under paragraph (d)(5) of this section is considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1) if it has a CCULR of 9.0 percent or greater.

(2) *Qualifying Complex Credit Union.* For purposes of this part, a qualifying complex credit union means a complex credit union under § 702.103 that satisfies all of the following criteria:

(i) Has a CCULR of 9.0 percent or greater;

(ii) Has total off-balance sheet exposures of 25 percent or less of its total assets;

(iii) Has the sum of total trading assets and total trading liabilities of 5 percent or less of its total assets; and

(iv) Has the sum of total goodwill and total other intangible assets of 2 percent or less of its total assets.

(3) *Calculation of Qualifying Criteria.* Each of the qualifying criteria in paragraph (d)(2) of this section is calculated based on data reported in the Call Report as of the end of the most recent calendar quarter.

(4) *Calculation of the CCULR.* A qualifying complex credit union opting into the CCULR framework under this paragraph (d) calculates its CCULR in the same manner as its net worth ratio under § 702.2.

(5) *Opting into the CCULR Framework.* (i) A qualifying complex credit union may opt into the CCULR framework by completing the applicable reporting requirements of its Call Report.

(ii) A qualifying complex credit union can opt into the CCULR framework at the end of each calendar quarter.

(6) *Opting Out of the CCULR Framework.* (i) A qualifying complex credit union may voluntarily opt out of the framework at the end of each calendar quarter.

(7) *Treatment when ceasing to meet the qualifying complex credit union requirements.* (i) If a qualifying complex credit union that has opted into the CCULR framework ceases to meet the qualifying criteria in paragraph (d)(2) of this section, the credit union has two calendar quarters (grace period) either to satisfy the requirements to be a qualifying complex credit union or to calculate its risk-based capital ratio under paragraphs (a) through (c) of this section.

(ii) The grace period begins at the end of the calendar quarter in which the credit union no longer satisfies the criteria to be a qualifying complex credit union. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(iii) During the grace period, the credit union continues to be treated as a qualifying complex credit union for the purpose of this part and must continue calculating and reporting its CCULR, unless the qualifying complex credit union has opted out of using the CCULR framework under paragraph (d)(6) of this section. The qualifying complex credit union also continues to be considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1). However, if the qualifying complex credit union has a CCULR of less than seven percent, it will not be considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1) and its capital classification is determined by its net worth ratio.

(v) A qualifying complex credit union that ceases to meet the qualifying criteria in paragraph (d)(2) of this section as a result of a merger or acquisition that is not a supervisory merger or combination has no grace period and must comply with the risk-based capital ratio under paragraphs (a) through (c) of this section in the quarter it ceases to be a qualifying complex credit union.

(e) *Reservation of Authority.* The NCUA may require a complex credit union that otherwise would meet the definition of a qualifying complex credit union to comply with the risk-based capital ratio under paragraphs (a) through (c) of this section if the NCUA determines that the complex credit union's capital requirements under paragraph (d) of this section are not commensurate with its risks. Any credit union required to comply with the risk-based capital ratio under this paragraph (e), would be permitted a minimum of a two-quarter grace period before being subject to risk-based capital requirements.

§ 702.111 [Amended]

■ 7. In § 702.111, amend paragraph (c)(1)(i) by removing ''risk-based capital ratio'' and adding in its place ''risk-based capital measure''.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 8. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.2 [Amended]

■ 9. In § 703.2, amend the definition of ''Net worth'' by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

§ 703.13 [Amended]

■ 11. In § 703.13, amend paragraph (d)(3)(iii) by

■ a. Removing the phrase ''net worth classification'' and adding in its place the phrase ''capital classifications''; and

■ b. Removing the phrase ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement''.

[FR Doc. 2021–27644 Filed 12–22–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 741

RIN 3133–AE98

Subordinated Debt

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the Subordinated Debt rule, which the Board finalized in December 2020 with an effective date of January 1, 2022. This final rule amends the definition of ''Grandfathered Secondary Capital'' to include any secondary capital issued to the United States Government or one of its subdivisions (U.S. Government), under a secondary capital application approved before January 1, 2022, irrespective of the date of issuance. This amendment will benefit eligible low-income credit unions (LICUs) that are either participating in the U.S. Department of the Treasury's (Treasury) Emergency Capital Investment Program (ECIP) or other programs administered by the U.S. Government that can be used to fund secondary capital, if they do not receive the funds for such programs by December 31, 2021. The Board is also amending the Subordinated Debt rule by extending the expiration of regulatory capital treatment for the aforementioned secondary capital issuances to the later of 20 years from the date of issuance or January 1, 2042.

DATES: The final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Justin Anderson, Senior Staff Attorney, (703) 518–6556, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Subordinated Debt Rule

At its December 2020 meeting, the Board issued a final Subordinated Debt rule permitting LICUs, Complex Credit Unions, and New Credit Unions to issue Subordinated Debt for purposes of Regulatory Capital treatment.[1] Relevant to this final rule, the Subordinated Debt rule grandfathered secondary capital issued before January 1, 2022, and allowed such secondary capital to receive regulatory capital treatment until January 1, 2042 (20 years from the effective date of the Subordinated Debt rule).[2] The grandfathering provision of the Subordinated Debt rule allows LICUs with grandfathered secondary capital to continue to be subject to the requirements of 12 CFR 701.34(b), (c), and (d) (recodified in the December 2020 final Subordinated Debt rule as 12 CFR 702.414), rather than the requirements of the Subordinated Debt rule.[3]

The Subordinated Debt rule also includes a provision stating that any issuances of secondary capital not completed by January 1, 2022, are, as of January 1, 2022, subject to the requirements applicable to Subordinated Debt in the Subordinated Debt rule.[4] This provision would nullify any approved secondary capital application if the associated issuance is not completed before January 1, 2022. Any LICU in this situation would be required to reapply under the Subordinated Debt rule if such LICU sought to proceed with its planned secondary capital issuance.

B. Emergency Capital Investment Program

Subsequent to the issuance of the Subordinated Debt rule, Congress passed the Consolidated Appropriations Act, 2021 (CAA).[5] The CAA, among other things, created the ECIP. Under the ECIP, Congress appropriated funds and directed Treasury to make investments in ''eligible institutions'' to support their efforts to ''provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities.''[6] The definition of ''eligible institutions'' includes federally insured credit unions that are minority depository institutions or community development financial institutions, provided such credit unions are not in troubled condition or subject to any formal enforcement actions related to unsafe or unsound lending practices.[7]

Under the terms developed by Treasury, investments in eligible credit unions will be in the form of subordinated debt. Treasury also aligned its investments in LICUs with the Federal Credit Union Act and the NCUA's regulations to allow eligible LICUs to apply to the NCUA for secondary capital treatment for these investments.

Treasury opened the ECIP application process on March 4, 2021, with an application deadline of May 7, 2021. Treasury subsequently extended this deadline multiple times, with the most recent deadline being September 1, 2021.

C. Summary of the Proposed Rule

At its September 2021 meeting, the Board issued a notice of proposed rulemaking to amend the Subordinated Debt rule to address a specific situation with funding of approved secondary capital applications.[8]

As discussed in subsection A of this section, if the ECIP investments, or investments from any other programs administered by the U.S. Government that can fund secondary capital, are not funded by the end of 2021, those approved LICUs would be required to reapply under the Subordinated Debt rule to complete an issuance. As this scenario would impose an unnecessary burden on these LICUs, the Board proposed to amend the Subordinated Debt rule to permit funding of secondary capital approved under the current secondary capital rule, beyond 2021, without the need to reapply under the Subordinated Debt rule. Regardless of the issuance date of the secondary capital, such secondary capital would, for the purposes of the Subordinated Debt rule, be considered Grandfathered Secondary Capital, and remain subject to 12 CFR 701.34(b), (c) and (d) of the NCUA's regulations (recodified in the December 2020 final Subordinated Debt rule as 12 CFR 702.414). The Board notes that the proposed changes were narrowly tailored to provide an exception to the issuance cutoff date, if the secondary capital issuance is:

1. To the U.S. Government; and

2. Being conducted under a secondary capital application that was approved before January 1, 2022, under either § 701.34 of the NCUA's regulations, for federal credit unions, or § 741.203 of the NCUA's regulations, for federally insured, state-chartered credit unions.

[1] 86 FR 11060 (Feb. 23, 2021). Capitalized terms in this preamble are defined in the December 2020 Subordinated Debt final rule.

[2] *Id.* at 11074.

[3] *Id.*

[4] *Id.* at 11083.

[5] Consolidated Appropriations Act, 2021, Public Law 116–260 (H.R. 133), Dec. 27, 2020.

[6] *Id.* codified at 12 U.S.C. 4703a *et seq.*

[7] 12 U.S.C. 4703a(a)(2).

[8] 86 FR 53567 (Sept. 28, 2021).

Consistent with the final Subordinated Debt rule, any LICU not meeting the above criteria will remain subject to the requirement to complete any issuance by the end of 2021 or such issuance will be subject to the requirements of the final Subordinated Debt rule.

The Board also proposed to amend the starting point for Grandfathered Secondary Capital to retain its status as Regulatory Capital. Currently, the Subordinated Debt rule states that all Grandfathered Secondary Capital will be treated as regulatory capital until January 1, 2042 (20 years from the effective date of the final Subordinated Debt rule). As the proposed rule would allow limited issuances of Grandfathered Secondary Capital beyond January 1, 2022, the Board proposed to allow such secondary capital to count as regulatory capital for up to 20 years from the date of issuance. The Board noted that this proposed amendment would provide equitable treatment for all issuances of Grandfathered Secondary Capital.

II. Summary of Comments

A. The Public Comments, Generally

The NCUA received 15 comments following publication of the proposed rule. All of the commenters that addressed the proposed rule were in support of the proposed amendments. There were no commenters that opposed the proposed amendments.

B. Comments Outside the Scope of the Proposed Rule

All of the commenters recommended additional changes to the Subordinated Debt rule. In the proposed rule, however, the Board stated the proposed changes contained therein were narrowly tailored to address a specific situation with funding of approved secondary capital applications.[9] Therefore, the Board noted it was not considering any other changes to the final Subordinated Debt rule at that time and comments outside the scope of the proposed rule would be treated as such for the purpose of any final rule the Board may issue.[10]

While the comments recommending changes to the Subordinated Debt rule are outside the scope of this rulemaking, the Board will retain these comments for use in any future proposals to amend the Subordinated Debt rule.

III. Final Rule

As no commenters opposed the proposed rule, the Board is finalizing the proposed amendments without change.

V. Administrative Law Matters

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires that a final rule be published in the **Federal Register** no less than 30 days before its effective date except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[11] Because the final rule relieves a restriction, the final rule is exempt from the APA's delayed effective date requirement.[12] Therefore, this final rule will become effective on January 1, 2022.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) generally provides for congressional review of agency rules.[13] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the APA.[14] The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to the Office of Management and Budget for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file all appropriate Congressional reports.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid Office of Management and Budget control number. This final rule extends the time for certain issuances of secondary capital and the corresponding Regulatory Capital treatment of such issuances. As such, this rule does not require any information collection as defined by the Paperwork Reduction Act of 1995.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [15] generally requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, the Board considers credit unions with assets less than $100 million to be small entities.[16]

The Board determined that the proposed rule would affect a small number of LICUs with approved secondary capital applications for issuances to the U.S. Government or its subdivisions. The rule is focused on relieving administrative application requirements that would otherwise apply. As such, the Board found that an RFA analysis was not required for the proposed rule. Accordingly, the Board certifies that the final rule does not have a significant economic impact on a substantial number of small credit unions.

E. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

The rule relieves administrative application requirements that would otherwise apply and does not alter substantive requirements that apply to state-chartered credit unions generally. The Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

F. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

[9] *Id.* at 53568.

[10] *Id.*

[11] 5 U.S.C. 553(d).

[12] *Id.* 553(d)(1).

[13] *Id.* 801–804.

[14] *Id.* 551.

[15] *Id.* 601 *et seq.*

[16] NCUA Interpretive Ruling and Policy Statement 15–1. 80 FR 57512 (Sept. 24, 2015).

By the NCUA Board on December 16, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the NCUA is amending 12 CFR parts 702 and 741, as amended by 86 FR 11060 (Feb. 23, 2021) and effective on January 1, 2022, as follows:

PART 702—CAPITAL ADEQUACY

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. In § 702.2 revise the definitions of ''Grandfathered Secondary Capital'' and ''Regulatory Capital'' to read as follows:

§ 702.2 Definitions.

* * * * *

Grandfathered Secondary Capital means any secondary capital issued under § 701.34 of this chapter, before January 1, 2022 or, in the case of a federally insured, state-chartered credit union, with § 741.204(c) of this chapter, before January 1, 2022. (12 CFR 701.34 was recodified as § 702.414 as of January 1, 2022). This term also includes issuances of secondary capital to the U.S. Government or any of its subdivisions, under applications approved before January 1, 2022, pursuant to § 701.34 or § 741.204(c) of this chapter, irrespective of the date of issuance.

* * * * *

Regulatory Capital means:

(1) With respect to an Issuing Credit Union that is a LICU and not a complex credit union, the aggregate outstanding principal amount of Subordinated Debt and, until the later of 20 years from the date of issuance or January 1, 2042, Grandfathered Secondary Capital that is included in the credit union's net worth ratio;

(2) With respect to an Issuing Credit Union that is a complex credit union and not a LICU, the aggregate outstanding principal amount of Subordinated Debt that is included in the credit union's RBC Ratio;

(3) With respect to an Issuing Credit Union that is both a LICU and a Complex Credit Union, the aggregate outstanding principal amount of Subordinated Debt and, until the later of 20 years from the date of issuance or January June 1, 2042, Grandfathered Secondary Capital that is included in its net worth ratio and in its RBC Ratio; and

(4) With respect to a new credit union, the aggregate outstanding principal amount of Subordinated Debt and, until the later of 20 years from the date of issuance or January 1, 2042, Grandfathered Secondary Capital that is considered pursuant to § 702.207.

* * * * *

■ 3. Revise § 702.401 to read as follows:

§ 702.401 Purpose and scope.

(a) *Subordinated Debt.* This subpart sets forth the requirements applicable to all Subordinated Debt issued by a federally insured, natural person credit union, including the NCUA's review and approval of that credit union's application to issue or prepay Subordinated Debt. This subpart shall apply to a federally insured, state-chartered credit union only to the extent that such federally insured, state-chartered credit union is permitted by applicable state law to issue debt instruments of the type described in this subpart. To the extent that such state law is more restrictive than this subpart with respect to the issuance of such debt instruments, that state law shall apply. Except as provided in the next sentence, any secondary capital, as that term is used in the Federal Credit Union Act, issued after January 1, 2022, is Subordinated Debt and subject to the requirements of this subpart. Issuances of secondary capital, as that term is used in the Federal Credit Union Act, to the U.S. Government or any of its subdivisions, under applications approved before January 1, 2022, pursuant to § 701.34 or § 741.204(c) of this chapter, are not subject to the requirements applicable to Subordinated Debt, discussed elsewhere in this subpart, irrespective of the date of issuance.

(b) *Grandfathered Secondary Capital.* Any secondary capital defined as ''Grandfathered Secondary Capital,'' under § 702.402, is governed by § 702.414. Grandfathered Secondary Capital will no longer be treated as Regulatory Capital as of the later of 20 years from the date of issuance or January 1, 2042.

■ 4. In § 702.402 revise the definition for ''Grandfathered Secondary Capital'' to read as follows:

§ 702.402 Definitions.

* * * * *

Grandfathered Secondary Capital means any secondary capital issued under § 701.34 of this chapter before January 1, 2022, or, in the case of a federally insured, state-chartered credit union, with § 741.204(c) of this chapter, before January 1, 2022. (12 CFR 701.34 was recodified as § 702.414 as of January 1, 2022). This term also includes issuances of secondary capital to the U.S. Government or any of its subdivisions, under applications approved before January 1, 2022, pursuant to § 701.34 or § 741.204(c) of this chapter, irrespective of the date of issuance.

* * * * *

■ 5. In § 702.414 revise the introductory paragraph and paragraph (a)(2) to read as follows:

§ 702.414 Regulations governing Grandfathered Secondary Capital.

This section recodifies the requirements from 12 CFR 701.34(b), (c), and (d) that were in effect as of December 31, 2021, with minor modifications. The terminology used in this section is specific to this section. Except as provided in the next sentence, all secondary capital issued under § 701.34 of this chapter before January 1, 2022, or, in the case of a federally insured, state-chartered credit union, § 741.204(c) of this chapter, that is referred to elsewhere in this subpart as ''Grandfathered Secondary Capital,'' is subject to the requirements set forth in this section. Issuances of secondary capital to the U.S. Government or any of its subdivisions, under applications approved before January 1, 2022, pursuant to § 701.34 or § 741.204(c) of this chapter, are also considered ''Grandfathered Secondary Capital'' irrespective of the date of issuance.

* * * * *

(a) * * *

(1) * * *

(2) *Issuances not completed before January 1, 2022.* Except as provided in the next sentence, any issuances of secondary capital not completed by January 1, 2022, are, as of January 1, 2022, subject to the requirements applicable to Subordinated Debt discussed elsewhere in this subpart. Issuances of secondary capital to the U.S. Government or any of its subdivisions, under applications approved before January 1, 2022, pursuant to §§ 701.34 or 741.204(c) of this chapter, are not subject to the requirements applicable to Subordinated Debt, discussed elsewhere in this subpart, irrespective of the date of issuance.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

■ 6. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 7. Amend § 741.204 by revising paragraph (c) to read as follows:

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

* * * * *

(c) Follow the requirements of § 702.414 of this chapter for any Grandfathered Secondary Capital (as defined in part 702 of this chapter).

[FR Doc. 2021–27643 Filed 12–22–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 721

RIN 3133–AF26

Mortgage Servicing Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to permit federal credit unions (FCUs) to purchase mortgage servicing assets (MSAs), referred to as mortgage servicing rights in the proposed rule, from other federally insured credit unions subject to certain requirements. Under the final rule, FCUs with a CAMEL or CAMELS composite rating of 1 or 2 and a CAMEL or CAMELS Management component rating of 1 or 2, may purchase the mortgage servicing rights of loans that the FCU is otherwise empowered to grant, provided these purchases are made in accordance with the FCU's policies and procedures that address the risk of these investments and servicing practices. The Federal Credit Union Act (the Act) permits FCUs to purchase mortgage servicing assets under their express authority to purchase assets from other credit unions.

DATES: The final rule is effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Fay, Director, Capital Markets; John G. Nilles, Senior Capital Markets Specialist, Office of Examination & Insurance, or Ian Marenna, Associate General Counsel; Chrisanthy Loizos, Senior Trial Attorney, Office of General Counsel, or Ernestine Ward, Consumer Compliance Policy and Outreach Program Officer, Office of Consumer Financial Protection, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6300, (703) 518–6540, or (703) 518–6524.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

While the Act provides specific, statutory investment powers for FCUs,[1] the Board has adopted regulatory prohibitions against certain investments and investment activities on the basis of safety and soundness concerns, including the purchase of mortgage servicing rights (MSRs) as an investment.[2] In December 2020, by a vote of 2–1, the Board approved a notice of proposed rulemaking (NPR) [3] to amend the agency's Investment and Deposit Activities Rule (Investment Rule), 12 CFR part 703, to explicitly permit FCUs to purchase MSRs from other federally insured credit unions (FICUs) based on express statutory authority that permits an FCU ''to sell all or a part of its assets to another credit union [and] to purchase all or part of the assets of another credit union. . .subject to regulations of the Board.'' [4] The proposed regulatory text provided the following requirements for this investment authority:

(1) The underlying mortgage loans of the MSRs are loans the FCU is empowered to grant; [5]

(2) The FCU purchases the MSRs within the limitations of the FCU's board of directors' written purchase policies; and

(3) The FCU's board of directors or investment committee approves the purchase in advance.

The NPR also included several questions as to whether the rule should place additional conditions on the authority, such as capital requirements, concentration limits, or other measures to address consumer financial protection, compliance risk and liquidity risk.

Generally, when a lender originates a mortgage loan, the lender may retain the loan and the servicing function for the loan in its portfolio, sell the loan along with the MSRs to another party, or separate the MSRs from its mortgage loan and transfer either the loan or the MSRs to another party. The NPR focused on the purchase of MSRs as assets that are distinct from their underlying mortgage loans. The Board proposed to permit FCUs to purchase MSRs by removing MSRs from the list of prohibited investments [6] in the Investment Rule and adding the purchase of MSRs from other FICUs to the rule's list of permissible investments for FCUs.[7]

Under the current Investment Rule, MSRs are defined as ''a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Servicing is the administration of a mortgage loan, including collecting monthly payments and fees, providing recordkeeping and escrow functions, and, if necessary, curing defaults and foreclosing.'' [8] Mortgage loan servicers, therefore, are intermediaries between borrowers and owners of the mortgage loans; their servicing functions are subject to a servicing agreement and consumer protection laws, as applicable.[9] MSRs, or mortgage servicing assets, a term used interchangeably with MSRs, are recorded in accordance with Generally Accepted Accounting Principles (GAAP).[10]

Mortgage servicing can carry various risks. Servicers are exposed to liquidity risk if servicing agreements require the servicer to remit mortgage loan payments to the investors of sold loans even when borrowers fail to make their monthly payments. There are also operational risks related to mortgage servicing due to a myriad of statutes and regulations that protect consumers, which can expose FCUs to reputational, legal, and compliance risk. The compliance and reputation risk of a mortgage servicer can be considerable due to the high touch nature of interactions with consumers and the attendant legal requirements imposed on mortgage servicers. For example, depending on the particular servicer and its activities, servicers must comply with a variety of requirements, including the Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X; the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z; as well as amendments to Regulations X and Z under the Mortgage Servicing Rules promulgated by the Consumer Financial Protection Bureau, which implement provisions of the Dodd-Frank Wall Street Reform and Consumer

[1] 12 U.S.C. 1757(7), (8), (14), (15).

[2] 62 FR 32989 (June 18, 1997); 66 FR 54168, 54169 (Oct. 26, 2001); 67 FR 78996, 78997 (Dec. 27, 2002); 12 CFR 703.16(a).

[3] 85 FR 86867 (Dec. 31, 2020).

[4] 12 U.S.C. 1757(14).

[5] The phrase ''empowered to grant'' refers to an FCU's authority to make the type of loans permitted by the Act, NCUA regulations, FCU Bylaws, and an FCU's own internal policies. *See* NCUA OGC Op. 04–0713 (Oct. 25, 2004) available at *https://www.ncua.gov/files/legal-opinions/OL2004-0713.pdf,* 76 FR 81421, 81425 (December 28, 2011).

[6] 12 CFR 703.16.

[7] 12 CFR 703.14.

[8] 12 CFR 703.2.

[9] For example, *see* 12 CFR 1024.17; 12 CFR part 1024, subpart C; 12 CFR 1026.20, .36, .40–.41.

[10] *See* Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 860—Transfer and Servicing of Financial Assets.

Protection Act.[11] As applicable, servicers must comply with other federal laws regarding mortgage servicing, including the Servicemembers Civil Relief Act (SCRA),[12] the Fair Debt Collection Practices Act, and Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices,[13] as well as any applicable state laws regarding servicing.[14] To be successful, servicers need to understand the complexities in determining the value of these assets, and have effective information and compliance management systems, trained personnel, robust internal controls, as well as appropriate risk management to properly service the loans.

Although limited by the prohibition in the Investment Rule to purchase MSRs, FCUs record MSRs under two circumstances. When an FCU originates a residential mortgage loan and sells the loan to investors on the secondary market or other purchasers, the FCU may retain the corresponding servicing rights for various reasons, including maintaining its servicing relationship with its member. Alternatively, FCUs can retain MSRs if they later sell residential mortgage loans purchased from the originating lender.

Similar to other financial institutions involved in residential lending, FCUs engage in both origination and servicing activities related to residential lending. As of June 30, 2021, approximately 3,600 FICUs held $449 billion in aggregate outstanding first lien residential mortgage loans that they originated, commonly referred to as ''portfolio loans,'' with 2,138, or 59.4 percent, of FCUs accounting for $223 billion, or 49.7 percent, of the total amount.[15] An FCU does not recognize a servicing asset for a portfolio mortgage loan in which the FCU has retained servicing, because it has not undertaken an obligation to service the loan for another party.

Credit unions, similar to other lenders involved with mortgage finance, actively sell residential mortgage loans to investors on the secondary market. As of June 2021, FICUs collectively sold and serviced $270 billion of mortgage real estate loans with FCUs accounting for 53 percent of the total balance. In 2020, approximately 1,100 FICUs collectively sold $120 billion in first lien residential mortgage loans. Of the total $120 billion sold, 535 FCUs accounted for $58 billion of the total amount sold. Comparatively, approximately 1,100 FICUs collectively sold $63 billion in residential mortgage loans in 2019, with 556 FCUs accounting for $39 billion of the total amount sold.

B. Summary of the Proposed Rule

The Board proposed to amend NCUA's Investment Rule to permit FCUs to purchase MSRs from other FICUs. Specifically, the proposed rule removed the current prohibition on FCUs purchasing MSRs from the Investment Rule. The Board proposed to amend § 703.14 to explicitly permit an FCU to purchase MSRs from other FICUs, provided:

(1) The underlying mortgage loans of the MSRs are loans the FCU is empowered to grant;

(2) The FCU purchases the MSRs within the limitations of the FCU's board of directors' written purchase policies; and

(3) The board of directors or investment committee approves the purchase in advance.

To ensure that MSRs purchased by FCUs meet the same requirements and standards applicable to the loans that a buying FCU can make, the proposed rule allowed purchases of MSRs from FICUs only if the underlying mortgage loans from which the MSRs are derived meet the same conditions for loans the FCU is empowered to grant. This is the same standard applicable to FCUs when buying certain eligible obligations under § 701.23(b).

Consistent with § 701.23, the proposed rule also required that FCUs purchase MSRs within the limitations of the FCU's board of directors' written purchase policies and that the FCU's board of directors or investment committee approves the purchase in advance.

The proposed rule removed the regulatory text that prohibits the purchase of MSRs in § 703.16(a) and reserved the paragraph to correspond to the change in § 703.14. The remaining provision in § 703.16(a), which recognizes an FCU's incidental powers authority to service the loans owned by a member engaged in mortgage lending, was transferred to part 721 as another example of a loan-related product. While loan servicing is an incidental powers activity when performed for other credit unions under § 721.3(c) as a correspondent service, the proposed addition to paragraph (h) reflected the existing authority currently found in § 703.16(a) to provide loan-related services to members.

In addition, the Board requested comment on the following questions with the expressed intention that the final rule would incorporate appropriate safeguards and limitations as informed by the responses the Board received in response to the NPR.

- Benefits: How would the proposed rule to permit an FCU to purchase MSRs from other FICUs benefit an FCU's mortgage loan servicing operations?
- Compliance Risk: If FCUs purchase volumes of MSRs from different FICUs, are they prepared to ensure they have effective compliance management systems for compliance with the consumer protection-related laws and regulations that apply to mortgage loan servicers?
- Capital and CAMEL Requirements: Should the proposed rule include additional criteria for an FCU to be eligible to purchase MSRs? In particular, should the FCU be required to be ''well capitalized'' as defined in part 702? If so, similarly to the eligible obligations rule, should it be well capitalized for a minimum of the six quarters preceding its purchase of MSRs? Should the FCU be required to have a composite CAMEL rating of 1 or 2 with a Management rating of a 1 or 2 for at least the last two examination cycles?
- Concentration Risk: Should the final rule include a limit on the amount of MSRs an FCU can hold to address concentration risk? Specifically, should a limit on the amount of MSRs held by

[11] Small servicers are exempt from numerous requirements that apply to mortgage servicing activities under Regulations X and Z. *See, e.g.* 12 CFR 1024.17; 12 CFR 1024.37–.41; 12 CFR 1026.41. Generally, to qualify as a small servicer, a servicer must service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. *See* 12 CFR 1026.41(e)(4) for full definition. Note however, a servicer is not a small servicer under § 1026.41(e)(4)(ii)(A) if it services any mortgage loans for which the servicer or an affiliate is not the creditor or assignee (that is, for which the servicer or an affiliate is not the owner or was not the originator).

[12] For example, the SCRA contains a strict liability provision that requires a court order before foreclosing on a mortgage during a period of military service, and for one year after a period of military service. 50 U.S.C. 3953.

[13] Note, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive, or abusive act or practice. Dodd-Frank Act, 12 U.S.C. 5536 (a)(1)(B).

[14] ''State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.'' 12 CFR 1024.5(c) and Commentary .5(c)(1)–1. See also the preemption of state law provision in the mortgage servicing transfer rule, which states ''[p]rovisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice provided under this section, if permitted under State law.'' 12 CFR 1024.33(d).

[15] NCUA Call Report Data as of June 30, 2021.

an FCU be determined using the total amount of MSRs purchased by the FCU or, alternatively, the aggregate amount of MSRs purchased from other parties and MSRs retained after the sale of the underlying mortgage loans by the FCU? Should the rule limit the total amount of MSRs that an FCU may hold to no more than 25 percent of the FCU's net worth or would another standard, such as a concentration limit based on assets, be more appropriate to address concentration risk?

- Liquidity Risk: To address the liquidity risk of the purchasing FCU, should the final rule limit the amount of months an FCU is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments? Specifically, should there be a maximum of three to six months of payments made to the mortgage loan owner when a borrower fails to make payment on the serviced mortgage loan?

In addition to the questions listed, the Board also solicited comment on whether the safeguards and limitations applicable to FCUs in the final rule should be extended to all FICUs in light of the risks associated with the purchase of MSRs, as a requirement for obtaining and maintaining federal share insurance.

II. Final Rule

The final rule removes the prohibition on FCUs from purchasing MSRs under the Investment Rule.[16] The final rule also removes the current defined term ''mortgage servicing rights'' in the Investment Rule and replaces it with the term ''mortgage servicing assets.'' For consistency with part 702, the final rule adopts the same definition for ''mortgage servicing assets'' that the Board adopted under its amendments to the risk-based capital (RBC) rule.[17] Under the RBC rule, MSAs are defined as ''assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.'' [18] This alignment in the final rule does not make substantive definitional changes to terms that are commonly used interchangeably by industry and regulators, but rather ensures uniformity and clarity in the regulatory text for compliance with both the investment and capital rules.[19]

The final rule amends § 703.14 to explicitly permit an FCU to purchase MSAs from other FICUs, provided:

(1) After the last full examination of the credit union, the FCU received a composite CAMELS rating of 1 or 2, which also included a Management rating of 1 or 2; [20]

(2) The underlying mortgage loans of the MSAs are loans the FCU is empowered to grant;

(3) The FCU purchases the MSAs within the limitations of the FCU's board of directors' written purchase policies; and

(4) The board of directors or the FCU's investment committee approves the purchase in advance.

The Board notes that under recent amendments to the RBC rule, complex credit unions with MSAs will also factor the criteria in § 702.104 to calculate their RBC requirements.[21]

The final rule removes the current prohibition against MSR purchases imposed in § 703.16(a) and reserves the paragraph to correspond to the change in § 703.14. The remaining provision in § 703.16(a), which recognizes an FCU's incidental powers authority to service the loans owned by a member engaged in mortgage lending, is transferred to part 721 as another example of loan-related product. While loan servicing is an incidental powers activity when performed for other credit unions under § 721.3(c) as a correspondent service, the addition to paragraph (h) reflects the authority found in § 703.16(a) to provide loan-related services to members.

III. Legal Authority

Over decades, the NCUA has issued many regulations and opinions recognizing the authority of an FCU to engage in loan servicing activities. Since 1979, an FCU has been permitted ''to service any eligible obligation it purchases or sells in whole or in part'' under the NCUA's eligible obligations rule.[22] FCUs also have the authority to provide correspondent services, including loan servicing, to other credit unions under the incidental powers regulation.[23] In adopting that regulation, the Board observed: ''Correspondent services are services or functions provided by an FCU to another credit union that the FCU is authorized to perform for its own members or as part of its operation.'' [24] During the part 721 rulemaking in 2001, the Board agreed with commenters that loan servicing and escrow services were examples of permitted correspondent services.[25] Furthermore, although the purchase of MSRs was prohibited under the Investment Rule, the Board recognized during the incidental powers rulemaking that an FCU could perform servicing for a member engaged in making mortgage loans as a financial service to its member:

''For this activity to be permissible as a financial service to a member, the member must continue to own the loan during the time that the credit union provides servicing. In this context, the NCUA Board concludes that providing mortgage servicing is an appropriate exercise of a credit union's incidental powers to provide financial service to a member.'' [26]

Therefore, the authority to provide mortgage loan servicing as a financial service to members, under the conditions above, has been in place since 2003.[27] FCUs are also permitted to provide mortgage loan servicing to others as a charitable contribution.[28] Further, under the NCUA's Credit Union Service Organization (CUSO) regulation, CUSOs [29] are expressly preapproved to provide loan support services, including loan servicing and debt collection services.[30]

The authority for FCUs to purchase MSAs is found in Section107(14) of the Act, which permits an FCU ''to sell all or a part of its assets to another credit union [and] to purchase all or part of the assets of another credit union . . . subject to regulations of the Board.'' [31] Given that MSAs are financial assets

[16] The Board did not propose in the NPR to remove any investment restrictions applicable to federally insured corporate credit unions under part 704. This final rule, therefore, does not alter the distinct investment authorities and prohibitions applicable to corporate credit unions under part 704.

[17] 80 FR 66626 (Oct. 29, 2015) and 84 FR 68781 (Dec. 17, 2019).

[18] 12 CFR 702.2 (effective Jan. 1, 2022).

[19] *See* Comptroller's Handbook for Mortgage Banking, version 1 Feb. 2014 at p. 64, fn.4; 86 FR 45824, 45846 (Aug. 16, 2021).

[20] Effective April 1, 2022, the NCUA's supervisory rating system will change from CAMEL to CAMELS. See 86 FR 59282 (Oct. 27, 2021). CAMEL ratings will be used to determine eligibility for those credit unions that do not have a CAMELS rating.

[21] 80 FR 66626 (Oct. 29, 2015) and 84 FR 68781 (Dec. 17, 2019). On December 16, 2021, the Board approved additional amendments to 12 CFR 702.104 pertaining to mortgage servicing assets.

[22] 12 CFR 701.23(e); 44 FR 27068 (May 9, 1979).

[23] 12 CFR 721.3(c).

[24] 66 FR 40845, 40850 (Aug. 6, 2001).

[25] *Id.; see also* NCUA OGC Opinion 09–0430 (August 2009) available at *https://www.ncua.gov/regulation-supervision/legal-opinions/2009/nonmember-loan-servicing.*

[26] 67 FR 78996, 78998 (Dec. 27, 2002).

[27] 68 FR 32960 (June 3, 2003).

[28] NCUA OGC Opinion 01–0502 (June 18, 2001) available at *https://www.ncua.gov/files/legal-opinions/OL2001-0502.pdf;* 12 CFR 721.3(b)(1).

[29] Generally, a CUSO is an entity in which a FICU has an ownership interest or to which a FICU has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members. *See* 12 CFR 712.1(d).

[30] 12 CFR 712.5(h); 712.3(d)(5)(i)(A).

[31] 12 U.S.C. 1757(14).

that may be sold separately from their underlying mortgage loans, an FCU has the statutory authority to sell MSAs to, and purchase MSAs from, another credit union.

By the plain language of Section 107(14), FCUs may purchase MSAs only from other credit unions. Contrast the authority to purchase MSAs ''of another credit union'' [32] to an FCU's express statutory power to enter loan participation agreements with ''other credit unions, credit union organizations or financial organizations.'' [33] Under NCUA's loan participation rule, subject to certain conditions, an FCU can purchase a participation interest in a loan from a credit union, credit union organization, or financial organization, which means any federally chartered or federally insured financial institution or any state or federal government agency and its subdivisions.[34] As such, the Act makes a greater number of participation partner-types (sellers of loan participation interests) available to an FCU than is permitted to the FCU if it is purchasing MSAs.

Lastly, the Board has engaged in several rulemakings to amend its RBC rule to, among other changes, include a guardrail for complex credit unions that purchase MSAs.[35] The final rule includes a deduction to the RBC numerator for MSA balances that exceed 25 percent of the capital numerator with the remaining balance risk-weighted at 250 percent in the RBC denominator. As mentioned in the preamble of the 2015 RBC final rule,[36] the Board believes the risks of MSAs contribute to a high level of uncertainty regarding the ability of credit unions to realize value from these assets. In adopting the December 2021 amendments to the RBC rule, the Board determined that it was appropriate to add a risk-based numerator deduction to address the potential of complex credit unions purchasing MSAs from other FICUs.[37]

This rulemaking is promulgated pursuant to Section 120(a) of the Act,[38] which is a general grant of regulatory authority that authorizes the Board to prescribe rules and regulations for the administration of the Act.[39] In addition, Section 206 of the Act grants the Board broad authority to take enforcement action against a FICU or an ''institution-affiliated party'' [40] that is engaging, has engaged, or the Board has reasonable cause to believe that it is about to engage, in an unsafe or unsound practice in conducting the business of such credit union.[41] Congress chose not to define ''unsafe or unsound practices'' in the Act, leaving determinations regarding which actions are unsafe or unsound to the Board.

IV. Discussion of Public Comments Received on the Proposed Rule

A. Generally

In the NPR, the Board proposed to amend 12 CFR 703.14 to include the following three prerequisites in order for an FCU to purchase MSRs from a FICU:

(1) The underlying mortgage loans of the MSRs are loans the FCU is empowered to grant;

(2) The FCU purchases the MSRs within the limitations of the FCU's board of directors' written purchase policies; and

(3) The FCU's board of directors or investment committee approves the purchase in advance.

In response, the Board received eleven comment letters from two natural person FCUs, eight credit union leagues and trade associations, and one individual. All but one of the commenters supported the removal of the regulatorily imposed prohibition in the Investment Rule that currently prevents FCUs from purchasing MSRs. Several commenters stated that additional conditions should be considered or included in the final rule. However, two commenters urged against conditions that would limit the investment authority, suggesting that FCUs and FICUs should be solely responsible for managing their risk mitigation due to their ample experience of servicing their own mortgages, as well as selling mortgage loans to the government-sponsored enterprises (GSEs).[42] These commenters stated that the rules should be more expansive to include purchases of MSRs from parties other than FICUs.

One commenter suggested the rulemaking is premature. This commenter stated that it is paramount for FCUs to understand how MSR purchases could affect both long- and short-term earnings of an FCU, particularly if the FCU retains low margin MSRs, as well as the degree of negative convexity for the MSRs as an investment. This commenter noted that many assumptions go into deriving the underlying MSR value, requiring considerable judgment, and that many FCU supervisory personnel may lack understanding or expertise. The commenter concludes, however, that these concerns may be mitigated if an FCU applies a prudent retention strategy backed by organization policy and guidance.

In response to a question in the NPR seeking comment on whether the proposed rule would benefit an FCU's mortgage loan servicing operations, many commenters identified benefits to the expanded investment authority to include the purchase of MSRs. Most commenters believe that the proposed rule would provide flexibility for FCUs to operate their mortgage loan business and would provide FICUs another avenue to sell their MSRs, which could generate a higher selling price and keep the MSRs within the credit union system. Two commenters stated that the additional flexibility would allow smaller institutions that want to grow and sell their mortgages to have more options to sell while also allowing growth opportunities for the FCUs who purchase those MSRs. Similarly, another commenter stated that MSRs can potentially provide an ongoing stream of income to an FCU's bottom line, given that the FCU understands and prepares for potential risks involved. Another commenter noted the benefits of mortgage servicing, which include a more positive member/borrower experience, new cross-selling opportunities, and additional revenue sources. Two commenters also found that the rule would encourage more cooperation between credit unions.

Several commenters stated that the proposed rule will offer FCUs opportunities to realize economies of scale. One commenter noted that smaller credit unions may seek to partner with their larger marketplace colleagues to enter the MSR

[32] Id.

[33] 12 U.S.C. 1757(5)(E).

[34] 12 CFR 701.22(a)–(b).

[35] 80 FR 66626 (Oct. 29, 2015) and 84 FR 68781 (Dec. 17, 2019). On December 16, 2021, the Board approved additional amendments to 12 CFR 702.104.

[36] 80 FR 66683.

[37] [Insert **Federal Register** citation to part 702 amendments approved on December 16, 2021]

[38] 12 U.S.C. 1766(a).

[39] 12 U.S.C. 1751–1795k.

[40] *See* 12 U.S.C. 1786(r) (providing: ''For purposes of [the Federal Credit Union Act], the term 'institution-affiliated party'' means—(1) any committee member, director, officer, or employee of, or agent for, an insured credit union; (2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; and (3) any independent contractor (including any attorney, appraiser, or account) who knowingly or recklessly participates in—(A) any violation of any law or regulation; (B) any breach of fiduciary duty; or (C) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.'').

[41] 12 U.S.C. 1786.

[42] GSEs include the Federal Home Loan Banks, Fannie Mae, Freddie Mac, Farmer Mac, and the Federal Farm Credit System Corporation.

marketplace. A large FCU stated that FCUs that service their own mortgage loans devote significant resources to meeting the operational and compliance responsibilities associated with mortgage servicing. If these fixed costs can be spread over a larger mortgage servicing portfolio, FCUs will be able to execute their mortgage lending businesses more effectively. This commenter also noted that, while mortgage servicing is a complex undertaking, purchasing MSRs will not add incremental risk for FCUs or the National Credit Union Share Insurance Fund (NCUSIF) because the risks associated with this new authority are similar to those already assumed as part of mortgage lending. Rather than adding risk, MSRs will allow FCUs to better address the inherent liquidity and interest rate risks posed by mortgage lending, and such risk mitigation will better protect the NCUSIF. One commenter stated that in 2019, about $240 billion in real estate loans were sold outside of the credit union system; consequently, removing the prohibition will promote safety and soundness by keeping revenue within the credit union system. Finally, one commenter commended the agency's timing of the rulemaking as the elongated pandemic health emergency has resulted in increased deposit flows rendering additional investment options a welcome tool.

Six commenters explicitly supported the three conditions proposed for this investment activity, finding the criteria appropriate to an FCU's purchase of MSRs from FICUs. Two commenters stated that FCUs can put proper controls in place to adequately mitigate associated risks. One of these commenters stated that it is prudent to consider certain safeguards that would apply before an FCU is eligible to purchase MSRs, depending on the complexity of the FCU's business model and staff composition.

Two commenters believe the requirements that MSR purchases be made in accordance with the board of directors' written purchase policies and receive advance approval by the board or investment committee should help ensure that MSR purchases are managed and properly vetted by the FCU. One commenter, however, does not support the requirements that MSRs be purchased within the limitations set by the board of directors' written purchase policies and that an FCU's board of directors or investment committee approve MSR purchases in advance. This commenter stated that the advance approval condition would only delay transactions, create more paperwork for the volunteers on board of directors or investment committees, and likely not have a material impact on the decision of whether to purchase MSRs.

One commenter expressed concern that, if the underlying mortgage loans of the MSRs must be loans the FCU is empowered to grant before an FCU can purchase MSRs, this condition will limit the number of FCUs that may take advantage of the new investment authority. This commenter stated that, while the purchase of MSRs will allow FCUs the ability to market and offer their product and services to prospective members, an FCU with a ''closed field of membership'' would have a difficult time purchasing MSRs that fit into their field of membership. This commenter requests that NCUA clarify how an FCU with, a single-common bond field of membership, for example, can take advantage of this investment authority.

The Board believes that FCUs have demonstrated experience originating and servicing residential mortgage loans, including in the mitigation of the attendant operational and compliance risks of mortgage servicing. The Board agrees with the comments in support of the proposed investment authority, particularly in its benefits to the credit union system. The opportunity to purchase MSRs provides flexibility for FCUs to operate their mortgage loan businesses, as well as providing the opportunity for FICUs to sell their MSRs. As one commenter noted, a readily available control for FCUs is the use of third parties to perform valuations of servicing portfolios, not only to ensure that conformance with GAAP, but also to ensure that an independent, expert financial analysis is conducted to minimize risk through timely adjustments. For these reasons, the Board believes removing the prohibition in the Investment Rule is appropriate and consistent with safety and soundness.

In addition to the CAMELS rating requirement discussed below, the final rule adopts the three conditions provided in the NPR as proposed. To purchase MSAs from a FICU, an FCU must meet the following requirements:

(1) The underlying mortgage loans of the MSAs are loans the FCU is empowered to grant;

(2) The FCU purchases the MSAs within the limitations of the FCU's board of directors' written purchase policies; and

(3) The FCU's board of directors or investment committee approves the purchase in advance.

The final rule requires that the underlying mortgage loans to any MSAs purchased by an FCU must meet the same requirements and standards applicable to mortgage loans that the FCU could originate. This is the same standard applicable to FCUs when buying certain eligible obligations under § 701.23(b). Note that the eligible obligations rule does not require FCUs to purchase the loans of its members under § 701.23(b)(2), a rule adopted in accordance with § 107(14) of the Act.[43] When an FCU uses this authority to buy eligible obligations, the obligation must be in accordance with the FCU's loan authority under the Act, NCUA regulations, FCU Bylaws, and the FCU's internal policies. The loan, however, is not required to be of an obligation of a member of the FCU or a person within the FCU's field of membership. Likewise, the authority of an FCU to purchase MSAs from other FICUs is not limited to loans made to persons in the purchasing FCU's field of membership. In addition, like § 701.23, the final rule requires that an FCU purchase MSAs within the limitations of the FCU's board of directors' written purchase policies and that its board of directors or investment committee approve of the purchase in advance.

B. Compliance Risk Management

In the NPR, the Board requested comment as to whether FCUs have effective compliance management systems (CMS) to help them to comply with the consumer protection-related laws and regulations applicable to mortgage loan servicers if they purchase MSRs from other FICUs.

A majority of commenters believe that an FCU can effectively manage its exposure to compliance risk through a comprehensive compliance program, which typically includes policies, procedures, processes, monitoring, and an audit function. While two commenters acknowledged the compliance and legal risks inherent in the acquisition of MSRs, they asserted FCUs that service mortgages they originated have long been able to manage these risks as part of their regular course of business. This includes maintaining expert compliance and legal personnel on staff, as well as engaging with outside counsel when necessary. Two commenters noted that FICUs have been selling mortgage loans to the GSEs for many years. Consequently, their CMS would not need much expanding to comply with the consumer protections that apply to the transfer and servicing of mortgage loans. One commenter stated that, while adjustments to CMS may be warranted

[43] See 77 FR 31981, 31987 (May 31, 2012) and 66 FR 15055, 15059 (March 15, 2001).

if an FCU expands its loan servicing operations, changes to comply with the consumer protections that apply to the transfer and servicing of mortgage loans will not be significant.

One commenter discussed the use of proper controls related to the purchase of MSRs and tools that FCUs can leverage to mitigate associated risks. This commenter stated that one control is for FCUs to invest in robust mortgage servicing software that is integrated with other in-house software, including the core system and loan origination system, to efficiently service mortgage loans. The commenter stated that the adoption of a comprehensive set of technologies is necessary for servicers to work efficiently and comply with regulations. The commenter also stated that, as FCUs consider upgrades to their CMS, specifically their mortgage lending quality control programs, any final rule should permit flexibility in examination findings because FCUs may need to amend existing CMS contracts and enhance staff training. Similarly, another commenter noted that FCUs will need to consider CMS upgrades, specifically to their mortgage lending quality control programs, and should consider the need to closely review custom loan documents, including promissory notes. FCUs may need to consider creating or hiring specialized due diligence teams to review loans to ensure they meet the NCUA's regulations and the FCU's own internal policies.

Another commenter stated that mortgage servicing operations should be certified or confirmed through third-party reviews and/or audits. Further, this commenter asserted that FCUs would need increased due diligence over third-party vendors that service mortgages and to secure insurance coverage sufficient to support possible losses. This commenter agreed that FCUs that decide to purchase MSRs should have appropriate expertise on staff to avoid problems. The commenter suggests NCUA may wish to take steps to develop a risk-rating matrix to measure performance and credit quality of loans in a selected pool.

The Board recognizes that FCUs have experience originating and servicing mortgage loans and managing their exposure to compliance risk through their CMS. An FCU that currently services mortgage loans that it originates is expected to have an effective CMS that addresses compliance with mortgage servicing laws and regulations, and includes the following components:

- Board and senior management oversight,
- Policies and procedures,
- Training,
- Monitoring,
- Member complaint response, and
- An audit function.

An effective CMS also promotes compliance with consumer protection-related laws and regulations and prevents consumer harm. Due to the existing and extensive consumer protection laws that are specific to mortgage loan servicing,[44] including those under Regulation X and Regulation Z, which are promulgated by the Consumer Financial Protection Bureau, the Board believes that it is not necessary to include additional consumer protections in the final Investment Rule.[45] However, the NCUA will use the examination process to assess the effectiveness of an FCU's CMS for compliance with consumer protection-related laws and regulations that apply to mortgage servicers, as appropriate.[46] Further, as appropriate, the NCUA will employ supervisory tools or take enforcement action to address any CMS deficiencies related to mortgage servicing that cause consumer harm. Moreover, the Board notes that any FCUs that currently operate under the small servicer exceptions to these rules will no longer benefit from the exemption from certain requirements if they begin to purchase MSAs from non-affiliate owners of the underlying mortgage loans.[47]

C. CAMELS Requirement

In the NPR, the Board requested comment as to whether the final rule should require FCUs to be ''well capitalized'' as defined in part 702, and whether, like the eligible obligations rule, an FCU should be well capitalized for a minimum of the six quarters preceding its purchase of MSRs. The Board further asked whether the final rule should limit eligibility for the authority to purchase MSRs from other FICUs to FCUs that have a composite CAMEL rating of 1 or 2 with a Management rating of a 1 or 2 for at least the last two examinations.

Three commenters specifically supported a requirement that an FCU be well capitalized in order to purchase MSRs from other FICUs. One commenter stated that not every investment vehicle is appropriate for all credit unions and additional criteria for an FCU to be eligible to purchase MSRs is needed, including criteria based on ''net worth'' or ''well capitalized'' as defined by NCUA regulations. Another commenter stated that, for the safety and soundness of an FCU purchasing MSRs, capitalization will be a prudent factor and that RBC rules at Tier 1 should apply. The third commenter stated that an FCU should be required to be ''well capitalized'' in order to purchase MSRs from FICUs and that capital levels should be sustained for at least six quarters before MSRs can be purchased from other FICUs.

One commenter opposed eligibility criteria based on a credit union's capital levels or CAMEL rating. This commenter stated that, although the safety and soundness of the credit union system is a top priority, such limitations would potentially hinder credit unions' ability to grow, make more loans to its members, and better serve their communities. This commenter also noted that when FCUs are servicing a loan that they originate, they are not subject to conditions regarding their capital levels and CAMEL rating, so there is no need for any eligibility criteria if they were to purchase MSRs from an FICU. Another commenter also opposed using the CAMEL system as additional eligibility criteria. This commenter stated that the CAMEL system may be overly qualitative and could lead to unintended consequences for non-participating FCUs with a CAMEL 1 or 2 rating. This commenter suggested that FCUs could possibly suffer reputational harm if they chose not to participate in MSR purchases because interested parties might presume the FCU has a CAMEL 3 or 4 rating.

Two commenters stated that the rule should require FCUs to have a composite CAMEL rating of 1 or 2 and one of these commenters also supported a requirement that eligible FCUs also have a Management rating of a 1 or 2 for

[44] Servicers must comply with various laws to the extent that the law applies to the particular servicer and its activities, including but not limited to RESPA, 12 U.S.C. 2601, *et seq.* (Regulation X), TILA, 15 U.S.C. 1601, *et seq.* (Regulation Z), the SCRA, 50 U.S.C; 3901, *et seq.,* the Dodd-Frank Act (UDAAP provisions), 12 U.S.C. 5536(a)(1)(B), as well as other applicable Federal and State laws.

[45] For example, *see* 12 CFR 1024.17; 12 CFR part 1024, subpart C; 12 CFR 1026.20, .36, .40-.41.

[46] For example, *see https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/compliance-management-systems-and-compliance-risk; https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/real-estate-settlement-procedures-act-regulation-x; https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/truth-lending-act-regulation-z; https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/lending-regulations/servicemembers-civil-relief-act-scra.*

[47] *See* Supplement I to 12 CFR part 1026, Official Interpretations, 41(e)(4)(iii)—Small Servicer Determination.

at least the last two examination cycles before they can purchase MSRs.

In order to purchase MSAs from other FICUs, the final rule requires that an FCU have a composite CAMELS rating of 1 or 2, which must include a Management component rating of 1 or 2, assigned at the completion of the FCU's last full examination. Note that the final rule refers to the CAMELS rating instead of the CAMEL rating referred to in the preamble of the NPR because, effective April 1, 2022, the NCUA's supervisory rating system will change from CAMEL to CAMELS by adding the ''S'' (Sensitivity to Market Risk) component to the existing CAMEL rating system and redefining the ''L'' (Liquidity Risk) component. The Board determined that it was beneficial to add the ''S'' component in order to enhance transparency and allow the NCUA and federally insured natural person and corporate credit unions to better distinguish between liquidity risk (''L'') and sensitivity to market risk (''S'').[48] The effective date of the final rule, therefore, aligns with the effective date of the change to the rating system. If the rating for the last full examination of the credit union predates the change to the rating system that goes into effect on April 1, 2022, FCUs that received a composite 1 or 2 CAMEL rating with a Management component rating of 1 or 2 for their most recent full examination will qualify to purchase MSAs under the final rule, provided all of the conditions of the rule are met.

The Board believes the requirement that an FCU have received a CAMELS composite rating of 1 or 2, with a Management component rating of 1 or 2, for its most recent full examination is a fundamental precondition and safeguard for purchasing MSAs. A Management component rating of 2 ''indicates satisfactory management and board practices relative to the credit union's size, complexity, and risk profile.'' [49] For an FCU to achieve at least a CAMEL composite rating of 2, that FCU will have ''no material supervisory concerns and, as a result, the supervisory response is informal and limited.'' [50] An FCU meeting this requirement of the final rule generally demonstrates an appropriate level of sound management and operation necessary to address the attendant financial, operational, and compliance risks involved with purchasing MSAs and loan servicing activities. For these reasons, the Board believes that adding the additional classification requirement of ''well capitalized'' to the final rule would be redundant.

D. Concentration Risk

In the NPR, the Board requested comment as to whether the final rule should limit the amount of MSRs an FCU can hold to address concentration risk. Specifically, the Board asked whether any concentration limits in the final rule should include:

- A limit on the amount of MSRs held by an FCU using either the total amount of MSRs purchased by the FCU or, alternatively, the aggregate amount of MSRs purchased from other parties and MSRs retained after the sale of the underlying mortgage loans by the FCU;
- A limit set at the total amount of MSRs that an FCU may hold to no more than 25 percent of the FCU's net worth; or
- A concentration limit based on assets.

The Board also sought feedback from commenters on whether other standards should apply to address concentration risk.

Five commenters generally supported the Board addressing the concentration risk of MSRs held by FCUs. One commenter acknowledged that high concentrations in a particular asset, such as MSRs, can expose a credit union to undue risk and stated it may be appropriate to establish in the final rule a limit on the amount of MSRs that an FCU can hold to address concentration risk. Likewise, another commenter suggested that concentration risk should be evaluated. One commenter generally supports a limit on the amount of MSRs held by an FCU based only on the total amount of MSRs purchased. Further, this commenter also supported a concentration limit based on the total amount of MSRs that an FCU may hold using traditional metrics, such as assets. The commenter, however, opposed a limit on the aggregate amount of MSRs both purchased from other parties and retained by the FCU after the sale of the underlying mortgage loans.

Two commenters supported a concentration risk limit in some form to alleviate risks, possibly using a limit based on a percentage of the credit union's net worth, similar to NCUA's loan participations rule.[51] One of these commenters also offered two additional suggestions: (1) A limit set as a percentage of total loans under servicing to total assets, instead of using MSRs as a factor in the calculation, due to the potential valuation swings with MSR assets, or (2) as suggested by another commenter, bifurcating the concentration limitation between mortgages originated with servicing retained, and purchased loans with MSRs, as another way to separate the risk while not limiting the FCU's organic mortgage production.

One commenter found the suggested cap in the question, to limit the total amount of MSRs that an FCU may hold to no more than 25 percent of net worth, as unwarranted. The commenter stated the cap reflects an arbitrary ''one size fits all'' approach, as opposed to a risk-based approach addressed by policy and serves to reinforce the long-held myth that FCUs are subject to a 25 percent aggregate mortgage limit. This commenter also stated the proposed 25 percent of net worth limit could have a disproportionate impact on modest sized FCUs.

One commenter opposed any concentration limits in the final MSR rule. This commenter stated that FCUs and FICUs should be able to set their own concentration limits internally, if they determine such limits are necessary after conducting a risk assessment. Further, a blanket concentration limit for the entire industry fails to account for the unique circumstances of each FCU and its membership and removes control over business decisions from credit union management.

The final rule does not include a concentration limit for MSAs. High concentrations in a particular asset can expose a credit union to undue risk and, as a general matter, credit union officials and management have a fiduciary responsibility to identify, measure, monitor, and control concentration risk.[52] Furthermore, the NCUA may review concentration risk as part of its supervisory activities to determine if an FCU's balance sheet reveals potentially high exposure related to MSAs. With regard to complex credit unions, however, the Board has recently taken regulatory action as part of its RBC rulemaking to prevent the excessive exposure of MSAs, similarly to rules adopted by the other federal banking agencies.[53] While non-complex credit unions are not subject to the RBC provisions addressing concentration risk, smaller FCUs are less likely to purchase MSAs from other FICUs and generally present a lower risk to the NCUSIF. As noted,

[48] 86 FR 59282 (Oct. 27, 2021).

[49] *https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/appendix-ncuas-camel-rating-system-camel.*

[50] Id.

[51] 12 CFR 701.22.

[52] *See* NCUA Supervisory Letter 08–01, ''Concentration Risk,'' *https://www.ncua.gov/files/letters-credit-unions/LCU2010-03Encl.pdf.*

[53] 80 FR 66626 and 84 FR 68781. On December 16, 2021, the Board approved additional amendments to 12 CFR 702.104.

the Board believes the agency's supervisory functions can sufficiently address concerns regarding MSA concentrations.

E. Liquidity Risk

To address liquidity risk, the Board requested comment as to whether the rule should limit the amount of months an FCU servicer is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments. If so, the Board also asked whether the rule should specifically limit the amount of months to no more than three to six months of payments to the mortgage loan owner after a borrower fails to make payments.

Two commenters did not see a need for the rule to address liquidity risk as suggested in the NPR. While recognizing that the FCU purchasing MSRs may face liquidity risks, the commenters stated that an FCU is aware of these risks when buying MSRs and can perform its own cost-benefit analysis. One commenter stated that FCUs that have demonstrated the ability to comply with regulations pertaining to MSRs and to handle the risk of defaulting borrowers and remitting payments to MSR shareholders, despite being unable to collect from borrowers, should be permitted to purchase MSRs without any additional regulatory hurdles. This commenter suggests such considerations are no different from normal evaluations of safety and soundness for FCUs of any size or complexity. The other commenter stated the Board should allow the purchaser and seller to determine the extent of any liquidity protection in their agreement instead of imposing a blanket requirement for all FCUs.

Six commenters offered a range of comments regarding whether the rule should address liquidity risk. One commenter suggested the Board further examine whether limiting the number of months an FCU is obligated to remit payments to the mortgage loan owner when a borrower defaults would appropriately address any liquidity risk of the purchasing FCU. Similarly, another commenter stated while MSRs can pose liquidity risk, those risks should be evaluated, for example, the number of months an MSR is obligated to remit payments to the mortgage loan owner if the borrower is delinquent. Likewise, in recognizing the liquidity risk in servicing arrangements, another commenter stated the final rule could limit the number of months an FCU is obligated to remit payments to the mortgage loan owner if the borrower fails to make payments.

Two commenters explicitly supported a provision in the rule that establishes a maximum of three to six months of payments made to the mortgage loan owner when a borrower fails to make payment on the serviced mortgage. One of these commenters also suggested a standardized agreement could be used between credit unions selling and purchasing MSRs to enhance transparency between the parties.

One commenter stated that payment remittance on MSRs should follow the requirements of the GSEs as opposed to other limitations on the remittance structure. In addition, this commenter stated an FCU should perform liquidity stress tests within the scope of the organization, including in relation to MSRs.

The Board believes FCUs that have a CAMELS composite rating of 1 or 2 with a Management rating of 1 or 2, should be capable of managing the liquidity risk associated with this investment authority. The Board therefore has not included a provision in the final rule to address liquidity risk but staff will issue future guidance as appropriate.

F. Application of Rule to Federally Insured State Chartered Unions (FISCUs)

The NPR also solicited comments on whether the safeguards and limitations in the final rule should be extended to all FICUs as a condition for obtaining and maintaining federal share insurance, in light of the risks associated with MSRs. One commenter, an advocate of additional guardrails or limitations in the final rule, supports extending the same safeguards and limitations applicable to FCUs to all FICUs. Another commenter also specifically supported extending the rule to all FICUs because the risk to the NCUSIF is the same for FCUs and FISCUs.

In addition, one commenter strongly recommended that NCUA work with state regulators to address supervisory concerns regarding MSRs in a manner that does less harm to the dual chartering system, more effectively mitigates material risk, and improves oversight while not unnecessarily burdening credit unions.

The final rule applies only to FCUs by removing the NCUA's previous prohibition against the purchase of MSRs in its investment regulation. It is not apparent to the Board that state laws applicable to FISCUs widely provide for similar investment authority, although most state regulators can grant parity for state-chartered credit unions so those institutions may engage in the same activities authorized for FCUs. Further, to the extent that FISCUs engage in the purchase of MSAs from other parties, the conditions on these assets under the RBC requirements in part 702 apply to all complex federally insured credit unions. The NCUA will monitor this activity in FISCUs and will consider whether to extend § 703.14(l) to FISCUs under part 741, subpart B, if necessary. Finally, the Board notes that it is committed to the agency's continued communications with state regulators to address supervisory concerns, including those related to MSAs.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[54] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[55] The rule imposes no requirement or costs on small entities and only expands the types of investments an FCU can make by including MSAs. The conditions in the final rule for a threshold CAMELS rating and written investment policies are prerequisites for other investment activities, therefore the Board does not expect these requirements to entail substantial regulatory burden. Accordingly, the associated cost is minimal. The NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[56] For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The rule does not contain any new information collection requirements that require approval by OMB under the PRA. Current recordkeeping requirements are covered under OMB control number 3133–0133.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to

[54] 30 5 U.S.C. 603(a).

[55] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003) as amended by Interpretive Ruling and Policy Statement 13–1, 78 FR 4032 (Jan. 18, 2013).

[56] 44 U.S.C. 3507(d); 5 CFR part 1320.

consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[57]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[58] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to OMB for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects

12 CFR Part 703

Credit unions, investments.

12 CFR Part 721

Credit unions, functions, implied powers.

[57] Public Law 105–277, 112 Stat. 2681 (1998).

[58] 5 U.S.C. 551.

By the National Credit Union Administration Board on December 16, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR parts 703 and 721 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 is revised to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(14) and 1757(15).

■ 2. Amend § 703.2 by removing the definition of ''Mortgage servicing rights'' and adding in its place a definition for ''Mortgage servicing assets'' to read as follows:

§ 703.2 Definitions.

* * * * *

Mortgage servicing assets mean those assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

* * * * *

■ 3. Amend § 703.14 by adding paragraph (m) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(m) *Mortgage servicing assets.* A Federal credit union may purchase mortgage servicing assets from other federally insured credit unions if all of the following conditions are met:

(1) The Federal credit union received a composite CAMELS rating of ''1'' or ''2,'' with a Management component rating of a ''1'' or ''2,'' for the last full examination;

(2) The underlying mortgage loans of the mortgage servicing assets are loans the Federal credit union is empowered to grant;

(3) The Federal credit union purchases the mortgage servicing assets within the limitations of its board of directors' written purchase policies; and

(4) The Board of Directors or Investment Committee approves the purchase.

§ 703.16 [AMENDED]

■ 4. Amend § 703.16 by removing and reserving paragraph (a).

PART 721—INCIDENTAL POWERS

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

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

■ 6. Amend § 721.3 in paragraph (h) by revising the last sentence to read as follows:

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(h) * * * These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit, leases, and mortgage loan servicing functions for a member as long as the loan is owned by a member.

* * * * *

[FR Doc. 2021–27641 Filed 12–22–21; 8:45 am]

BILLING CODE 7535–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the 4.7 percent increase in the average of the CPI–W for the 12-month period ending in November 2021, the exemption threshold is adjusted to $50 million from $48 million. Therefore, banks, savings associations, and credit unions with assets of $50 million or less as of December 31, 2021, are exempt from collecting data in 2022.

DATES: This rule is effective on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Willie Williams, Paralegal Specialist; Lanique Eubanks, Senior Counsel; Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is amending Regulation C,

which implements the HMDA asset thresholds, to establish the asset-sized exemption threshold for depository financial institution for 2022. The asset threshold will be $50 million for 2022.

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) [1] requires most mortgage lenders located in metropolitan areas to collect data about their housing related lending activity. Annually, lenders must report their data to the appropriate Federal agencies and make the data available to the public. The Bureau's Regulation C [2] implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.,* banks, savings associations, and credit unions) with assets totaling $10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions.[3] The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPI–W for 1996 exceeded the CPI–W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of $1 million.

The definition of ''financial institution'' in § 1003.2(g) provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest $1 million. For 2021, the threshold was $48 million. During the 12-month period ending in November 2021, the average of the CPI–W increased by 4.7 percent. As a result, the exemption threshold is increased to $50 million for 2022. Thus, banks, savings associations, and credit unions with assets of $50 million or less as of December 31, 2021, are exempt from collecting data in 2022. An institution's exemption from collecting data in 2022 does not affect its responsibility to report data it was required to collect in 2021.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[4] Pursuant to this final rule, comment 2(g)–2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and non-discretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.[5] At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2022. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[6]

C. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[7]

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

III. Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1003

Banks, Banking, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. Amend supplement I to part 1003 by revising *2(g) Financial Institution* under the heading *Section 1003.2—Definitions* to read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(g) Financial Institution

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2021, the preceding calendar year is 2020, and the preceding December 31 is December 31, 2020. Accordingly, in 2021, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2020. Likewise, in 2021, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 100 closed-end mortgage loans during either 2019 or 2020.

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2022, the asset-size exemption threshold is $50 million. Banks, savings associations, and credit unions with assets at or below $50 million as of December 31, 2021, are exempt from collecting data for 2022.

[1] 12 U.S.C. 2801–2810.

[2] 12 CFR part 1003.

[3] 12 U.S.C. 2808(b).

[4] 5 U.S.C. 553(b)(B).

[5] 5 U.S.C. 553(d).

[6] 5 U.S.C. 603(a), 604(a).

[7] 44 U.S.C. 3501–3521.

3. Merger or acquisition—coverage of surviving or newly formed institution. After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 200 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution's responsibilities during the calendar year of a merger.

4. Merger or acquisition—coverage for calendar year of merger or acquisition. The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a ''covered institution'' means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and ''an institution that is not covered'' means either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

5. Originations. Whether an institution is a financial institution depends in part on whether the institution originated at least 100 closed-end mortgage loans in each of the two preceding calendar years or at least 200 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

6. Branches of foreign banks—treated as banks. A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

7. Branches and offices of foreign banks and other entities—treated as nondepository financial institutions. A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of ''bank'' under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

* * * * *

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–27899 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect changes in the asset-size thresholds for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan. These changes reflect updates to the exemption from TILA's escrow requirement of creditors that, together with affiliates that regularly extended covered transactions secured by first liens, had total assets of less than $2 billion (adjusted annually for inflation) and the exemption the Bureau added, by implementing section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), for certain insured depository institutions and insured credit unions with assets of $10 billion or less (adjusted annually for inflation). These amendments are based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the 4.7 percent increase in the average of the CPI–W for the 12-month period ending in November 2021, the exemption threshold for creditors and their affiliates that regularly extended covered transactions secured by first liens is adjusted to $2.336 billion from $2.230 billion. The exemption threshold for certain insured depository institutions and insured credit unions with assets of $10 billion or less (adjusted annually for inflation) is adjusted to $10.473 billion from $10 billion.

DATES: This rule is effective on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Willie Williams, Paralegal Specialist; Lanique Eubanks, Thomas Dowell, Senior Counsels, Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 129D of the Truth in Lending Act (TILA) contains a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. TILA section 129D also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that meets certain requirements, including any asset-size threshold the Bureau may establish.

In the 2013 Escrows Final Rule,[1] the Bureau established such an asset-size threshold of $2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI–W for each 12-month period ending in November, with rounding to the nearest million dollars.[2] In 2015, the Bureau revised the asset-size threshold for small creditors and how it applies. The Bureau included in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period and added a grace period to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.[3] For 2021, the threshold was $2.230 billion.

During the 12-month period ending in November 2021, the average of the CPI–W increased by 4.7 percent. As a result, the exemption threshold is increased to $2.336 billion for 2022. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2021 are less than $2.336 billion on December 31, 2021, and it meets the other requirements of § 1026.35(b)(2)(iii), the creditor will be exempt from the escrow-accounts requirement for higher-priced mortgage loans in 2022 and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of any loan consummated in 2023 with applications received before April 1, 2023. The adjustment to the escrows asset-size exemption threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at § 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the threshold in § 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages.

In the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[4] Congress directed the Bureau to issue regulations to add a new exemption from TILA's escrow requirement that exempts transactions by certain insured depository institutions and insured credit unions.[5] In 2021, the Bureau issued a final rule implementing this exemption in § 1026.35(b)(2)(vi) (2021 Escrows Rule).[6] The final rule exempted from the Regulation Z HPML escrow requirement any loan made by an insured depository institution or insured credit union and secured by a first lien on the principal dwelling of a consumer if: (1) The institution has assets of $10 billion or less; (2) the institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) certain of the existing HPML escrow exemption criteria are met. In the 2021 Escrows Rule, the Bureau established such an asset-size threshold of $10 billion or less in § 1026.35(b)(2)(vi)(A), which will adjust automatically each year, based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. Unlike the asset threshold in § 1026.35(b)(2)(iii) and the other thresholds in § 1026.35(b)(2)(vi), affiliates are not considered in calculating compliance with this threshold. For calendar year 2021, the asset threshold was $10 billion.

During the 12-month period ending in November 2021, the average of the CPI–W increased by 4.7 percent. As a result, the exemption threshold is increased to $10.473 billion for 2022. Thus, a creditor that is an insured depository institution or insured credit union that during calendar year 2021 had assets of $10.473 billion or less on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2023 for which the application was received before April 1, 2023.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)–1 in Regulation Z is amended to update the exemption threshold in § 1026.35(b)(2)(iii) and comment 35(b)(2)(vi)(A)–1 in Regulation Z is amended to update the exemption threshold in § 1026.35(b)(2)(vi). The amendments in this final rule are technical and merely apply the formulae previously established in Regulation Z for determining any adjustments to the exemption thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2022. The amendment in this final rule is technical and non-discretionary, and it merely applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

[1] 78 FR 4726 (Jan. 22, 2013).

[2] *See* 12 CFR 1026.35(b)(2)(iii)(C).

[3] *See* 80 FR 59943, 59951 (Oct. 2, 2015). The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the Helping Expand Lending Practices in Rural Communities Act's amendments to TILA (Pub. L. 114–94, section 89003, 129 Stat. 1312, 1800–01 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. *See* 81 FR 16074 (Mar. 25, 2016).

[4] Public Law 115–174, 132 Stat. 1296 (2018).

[5] EGRRCPA section 108, 132 Stat. 1304–05; 15 U.S.C. 1639d(c)(2).

[6] 86 FR 9840 (Feb. 17, 2021).

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[7]

C. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[8]

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Signing Authority

The Associate Director for Research, Markets and Regulations, Janis K. Pappalardo having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau **Federal Register** Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions,* Paragraphs 35(b)(2)(iii) and (vi)(A)–1 are revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), secured by a property located in an area that is either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of § 1026.35(b)(2)(iii)(B), a transfer of a first-lien covered transaction to ''another person'' includes a transfer by a creditor to its affiliate.

A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

[7] 5 U.S.C. 603(a), 604(a).

[8] 44 U.S.C. 3501–3521.

C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as ''affiliate'' is defined in § 1026.32(b)(5), are counted toward the threshold in this section. ''Affiliate'' is defined in § 1026.32(b)(5) as ''any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).'' Under the Bank Holding Company Act, a company has control over a bank or another company if it directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; it controls in any manner the election of a majority of the directors or trustees of the bank or company; or the Federal Reserve Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's ''affiliate'' (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of definition of ''affiliate.''

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of ''regularly extended'' is based on the number of times a person extends consumer credit for purposes of the definition of ''creditor'' in § 1026.2(a)(17). Because covered transactions are ''transactions secured by a dwelling,'' consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an ''affiliate,'' as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, ''as set forth in the Bank Holding Company Act.'' If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of the definition of ''affiliate.''

D. A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015, satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016, and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under § 1026.35(b)(2)(iii)(C), the $2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2022, the asset threshold is $2,336,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2021 has total assets of less than $2,336,000,000 on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan consummated in 2023 for which the application was received before April 1, 2023. For historical purposes:

1. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was $2,060,000,000. Creditors that had total assets of less than $2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

4. For calendar year 2016, the asset threshold was $2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than $2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

5. For calendar year 2017, the asset threshold was $2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 had total assets of less than $2,069,000,000 on December 31, 2016, satisfied this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018.

6. For calendar year 2018, the asset threshold was $2,112,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 had total assets of less than $2,112,000,000 on December 31, 2017, satisfied this criterion for purposes of any loan consummated in 2018 and for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019.

7. For calendar year 2019, the asset threshold was $2,167,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 had total assets of less than $2,167,000,000 on December 31, 2018, satisfied this criterion for purposes of any loan consummated in 2019 and for purposes of any loan consummated in 2020 for which the application was received before April 1, 2020.

8. For calendar year 2020, the asset threshold was $2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 had total assets of less than $2,202,000,000 on December 31, 2019, satisfied this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2021 for which the application was received before April 1, 2021.

9. For calendar year 2021, the asset threshold was $2,230,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2020 had total assets of less than $2,230,000,000 on December 31, 2020, satisfied this criterion for purposes of any loan consummated in 2021 and for purposes of any loan consummated in 2022 for which the application was received before April 1, 2022iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Thus, the exemption applies, provided the other conditions of § 1026.35(b)(2)(iii) (or, if applicable, the conditions for the exemption in § 1026.35(b)(2)(vi)) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), however, the creditor and its affiliate become ineligible for the exemption in § 1026.35(b)(2)(iii) and (vi) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 1026.35(b)(2)(iii) and (vi), a creditor or its affiliate ''maintains'' an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

* * * * *

Paragraph 35(b)(2)(vi)(A).

1. The asset threshold in § 1026.35(b)(2)(vi)(A) will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. Unlike the asset threshold in § 1026.35(b)(2)(iii) and the other thresholds in § 1026.35(b)(2)(vi), affiliates are not considered in calculating compliance with this threshold. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2022, the asset threshold is $10,473,000,000. A creditor that is an insured depository institution or insured credit union that during calendar year 2021 had assets of $10,473,000,000 or less on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2023 for which the application was received before April 1, 2023. For historical purposes:

1. For calendar year 2021, the asset threshold was $10,000,000,000. Creditors that had total assets of 10,000,000,000 or less on December 31, 2020, satisfied this criterion for purposes of any loan consummated in 2021 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2022 for which the application was received before April 1, 2022.

* * * * *

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–27900 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0904; Product Identifier 2019–SW–041–AD; Amendment 39–21864; AD 2021–05–03]

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 EC225LP helicopters. This AD requires various inspections of the left-hand side (LH) engine fuel supply (fuel supply) hose and depending on the inspection results, reinstalling the fuel supply hose or removing the fuel supply hose from service. Additionally, this AD requires installing an improved part and prohibits installing a certain part-numbered LH fuel supply hose on any helicopter unless it is installed by following certain procedures. This AD was prompted by a report of an incorrect installation of the LH fuel supply hose causing restricted fuel flow to the LH engine. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of January 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or 800–232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0904.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0904; 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 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: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@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 EC225LP helicopters with a LH fuel supply hose part number (P/N) 704A34416087 installed. The NPRM published in the **Federal Register** on October 7, 2020 (85 FR 63235, October 7, 2020). For helicopters delivered to the first operator before November 30, 2018, and for helicopters delivered to the first operator on or after November 30, 2018, that have had the LH fuel supply hose replaced or reinstalled before May 10, 2019, the NPRM proposed to require visually inspecting the LH fuel supply hose for twisting, and if needed, borescope inspecting the entire length of the inside of the fuel supply hose for twisting. Depending on the inspection results, the NPRM proposed to require reinstalling or removing the fuel supply hose from service. Additionally, the NPRM proposed to prohibit installing a certain part-numbered LH fuel supply hose on any helicopter unless that LH fuel supply hose is installed by following certain procedures specified in the manufacturer's service bulletin. The proposed requirements were intended to prevent a decrease of the LH

engine power when accelerating to a power setting corresponding to One Engine Inoperative (OEI) power and subsequent reduced control of the helicopter.

The NPRM was prompted by EASA AD 2019–0092, dated April 26, 2019 (EASA AD 2019–0092), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter) Model EC 225 LP helicopters, all serial numbers. EASA advised that an occurrence was reported where during an in-flight single engine power check, the LH side engine experienced a power loss. EASA stated that a subsequent investigation determined that the fuel flow to the affected engine was restricted by a twisted fuel supply hose. EASA stated that this condition, if not detected and corrected, could lead to a decrease of the LH engine power when accelerating to the power setting corresponding to OEI power, and subsequent reduced control of the helicopter. Accordingly, EASA AD 2019–0092 required a one-time visual inspection of the fuel supply hose and depending on the inspection results, removing from service or replacing the affected part. EASA AD 2019–0092 also introduced re-installation requirements for a fuel supply hose that is being replaced or reinstalled.

After the FAA issued the NPRM, the FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model EC225LP helicopters with a LH fuel supply hose P/N 704A34416087 installed. The SNPRM published in the **Federal Register** on May 10, 2021 (86 FR 24783, May 10, 2021) (the May 2021 SNPRM). The May 2021 SNPRM proposed to require visually inspecting the LH fuel supply hose P/N 704A34416087 for twisting, and if needed, borescope inspecting the entire length of the inside of the fuel supply hose for twisting. Depending on the inspection results, the May 2021 SNPRM proposed to require reinstalling or removing the fuel supply hose from service. Additionally, the May 2021 SNPRM proposed to prohibit installing a certain part-numbered LH fuel supply hose on any helicopter unless that LH fuel supply hose is installed by following certain procedures specified in the manufacturer's service bulletin.

The May 2021 SNPRM was prompted by the FAA's determination that operators may not have the information required to comply with the proposed requirements in the NPRM. Operators may not know the date the helicopter was delivered to the first operator. Additionally, operators may not know whether the LH fuel supply hose has been previously removed or reinstalled since the maintenance regulations do not require certain operators to maintain these records after one year.

Accordingly, the FAA determined that revising proposed paragraph (e)(1) of the NPRM by deleting the language referring to delivery dates and dates of LH fuel supply hose replacement or reinstallation was necessary. As a result of these changes, the FAA revised the NPRM to specify that all helicopters included in the applicability paragraph would be required to comply with the proposed requirements in the May 2021 SNPRM. Also, after the NPRM was issued, the FAA determined that a limit on special flight permits was required. The May 2021 SNPRM reflected this change and stated that special flight permits may be permitted provided that there are no passengers on board.

Since the May 2021 SNPRM was issued, EASA issued EASA AD 2021–0156, dated July 2, 2021 (EASA AD 2021–0156), which supersedes EASA AD 2019–0092. EASA advises that Airbus Helicopters has developed an improved fuel supply hose P/N 704A34416101 and modification instructions to install the improved part. Accordingly, EASA AD 2021–0156 retains the requirements of EASA AD 2019–0092 and requires replacing the affected part with the improved part. EASA AD 2021–0156 also allows a terminating action for the inspection requirements once the improved part has been installed according to the installation requirements.

Accordingly, the FAA issued a second SNPRM to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model EC225LP helicopters with a LH fuel supply hose P/N 704A34416087 installed. This SNPRM published in the **Federal Register** on September 7, 2021 (86 FR 49937, September 7, 2021) (the September 2021 SNPRM). The September 2021 SNPRM proposed to require visually inspecting the LH fuel supply hose for twisting, and if needed, borescope inspecting the entire length of the inside of the fuel supply hose for twisting. Depending on the inspection results, the September 2021 SNPRM proposed to require reinstalling or removing the fuel supply hose from service.

Additionally, the September 2021 SNPRM proposed to prohibit installing a certain part-numbered LH fuel supply hose on any helicopter unless that LH fuel supply hose is installed by following certain procedures described in the manufacturer's service bulletin. Finally, the September 2021 SNPRM proposed to require modifying your helicopter by removing from service LH fuel supply hose P/N 704A34416087 and installing the improved LH fuel supply hose P/N 704A34416101. This modification would provide terminating action for the proposed inspection requirements of the September 2021 SNPRM.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from six commenters on the September 2021 SNPRM. Five commenters supported the SNPRM without change and one individual supported the SNPRM but requested a certain change. The following presents this comment and the FAA's response.

Request To Revise the Required Actions Section To Include Additional Inspections

One individual requested that the FAA revise the Required Actions section of this AD to include repetitive inspections of the LH fuel supply hose for one year after initial installation of the new supply hose. The individual stated this will ensure maximum safety and efficiency.

The FAA disagrees with this request because the unsafe condition is adequately addressed by installing the improved fuel supply hose in accordance with this AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 2, dated May 21, 2021 which specifies procedures for removing the fuel supply hose from the LH power plant, visually inspecting the fuel supply hose for twisting, and depending on inspection results, performing an endoscope inspection on the inside of the hose. This service

information also specifies procedures required to install the improved fuel supply hose.

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.

Other Related Service Information

The FAA also reviewed Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 1, dated February 28, 2019, which also specifies procedures for removing the fuel supply hose, visually inspecting the fuel supply hose for twisting, performing an endoscope inspection on the inside of the hose, and specifies procedures required to install a serviceable fuel supply hose.

Differences Between This AD and EASA AD 2021–0156

EASA AD 2021–0156 requires compliance within 110 flight hours or 6 months, whichever occurs first after the effective date of EASA AD 2019–0092, while this AD requires compliance within 110 hours time-in-service after the effective date of this AD. EASA AD 2021–0156 requires reporting information to Airbus Helicopters if the LH fuel supply hose is twisted on the inside, while this AD does not. Additionally, EASA AD 2021–0156 is applicable to all serial-numbered EC225LP helicopters, whereas this AD applies to EC225LP helicopters with a certain LH fuel supply hose installed.

Costs of Compliance

The FAA estimates that this AD affects 28 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.

Visually inspecting the LH fuel supply hose for twisting takes about 1 work-hour for an estimated cost of $85 per helicopter and $2,380 for the U.S. fleet.

Replacing a LH fuel supply hose takes about 8 work-hours and parts cost about $2,363 for an estimated replacement cost of $3,043 per replacement.

Borescope inspecting the LH fuel supply hose takes about 8 work-hours for an estimated cost of $680 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:

2021–05–03 Airbus Helicopters: Amendment 39–21864; Docket No. FAA–2020–0904; Product Identifier 2019–SW–041–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC225LP helicopters, certificated in any category, with a left-hand side (LH) engine fuel supply (fuel supply) hose part number (P/N) 704A34416087 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2820, Aircraft Fuel Distribution System.

(e) Unsafe Condition

This AD was prompted by a report of an incorrect installation of the LH fuel supply hose P/N 704A34416087. The FAA is issuing this AD to prevent restricted fuel flow to the LH engine. The unsafe condition, if not addressed, could result in a decrease of the LH engine power when accelerating to a power setting corresponding to One Engine Inoperative power and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 110 hours time-in-service (TIS) after the effective date of this AD, visually inspect the LH fuel supply hose for twisting as shown in Figures 1 and 2 of Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 2, dated May 21, 2021 (ASB EC225–71A019 Rev 2). If the LH fuel supply hose has any twisting, before further flight, borescope inspect the entire length of the inside of the fuel supply hose for twisting as shown in Figures 3 through 5 of ASB EC225–71A019 Rev 2.

(i) If the inside of the LH fuel supply hose has any twisting, before further flight, remove the LH fuel supply hose from service and install an airworthy LH fuel supply hose by following the Accomplishment Instructions, paragraph 3.B.3.b, of ASB EC225–71A019 Rev 2.

(ii) If the LH fuel supply hose does not have any twisting, reinstall the LH fuel supply hose by following the Accomplishment Instructions, paragraph 3.B.3.b, of ASB EC225–71A019 Rev 2.

(2) Within 1,200 hours TIS after the effective date of this AD, modify your helicopter by removing from service LH fuel supply hose P/N 704A34416087 and installing the improved LH fuel supply hose P/N 704A34416101 in accordance with the Accomplishment Instructions, paragraph 3.B.3.b, of ASB EC225–71A019 Rev 2.

(3) As of the effective date of this AD, do not install a LH fuel supply hose P/N 704A34416087 on any helicopter unless it is installed by following the Accomplishment Instructions, paragraph 3.B.3.b, of ASB EC225–71A019 Rev 2.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus

Helicopters Alert Service Bulletin No. EC225–71A019, Revision 1, dated February 28, 2019.

(i) Special Flight Permits

Special flight permits may be permitted provided that there are no passengers on board.

(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)(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.

(k) Related Information

(1) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0156, dated July 2, 2021. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2020–0904.

(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 the AD specifies otherwise.

(i) Airbus Helicopters Alert Service Bulletin No. EC225–71A019, Revision 2, dated May 21, 2021.

(ii) [Reserved]

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

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

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

Issued on December 8, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27638 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0792; Project Identifier AD–2020–00593–G; Amendment 39–21840; AD 2021–24–19]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all DG Flugzeugbau GmbH Model DG–500MB and DG–1000M gliders with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine installed. This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an error in the engine control unit (ECU) software. This AD requires updating the ECU software. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Solo Kleinmotoren GmbH, Postfach 600152, D71050 Sindelfingen, Germany; phone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com*; website: *https://aircraft.solo.global/gb/.* 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–2021–0792.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0792; 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: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 DG Flugzeugbau GmbH Model DG–500MB and DG–1000M gliders with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine installed. The NPRM published in the **Federal Register** on September 17, 2021 (86 FR 51838). The NPRM was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2020–0056, dated March 13, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition on Solo Kleinmotoren GmbH Solo Model 2625 02 engines, variation 02i with electronic fuel injection, installed on but not limited to Binder Motorenbau, DG-Flugzeugbau, and Schempp-Hirth powered sailplanes (gliders). The MCAI states:

> An error was found in the ECU affected SW [software] that can cause brief injection of fuel into one cylinder when the ECU is activated.
>
> This condition, if not corrected, could increase the time needed to (re)start the engine in flight, possibly resulting in reduced control of the powered sailplane.
>
> To address this potential unsafe condition, SOLO Kleinmotoren GmbH, together with the ECU manufactuerer [sic], developed an ECU SW update and issued the SB [service bulletin] accordingly, providing installation instructions.
>
> For the reason described above, this [EASA] AD requires an update of the ECU software.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0792.

The Model 2625 02i engine does not have an FAA type certificate. For Model DG–1000M gliders, this engine is part of the glider type certification. For Model DG–500MB gliders, this engine may be installed as a Model 2525 02 engine modified with a fuel injection system and re-identified as a Model 2625 02i engine.

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Solo Kleinmotoren GmbH Service Bulletin No. 4600–11, Ausgabe 1 (English translation: Issue 1), dated August 19, 2019. This service information specifies procedures for updating the ECU software to a version that fixes a software error found in previous ECU software versions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 4 gliders of U.S. registry. The FAA estimates that it would take about 2 work-hours per glider to comply with the requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $680 or $170 per glider.

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. For the reasons discussed above, I certify 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:

2021–24–19 DG Flugzeugbau GmbH: Amendment 39–21840; Docket No. FAA–2021–0792; Project Identifier AD–2020–00593–G.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to DG Flugzeugbau GmbH Model DG–500MB and DG–1000M gliders, all serial numbers, certificated in any category, with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7300, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an error in the engine control unit (ECU) software. The FAA is issuing this AD to prevent an injection of fuel into one cylinder when the ECU is activated. The unsafe condition, if not addressed, could result in difficulty starting the engine and reduced control of the glider.

(f) Compliance

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

(g) Required Actions

(1) Within 3 months after the effective date of this AD, update the ECU software to software version V517 Revision 8 in accordance with the Actions in Solo Kleinmotoren GmbH Service Bulletin No. 4600–11, Ausgabe 1 (English translation: Issue 1), dated August 19, 2019.

(2) As of the effective date of this AD, do not install ECU software version V517 Revision 7 or earlier on any glider with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine.

(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 certification office, send it to the attention of the person identified in paragraph (i)(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.

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety

Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0056, dated March 13, 2020, 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–2021–0792.

(j) Material Incorporated by Reference

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

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

(i) Solo Kleinmotoren GmbH Service Bulletin No. 4600–11, Ausgabe 1 (English translation: Issue 1), dated August 19, 2019.

Note 1 to paragraph (j)(2)(i): This service information contains German to English translation. EASA used the English translation in referencing the document from Stemme AG. For enforceability purposes, the FAA will cite the service information in English as it appears on the document.

(ii) [Reserved]

(3) For service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 600152, D71050 Sindelfingen, Germany; phone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com*; website: *https://aircraft.solo.global/gb/*.

(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 November 18, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27636 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0872; Project Identifier MCAI–2021–00312–R; Amendment 39–21866; AD 2021–26–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–11–05, which applied to all Airbus Helicopters Model EC120B helicopters. AD 2020–11–05 required repetitive inspections of the tail rotor (TR) hub body for cracks and applicable corrective actions if necessary, and repetitive replacement of the attachment bolts, washers, and nuts of the TR hub body. This AD was prompted by a report of recurrent loss of tightening torque on several attachment bolts on the TR hub body. This AD retains certain requirements of AD 2020–11–05, adds repetitive inspections, requires additional corrective actions, and updates applicable service information. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 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 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. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–00872.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0872; 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 Union Aviation Safety Agency (EASA) AD, 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., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–11–05, Amendment 39–21130 (85 FR 31042, May 22, 2020), (AD 2020–11–05). AD 2020–11–05 applied to Airbus Helicopters Model EC120B helicopters, all serial numbers. The NPRM published in the **Federal Register** on October 8, 2021 (86 FR 56220). In the NPRM, the FAA proposed to retain some of the requirements of AD 2020–11–05, and proposed to require, within 15 hours time-in-service (TIS) or 7 days, whichever occurs first, performing repetitive inspections of the TR hub body for a crack and depending on the inspection results, removing the affected parts from service. The NPRM also proposed to require inspecting the TR spline flange for corrosion, impacts, fretting, wear, and a crack and depending on the inspection results, removing the TR splined flange from service. For helicopters with 9,000 or more total hours TIS or with unknown total hours TIS, the NPRM proposed to require, within 15 hours TIS or 7 days, whichever occurs first, and thereafter at intervals not to exceed 1,000 hours TIS, removing from service any bolt, washer, and nut installed on the TR hub body, replacing them with airworthy parts, inspecting the TR splined flange, and depending on the inspection results, removing the TR splined flange from service.

Additionally, the NPRM proposed to require, for helicopters with less than 9,000 total hours TIS, within 1,000 hours TIS or before accumulating 9,000 total hours TIS, whichever occurs first, and thereafter at intervals not to exceed 1,000 hours TIS, removing from service any bolt, washer, and nut installed on the TR hub body replacing them with

airworthy parts, inspecting the TR splined flange, and depending on the inspection results, removing the TR splined flange from service. Finally, the NPRM proposed to prohibit the installation of a certain part-numbered TR hub body unless certain actions have been accomplished.

The NPRM was prompted by EASA AD 2021–0069, dated March 11, 2021 (EASA AD 2021–0069), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters, formerly Eurocopter, Eurocopter France, Model EC120 B helicopters, all serial numbers. EASA advises that an inspection of the TR hub body revealed a recurring loss of tightening torque on several attachment bolts. This condition, if not addressed, could result in cracking and potential loss of the TR drive and consequent loss of yaw control of the helicopter.

Accordingly, EASA AD 2021–0069 retains the requirements of EASA AD 2019–0272R1, dated November 18, 2019 (EASA AD 2019–0272R1), which prompted AD 2020–11–05, and requires additional repetitive detailed inspections of the interface between the TR hub body part number C642A0100103 and the splined flange. Depending on the inspection results, EASA AD 2021–0069 requires accomplishment of applicable corrective actions.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin 05A020, Revision 2, dated February 8, 2021. This service information specifies procedures for repetitive inspections of the TR hub body for cracks and the TR spline flange for cracks and fretting and the appropriate corrective actions.

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

Differences Between This AD and EASA AD 2021–0069

EASA AD 2021–0069 uses flight hours (FH) for certain compliance times, whereas this AD uses hours TIS. EASA AD 2021–0069 retains the compliance time of November 1, 2019 for certain actions, which is the effective date of EASA AD 2019–0272R1, whereas this AD requires compliance in terms of the effective date of this AD.

Where Note 1 of EASA AD 2021–0069 allows a non-cumulative tolerance of 100 FH to be applied to the compliance times for the initial replacement of bolts, washers, and nuts (Table 1 of EASA AD 2021–0069) to allow for synchronization of the required inspections with other maintenance tasks, this AD does not allow a non-cumulative tolerance to be applied to the compliance times.

Costs of Compliance

The FAA estimates that this AD affects 89 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.

Visually inspecting each TR hub body for a crack takes about 0.25 work-hour for an estimated cost of $22 per inspection and $1,958 for the U.S. fleet per inspection.

Visually inspecting each TR spline flange for corrosion, impacts, fretting, wear, and a crack takes about 0.25 work-hour for an estimated cost of $22 per inspection and $1,958 for the U.S. fleet per inspection.

Replacing a TR hub body takes about 2 work-hours and parts would cost about $16,417 for an estimated cost of $16,587 per TR hub body replacement.

Replacing a TR spline flange takes about 0.5 work-hour and parts would cost about $2,950 for an estimated cost of $2,993 per TR spline flange replacement.

Replacing a bolt, washer, and nut takes about 0.5 work-hour and parts would cost about $68 for an estimated cost of $111 per replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

■ a. Removing Airworthiness Directive 2020–11–05, Amendment 39–21130 (85 FR 31042, May 22, 2020); and

■ b. Adding the following new airworthiness directive:

2021–26–07 Airbus Helicopters: Amendment 39–21866; Docket No.

FAA–2021–0872; Project Identifier MCAI–2021–00312–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

This AD replaces AD 2020–11–05, Amendment 39–21130 (85 FR 31042, May 22, 2020) (AD 2020–11–05).

(c) Applicability

This AD applies to Airbus Helicopters Model EC120B helicopters, certificated in any category, all serial numbers.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6400, Tail rotor system.

(e) Unsafe Condition

This AD was prompted by a report of recurrent loss of tightening torque on several attachment bolts on the tail rotor (TR) hub body. The FAA is issuing this AD to detect cracking and fretting, which if not addressed, could result in potential loss of the TR drive and consequent loss of yaw control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 15 hours time-in-service (TIS) or 7 days, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 15 hours TIS, using a light source and mirror, visually inspect TR hub body part number (P/N) C642A0100103 for a crack in the entire inspection area depicted in Figure 1 of Airbus Helicopters Emergency Alert Service Bulletin 05A020 Revision 2, dated February 8, 2021. If there is a crack, before further flight, perform the actions in paragraphs (g)(1)(i) and (ii) of this AD.

(i) Remove the TR hub body and each bolt, washer, and nut installed on the TR hub body from service and replace with airworthy parts.

(ii) Inspect the TR splined flange for corrosion, impacts, fretting, wear, and a crack in the areas identified in Figure 2 to paragraph (g)(1)(ii) of this AD. If the condition of the part (including corrosion, impacts, fretting, wear, or cracks) exceeds the criteria as specified in Figure 1 to paragraph (g)(1)(ii) of this AD, before further flight, remove the splined flange from service and replace with an airworthy part.

Note 1 to paragraph (g)(1)(ii): You may refer to ''Detailed Check—Splined Flange,'' Task 64–21–00, 6–5, Airbus Aircraft Maintenance Manual (AMM), dated October 15, 2020, which pertains to the TR splined flange inspection.

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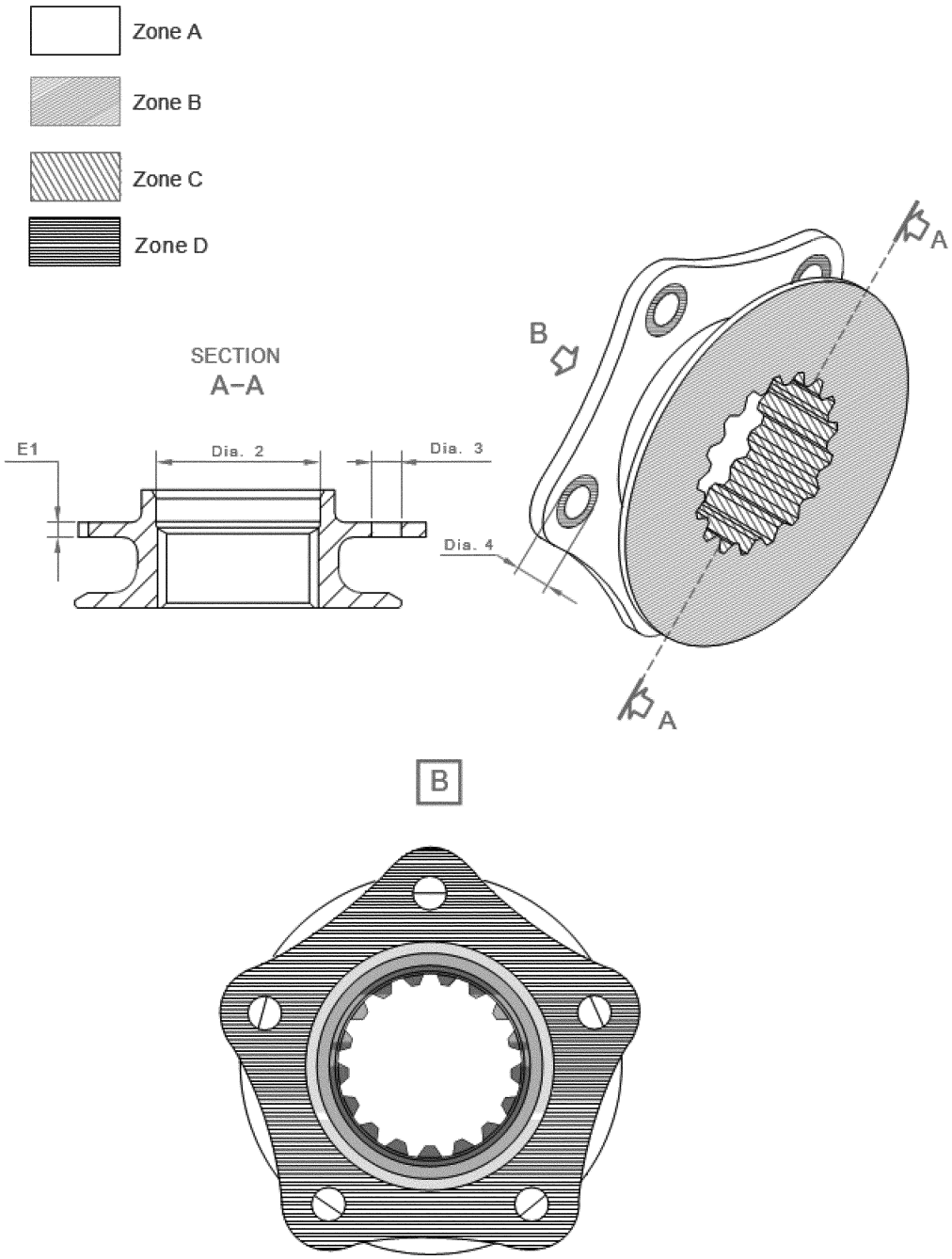
Figure 1 to paragraph (g)(1)(ii) – *Inspection Criteria for Tail Rotor Splined Flange*

Location as specified in Figure 2 to paragraph (g)(1)(ii) of this AD	**Maximum damage, which causes replacement (E1, Dia. 2, Dia. 3, and Dia. 4 are shown in Figure 2 to paragraph (g)(1)(ii) of this AD)**
Zone A	Scratch depth > 0.2 mm (0.008 in.). Crack. E1 < 2.75 mm (0.108 in.). Dia. 3 > 6.02 mm (0.2371 in.). Dia. 2 > 33.03 mm (1.3004 in.).
Zone B	Touch-up depth > 0.1 mm (0.004 in.). Crack.
Zone C	Crack. Scratch depth > 0.2 mm (0.008 in.).
Zone D [Dia. 4 = 14 mm +/- 0.1 mm (0.548; 0.555in.)]	Touch-up depth > 0.1 mm (0.004 in.). Crack. E1 < 2.75 mm (0.108 in.).

Figure 2 to paragraph (g)(1)(ii) – *Inspection Areas of Tail Rotor Splined Flange*



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(2) For helicopters with 9,000 or more total hours TIS, or with unknown total hours TIS, within 15 hours TIS or 7 days, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 1,000 hours TIS, remove each bolt, washer, and nut installed on the TR hub body from service and replace with airworthy parts and perform the actions in paragraph (g)(1)(ii) of this AD.

(3) For helicopters with less than 9,000 total hours TIS, within 1,000 hours TIS or before accumulating 9,000 total hours TIS, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 1,000 hours TIS, remove each bolt, washer, and nut installed on the TR hub body from service and replace with airworthy parts and perform the actions in paragraph (g)(1)(ii) of this AD.

(4) As of the effective date of this AD, do not install TR hub body P/N C642A0100103 on any helicopter, unless the actions of paragraph (g)(1) of this AD have been accomplished.

(h) Special Flight Permits

A special flight permit may be permitted provided that there are no passengers onboard.

(i) 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 (j)(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.

(j) Related Information

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

(2) Service information identified in this AD, is available at the contact information specified in paragraphs (k)(3) and (4) of this AD.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0069, dated March 11, 2021. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–0872.

(k) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Emergency Alert Service Bulletin 05A020, Revision 2, dated February 8, 2021.

(ii) [Reserved]

(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 December 9, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27625 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0728; Project Identifier MCAI–2020–00656–R; Amendment 39–21867; AD 2021–26–08]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 206, 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters. This AD was prompted by reports of cracked or missing nuts on the tail rotor drive shaft (TRDS) disc pack (Thomas) couplings. This AD requires removing certain nuts from service, installing newly designed nuts, and applying a specific torque and a torque stripe to each newly installed nut. This AD then requires, after the installation of each newly designed nut, inspecting the torque and, depending on the inspection results, either applying a torque stripe or performing further inspections and removing certain parts from service. Finally, this AD prohibits installing any affected nut on any TRDS Thomas coupling. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2022.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of January 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com*; or at *https://www.bellflight.com/support/contact-support.* 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–2021–0728.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0728; 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 Transport Canada 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: Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Textron Canada Limited Model 206, 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters with nut part number (P/N) MS21042L4 or P/N MS21042L5 installed on the TRDS Thomas couplings. The NPRM published in the **Federal Register** on September 14, 2021 (86 FR 51038). In the NPRM, the FAA proposed to require, within 600 hours time-in-service (TIS) after the effective date of this AD, removing each affected nut from service, installing a newly designed nut, and applying a specific torque and a torque stripe to each newly installed nut. The NPRM also proposed to require, within 25 hours TIS after installation of each newly designed nut, inspecting the torque of each nut, and depending on the results of the inspection, further inspections and removing certain parts from service. Finally, the NPRM proposed to prohibit installing any affected nut on any TRDS Thomas coupling.

The NPRM was prompted by a series of ADs issued by Transport Canada, which is the aviation authority for Canada. Initially, Transport Canada issued Canadian AD CF–2019–34, dated September 25, 2019 (Transport Canada AD CF–2019–34), to correct an unsafe condition for Bell Helicopter Textron Canada Limited (now Bell Textron Canada Limited) Model 206, 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, all serial numbers. Transport Canada AD

CF–2019–34 advised of reports of cracked or missing nuts at the TRDS Thomas couplings, which could have been caused by improper torque or hydrogen embrittlement. This condition, if not addressed, could result in loss of the tail rotor and subsequent loss of control of the helicopter.

After Transport Canada issued Transport Canada AD CF–2019–34, it was determined that helicopters modified in accordance with Supplemental Type Certificate (STC) SH2750NM or Transport Canada STC SH99–202, were not able to comply with Transport Canada AD CF–2019–34. Accordingly, Transport Canada issued AD CF–2020–15, dated May 13, 2020 (Transport Canada AD CF–2020–15) which supersedes Transport Canada AD CF–2019–34, and contains a new requirement for helicopters with STC SH2750NM or Transport Canada STC SH99–202 installed or models that have been modified per Bell Service Instruction BHT–206–SI–2052, Revision 1, dated October 14, 2010 (BHT–206–SI–2052). Transport Canada advises for certain model helicopters, the newly designed nuts cannot be installed because STC SH2750NM and Transport Canada STC SH99–202 install a pulley at the Thomas coupling location causing insufficient clearance. Transport Canada further advises for certain model helicopters with STC SH2750NM or Transport Canada STC SH99–202 installed, different part-numbered nuts may be installed which were not identified in the applicable service information and are now required to be replaced with a new part-numbered nut that is not vulnerable to the unsafe condition. Accordingly, Air Comm Corporation, the STC holder for STC SH2750NM, issued new service information to address these additional issues and provide newly developed instructions which apply to certain model helicopters with STC SH2750NM or Transport Canada STC SH99–202 installed.

Additionally, Transport Canada advises that BHT–206–SI–2052, which is optional, specifies procedures for Model 206L–1 and 206L–3 helicopters to upgrade the airframe and systems and also includes installation of the Model 206L–4 TRDS Thomas coupling. According to Transport Canada, models that have incorporated BHT–206–SI–2052, with STC SH2750NM or Transport Canada STC SH99–202 installed, will have the Model 206L–4 helicopter pulley configuration and are subject to the Air Comm Corporation service information.

Accordingly, Transport Canada AD CF–2020–15 requires the replacement of the affected nuts with the newly designed nuts at each TRDS Thomas coupling.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter; Bell. Bell recommended certain changes pertaining to the torque limits applied to each newly installed nut and the time for performing the torque recheck. The following presents the comments received on the NPRM and the FAA's response to each comment.

Bell commented that the NPRM calls for an initial torque of 50 in/lb to each nut, whereas the Bell maintenance manual requires an initial torque of 50–70 in/lb to each nut. Additionally, Bell explained that, as per its Standards Practice Manual (BHT–ALL–SPM) Chapter 2, tare torque must also be taken into consideration for self-locking hardware and that the total assembly torque is the measured tare torque plus the standard torque or specified torque. Bell requested that the installation torque in the AD be revised to read 50–70 in/lb.

The FAA agrees that in this instance the maximum initial torque limit and the tare torque should be consistent with Bell's maintenance manuals and has revised this AD accordingly.

Bell also commented that the NPRM calls for the torque recheck to be performed within 25 hours, whereas its maintenance manual requires the torque recheck between 10–25 hours. Bell recommended that the torque recheck be done within 25 hours TIS. The FAA agrees with the comment but no changes to this AD were necessary.

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. However, after the NPRM was published, the FAA discovered that costs were inadvertently excluded in the NPRM; those costs, which are nominal, are included in this final rule. Except for minor editorial changes, the change to the costs of compliance, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will significantly increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 206–19–136, dated August 27, 2019 for FAA-certificated Model 206, 206A-series, and 206B-series helicopters and non FAA-certificated Model TH–67 helicopters and Bell Alert Service Bulletin 206L–19–181, Revision A, dated August 29, 2019 for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters. This service information specifies procedures for replacing the affected nuts with the newly designed corrosion-resistant nuts.

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.

Other Related Service Information

The FAA reviewed Air Comm Corporation Service Bulletin SB 206EC–092619, Revision NC, dated September 26, 2019, which also specifies procedures for replacing the affected nuts with the newly designed corrosion-resistant nuts, but explains that affected helicopters equipped with Air Comm Corporation air conditioning systems installed under STC SH2750NM use the affected nut to attach a pulley onto the TRDS, which causes clearance issues for the nuts to be installed at the coupling. Therefore, this service bulletin specifies replacing the nut with a lower profile nut.

The FAA also reviewed BHT–206–SI–2052. This service information specifies procedures to upgrade Model 206L–1 and 206L–3 helicopters to allow operations at an increased internal gross weight.

Differences Between This AD and the Transport Canada AD

Transport Canada AD CF–2020–15 requires compliance within 600 hours air time or within the next 24-months, whichever occurs first, whereas this AD requires compliance within 600 hours TIS and an additional inspection within 25 hours TIS after installation of certain nuts.

Costs of Compliance

The FAA estimates that this AD affects 1,439 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.

Replacing each affected nut with the newly designed nut and applying torque and a torque stripe will take about 4 work-hours, and parts will cost about $75 for an estimated cost of $415 per nut replacement and $597,185 per nut replacement for the U.S. fleet.

Checking the torque, and if applicable, applying a torque stripe, will take a minimal amount of time and have a nominal parts cost. If required, inspecting each TRDS Thomas coupling, and each bolt, nut, and washer for elongated holes and fretting on the fasteners will take about 0.5 work-hour for an estimated cost of $43 per inspection. Replacing each TRDS Thomas coupling will take about 4 work-hours, and parts will cost about $4,000 for an estimated cost of $4,340 per TRDS Thomas coupling replacement. Replacing each nut will take about 4 work-hours, and parts will cost about $75 for an estimated cost of $415 per nut replacement. Replacing a bolt or washer will take a minimal amount of time and parts will cost a nominal amount.

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:

2021–26–08 Bell Textron Canada Limited: Amendment 39–21867; Docket No. FAA–2021–0728; Project Identifier MCAI–2020–00656–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 206, 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, certificated in any category, with nut part number (P/N) MS21042L4 or P/N MS21042L5 installed on the tail rotor drive shaft (TRDS) disc pack (Thomas) couplings.

Note 1 to paragraph (c): Helicopters with an OH–58A designation are Model 206A–1 helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6510, Tail Rotor Drive Shaft.

(e) Unsafe Condition

This AD was prompted by reports of cracked or missing nuts installed on the TRDS Thomas couplings. The FAA is issuing this AD to prevent failure or loss of a nut on the TRDS Thomas couplings. The unsafe condition, if not addressed, could result in loss of the tail rotor and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 600 hours time-in-service (TIS) after the effective date of this AD:

(i) For helicopters that have not been modified by installing Supplemental Type Certificate (STC) SH2750NM:

(A) Remove each nut P/N MS21042L4 installed on each TRDS Thomas coupling from service, and replace with nut P/N NAS9926–4L. The location of nut P/N NAS9926–4L is depicted in Detail A Figure 1 of Bell Alert Service Bulletin (ASB) 206–19–136, dated August 27, 2019 (ASB 206–19–136) or Bell ASB 206L–19–181, Revision A, dated August 29, 2019 (ASB 206L–19–181), as applicable to your model helicopter.

(B) Apply a torque of 5.65–7.90 Nm (50–70 in lb) plus tare torque to each nut installed as required by paragraph (g)(1)(i)(A) of this AD, and apply a torque stripe using torque seal lacquer (C–049) or equivalent lacquer, as shown in Figure 2 of ASB 206–19–136 or ASB 206L–19–181, as applicable to your model helicopter.

Note 2 to paragraph (g)(1)(i)(B): Torque stripes are referred to as witness marks in ASB 206–19–136 and ASB 206L–19–181.

(ii) For Bell Textron Canada Limited Model 206, 206A, 206A–1, 206B, 206B–1, and 206L helicopters that have been modified by installing STC SH2750NM and Model 206L–1 and 206L–3 helicopters that have been modified by installing STC SH2750NM but have not been modified by accomplishing Bell Service Instruction BHT–206–SI–2052, Revision 1, dated October 14, 2010 (BHT–206–SI–2052):

(A) Remove each nut P/N MS21042L4 installed on each TRDS Thomas coupling from service, except for nuts P/N MS21042L4 installed on the forward short TRDS Thomas coupling, and replace with nut P/N NAS9926–4L. The location of nut P/N NAS9926–4L is depicted in Detail A Figure 1 of ASB 206–19–136 or ASB 206L–19–181 as applicable to your model helicopter.

(B) Remove each nut P/N MS21042L4 installed on the forward short TRDS Thomas coupling from service and replace with nut P/N 90–132L4.

(C) For each nut installed as required by paragraphs (g)(1)(ii)(A) and (B) of this AD, apply a torque of 5.65–7.90 Nm (50–70 in lb) plus tare torque to each nut and apply a torque stripe using torque seal lacquer (C–049) or equivalent lacquer, as shown in Figure 2 of ASB 206–19–136 or ASB 206L–19–181, as applicable to your model helicopter.

(iii) For Bell Textron Canada Limited Model 206L–1 and 206L–3 helicopters that have been modified by installing STC SH2750NM and have been modified by accomplishing BHT–206–SI–2052:

(A) Remove each nut P/N MS21042L4 installed on each TRDS Thomas coupling from service, except for nuts P/N MS21042L4 installed on the forward short TRDS Thomas coupling, and replace with nut P/N NAS9926–4L. The location of nut P/N NAS9926–4L is depicted in Detail A Figure 1 of ASB 206L–19–181.

(B) Remove each nut P/N MS21042L4 installed on the forward short TRDS Thomas coupling from service and replace with nut P/N 90–132L4.

(C) For each nut installed as required by paragraphs (g)(1)(iii)(A) and (B) of this AD, apply a torque of 5.65–7.90 Nm (50–70 in lb) plus tare torque to each nut, and apply a torque stripe using torque seal lacquer (C–049) or equivalent lacquer, as shown in Figure 2 of ASB 206L–19–181.

(iv) For Bell Textron Canada Limited Model 206L–4 helicopters that have been modified by installing STC SH2750NM:

(A) Remove each nut P/N MS21042L4 installed on each TRDS Thomas coupling from service, except for nuts P/N MS21042L4 installed on the forward short TRDS Thomas coupling, and replace with nut P/N NAS9926–4L. The location of nut P/N NAS9926–4L is depicted in Detail A Figure 1 of ASB 206L–19–181.

(B) Remove from service each nut P/N MS21042L5 installed on the forward short TRDS Thomas coupling and replace with nut P/N 90–132L5.

(C) For each nut installed as required by paragraphs (g)(1)(iv)(A) and (B) of this AD, apply a torque of 5.65–7.90 Nm (50–70 in lb) plus tare torque to each nut, and apply a torque stripe using torque seal lacquer (C–049) or equivalent lacquer, as shown in Figure 2 of ASB 206L–19–181.

(2) Within 25 hours TIS after installation of any nut P/N NAS9926–4L, P/N 90–132L4, or P/N 90–132L5, as required by paragraphs (g)(1)(i)(A), (ii)(A) and (B), (iii)(A) and (B), or (iv)(A) and (B) of this AD, apply a torque of 5.65 Nm (50 in lb) to each nut.

(i) If the nut does not move, apply a torque stripe using torque seal lacquer (C–049) or equivalent lacquer, as shown in Figure 2 of ASB 206–19–136 or ASB 206L–19–181, as applicable to your model helicopter.

(ii) If any nut moves, inspect each TRDS Thomas coupling and each bolt, nut, and washer for elongated holes and fretting on the fasteners. If any TRDS Thomas coupling has an elongated hole, remove the TRDS Thomas coupling from service. If any bolt, nut, or washer has any fretting, remove the affected part from service.

(3) As of the effective date of this AD, do not install nut P/N MS21042L4 or MS21042L5 on any TRDS Thomas coupling.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

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

(2) Bell Service Instruction BHT–206–SI–2052, Revision 1, dated October 14, 2010, which is not incorporated by reference, contains additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (j)(3) and (4) of this AD.

(3) The subject of this AD is addressed in Transport Canada AD CF–2020–15, dated May 13, 2020. You may view the Transport Canada AD at *https://www.regulations.gov* in Docket No. FAA–2021–0728.

(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) Bell Alert Service Bulletin 206–19–136, dated August 27, 2019.

(ii) Bell Alert Service Bulletin 206L–19–181, Revision A, dated August 29, 2019.

(3) For Bell service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.*

(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 December 12, 2021.

Ross Landes,

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

[FR Doc. 2021–27645 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0716; Project Identifier 2019–CE–023–AD; Amendment 39–21799; AD 2021–23–01]

RIN 2120–AA64

Airworthiness Directives; Stemme AG Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Stemme AG Model Stemme S 12 gliders. This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an airspeed indicator (ASI) with speed markings inconsistent with the approved and published values. This AD requires inspecting the ASI markings and, depending on findings, either replacing the ASI or amending the existing aircraft flight manual (AFM) until the ASI is replaced. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2022.

ADDRESSES: For service information identified in this final rule, contact STEMME AG, Flugplatzstrasse F2, Nr. 6–7, D–15344 Strausberg, Germany; phone: +49 (0) 3341 3612–0; fax: +49 (0) 3341 3612–30; email: *airworthiness@stemme.de*; website: *https://www.stemme.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0716.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0716; 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: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Stemme AG Model Stemme S 12 gliders. The NPRM published in the **Federal Register** on August 27, 2021 (86 FR 48065). The NPRM was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2019–0082, dated April 12, 2019 (referred to after this as ''the MCAI''), to address an unsafe condition on Stemme AG Model Stemme S 12 gliders. The MCAI states:

> During a production inspection of a new powered sailplane, an ASI was found with speed markings inconsistent with the approved and published values (begin[ning] of the white and green arc). Subsequent investigation of the production records for delivered Stemme S 12 powered sailplanes does not exclude that a similar, non-conforming ASI was installed during production.
>
> This condition, if not corrected, could lead to erroneous information being provided to the pilot, particularly at the lower speed operation limits, possibly resulting in reduced control of the powered sailplane.
>
> To address this unsafe condition, Stemme AG issued the SB [service bulletin] to provide inspections instructions.
>
> For the reason described above, this [EASA] AD requires a one-time inspection of the markings of the affected part and, depending on findings, amending the Aircraft Flight Manual (AFM) and replacing the affected part. This [EASA] AD also prohibits installation of affected parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0716.

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Stemme Service Bulletin No. P062–980027, Revision 00, dated December 17, 2018. The service information specifies checking the ASI markings and provides illustrations of correct markings. The service information specifies the procedure to replace an affected ASI with an ASI with correct markings. The service information also includes a temporary page to insert into the AFM until the ASI is replaced. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 20 gliders of U.S. registry. The FAA estimates it would take about 0.5 work-hour per glider to comply with the inspection requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $850 or $42.50 per glider.

The FAA estimates that amending the AFM to insert and then remove the temporary page as a result of the inspection would take about 1 work-hour per glider for a total cost of $85 per glider. The FAA estimates that replacing the ASI would take about 3.5 work-hours and require parts costing $603, for a total cost of $900.50 per glider. The FAA has no way of determining the number of gliders that may need these actions.

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. For the reasons discussed above, I certify 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:

2021–23–01 Stemme AG: Amendment 39–21799; Docket No. FAA–2021–0716; Project Identifier 2019–CE–023–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Stemme AG Model Stemme S 12 gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3414, Airspeed/Mach Indicator.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an airspeed indicator (ASI) with speed markings inconsistent with the approved and published values (beginning of the white and green arc). The FAA is issuing this AD to prevent erroneous information being provided to the pilot, particularly at the lower speed operation limits. The unsafe condition, if not addressed, could result in reduced control of the glider.

(f) Compliance

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

(g) Required Actions

(1) Within 30 days after the effective date of this AD, inspect ASI part number (P/N) IF–W230 or IF–W190 for incorrect markings in accordance with the table in the Appendix, ''2.3. Airspeed Indicator Markings,'' of Stemme Service Bulletin No. P062–980027, Revision 00, dated December 17, 2018 (the SB). If an ASI marking is incorrect, before further flight, perform one of the following:

(i) Replace the ASI by following the Actions, Action 2, of the SB; or

(ii) Amend the existing aircraft flight manual (AFM) for your glider by inserting the Appendix, temporary page 2–3 SB, ''2.3. Airspeed Indicator Markings,'' of the SB. Within 3 months after amending the AFM, replace the ASI by following the Actions, Action 2, of the SB and remove temporary page 2–3 SB, ''2.3. Airspeed Indicator Markings,'' from the AFM.

(2) As of the effective date of this AD, do not install ASI P/N IF–W230 or IF–W190 on any glider unless it has passed the inspection required by this AD.

(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 certification office, send it to the attention of the person identified in paragraph (i)(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.

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0082, dated April 12, 2019, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0716.

(j) Material Incorporated by Reference

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

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

(i) Stemme Service Bulletin No. P062–980027, Revision 00, dated December 17, 2018.

Note 1 to paragraph (j)(2)(i): This service information has Feb-29 and July 14, 2017, in the footer of every page on the document. Feb-29 refers to the form number and July 14, 2017, is the revision date of the form used to write the service information. The signature block on the bottom of page 1 contains a release date and an approval date. For enforceability purposes, the FAA will cite the Stemme AG service information using the release date of December 17, 2018, that is used in EASA AD 2019–0082, dated April 12, 2019.

Note 2 to paragraph (j)(2)(i): This service information contains German to English translation. EASA used the English translation in referencing the document from Stemme AG. For enforceability purposes, the FAA will cite the Stemme AG service information in English as it appears on the document.

(ii) [Reserved]

(3) For service information identified in this AD, contact STEMME AG, Flugplatzstrasse F2, Nr. 6–7, D–15344 Strausberg, Germany; phone: +49 (0) 3341 3612–0; fax: +49 (0) 3341 3612–30; email: *airworthiness@stemme.de;* website: *https://www.stemme.com.*

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

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

Issued on October 25, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27774 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0827; Project Identifier MCAI–2021–00617–T; Amendment 39–21841; AD 2021–24–20]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by reports of slat transmission jams caused by frozen slat geared rotary actuators (SGRAs) at slat 5 track 12. This AD requires repetitive water drainage and plug cleaning of the left- and right-hand SGRAs having a certain part number installed on slat 5 track 12 with certain functional item numbers, 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 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221

8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0827.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0827; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0130R1, dated June 10, 2021 (EASA AD 2021–0130R1) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on September 23, 2021 (86 FR 52848). The NPRM was prompted by reports of slat transmission jams caused by frozen SGRAs at slat 5 track 12. Further investigation showed that the jams occur when water in the SGRA freezes due to low temperature during cruise and insufficient water drainage. The NPRM proposed to require repetitive water drainage and plug cleaning of the left- and right-hand SGRAs having a certain part number installed on slat 5 track 12 with certain functional item numbers, as specified in EASA AD 2021–0130R1.

The FAA is issuing this AD to address SGRA jams, which could result in reduced control of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

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 2021–0130R1 describes procedures for repetitive water drainage and plug cleaning of the left- and right-hand SGRAs having part number 4775A0000–02 installed on slat 5 track 12 with functional item number (FIN) 5045CW and FIN 5145CW (including reinstalling incorrectly installed drain plug assemblies and replacing any damaged or missing nylon pins). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$5,100

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:

2021–24–20 Airbus SAS: Amendment 39–21841; Docket No. FAA–2021–0827; Project Identifier MCAI–2021–00617–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports of slat transmission jams caused by frozen slat geared rotary actuators (SGRAs) at slat 5 track 12 due to low temperature during cruise and insufficient water drainage. The FAA is issuing this AD to address SGRA jams, which could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0130R1, dated June 10, 2021 (EASA AD 2021–0130R1).

(h) Exceptions to EASA AD 2021–0130R1

(1) Where EASA AD 2021–0130R1 refers to ''the effective date of the original issue of this [EASA] AD,'' this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0130R1 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0130R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(k) Related Information

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

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 2021–0130R1, dated June 10, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0130R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on November 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27828 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0364; Project Identifier MCAI–2019–00119–E; Amendment 39–21872; AD 2021–26–13]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines. This AD was prompted by the manufacturer revising the engine Time Limits Manual (TLM) life limits of certain critical rotating parts, updating direct accumulation counting (DAC) data files, and updating certain maintenance tasks. This AD requires revision of the engine TLM life limits of certain critical rotating parts and DAC data files, 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 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2022.

ADDRESSES: For material incorporated by reference in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@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, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0364.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0364; 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 EASA AD, 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: Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to RRD Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines. The SNPRM published in the **Federal Register** on September 20, 2021 (86 FR 52111). The SNPRM was prompted by the manufacturer revising the engine TLM life limits of certain critical rotating parts, updating DAC data files, and updating certain maintenance tasks. The SNPRM proposed to require operators to revise the ALS of their approved maintenance program by incorporating the revised tasks of the applicable TLM for each affected model turbofan engine. The SNPRM proposed to require accomplishing the actions specified in EASA AD 2020–0241, dated November 5, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), as incorporated by reference, except for any differences identified as exceptions in the regulatory text of the proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.'' The FAA is issuing this AD to address the unsafe condition on these products. See the MCAI for additional background information.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0241 to correct an unsafe condition for all RRD Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from an individual commenter. The commenter expressed support for the SNPRM without change, but incorrectly referenced automotive engines within the rationale for the support.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2020–0241. EASA AD 2020–0241 requires accomplishment of the actions specified in RRD's updated TLM for affected engines as specified in Rolls-Royce Trent 1000 TLM T-Trent-10RRC, Chapters 05–10 and 05–20, Revision 20, dated August 1, 2020. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 20 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the continuous airworthiness maintenance program.	1 work-hour × $85 per hour = $85 ..	$0	$85	$1,700

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:

2021–26–13 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–21872; Docket No. FAA–2020–0364; Project Identifier MCAI–2019–00119–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc) (RRD) Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual life limits of certain critical rotating parts, updating the direct accumulation counting data files, and updating certain maintenance tasks. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2020–0241, dated November 5, 2020 (EASA AD 2020–0241).

(h) Exceptions to EASA AD 2020–0241

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0241 are not required by this AD.

(2) Where EASA AD 2020–0241 requires compliance from its effective date, this AD requires using the effective date of this AD.

(3) Paragraph (3) of EASA AD 2020–0241 specifies revising the approved airworthiness maintenance program within 12 months after its effective date, but this AD requires revising the existing approved continuous airworthiness maintenance program within 90 days after the effective date of this AD.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2020–0241.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0241 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 ECO Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *ANE-AD-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 Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@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 2020–0241, dated November 5, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0241, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@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 at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this 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 December 9, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27628 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of the Lifting of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada for Certain Individuals Who Are Fully Vaccinated Against COVID–19 and Can Present Proof of COVID–19 Vaccination Status

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of the lifting of temporary travel restrictions for certain travelers.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (Secretary) to lift the temporary restrictions that apply to non-essential travel by certain individuals. Specifically, the Secretary has lifted such restrictions for individuals who have been fully vaccinated against COVID–19, can present proof of COVID–19 vaccination status, and are seeking to enter the United States via land ports of entry (POEs) and ferry terminals along the U.S.-Canada border. The lifting of restrictions for such fully vaccinated individuals does not affect U.S. citizens and lawful permanent residents returning to the United States, regardless of whether the individual is

fully vaccinated, because such travel is currently defined as essential travel.

DATES: The lifting of these restrictions began at 12 a.m. Eastern Standard Time (EST) on November 8, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Notice of Action

On October 21, 2021, the Secretary announced his decision to continue to temporarily restrict the non-essential travel of individuals from Canada into the United States via land POEs and ferry terminals along the United States-Canada border.[1] The Secretary further announced that he intended to lift these restrictions for individuals who are fully vaccinated against COVID–19 and have appropriate proof of vaccination to align with changes to international travel by air.[2] The Secretary stated that any such modifications to the restrictions would be accomplished via a posting to the DHS website (*https://www.dhs.gov*) and followed by a publication in the **Federal Register**.[3]

On October 29, 2021, DHS posted to its website an announcement that beginning November 8, 2021, non-essential travel would be permitted through land POEs and ferry terminals, provided that the traveler is fully vaccinated against COVID–19 and can present proof of COVID–19 vaccination status. DHS stated that unvaccinated travelers may continue to cross the U.S.-Canada border at land POEs and ferry terminals for essential travel, including lawful trade, emergency response, and public health purposes.[4] Thus, starting November 8, 2021, when arriving at a U.S. land POE or ferry terminal, travelers who are traveling for a non-essential reason should be prepared to: (1) Present proof of COVID–19 vaccination as outlined on the CDC website; [5] and (2) verbally attest to the reason for their travel and COVID–19 vaccination status. The lifting of restrictions for fully vaccinated individuals does not affect U.S. citizens and lawful permanent residents returning to the United States, regardless of whether the individual is fully vaccinated, because such travel is currently defined as essential travel.

Consistent with the October 21, 2021 **Federal Register** notice and the October 29, 2021 web posting, DHS is publishing this notice of the lifting of the non-essential travel restrictions for certain individuals as described above.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–28063 Filed 12–21–21; 4:15 pm]

BILLING CODE 9112–FP–P

[1] 86 FR 58218.

[2] *Id.*

[3] *Id.* at 58220.

[4] *See* DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, *https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals* (released Oct. 29, 2021; last updated Nov. 23, 2021); *see also* DHS, *Frequently Asked Questions: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us-land-ports-entry-and-ferry* (released Oct. 29, 2021; last updated Nov. 23, 2021).

[5] *See* CDC, Requirement for Proof of COVID–19 Vaccination for Air Passengers *https://www.cdc.gov/coronavirus/2019-ncov/travelers/proof-of-vaccination.html* (updated Nov. 24, 2021).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of the Lifting of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico for Certain Individuals Who Are Fully Vaccinated Against COVID–19 and Can Present Proof of COVID–19 Vaccination Status

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of the lifting of temporary travel restrictions for certain travelers.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (Secretary) to lift the temporary restrictions that apply to non-essential travel by certain individuals. Specifically, the Secretary has lifted such restrictions for individuals who have been fully vaccinated against COVID–19, can present proof of COVID–19 vaccination status, and are seeking to enter the United States via land ports of entry (POEs) and ferry terminals along the U.S.-Mexico border. The lifting of restrictions for such fully vaccinated individuals does not affect U.S. citizens and lawful permanent residents returning to the United States, regardless of whether the individual is fully vaccinated, because such travel is currently defined as essential travel.

DATES: The lifting of these restrictions began at 12 a.m. Eastern Standard Time (EST) on November 8, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Notice of Action

On October 21, 2021, the Secretary announced his decision to continue to temporarily restrict the non-essential travel of individuals from Mexico into the United States via land POEs and ferry terminals along the United States-Mexico border.[1] The Secretary further announced that he intended to lift these restrictions for individuals who are fully vaccinated against COVID–19 and have appropriate proof of vaccination to align with changes to international travel by air.[2] The Secretary stated that any such modifications to the restrictions would be accomplished via a posting to the DHS website (*https://www.dhs.gov*) and followed by a publication in the **Federal Register**.[3]

On October 29, 2021, DHS posted to its website an announcement that beginning November 8, 2021, non-essential travel would be permitted through land POEs and ferry terminals, provided that the traveler is fully vaccinated against COVID–19 and can present proof of COVID–19 vaccination status. DHS stated that unvaccinated travelers may continue to cross the U.S.-Mexico border at land POEs and ferry terminals for essential travel, including lawful trade, emergency response, and public health purposes.[4] Thus, starting November 8, 2021, when arriving at a U.S. land POE or ferry terminal, travelers who are traveling for a non-essential reason should be prepared to: (1) Present proof of COVID–19 vaccination as outlined on the CDC website; [5] and (2) verbally attest to the reason for their travel and COVID–19 vaccination status. The lifting of restrictions for fully vaccinated individuals does not affect U.S. citizens and lawful permanent residents

[1] 86 FR 58216.

[2] *Id.*

[3] *Id.* at 58218.

[4] *See* DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, *https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals* (released Oct. 29, 2021; last updated Nov. 23, 2021); *see also* DHS, *Frequently Asked Questions: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us-land-ports-entry-and-ferry* (released Oct. 29, 2021; last updated Nov. 23, 2021).

[5] *See* CDC, Requirement for Proof of COVID–19 Vaccination for Air Passengers *https://www.cdc.gov/coronavirus/2019-ncov/travelers/proof-of-vaccination.html* (updated Nov. 24, 2021).

returning to the United States, regardless of whether the individual is fully vaccinated, because such travel is currently defined as essential travel.

Consistent with the October 21, 2021 **Federal Register** notice and the October 29, 2021 web posting, DHS is publishing this notice of the lifting of the non-essential travel restrictions for certain individuals as described above.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–28064 Filed 12–21–21; 4:15 pm]

BILLING CODE 9112–FP–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB53

Bank Secrecy Act Regulations—Reports of Foreign Financial Accounts Civil Penalties

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is amending the Bank Secrecy Act civil penalty regulations relating to the requirements for reporting foreign financial accounts and for reporting transactions with foreign financial agencies. The amendments remove civil penalty language, which was made obsolete with the enactment of the American Jobs Creation Act of 2004. The American Jobs Creation Act of 2004 revised the manner for computing the penalty, including providing a greater maximum penalty for willful violations than was previously authorized.

DATES: *Effective Date:* The final rule is effective December 23, 2021.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *https://fincen.gov/contact.*

SUPPLEMENTARY INFORMATION:

I. Background

The purposes of the Bank Secrecy Act (BSA), Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5336, include, among other things, requiring certain reports or records that are highly useful in criminal, tax, or regulatory investigations. The regulations implementing the BSA appear at 31 CFR chapter X. The Secretary's authority to administer the BSA has been delegated to the Director of FinCEN.[1]

Pursuant to 31 U.S.C. 5314, the Secretary is authorized to require any ''resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.'' The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.360, and 1010.420. Section 1010.350 sets forth the requirements for filing a Foreign Bank Account Report (FBAR), which generally require each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship for each year in which such relationship exists. Section 1010.420 outlines the recordkeeping requirements associated with foreign financial accounts required to be reported under Section 1010.350. Section 1010.360, commonly referred to as the report of foreign financial agency transactions, provides that FinCEN may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies.

II. Civil Monetary Penalty

Section 5321 of Title 31 of the U.S. Code describes civil monetary penalties for violations of the BSA. In October 1986, Congress amended 31 U.S.C. 5321 to add a provision—31 U.S.C. 5321(a)(5)—authorizing a civil monetary penalty for willful violations of section 5314. (Pub. L. 99–570, section 1357(c), October 26, 1986) (''the Anti-Drug Abuse Act of 1986'' or the ''1986 Act'')). The terms of the 1986 amendment were incorporated into the BSA implementing regulations at 31 CFR 1010.820(g).[2]

The American Jobs Creation Act of 2004 amended 31 U.S.C. 5321(a)(5). The amendments revised the manner in which the penalty is calculated, including an increase to the maximum amount that could be assessed for willful violations of section 5314.

III. Section by Section Analysis

Section 821 of the American Jobs Creation Act of 2004 is self-executing, and the penalty provisions apply to violations occurring after the date of its enactment. For those reasons, the provisions in 31 CFR 1010.820(g) are obsolete and superseded by statute. FinCEN is therefore rescinding 31 CFR 1010.820(g). The remaining paragraphs (h) and (i) in § 1010.820 are redesignated as paragraphs (g) and (h).

IV. Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The final rule rescinds civil penalty regulations at 31 CFR 1010.820(g)(1) and (2) because they have been rendered obsolete with the 2004 amendments to 31 U.S.C. 5321(a)(5). The agency has therefore determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary. This amendment to the regulations merely conforms the regulations to the current statute.

Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. FinCEN finds that there is good cause for shortened notice since 31 CFR 1010.820(g) is obsolete and the revisions made by this final rule are non-substantive and technical. This final rule takes effect on December 23, 2021.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. As noted above, FinCEN has determined that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

VI. Executive Order 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess 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. FinCEN

[1] *See* Treasury Order 180–01 (Jan. 14, 2020).

[2] 52 FR 11436, April 8, 1987.

has determined that Executive Orders 13563 and 12866 do not apply to this final rulemaking.

VII. Paperwork Reduction Act (PRA) Notices

There is no collection of information requirement in this final rule.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, 12 U.S.C. 1532, Public Law 104–4 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that no portion of this final rule will result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 1010 is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1960; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 1010.820 [Amended]

■ 2. Section 1010.820 is amended as follows:

■ a. Remove paragraph (g); and

■ b. Redesignate paragraphs (h) and (i) as paragraphs (g) and (h).

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2021–27623 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–02–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 387

[Docket No. 20–CRB–0008–CA (2020–2024)]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final determination.

SUMMARY: The Copyright Royalty Judges published for comment a proposed settlement governing royalty rates and terms for the retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers. Having received no comments, the Judges adopt the existing rates and terms as proposed by the settlement.

DATES: The rates are applicable to the period beginning January 1, 2020, and ending December 31, 2024.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB at *https://app.crb.gov* and perform a case search for docket 20–CRB–0008–CA.

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

SUPPLEMENTARY INFORMATION: On January 26, 2021, the Copyright Royalty Judges (Judges) received a Joint Notice of Settlement of Participating Parties [1] informing the Judges that they have agreed not to seek a quinquennial adjustment in the existing Section 111 royalty rates or gross receipts limitations pursuant to 17 U.S.C. 804(b)(1)(A)–(B) for the 2020–2024 [2] period. As a result, the Participating Parties requested that the Judges terminate this proceeding without making any changes in (1) the royalty rates currently set forth in 17 U.S.C. 111(d)(1)(B) and 37 CFR 256.2(c)–(d); [3] and (2) the gross receipts limitations set forth in 17 U.S.C. 111(d)(1)(E)–(F). Joint Notice at 2. Section 111 of the Copyright Act grants a statutory copyright license to cable television systems for the retransmission of over-the-air television and radio broadcast stations to their subscribers. 17 U.S.C. 111(c). In exchange for the license, cable operators submit to the Copyright Office semiannually royalty payments and statements of account detailing their retransmissions. 17 U.S.C. 111(d)(1). The Copyright Office deposits the royalties into the United States Treasury for later distribution to copyright owners of the broadcast programming that the cable systems retransmit. 17 U.S.C. 111(d)(2).

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d)(1). Royalty rates are based upon a cable system's gross receipts from subscribers who receive retransmitted broadcast signals. For rate calculation purposes, cable systems are divided into three tiers (small, medium, and large) based on their gross receipts. 17 U.S.C. 111(d)(1)(B) through (F). Both the applicable rates and the tiers are subject to adjustment. 17 U.S.C. 801(b)(2).

Every five years persons with a significant interest in the royalty rates may file petitions to initiate a proceeding to adjust the rates. 17 U.S.C. 804(a)–(b). No person with a significant interest filed a petition to initiate a proceeding in 2020. Therefore, the Judges initiated a rate adjustment proceeding by publishing a notice and request for petitions to participate in the **Federal Register**. 85 FR 34467 (June 4, 2020). The Judges accepted the petitions to participate of each of the Participating Parties and commenced a Voluntary Negotiation Period (VNP). Notice of Participants, Commencement of Voluntary Negotiation Period, and Scheduling Order (Oct. 20, 2020).[4] In response to that Notice and Order, on January 26, 2021, the Participating Parties submitted a Joint Notice of Settlement of Participating Parties

[1] The Participating Parties are American Society of Composers, Authors and Publishers, Broadcast Music, Inc., Canadian Claimants Group (by Canadian Broadcasting Corporation), Devotional Claimants (Crystal Cathedral Ministries, *et al.*), Global Music Rights, LLC, Joint Sports Claimants, Motion Picture Association, Commercial Television Claimants (through the National Association of Broadcasters), NPR Claimants (through National Public Radio, Inc.), NCTA-The internet & Television Association, Public Television Claimants (through Public Broadcasting Service), and SESAC Performing Rights, LLC.

[2] The period of years for the rates has been misstated as 2020–2025 in filings in this docket. The five-year period starting in 2020 ends in 2024, not 2025. The Judges have adjusted the docket number to reflect the correct span.

[3] The Judges assume that the Participating Parties' reference to 37 CFR 256.2(c) & (d), which was a Copyright Office regulation relating to the Judges' predecessor, was intended to refer to paragraphs (c)–(d) of 37 CFR 387.2, which the Judges adopted at the conclusion of the last cable rate proceeding. *See* 81 FR 62812 (Sept. 13, 2016) and 81 FR 24523–24 (Apr. 26, 2016).

[4] The Judges also received a petition to participate from Circle God Network Inc. (through David Powell), which the Judges concluded failed to state why it believed it had a significant interest in the proceeding. The Judges subsequently rejected Mr. Powell's petition to participate, Order Rejecting David Powell's Petition to Participate and Permitting Filing of an Amended Petition (Oct. 20, 2020), and later dismissed Mr. Powell from the proceeding. Order Dismissing David Powell (Nov. 5, 2020).

notifying the Judges that they have agreed not to seek a quinquennial adjustment in the existing Section 111 royalty rates or gross receipts limitations pursuant to 17 U.S.C. 804(b)(1)(A)–(B) for the 2020–2024 period.[5] They requested that the Judges terminate this proceeding without making any changes in the applicable royalty rates and gross receipts limitations.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided the parties submit the negotiated rates and terms to the Judges for approval. That provision directs the Judges to provide those who would be bound by the negotiated rates and terms an opportunity to comment on the agreement. Unless a participant in a proceeding objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory rates or terms, or the Judges find the negotiated rates and terms are contrary to law, the Judges adopt the negotiated rates and terms. 17 U.S.C. 801(b)(7)(A).

On February 4, 2021, the Judges published the proposed settlement in the **Federal Register** and requested comments from interested parties pursuant to 17 U.S.C. 801(b)(7)(A). 86 FR 8222 (Feb. 4, 2021). The Judges received no comments. Therefore, the Judges adopt the existing rates and terms in 37 CFR 387.2 (c) and (d) for the 2020–2024 rate period and close the proceeding. The Judges hereby give notice that the adopted rates and terms and gross receipts limitations will continue to be binding on all cable systems that retransmit over-the-air television and radio broadcast stations to their subscribers and on all copyright owners of the broadcast programming that the cable systems retransmit during the license period 2020–2024.

Dated: December 9, 2021.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2021–27913 Filed 12–22–21; 8:45 am]

BILLING CODE 1410–72–P

[5] As with other filings in this docket, the Joint Notice of Settlement of Participating Parties addressed the 2020–2025 period. As indicated *supra,* this final action corrects the prior misstated dates and addresses a narrower period beginning January 1, 2020, and ending December 31, 2024.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0542; FRL–9199–01–OCSPP]

Bicyclopyrone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of bicyclopyrone in or on the fresh and dried forms of lemongrass, rosemary, and wormwood. Syngenta Crop Protection, LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 23, 2021. Objections and requests for hearings must be received on or before February 22, 2022 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0542, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0542 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 22, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0542, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting

comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 22, 2021 (86 FR 21317) (FRL–10022–59), and of June 1, 2021 (86 FR 29229) (FRL–10023–95), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8777) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide bicyclopyrone, 4-hydroxy-3-}2-[(2-methoxyethoxy)methyl{-6-(trifluoromethyl) 3pyridylcarbonyl{bicyclo[3.2.1]oct-3-en-2-one, in or on rosemary, fresh at 0.03 parts per million (ppm); rosemary, dried at 0.3 ppm; lemongrass, fresh at 0.3 ppm; lemongrass, dried at 0.5 ppm; wormwood, fresh at 0.05 ppm and wormwood, dried at 0.09 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC., the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for bicyclopyrone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with bicyclopyrone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The bicyclopyrone database is considered complete for risk assessment purposes.

Bicyclopyrone is a 4-hydroxyphenylpyruvate dioxygenase (HPPD)-inhibiting chemical. HPPD is an enzyme involved in the catabolism of tyrosine, an essential amino acid for mammals. Recently OPP evaluated (*HPPD Inhibiting Herbicides: State of the Science.* 9/18/2020. Authors: K. Yozzo and M. Perron) a proposed mode-of-action (MOA)/adverse-outcome pathway (AOP) for HPPD inhibitors in mammals and determined there was sufficient evidence to establish the MOA/AOP. The initiating event in the MOA/AOP for HPPD-inhibiting chemicals, including bicyclopyrone, involves binding of the chemical to the HPPD enzyme causing complete or virtually complete enzyme inhibition, which leads to a build-up of systemic tyrosine levels (tyrosinemia) and a spectrum of tyrosine-mediated effects. In laboratory animals, these have been identified as ocular and skeletal developmental effects.

Bicyclopyrone is classified as ''Suggestive Evidence of Carcinogenic Potential'' based on the presence of rare ocular tumors in male rats. The EPA has determined that using a non-linear approach (*i.e.,* chronic reference dose (cRfD)) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to bicyclopyrone.

A complete discussion of the toxicological profile for bicyclopyrone as well as specific information on the studies received and the nature of the adverse effects caused by bicyclopyrone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the document titled ''Bicyclopyrone: Human Health Risk Assessment for the Establishment of Permanent Tolerances for Residues in/on Lemongrass, Rosemary, and Wormwood'' (hereinafter ''Bicyclopyrone Human Health Risk Assessment'') in docket ID number EPA–HQ–OPP–2019–0542 in *regulations.gov.*

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

The ability of a species to clear excess tyrosine can impact its sensitivity to HPPD-inhibiting chemicals and its relevance for human health risk assessment. Therefore, during the evaluation of the MOA/AOP for HPPD inhibitors in mammals, endpoints for human health risk assessment of HPPD inhibitors, including bicyclopyrone, were selected from studies available in mice and dogs. The developmental and reproduction toxicity studies in mice

are not available for bicyclopyrone; however, mouse developmental and reproduction toxicity studies for other HPPD inhibitors are available for bridging across the chemical class. The reproduction toxicity study for mesotrione (a HPPD inhibitor) provides the lowest point of departure (no-observed adverse-effect level (NOAEL) = 71 mg/kg/day) for these studies and was considered in conjunction with the bicyclopyrone database for endpoint selection.

A summary of the toxicological endpoints for bicyclopyrone used for human risk assessment can be found in the Bicyclopyrone Human Health Risk Assessment in the docket.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to bicyclopyrone, EPA considered exposure under the petitioned-for tolerances as well as all existing bicyclopyrone tolerances in 40 CFR 180.682. EPA assessed dietary exposures from bicyclopyrone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for bicyclopyrone; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA conducted a partially refined analysis that assumed average field trial residues for registered crops, tolerance levels for the proposed crops, average empirical processing factors for registered crops, anticipated residues for livestock commodities, and percent crop treated (PCT) for registered crop commodities.

iii. *Cancer.* Based on the data discussed in Unit III.A., EPA has determined that a separate cancer exposure assessment does not need to be conducted and that using a non-linear approach (*i.e.,* reference dose (RfD)) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to bicyclopyrone.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The chronic dietary assessment incorporated the following average PCT estimates: Barley, 1%; field corn, 10%; sweet corn, 5%; pop corn, 10% (used the higher of the corn PCTs); and wheat, 5% (used spring wheat PCT which was higher than winter wheat PCT). The PCT for livestock commodities is based on the PCT value for the livestock feed item used in the dietary burden with the highest percent crop treated (field corn, 10%).

In most cases, EPA uses available data from the United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which bicyclopyrone may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bicyclopyrone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bicyclopyrone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

The Surface Water Concentration Calculator (SWCC) computer model was used to generate surface water Estimated

Drinking Water Concentrations (EDWCs), while the Pesticide Root Zone Model for Groundwater (PRZM–GW) and the Screening Concentration in Ground Water (SCI–GROW) models were used to generate groundwater EDWCs. The maximum acute and chronic surface water EDWCs associated with bicyclopyrone use were 3.43 and 1.02 parts per billion (ppb), respectively. For groundwater sources of drinking water, the maximum acute and chronic and cancer EDWCs of bicyclopyrone in shallow groundwater from PRZM–GW were 4.82 and 4.2 ppb, respectively.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Bicyclopyrone is not registered for any use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The Agency is required to consider the cumulative risks of chemicals sharing a common mechanism of toxicity per OPP's *Guidance For Identifying Pesticide Chemicals and Other Substances that have a Common Mechanism of Toxicity,* which can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/guidance-identifying-pesticide-chemicals-and-other.* As a result, the Agency has determined that the (p-hydroxyphenyl-pyruvate dioxygenase) HPPD inhibitors, including bicyclopyrone, share a common mechanism of toxicity as discussed in the *HPPD Inhibiting Herbicides: State of the Science* paper (*HPPD Inhibiting Herbicides: State of the Science.* 9/18/2020. Authors: K. Yozzo and M. Perron). As explained in that document, the members of this group share the ability to bind to and inhibit the HPPD enzyme resulting in elevated systemic tyrosine levels and common apical outcomes that are mediated by tyrosine, including ocular and developmental effects. In 2021, after establishing a common mechanism grouping for the HPPD inhibitors, the Agency conducted a cumulative risk assessment (CRA) (J. Godshall; 30-June-2021; D462487) and concluded that cumulative exposures to HPPD inhibitors (based on proposed and registered pesticidal uses at the time the assessment was conducted) did not present risks of concern.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Although there is potential evidence of neurotoxicity and increased quantitative susceptibility, concern is low because neurotoxicity was only observed in the rat, which is not considered a relevant model for evaluating HPPD inhibitors, and selected endpoints are protective of the potential sensitivity/susceptibility for animal models appropriate for evaluating HPPD inhibitors.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for all exposure scenarios, except for the chronic dietary endpoint where the FQPA SF is being retained as a database UF because of the use of a LOAEL as the point of departure (UF_L). That decision is based on the following findings:

i. The toxicity database for bicyclopyrone is complete.

ii. There is no evidence of neurotoxicity in the bicyclopyrone database, including in the rat acute or subchronic neurotoxicity studies; however, histopathological findings were observed in the chronic dog study (swelling of the dorsal root ganglion and nerve fiber degeneration). Concern is low since the chronic dietary endpoint is based upon these effects, and these are the most sensitive effects in the bicyclopyrone hazard database in one of them most appropriate species for risk assessment.

iii. There was evidence of increased susceptibility in rat and rabbit developmental studies for bicyclopyrone. Since developmental and reproduction toxicity studies in mice are not available for bicyclopyrone, mouse developmental and reproduction toxicity studies for other HPPD inhibitors are available for bridging. In some instances, increased quantitative susceptibility was also observed in these mouse studies, including the 2-generation reproduction toxicity study for mesotrione. Although there was evidence of increased susceptibility, concern is low because: (1) Rat and rabbits were not considered appropriate animal models for assessing human health risk for HPPD inhibitors, (2) there are clear NOAEL/LOAEL values for the observed developmental and offspring effects, (3) developmental/offspring effects in mice for other HPPD inhibitors were seen at doses ≥600 mg/kg/day, except the mesotrione 2-generation reproduction toxicity study, (4) the offspring LOAEL of 300 mg/kg/day in the mesotrione reproduction toxicity study was set conservatively based on a low incidence of opaque/cloudy eyes, and (5) selected endpoints are protective of any potential sensitivity observed in mice.

iv. There are no residual uncertainties identified in the exposure databases. The dietary assessment does not underestimate exposure. In addition, there are no currently proposed residential uses.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, bicyclopyrone is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to bicyclopyrone from food and water will utilize 9.5% of the cPAD for all infants, the population group receiving the greatest exposure.

3. *Short-term risk.* A short-term adverse effect was identified; however, bicyclopyrone is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for bicyclopyrone.

4. *Intermediate-term risk.* An intermediate-term adverse effect was identified; however, bicyclopyrone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for bicyclopyrone.

5. *Aggregate cancer risk for U.S. population.* Because the Agency has determined that the chronic RfD will be protective of any potential cancer risk and there are no chronic risks that exceeds the Agency's level of concern, EPA concludes that there is not a concern for cancer risk from exposure to bicyclopyrone.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to bicyclopyrone residues.

More detailed information about the Agency's analysis can be found in the Bicyclopyrone Human Health Risk Assessment in docket ID number EPA–HQ–OPP–2019–0542 in *regulations.gov* at *https://www.regulations.gov.*

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology liquid chromatography-mass spectroscopy/mass spectroscopy (LCMS/MS) methods for tolerance enforcement have been developed and independently validated. For all matrices and analytes, the level of quantification (LOQ), defined as the lowest spiking level where acceptable precision and accuracy data were obtained, was determined to be 0.01 ppm for each of the common moieties, SYN503780 and CSCD686480, for a combined LOQ of 0.02 ppm is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The Codex has not established a MRL for residues of bicyclopyrone in/on lemongrass, rosemary, or wormwood.

V. Conclusion

Therefore, tolerances are established for residues of bicyclopyrone, 4-hydroxy-3-{2-[(2-methoxyethoxy)methyl]-6-(trifluoromethyl)-3-pyridylcarbonyl}bicyclo[3.2.1]oct-3-en-2-one, including its metabolites and degradates in or on lemongrass, dried at 0.5 ppm; lemongrass, fresh at 0.3 ppm; rosemary, dried at 0.3 ppm; rosemary, fresh at 0.03 ppm; wormwood, dried at 0.09 ppm; and wormwood, fresh at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 9, 2021.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.682, amend paragraph (a)(1) by:

■ a. In the introductory text, removing ''table below'' and ''specified below'' and adding ''following table'' and ''specified in this paragraph (a)(1)'' in their places, respectively; and

■ b. In the table, adding a table heading and entries in alphabetical order for ''Lemongrass, dried''; ''Lemongrass, fresh''; ''Rosemary, dried''; ''Rosemary, fresh''; ''Wormwood, dried''; and ''Wormwood, fresh''.

The additions read as follows:

§ 180.682 Bicyclopyrone; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Lemongrass, dried	0.5
Lemongrass, fresh	0.3
Rosemary, dried	0.3
Rosemary, fresh	0.03
* * * * *	
Wormwood, dried	0.09
Wormwood, fresh	0.05

* * * * *

[FR Doc. 2021–27602 Filed 12–22–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2021–0063]

RIN 2126–AC40

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Through this rule, FMCSA incorporates by reference the April 1, 2021, edition of the handbook.

DATES: Effective February 22, 2022. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of February 22, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. José Cestero, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–5541, *jose.cestero@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2021-0063/document* and choose the document to review. To view comments, click this final rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., 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.

II. Executive Summary

This final rule updates an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2019, edition of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The CVSA handbook contains inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Compliance Division) at (202) 366–1812. The document may be purchased from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, telephone (301) 830–6143, *www.cvsa.org.*

Twenty-one updates distinguish the April 1, 2021, handbook edition from the 2019 edition. The updates are all

described in detail in the July 6, 2021, notice of proposed rulemaking (NPRM) for this rule (86 FR 35445–47). The incorporation by reference of the 2021 edition does not impose new regulatory requirements.

III. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E, to address the congressional mandate on hazardous materials safety permits. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this final rule is applicable.

IV. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All highway route controlled quantities of radioactive material shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment's point of origin or when the shipment enters the United States.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.''

According to 2015–2019 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 3.34 million Level I–Level VI inspections were performed annually. Nearly 97 percent of these were Level I,[1] Level II,[2] and Level III[3] inspections. During the same period, an average of 611 Level VI inspections were performed annually, comprising only 0.02 percent of all inspections. On average, OOS violations were cited in only 7.8 Level VI inspections annually (2 percent), whereas on average, OOS violations were cited in 266,025 Level I inspections (25 percent), 275,840 Level II inspections (23 percent), and 61,201 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of vehicles involved in Level VI inspections because of the sensitive nature of the cargo being transported.

The changes from the 2019 edition of the CVSA handbook to the 2021 edition, which includes changes adopted in the 2020 edition, are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2021 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

V. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

FMCSA published a notice of proposed rulemaking (NPRM) on July 6, 2021 (86 FR 35443). Whereas the incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b) references the April 1, 2019, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' the NPRM proposed to incorporate by reference the April 1, 2021, edition, which also captures changes adopted in the April 1, 2020, edition. Cumulatively, twenty-one updates distinguish the April 1, 2021, edition from the 2019 edition. Each of the changes was described and discussed in detail in the NPRM. Generally, the changes serve to clarify or provide additional guidance to inspectors regarding uniform implementation and application of the out-of-service criteria, and none is expected to affect the number of out-of-service violations cited during Level VI inspections. The incorporation by reference of the 2021 edition does not change what constitutes a violation of FMCSA regulations.

B. Comments and Responses

FMCSA solicited comments concerning the NPRM for 30 days ending August 5, 2021. By that date, three comments were received, from CVSA and two private citizens. CVSA commended FMCSA for publishing the NPRM, and encouraged FMCSA to finalize the rule and update the incorporation by reference because ''the current reference of the April 1, 2019 edition is outdated and does not reflect

[1] Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

[2] Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

[3] Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

the most up to date Standard, which was published on April 1, 2021.''

One comment from a private citizen was outside the scope of this rulemaking.

One comment from a private citizen recommended that FMCSA not include the date of the handbook in the regulations so that updating the date through rulemakings would not be necessary.

Response: FMCSA must specify which version of a document is being incorporated by reference under the requirements of 1 CFR part 51. Therefore, in order to ensure that the most recent version of the handbook is incorporated by reference at 49 CFR 385.415(b), FMCSA must publish a new rulemaking for each updated version.

VI. International Impacts

The Federal Motor Carrier Safety Regulations (FMCSRs), and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State, and Provincial motor carrier safety enforcement agencies in the United States, Canada, and Mexico. The OOSC provide uniform enforcement tolerances for inspections conducted in all three countries.

VII. Section–by–Section Analysis

Section 385.4 Matter Incorporated by Reference

Section 385.4(b)(1), is amended by replacing the reference to the April 1, 2019, edition date with a reference to the new edition date of April 1, 2021.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs (OIRA) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under these orders.

The final rule updates an incorporation by reference from the April 1, 2019, edition to the April 1, 2021, edition of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' FMCSA reviewed its MCMIS data on inspections performed from 2015 to 2019 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the final rule's impact would be de minimis.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), OIRA designated this rulemaking as not a ''major rule,'' as defined by 5 U.S.C. 804(2).[4]

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. None of the updates from the 2021 edition imposes new requirements or makes substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to ''prepare and make available an initial regulatory flexibility analysis'' that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the final rule is not expected to impact a substantial number of small entities. This final rule updates an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at 49 CFR 385.415(b), and incorporates by reference the April 1, 2021, edition of the CVSA handbook. The changes to the 2021 edition of the CVSA handbook from the 2019 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2021 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rulemaking so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

[4] A ''major rule'' means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $170 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2020 levels) or more in any one year. Though this rulemaking would not result in such an expenditure, the Agency does discuss the effects of this rulemaking elsewhere in this preamble.

F. Paperwork Reduction Act

This rulemaking contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

FMCSA has determined that this rulemaking does not have substantial direct costs on or for States, nor does it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[5] requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rulemaking does not require the collection of personally identifiable information, and therefore a PIA is not necessary.

I. E.O. 13175 (Indian Tribal Governments)

This rulemaking does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The requirements in this rulemaking are covered by this CE, and the rulemaking does not have any effect on the quality of the environment.

List of Subjects in 49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. Revise § 385.4(b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) * * *

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' April 1, 2021, incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Meera Joshi,

Deputy Administrator.

[FR Doc. 2021–27851 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–EX–P

[5] Public Law 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note (Dec. 8, 2004).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 211217–0261]

RIN 0648–BK36

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Lane Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule modifies catch limits in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) for lane snapper. The purpose of this final rule and the framework action is to modify the annual catch limit (ACL), to revise an accountability measure (AM), and to achieve optimum yield (OY) for the stock while preventing overfishing. This final rule also makes minor administrative changes to replace outdated NMFS website addresses and language about required software for the Individual Fishing Quota (IFQ) programs. Additionally, this final rule reopens the harvest of lane snapper for the commercial and recreational sectors as a result of the ACL increase.

DATES: This final rule is effective January 24, 2022, except for amendment number 6 to § 622.41(k), which is effective on December 23, 2021.

The lane snapper commercial and recreational sectors will reopen effective 12:01 a.m., local time, December 23, 2021, until the end of the current fishing year, December 31, 2021.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-implement-modification-gulf-mexico-lane-snapper-catch-limits-and.*

FOR FURTHER INFORMATION CONTACT: Dan Luers, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes lane snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 18, 2021, NMFS published a proposed rule for the framework action and administrative changes to the IFQ Program and requested public comment (86 FR 57629). The proposed rule and the framework action outline the rationale for the actions regarding Gulf lane snapper contained in this final rule, which is unchanged from the proposed rule. A summary of the management measures described in the framework action, as well as management measures not contained in the framework action, and implemented by this final rule is described below. All weights in the final rule are described in round weight, unless otherwise noted.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Lane snapper in the Gulf EEZ are managed as a single stock with a stock ACL of 301,000 lb (136,531 kg) that has not changed since implemented in 2012 (76 FR 82044; December 29, 2011). This stock ACL is based on average landings from 1999 through 2008. The fishing year is January 1 through December 31, each year.

In 2019, in response to landings data that indicated lane snapper experienced overfishing in 2017 and exceeded its ACL in 2018, the Council requested that the NMFS Southeast Fisheries Science Center provide an updated, interim analysis on the lane snapper stock to include landings data from 2015–2018. However, the updated analysis used recreational catch estimate values that were calculated using effort and landings information from the previous Marine Recreational Information Program (MRIP) Coastal Household Telephone Survey (CHTS) and the Access Point Angler Intercept Survey. The CHTS has since been replaced by the newer MRIP Fishing Effort Survey (FES). Thus, as requested by the Council's Scientific and Statistical Committee (SSC), an updated analysis was provided in 2020 (SEDAR 49 Update [2020]) that converted the recreational data used to calculate the estimated catch limits for lane snapper to values directly comparable to those collected through MRIP–FES.

The conversion to MRIP–FES values resulted in an approximate doubling of recreational catch and effort estimates. Thus, based on the results of the SEDAR 49 Update (2020) and the conversion to MRIP–FES, the SSC recommended increasing the overfishing limit from 358,000 lb (162,386 kg) to 1,053,834 lb (478,011 kg), and increasing the acceptable biological catch (ABC) from 301,000 lb (135,531 kg) to 1,028,973 lb (466,734 kg). In the framework action, the Council adopted the SSC's recommendations.

Despite landings exceeding the lane snapper ACL each year from 2016 through 2020, NMFS closed the harvest of lane snapper only once, in 2019, under the current AM, which requires a closure when the ACL is met or projected to be met during the year following an ACL overage (84 FR 68058; December 13, 2019). Therefore, the Council is modifying the AM in this final rule to require an in-season closure in any year during which NMFS projects that the ACL is met.

In the 2020 fishing year, lane snapper landings exceeded the stock ACL by 57,638 lb (26,144 kg). Therefore, consistent with the current AM, NMFS monitored landings in 2021 and closed the harvest of lane snapper on October 18, 2021, after determining that the ACL would be reached by that date (86 FR 54657; October 4, 2021). The ACL increase implemented through this final rule will allow NMFS to reopen harvest of lane snapper until the end of the current fishing year, December 31, 2021.

Management Measures Contained in This Final Rule

This final rule modifies the ACL for the Gulf lane snapper stock. It also modifies the AM to require NMFS to implement a closure during the current fishing year if landings meet or are projected to meet the revised ACL.

Annual Catch Limit

This final rule increases the lane snapper stock ACL from 301,000 lb (136,531 kg) to 1,028,973 lb (466,734 kg).

Accountability Measure

This final rule modifies the AM such that if annual landings in a given year reach or are projected to reach the revised ACL, NMFS will implement a seasonal closure to prohibit harvest of lane snapper by the commercial and recreational sectors for the remainder of the fishing year.

Measures Codified in This Final Rule Not in the Framework Action

In addition to the other measures contained in the framework action and as explained in the proposed rule, this final rule also corrects the NMFS Southeast Regional Office website address in the two sections of the regulations that specify permit requirements and make several administrative changes to NMFS's IFQ Program regulations.

Comments and Responses

NMFS received a total of 21 comments on the proposed rule for the framework action. NMFS acknowledges the comments in favor of the actions in the proposed rule and agrees with them. Some comments suggested changes to lane snapper management measures that were outside the scope of the proposed rule and framework action, such as increasing the minimum size limit, or implementing sector allocations. These comments are not addressed further in this final rule. Specific comments related to the proposed rule and the framework action are grouped by topic and addressed below.

Comment 1: NMFS should increase the lane snapper ACL but not as much as proposed.

Response: NMFS disagrees that the ACL should not be increased as much as proposed. As explained previously, the current ACL of 301,000 lb (136,531 kg) has been in effect since 2012, and is based on average landings from 1999 through 2008. The ACL implemented through this final rule is based on new information provided in the SEDAR 49 Update (2020), which indicated that the Gulf lane snapper stock size had increased and includes the MRIP–FES data. The conversion to MRIP–FES data accounts for approximately half of the increase in the ACL. Thus, after the conversion, the increase implemented in this action is slightly less than a doubling of the current catch limits. The increase in the stock ACL is also consistent with the Council's SSC recommended ABC.

Comment 2: NMFS should not implement an increase in the Gulf lane snapper ACL because lane snapper is not prevalent in some areas, the stock is just starting to improve its health, and NMFS was required to close harvest of lane snapper in in October 2021.

Response: NMFS, in collaboration with the Council, made decisions on the lane snapper catch limits based on the

most recent data on the stock status. Although the population of lane snapper in certain areas may not appear to have increased, NMFS has determined that the stock size of lane snapper has increased substantially Gulf-wide. The increase in the stock ACL for lane snapper is consistent with the result of the SEDAR 49 Update (2020), which is the best scientific information available, and the recommendation of the Council's SSC.

The inseason closure of Gulf lane snapper in October 2021 was based on the stock ACL in place prior to the publication of this final rule, not on any change in the stock's status. The increase in the ACL implemented through this final rule is based updated information on the size of the Gulf lane snapper stock and allows NMFS to reopen harvest to the commercial and recreational sectors through the end of the current fishing year. Therefore, NMFS disagrees that the recent inseason closure provides a basis to reject the increase in ACL recommended by the Council.

Reopening of the Lane Snapper Commercial and Recreational Sectors for the 2021 Fishing Year

For Gulf lane snapper, the stock ACL of 301,000 lb (136,531 kg) has been used for stock management prior to the implementation of this rule. Also, the AM effective prior to the publication of this final rule, as specified in 50 CFR 622.41(k), stated that if the sum of the commercial and recreational lane snapper landings exceeds the stock ACL during a fishing year, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, NMFS is required to close the commercial and recreational sectors for the remainder of that fishing year. In the 2020 fishing year, lane snapper landings exceeded the stock ACL by 57,638 lb (26,144 kg). For the 2021 fishing year, NMFS determined that the ACL in place at the time would be reached by October 18, 2021, and published a temporary rule that closed the fishing season for lane snapper in the Gulf EEZ through December 31, 2021 (86 FR 54657; October 4, 2021).

The new ACL of 1,028,973 lb (466,734 kg) implemented through this final rule, is effective upon publication in the **Federal Register**. Therefore, in accordance with 50 CFR 622.8(c), NMFS reopens the Gulf lane snapper fishing season through December 31, 2021, to provide the opportunity for commercial and recreational fishers to harvest the new stock ACL.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS issues the reopening pursuant to section 305(d) of the Magnuson-Stevens Act. That action is taken under 50 CFR 622.8(c), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act.

NMFS finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and an opportunity for public comment on the action to reopen harvest of lane snapper, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulation at 50 CFR 622.8(c) has already been subject to notice and public comment, and all that remains is to notify the public that additional harvest of lane snapper is available under the new ACL, and therefore, that the commercial and recreational sectors will reopen. Such procedures are contrary to the public interest because the fishing year ends on December 31, 2021, and notice and comment would not allow harvest to reopen before that time, which would reduce the social and economic benefits of this rule and the ability to achieve OY.

NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date for these regulations because delaying implementation of the ACL increase and reopening is contrary to the public interest. A delay in effectiveness is contrary to the public interest because it would not allow additional harvest before the end of 2021.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that the modifications to the lane snapper ACL and AM, and administrative changes to NMFS's IFQ Program regulations would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gulf, Individual fishing quota, Lane snapper, Quota, Reef fish.

Dated: December 17, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Effective January 24, 2022, in § 622.4, revise the fifth sentence in paragraph (g)(1) to read as follows:

§ 622.4 Permits and fees—general.

* * * * *

(g) * * *

(1) * * * Application forms and instructions for renewal are available online at *https://www.fisheries.noaa.gov/southeast/resources-fishing/permits-applications-and-forms-southeast* or from the RA (Southeast Permits Office) at 1–877–376–4877, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time. * * *

* * * * *

■ 3. Effective January 24, 2022, in § 622.20, revise the third sentence in paragraph (a)(1)(ii) to read as follows:

§ 622.20 Permits and endorsements.

(a) * * *

(1) * * *

(ii) * * * The application form and instructions are available online at *https://www.fisheries.noaa.gov/southeast/resources-fishing/permits-applications-and-forms-southeast.* * * *

* * * * *

■ 4. Effective January 24, 2022, in § 622.21:
■ a. Revise the second sentence in paragraph (a)(3)(i);
■ b. Revise the third sentence in paragraph (b)(1); and
■ c. Revise the first sentence in paragraphs (b)(11)(i) and (b)(11)(ii)(A) introductory text.

The revisions read as follows:

§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.

(a) * * *

(3) * * *

(i) * * * The computer must have current, up-to-date browser software installed, which may be downloaded from the internet for free. * * *

* * * * *

(b) * * *

(1) * * * An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for Gulf red snapper as specified in paragraph (a)(3)(i) of this section, online via the NMFS IFQ website *https://secatchshares.fisheries.noaa.gov/,* may establish a vessel account through that IFQ account for that permitted vessel. * * *

* * * * *

(11) * * *

(i) * * * A current participant in the red snapper IFQ program must complete and submit the application for an IFQ Account that is available on the website *https://secatchshares.fisheries.noaa.gov,* to certify status as a U.S. citizen or permanent resident alien. * * *

(ii) * * *

(A) To establish an IFQ account, a person must first complete the application for an IFQ Account that is available on the website *https://secatchshares.fisheries.noaa.gov.* * * *

* * * * *

■ 5. Effective January 24, 2022, in § 622.22:
■ a. Revise the second sentence in paragraph (a)(3)(i);
■ b. Revise the third sentence in paragraph (b)(1); and
■ c. Revise the first sentence in paragraph (b)(11)(i).

The revisions read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(3) * * *

(i) * * * The computer must have current, up-to-date browser software installed, which may be downloaded from the internet for free. * * *

* * * * *

(b) * * *

(1) * * * An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for the applicable species, as specified in paragraph (a)(3)(i) of this section, online via the NMFS IFQ website *https://secatchshares.fisheries.noaa.gov,* may establish a vessel account through that IFQ account for that permitted vessel. * * *

* * * * *

(11) * * *

(i) A current participant in the Gulf grouper and tilefish IFQ program must complete and submit the application for an IFQ Account that is available on the website *https://secatchshares.fisheries.noaa.gov,* to certify status as a U.S. citizen or permanent resident alien. * * *

* * * * *

■ 6. Effective December 23, 2021, in § 622.41, revise paragraph (k) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(k) *Lane snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in this paragraph (k), the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. The stock ACL for lane snapper is 1,028,973 lb (466,734 kg), round weight.

* * * * *

[FR Doc. 2021–27752 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XB640]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 19.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the 28.9-mt General category December 2022 subquota to the January through March 2022 subquota period. The adjusted General category January through March 2022 subquota is 49 mt. NMFS reminds General category participants that when the fishery reopens January 1, 2022, the daily retention limit will be one large medium or giant bluefin tuna (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) per vessel per day/trip. This action is intended to provide further opportunities for General category fishermen to participate in the January through March General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective January 1, 2022, through March 31, 2022.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Nicholas Velseboer, *nicholas.velsboer@noaa.gov,* 978–281–9260, or Thomas Warren, *thomas.warren@noaa.gov,* 978–281–9347.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General category quota is 555.7 mt. The General category baseline subquota for the January through March time-period is 29.5 mt.

Transfer of 19.5 mt From the December 2022 Subquota to the January Through March 2022 Subquota

Under § 635.27(a)(1)(ii), NMFS has the authority to transfer subquota from one time period to another time period through inseason action after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including in December 2021 and during the winter fishery in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Without a quota transfer from the December 2022 subquota period, the quota available for the January through March period would be 29.5 mt and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT remain available in the areas where General category permitted vessels operate. Transferring 19.5 mt of the 28.9-mt quota available for the December 2022 subquota period would result in 49 mt (29.5 mt + 19.5 mt = 49 mt) being available for the January through March 2022 subquota period. This quota transfer would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery at both the beginning and end of the calendar year.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS may adjust each period's subquota based on overharvest or underharvest in the prior period and may transfer subquota from one time period to another time period. By allowing for such quota adjustments and transfers, NMFS anticipates that the General category quota would be used before the end of the fishing year. For 2021, NMFS transferred 19.5 mt of quota from the December 2021 subquota period to the January through March 2021 subquota period, resulting in an adjusted subquota of 49 mt for the January through March 2021 period and an adjusted subquota of 9.4 mt for the December 2021 period (85 FR 83832, December 23, 2020). NMFS also made a transfer of 26 mt from the Reserve to the General category effective February 8, 2021, resulting in an adjusted subquota of 75 mt for the January through March 2021 period (86 FR 8717, February 9, 2021), and closed the General category fishery for the January through March subquota period effective February 27, 2021 (86 FR 12291).

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance. NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 17–06 and maintained in Recommendation 20–06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. While not yet implemented, NMFS anticipates this transfer would also be consistent with ICCAT Recommendation 21–07. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time-periods.

NMFS also anticipates that some underharvest of the 2021 adjusted U.S. BFT quota will be carried forward to 2022 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that NMFS may adjust each period's subquota based on overharvest or underharvest in the prior period, as well as NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2022 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2021. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2022, through active inseason management actions such as retention limit adjustments and/or the timing of quota transfers, as practicable.

Given these considerations, NMFS is transferring 19.5 mt of the available 28.9-mt General category quota allocated for the December 2022 period to the January through March 2022 period, resulting in an adjusted January through March 2022 subquota of 49 mt, and an adjusted December 2022 subquota of 9.4 mt. The General category fishery will remain open until March 31, 2022, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or the end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). However, at this time, NMFS is maintaining the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) for the January through March 2022 General category fishery. Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply beginning January 1, 2022), whether a vessel fishing under the General category limit takes a 2-day trip or makes two trips in 1 day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments (*e.g.,* quota adjustment, daily retention limit adjustment, or closure) are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice, an opportunity for public comment, and a delay in effective date regarding this quota transfer for the January through March 2022 subquota period is impracticable and contrary to the public interest. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available December 2021 data, in deciding to transfer a portion of the December 2022 subquota to the January through March 2022 subquota. If NMFS was to offer a public comment period or delay in effective date now, after having appropriately considered that data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. This action does not raise conservation and management concerns. Transferring quota within the General category does not affect the overall U.S. BFT quota, and the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 20, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–27898 Filed 12–20–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211217–0262; RTID 0648–XX072]

Fisheries of the Northeastern United States; 2022 and Projected 2023 Summer Flounder, Scup, and Black Sea Bass Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces 2022 and projected 2023 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species. This action is intended to inform the public of the specifications for the start of the 2022 fishing year for summer flounder, scup, and black sea bass.

DATES: This rule is effective January 1, 2022.

ADDRESSES: A Supplemental Information Report (SIR) was prepared for the 2022–2023 summer flounder, scup, and black sea bass specifications. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the internet at *https://www.mafmc.org/s/SFSBSB_2022-2023_specs_SIR_final.pdf.*

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas,

recreational harvest limit (RHL), and other management measures, for each species for 1 to 3 years at a time. This action implments 2022 and projects 2023 ABCs, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs for all three species, consistent with the recommendations made by the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) and the Council at their joint August 2021 meeting.

The Scientific and Statistical Committee (SSC) met on July 22, 2021, to review the results of the 2021 management track stock assessments and recommend 2022 and 2023 ABCs for all three species; specific recommendations are discussed below.

Final 2022–2023 Specifications

Summer Flounder Specifications

This action approves the Council and Board recommended 2022–2023 summer flounder catch and landings limits as shown in Table 1. The recommendations are based on the most recent (2021) stock assessment and the application of the Council's risk policy. For summer flounder, this results in a 22-percent increase in the recommended 2022 and 2023 ABC over the 2021 ABC. The proposed rule (November 24, 2021; 86 FR 67014) and Section 5.2 of the Council's SIR provides information on how the specifications were calculated.

TABLE 1—SUMMARY OF 2022 AND PROJECTED 2023 SUMMER FLOUNDER FISHERY SPECIFICATIONS

Specifications	Mil lb.	Metric ton
Overfishing Limit (OFL)	2022: 36.28 2023: 34.98	2022: 16,458 2023: 15,865
ABC	33.12	15,021
Commercial ACL = ACT	18.48	8,382
Commercial Quota	15.53	7,046
Recreational ACL = ACT	14.64	6,639
RHL	10.36	4,697

The final state summer flounder commercial quotas take into account any overages that occurred during the 2020 or current fishing year, through October 31, as described at 50 CFR 648.103(b)(2). The final 2022 state-by-state summer flounder commercial quotas are provided in Table 2.

TABLE 2—FINAL 2022 SUMMER FLOUNDER STATE-BY-STATE COMMERCIAL QUOTAS

State	Final 2022 quotas (lb)	Final 2022 quotas (mt)
ME	24,488	11.11
NH	19,990	9.07
MA	1,391,846	631.33
RI	2,238,216	1,015.24
CT	956,043	433.65
NY	1,470,779	667.13
NJ	2,337,728	1,060.38
DE	−19,173	−8.70
MD	935,226	424.21
VA	2,776,242	1,259.28
NC	3,361,569	1,524.78
Total	15,512,127	7,036.18

Note: Summed not including Delaware.

This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch (36-cm) total length), gear requirements, and possession limits. Changes to 2022 recreational management measures (bag limits, size limits, and seasons) are not considered in this action but will be considered by the Board and Council later this year when additional data are available for 2021.

Black Sea Bass Specifications

This action approves the Council and Board recommended 2022–2023 black sea bass catch and landings limits as shown in Table 3. The recommendations are based on the most recent (2021) stock assessment and the application of the Council's risk policy. This results in a 2022 black sea bass ABC that is an 8-percent increase compared to 2021 and a projected 2023 ABC that is a 5-percent decrease compared to 2021. The proposed rule and Section 5.2 of the Council's SIR provides information on how the specifications were calculated.

TABLE 3—2022 AND PROJECTED 2023 BLACK SEA BASS CATCH AND LANDINGS LIMITS

Specifications	2022		2023	
	Mil lb.	Metric ton	Mil lb.	Metric ton
OFL	19.26	8,735	17.01	7,716
ABC	18.86	8,555	16.66	7,557

TABLE 3—2022 AND PROJECTED 2023 BLACK SEA BASS CATCH AND LANDINGS LIMITS—Continued

Specifications	2022		2023	
	Mil lb.	Metric ton	Mil lb.	Metric ton
Expected Commercial Discards	3.63	1,649	3.21	1,456
Expected Recreational Discards	2.02	917	1.79	810
Commercial ACL = ACT	10.10	4,583	8.93	4,048
Commercial Quota	6.47	2,934	5.71	2,592
Recreational ACL = ACT	8.76	3,972	7.74	3,509
RHL	6.74	3,055	5.95	2,699

This action does not change the 2022 commercial management measures for black sea bass, including the commercial minimum fish size (11-inch (27.94-cm) total length) and gear requirements.

Scup Specifications

This action approves the Council and Board recommended 2022–2023 scup catch and landings limits as shown in Table 4. The recommendations are based on the most recent (2021) stock assessment and the application of the Council's risk policy. This results in a 2022 ABC that is 8 percent less than the 2021 ABC; the projected 2023 ABC is 15 percent less than the 2021 ABC. The proposed rule and Section 5.2 of the Council's SIR provides information on how the specifications were calculated.

TABLE 4—2022 AND PROJECTED 2023 SCUP CATCH AND LANDINGS LIMITS

Specifications	2022		2023	
	Mil lb.	Metric ton	Mil lb.	Metric ton
OFL	32.56	14,770	30.09	13,648
ABC	32.11	14,566	29.67	13,460
Expected Commercial Discards	4.67	2,117	5.28	2,394
Expected Recreational Discards	0.99	447	1.12	506
Commercial ACL = ACT	25.05	11,361	23.15	10,499
Commercial Quota	20.38	9,245	17.87	8,105
Recreational ACL = ACT	7.06	3,205	6.53	2,961
RHL	6.08	2,757	5.41	2,455

The commercial scup quota is divided into three commercial fishery quota periods, as outlined in Table 5.

TABLE 5—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2022 BY QUOTA PERIOD

Quota Period	Percent share	lb	mt
Winter I	45.11	9,194,201	4,170
Summer	38.95	7,938,686	3,601
Winter II	15.94	3,248,849	1,474
Total	100.0	20,381,736	9,245

The current quota period possession limits are not changed by this action and are outlined in Table 6.

TABLE 6—COMMERCIAL SCUP POSSESSION LIMITS BY QUOTA PERIOD

Quota period	Percent share	Federal possession limits (per trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 7.

TABLE 7—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF UNUSED SCUP ROLLED OVER FROM WINTER I TO WINTER II

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0–499,999	0–226,796	0	0	12,000	5,443
12,000	5,443	500,000–999,999	226,796–453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000–1,499,999	453,592–680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000–1,999,999	680,389–907,184	4,500	2,041	16,500	7,484
12,000	5,443	*2,000,000–2,500,000	907,185–1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500-lb (680-kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

This action does not change the 2022 commercial management measures for scup, including the minimum fish size (9-inch (22.9-cm) total length), gear requirements, and quota period possession limits. As with summer flounder and black sea bass, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2022 will be considered later this year when additional data are available for 2021.

Comments and Responses

We received one comment on the proposed rule (November 24, 2021; 86 FR 67014). The comment was from the State of New York and the New York State Department of Environmental Conservation (hereinafter referenced as ''New York''). New York's comment comprises a cover letter and seven attachments. The attachments were the comment letters and supporting documents that New York previously submitted in response to the proposed rule for the 2020–2021 Summer Flounder, Scup, Black Sea Bass, and Bluefish Specifications (84 FR 36046; July 26, 2019) and the proposed rule for Amendment 21 to the FMP (85 FR 48660; August 12, 2020). Similar to arguments made in ongoing litigation, New York contends that the revised allocations and resulting quotas are not in accordance with Magnuson-Stevens Act's National Standards 2, 4, 5, and 7. NMFS' responses to New York's previously submitted comments can be found in the final rules for those two actions (84 FR 54041; October 9, 2019, and 85 FR 80661; December 14, 2020) and are not repeated here. The state commercial summer flounder allocation formula is established in the regulations at 50 CFR 648.102(c), and as such must be followed in setting the quotas in this specifications action. Deviating from this formula would require a rulemaking to modify the current regulations, which is beyond the scope of this action.

Changes From the Proposed Rule

As described in the proposed rule, the summer flounder specifications in this final rule incorporate overage information to calculate the final state quotas that was not available previously.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements 2022 specifications for the summer flounder, scup, and black sea bass fisheries. These specifications should be effective by the start of the fishing year on January 1, 2022, and must be published on or before December 31, 2021.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the Council's submission of the SIR. NMFS received the final version of the SIR on November 5, 2021. Preparation of the final rule is also dependent on the analysis of commercial summer flounder landings for the prior fishing year (2020) and the current fishing year through October 31, 2021, to determine whether any overages have occurred and adjustments are needed to the final state quotas. This process is codified in the summer flounder regulations and, therefore, cannot be performed earlier. Annual publication of the summer flounder quotas prior to the start of the fishing year, by December 31, is required by Court Order in *North Carolina Fisheries Association* v. *Daley.*

The 30-day delay in implementation for this rule is also unnecessary because this rule contains no new measures (*e.g.,* requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices.This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to theChief Counsel for Advocacy of the Small Business Administration during the proposedrule stage that this action would not have a significant economic impact on a substantialnumber of small entities. The factual basis for the certification was published in theproposed rule and is not repeated here. No comments were received regarding thiscertification. As a result, a regulatory flexibility analysis was not required and none wasprepared.

This final rule contains no information collection requirements under thePaperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

[FR Doc. 2021–27773 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201204–0325]

RIN 0648–BL10

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2021–2022 Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial and recreational groundfish fisheries. This action is intended to allow commercial and recreational fishery participants to access more abundant groundfish stocks while protecting rebuilding stocks.

DATES: This final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Sean E. Matson, (206) 526–6140, email: *sean.matson@noaa.gov.*

ADDRESSES:

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021–2022 biennium for most species managed under the PCGFMP on December 11, 2020 (85 FR 79880). In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its meeting on November 15–22, 2021, the Council made recommendations for the 2022 fishing year, which included decreasing trip limits for the Limited Entry (LE) and Open Access (OA) fixed gear (FG) sablefish, Daily Trip Limit (DTL) fisheries north of 36° N latitude. The Council also recommended increasing trip limits for the fixed gear lingcod fishery, north of 42° N latitude (LE and OA), beginning January 1, 2022, and for the remainder of the 2022 fishing year unless superseded by a subsequent action. Additionally, the Council recommended new sub-bag limits and sub-trip limits, in recreational and non-trawl commercial fisheries respectively, for two nearshore species, quillback rockfish and copper rockfish, as well as the shelf species vermillion rockfish.

Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also recommends management measures (*e.g.,* trip limits, area closures, and bag limits) that are meant to manage catch so as not to exceed the harvest specifications. The harvest specifications and management measures developed for the 2021–2022 biennium used data through the 2020 fishing year. Each of the adjustments to management measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data become available, projected impacts of management measures are updated, and the management measures themselves may need to be adjusted so as to help harvesters achieve but not exceed the harvest limits.

Sablefish (*Anoplopoma fimbria*) is an important commercial species on the West Coast, targeted by vessels using both bottom trawl and fixed gear (longlines and pots/traps). The sablefish stock is managed with a coast-wide OFL and ABC, but with separate ACLs north and south of 36° N latitude. In 2022, the ACL for sablefish north of 36° N latitude is 6,566 metric tons (mt) with a fishery HG of 5,872 mt. The fishery HG north of 36° N latitude is further divided between the LE FG and OA sectors with 90.6 percent, or 5,320 mt, allocated to the LE sector and 9.4 percent, or 552 mt, allocated to the OA sector. The LE share is divided so that 58 percent is allocated to trawl and 42 percent is allocated to FG. The LE FG share is further divided between the sablefish primary (tier) fishery (85% or 1,899 mt) and the daily trip limit (DTL) fisheries (15% or 335 mt), as shown in Table 2c to title 50, part 660, subpart C. The sablefish DTL fisheries are individually managed using landing targets (Table 1), which have accounted for discard mortality a priori, by subtracting 4.5 percent from the DTL catch share. This same method of accounting for discard mortality to calculate the landing target is also used in managing the OA sablefish DTL fishery, north of 36° N latitude (Table 1).

Lingcod (*Ophiodon elongates*) is another important commercial species on the West Coast, and like sablefish, caught by vessels with both trawl and fixed gear (longlines and pots/traps). The lingcod stock is managed separately north and south of 40°10′ N latitude, with a northern ACL of 4,958 mt in 2022, a fishery HG of 4,679.6 mt, and a northern trawl fixed gear allocation of 2,105.8, or 45 percent of the HG, and a northern non-trawl allocation of 2,573.8, or 55 percent. Lingcod north of 40°10′ N latitude are additionally managed north and south of 42° N latitude, typically with different trip limits set north and south of that management line.

Quillback rockfish (*Sebastes maliger*) off California (CA), are currently managed as part of the Minor Nearshore Rockfish complex, which is split north and south of 40°10′ N latitude. A stock assessment conducted in 2021 indicated the stock is not healthy, and interim measures to reduce mortality are warranted while broader measures are being developed as part of the 2023–2024 groundfish biennial harvest specifications and management

measures. For 2022, the Minor Nearshore Rockfish complex south of 40°10′ N latitude has an ACL of 1,010 mt, with a contribution ACL value for quillback rockfish of 4.18 mt. The Minor Nearshore Rockfish complex north of 40°10′ N latitude has an ACL of 93.4 mt, with a contribution ACL value for quillback rockfish of 9.74 mt. Quillback rockfish are caught in both recreational and commercial fisheries; while considered a deeper nearshore rockfish species, commonly found in waters shallower than 30 fathoms, they can be encountered in deeper waters, and depth-based encounter rates are largely driven by depth restrictions on the fishery. The Minor Nearshore Rockfish complexes, including quillback rockfish, are managed using trip limits in the commercial fixed gear fishery and bag limits in recreational fishery.

Copper rockfish (*Sebastes caurinus*) off CA are also currently managed as part of the Minor Nearshore Rockfish complex, south of 40°10′ N latitude; as well as the Minor Nearshore Rockfish complex north of 40°10′ N latitude, but only in the area between 42° and 40°10′ N latitude. Copper rockfish are a deeper nearshore rockfish species, but can commonly be found both in shallow nearshore waters, as well as deeper waters considered as the ''shelf.'' They are caught in both recreational and commercial fisheries. Copper rockfish were also the subject of a 2021 stock assessment which indicated localized depletion within the stock off California. For 2022, the Minor Nearshore Rockfish complex, south of 40°10′ N latitude has an ACL of 1,233.2 mt, and copper rockfish has a component ACL of 202 mt within the southern complex. The Minor Nearshore Rockfish complex, north of 40°10′ N latitude has an ACL of 77 mt, and copper rockfish has an ACL contribution of 8.06 mt within the northern complex.

Vermillion rockfish (*Sebastes miniatus*) off CA are currently managed as part of the Minor Shelf Rockfish complex, south of 40°10′ N latitude; as well as the Minor Shelf Rockfish complex north of 40°10′ N latitude, but only in the area between 42° and 40°10′ N lat. For 2022, the southern complex has an ACL of 1,428 mt, and vermillion has an ACL contribution of 209.5 mt; the northern complex has an ACL of 1,450 mt, and vermillion has an ACL contribution of 7.6 mt within it.

Request, Analysis, and Council Recommendation

Sablefish

At the November 2021 Council meeting, the Council's Groundfish Management Team (GMT) analyzed updated fishery data, and produced model-based projections for the fixed gear, LE and OA DTL fisheries north of 36° N lat., for the 2022 fishing year. Model projections for 2022 using the current sablefish trip limits in regulation indicated that catch would dramatically exceed target levels, unless lower limits were adopted. The GMT modeled lower alternative trip limits, uniformly distributed among bimonthly periods throughout the year, as requested by the Groundfish Advisory Subpanel (GAP).

The intent of setting sablefish trip limits is to optimize harvest opportunities, within each annual sector target, for vessels targeting sablefish, under a mix of daily, weekly, and bimonthly landings accumulation limits (commonly referred to collectively as ''trip limits''). To evaluate potential decreases to sablefish trip limits, the GMT made model-based projections of landings under current regulations, as well as alternative sablefish trip limits, including the limits ultimately recommended by the Council, throughout the year in 2022. Table 1 shows the projected sablefish landings, the sablefish harvest targets, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits. These projections were based on the most recent catch information available through early November 2021. Industry did not request changes to sablefish trip limits for the LE or OA DTL fisheries south of 36° N latitude. Therefore, NMFS and the Council did not consider changes for those fisheries.

As shown in Table 1, under the current trip limits, models predict that landings of sablefish would be far above the harvest targets for LE fixed gear sablefish DTL fishery north of 36° N lat., at approximately 236 percent attainment, under an average price assumption. Under the Council's recommended trip limits, sablefish attainment is projected to be within the sector target, in the LE DTL fishery north of 36° N latitude, at approximately 99 percent attainment under an average price assumption.

The GMT modeled trip limit options for the OA DTL fishery, north of 36° N latitude which were somewhat lower than the LE trip limits. OA trip limits are typically set lower than in LE, maintaining a higher level of access per vessel for those fishing under a limited entry permit. Trip limits being somewhat lower in the OA fishery also helps to buffer against sometimes high variability in participation, a feature typically not present in the LE fishery. As shown in Table 1, under the current trip limits, models predict approximately 74 percent attainment, under an average price assumption for OA fixed gear sablefish DTL fishery north of 36° N lat. Under the Council's recommended trip limits, sablefish attainment is projected at approximately 70 percent attainment (under the same price structure). In this case, the lower projected attainment may also provide something of a buffer, given the higher uncertainty of the OA model, compared with the LE model, and historic potential for volatility in the OA fishery.

Table 1 -- Projected landings of sablefish, north of 36° N. lat., sablefish harvest target, and projected percentage of sablefish attained through the end of 2021 by fishery and trip limit

Fishery	Option	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec	Projected Landings (mt)	Landing Target (mt)	Projected Attainment (Percent)
LE FG DTL North of 36° N. lat.	Current	1,700 lb (771 kg)/week, not to exceed 5,100 lb (2,313 kg)/2 months				4,500 lb (2,041 kg)/week, not to exceed 9,000 lb (4,082 kg)/2 months		792	336	236
	Recommended	2,400 lb (1,089 kg)/week, not to exceed 4,800 lb (2,177 kg)/2 months						334		99
OA FG DTL North of 36° N. lat.	Current	600 lb (272 kg)/day, or 1 landing/week up to 2,000 lb (907 kg), not to exceed 4,000 lb (1,814 kg)/2 months				600 lb (272 kg)/day, or 1 landing/week up to 3,000 lb (1,361 kg), not to exceed 6,000 lb (2,722 kg)/2 months		409	553	74
	Recommended	600 lb (272 kg)/day, or 1 landing/week up to 2,000 lb (907 kg), not to exceed 4,000 lb (1,814 kg)/2 months						387		70

Lingcod

The Council also recommended changes to trip limits in 2022 for lingcod north of 42° N latitude, after request from industry and analysis by the GMT. Trip limit increases were recommended to provide additional opportunity and increase attainment (current lingcod attainment in 2021 is just 17 percent of the ACL), as well as minimize regulatory discard because trip limits are being met by vessels in the first few weeks of the bimonthly period, which results in waste and lost revenue. Table 2 shows the current and recommended trip limits for lingcod north of 42° N latitude. Table 3 shows the projected impacts of those limits to total mortality, and percent attainment of the non-trawl allocation, north of 42° N latitude. Projected impacts to lingcod fishing mortality from the recommended trip limits are approximately 3.5 percent higher than for current limits. Based on the analysis by the GMT, the higher landing limits are predicted to convert fish that would otherwise be discarded, into landings and revenue, rather than incentivize additional effort. By maintaining a very similar level of effort, and total fishing mortality, this modest increase in trip limits is predicted to increase bycatch of yelloweye rockfish by only a trace amount (<0.03 mt). Yelloweye rockfish is managed under a rebuilding plan, and is a constraint to fixed-gear lingcod attainment.

TABLE 2—CURRENT AND RECOMMENDED TRIP LIMITS FOR LINGCOD NORTH OF 42° N LATITUDE

Option	Fishery	Area	Jan–Feb	Mar–Apr	May–Jun	Jul–Aug	Sep–Oct	Nov–Dec
Current	LE	N of 42° N lat.	4,000 lb (1,814 kg)/2 months				5,000 lb (2,268 kg)/2 months	
	OA		2,000 lb (907 kg)/month				2,500 lb (1,134 kg)/month	
Recommended	LE		5,000 lb (2,268 kg)/2 months					
	OA		2,500 lb (1,134 kg)/month					

TABLE 3—PROJECTED IMPACTS FOR CURRENT AND RECOMMENDED TRIP LIMITS, COMPARED TO THE NON-TRAWL ALLOCATION FOR LINGCOD NORTH OF 42° N LATITUDE

Option	Sector	Area	Mortality estimate (mt)	LE + OA (mt)	Non-trawl allocation (mt)	Attainment of allocation (percent)
Current	LE	North of 42° N lat	25.8	106.1	2,799.8	3.8
	OA		80.3			
Recommended	LE		27.5	109.9	2,799.8	3.9
	OA		82.4			

Quillback, Copper, and Vermillion Rockfish

The California Department of Fish and Wildlife (CDFW) recommended in the November 2021 PFMC meeting that the Council take inseason action to reduce fishing mortality of quillback, copper, and vermillion rockfish off of California (CA). The recommendation is in response to results of the recent stock assessments. Additionally, CDFW recommended that the Council reduce the existing recreational sub-bag limit of vermillion rockfish, due to recent high catches of this species, south of 40°10′ N lat. The Council, in response, recommended the following inseason changes to non-trawl fisheries off California for 2022, with the goal of reducing total mortality for quillback rockfish, copper rockfish, and vermilion rockfish.

Quillback Rockfish

CDFW staff analyzed potential management measure changes to reduce total fishing mortality of quillback rockfish off CA in both recreational and commercial fisheries, in response to results of the 2021 stock assessment. A range of new quillback-specific sub-trip limits were analyzed in order to reduce fishing mortality in the commercial fishery; current and recommended commercial options appear in Table 4.

For the recreational fishery, analysts examined changes to recreational regulations for quillback rockfish that would minimize impacts on fishing opportunities for other groundfish species, applying depth-dependent discard mortality rates for those fish discarded in excess of a recommended sub-bag limit, assuming the existing season by area fishery structure, and maintaining the current mixed species (*i.e.,* Minor Nearshore Rockfish complex) total bag limit of rockfish of 10 fish. Quillback rockfish are caught in recreational fisheries as a small part of a mixed species bag, and more than 50 percent of anglers who catch quillback, catch only one fish.

Results from the CDFW analysis of current regulations and of measures recommended by the Council appear in Table 4. Combined recommended management measures, between recreational and commercial fisheries statewide, were predicted to result in a 1.6 mt, or 12 percent reduction in estimated total fishing mortality. CDFW also plans to add quillback rockfish to the list of species with additional tracking effort, including frequent inseason projections, to make up for reporting lags, and produce estimates of catch to the current date, to accurately inform future inseason actions, if necessary.

TABLE 4—COMBINED PROJECTED RECREATIONAL AND COMMERCIAL IMPACTS STATEWIDE, FOR QUILLBACK ROCKFISH BASED ON COMBINATIONS OF CURRENT, AND RECOMMENDED MANAGEMENT MEASURES FOR BOTH COMMERCIAL AND RECREATIONAL FISHERIES (MT, TOTAL PROJECTED MORTALITY) *

Fishery/option	Commercial	
	Current—no sub-trip limit	Recommended—statewide 75 lb (34 kg)/2 months
Recreational:		
Current—no sub-bag limit	13.5	14
Recommended—statewide one fish sub-bag limit	11.4	11.9

* For example, the projection of the total mortality of quillback rockfish that corresponds to implementation of Council-recommended options, including both commercial and recreational catch, appears in the lower right cell (11.9 mt).

Council recommendations for quillback rockfish off CA included:

- Sub-bag limit of one quillback rockfish in the CA recreational fishery.
- Minor nearshore rockfish trip limits between 42°–40° 10′ N lat. of 2,000 lb/2 months, of which no more than 75 lb (34 kg) can be quillback rockfish.
- Deeper nearshore rockfish sub-trip limits south of 40° 10′ N lat. will be 2,000 lb/2 months, of which no more than 75 lb (34 kg) can be quillback rockfish.

Copper Rockfish

CDFW staff analyzed potential management measure changes to reduce total fishing mortality of copper rockfish off CA in both recreational and commercial fisheries in 2022, in response to results of the 2021 stock assessment. Copper rockfish are managed as part of the same nearshore rockfish complexes as quillback, are an important part of the same commercial and recreational fisheries as quillback, and the analysis was approached in similar fashion.

Copper rockfish is a popular recreational species, also caught as part of a mixed species bag. Similar to quillback rockfish, analysts examined changes to recreational regulations to reduce total fishing mortality of copper rockfish without disproportionately impacting fishing opportunities for other rockfish species, applying depth-dependent discard mortality rates for those fish discarded in excess of a recommended sub-bag limit, assuming

the existing season by area fishery structure, and maintaining the current mixed species, total bag limit of rockfish of 10 fish.

In the commercial fishery, like quillback, copper rockfish is also part of deeper nearshore fisheries managed using permits, and nearshore rockfish complex trip limits, in areas between 42° and 40° 10′ N lat., and south of 40° 10′ N lat., caught with limited entry fixed, and open access gears. A range of new copper-specific sub-trip limits were analyzed in order to reduce fishing mortality in the commercial fishery.

Results from the CDFW analysis of current regulations in addition to measures recommended by the Council appear in Table 5. Combined recommended management measures, between recreational and commercial fisheries statewide, were predicted to result in a 50 mt, or 25 percent reduction in estimated total fishing mortality. CDFW also plans to add copper rockfish to the list of species with additional tracking effort, including frequent inseason projections, to make up for reporting lags, and produce estimates of catch to the current date.

TABLE 5—COMBINED PROJECTED RECREATIONAL AND COMMERCIAL IMPACTS FOR COPPER ROCKFISH STATEWIDE, BASED ON COMBINATIONS OF CURRENT, AND RECOMMENDED MANAGEMENT MEASURES FOR BOTH RECREATIONAL AND COMMERCIAL FISHERIES (MT, TOTAL PROJECTED MORTALITY) *

Fishery/option	Commercial	
	Current—no sub-trip limit	Recommended—statewide 75 lb (34 kg)/2 months
Recreational:		
Current—no sub-bag limit	202	195.9
Recommended—statewide one fish sub-bag limit	158.2	152.2

* For example, the projection that corresponds to implementation of Council-recommended options for both commercial and recreational appears in the lower right cell (152.2 mt).

Council recommendation:

- A (new) sub-bag limit of one copper rockfish in the California recreational fishery.
- Minor nearshore rockfish trip limits between 42°–40° 10′ N lat. will be 2,000 lb/2 months, of which no more than 75 lb (34 kg) can be copper rockfish.
- Deeper nearshore rockfish sub-trip limits south of 40° 10′ N lat. will be 2,000 lb/2 months, of which no more than 75 lb (34 kg) can be copper rockfish.

Vermilion Rockfish

Current estimates of total catch of vermilion rockfish south of 40°10′ N lat. in 2021 equal 228.7 mt, which translates to 109 percent of the ACL contribution to the complex ACL. CDFW and the Council expect total catch of vermilion rockfish in 2022 to be similar to 2021. Vermillion rockfish is primarily taken in the recreational fishery, and catch projections were made by CDFW staff. Projections for status quo, and the recommended action appear in Table 6. The recommended action is projected to reduce catch of vermillion rockfish south of 40°10′ N lat. to within the OFL contribution (Table 6), and bring it closer to within the ACL contribution value.

TABLE 6—COMBINED PROJECTED RECREATIONAL AND COMMERCIAL IMPACTS FOR VERMILLION ROCKFISH STATEWIDE, BASED ON ALTERNATIVE MANAGEMENT MEASURES (CURRENT AND RECOMMENDED) FOR RECREATIONAL FISHERIES (MT, TOTAL PROJECTED MORTALITY) *

Fishery/option	Commercial catch (current, mt)	Difference between bag limits	2022 OFL contribution	Percent of OFL contribution	2022 ACL contribution	Percent of ACL contribution
Recreational:						
Current: statewide 5-fish sub-bag limit	270.5		269.3	100.4	209.5	129.1
Recommended: 4-fish sub-bag limit	251.2	19.3		93.3		119.9

* For example, projected combined catch, assuming the Council-recommended option for recreational fisheries, together with the current commercial limits, appears in row two, column one (251.2 mt, which corresponds to 93.3 percent attainment of the OFL contribution).

Council recommendation:

- Reduce the vermilion rockfish five fish sub-bag limit, to four fish, in the CA recreational fishery.

Summary of Changes

Trip limit decreases for sablefish are intended to reduce attainment of the LE and OA DTL fisheries to within their respective fishery targets in the coming 2022 fishing year. Both fisheries contribute to attainment of the non-trawl HG for sablefish north of 36° N latitude, and maintaining these fisheries' catch levels within their specific targets is important to preserving compliance with the harvest guideline and ACL for this highly economically important and typically highly attained species. The trip limit decreases do not change projected impacts to co-occurring rebuilding species as analyzed in the 2021–2022 harvest specifications because the projected impacts to those species assume that the entire sablefish ACL is harvested.

Recommended increases to lingcod north of 42° N latitude are intended to both increase fisher opportunity, and convert regulatory discards into landings and associated revenue, and are not predicted to increase effort or bycatch of co-occurring rebuilding species by more than a trace amount (<0.03 mt of yelloweye rockfish). Therefore, the Council recommended, and NMFS is implementing, by modifying Table 2, North and South to part 660, subpart E, trip limit changes for the LEFG fishery north of 40°10′ N lat., as well as Table 3, North and South to part 660, subpart F to increase the limits as shown in Table 1 (sablefish), and Table 2 (lingcod) in this rule.

Recommended commercial sub-trip limits for quillback, copper, and vermillion rockfish are intended to reduce fishing mortality off CA, due to new information from stock assessments that indicate overfishing in the case of quillback rockfish, precautionary status in the case of copper rockfish, as well as expected repeated exceedance of the ACL and OFL contribution reference points, as during 2015–2019 and 2021 for vermillion rockfish. Therefore, the Council recommended and NMFS is implementing, changes by modifying Table 2, South to part 660, subpart E, as well as Table 3, South to part 660, subpart F, as shown in tables 4, 5 and 6 in this rule.

Recommended recreational sub-bag limits for quillback, copper, and vermillion rockfish are intended to reduce fishing mortality for those stocks off CA in 2022, due to new stock assessments for this species. Therefore, the Council recommended and NMFS is implementing these changes by modifying 50 CFR 660.360(c)(3)(ii)(B) the changes shown in table 6 in this rule.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Dr. Sean Matson in the West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document modify trip limits for fisheries off of Washington, Oregon, and California to keep catch within allocations. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021–2022 harvest specifications and management measures which published on December 11, 2020 (85 FR 79880).

As stated earlier, the Council recommended reduced sablefish limits for 2022 to keep catch within harvest targets and allocations for their respective fisheries, and within the ACL. New information became available at the November 2021 Council meeting showing that updated 2022 catch projections using the most recent available data were much higher than projections made during the harvest specifications process due to a combination of changing fishery conditions, and trip limit changes made during the 2021 fishing year.

The updated trip limits being implemented in this rule are anticipated to provide for landings and fishing community revenue, while maintaining harvest within scientifically informed conservation limits, concomitant with the goals of the Magnuson Stevens Act.

The Council recommended increased lingcod landing limits to provide additional fisher opportunity and discourage regulatory discard. New information became available at the November 2021 Council meeting indicating that low attainment of lingcod could be somewhat improved in 2022 by increasing landing limits, without attracting undue additional effort, and while discouraging regulatory discard. Implementing the recommended trip limits is projected to ameliorate this, increase attainment rate of the allocation, and enable additional fish to be landed rather than wasted, producing more fisher and community revenue.

Additionally, the Council recommended new sub-bag limits, and sub-trip limits in recreational and commercial fisheries, respectively, for three nearshore rockfish species: Quillback rockfish, copper rockfish, and vermillion rockfish. These changes are necessary to reduce fishing mortality of the three stocks, in order to address recent unfavorable stock biomass as demonstrated through new stock assessments (quillback and copper rockfish), and to reduce catch to within management reference points (vermillion rockfish).

Delaying implementation to allow for public comment would, in the case of lingcod, reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry because it is unlikely the new regulations would in that case publish and be implemented before the beginning of the 2022 calendar year. For sablefish, quillback rockfish, copper rockfish, and vermillion rockfish off of California, delaying implementation could cause conservation issues, and unsustainable harvest at the levels established in the past, using what is now out of date information. Therefore, providing a comment period for this action could both significantly limit the economic benefits to the fishery, and at the same time hamper the adherence to scientifically informed reference points, created to ensure sustainability of the affected fisheries.

Therefore, the NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document were requested by the Council's advisory bodies, as well as members of industry during the Council's November 2021 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2021–2022 (85 FR 79880; December 11, 2021).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

Dated: December 20, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Revise Table 2 (North) to part 660, subpart E, to read as follows:

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 12/1/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	40 fm line[1/] - 100 fm line[1/]					
3		30 fm line [1/]- 40 fm line [1/2/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[3/] & Darkblotched rockfish**	8,000 lb/ 2 month					
5	**Pacific ocean perch**	3,600 lb/ 2 months					
6	**Sablefish**	2,400 lb /week, not to exceed 4,800 lb /2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[4/8/]**	10,000 lb/ month					
10							
11							
12	**Whiting**	10,000 lb/ trip					
13	**Minor Shelf Rockfish[3/]**	800 lb / month					
14	**Shortbelly Rockfish**	200 lb / month					
15	**Widow rockfish**	4,000 lb/ 2 month					
16	**Yellowtail rockfish**	3,000 lb/ month					
17	**Canary rockfish**	3,000 lb/ 2 months					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish [5/]**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat.	2,000 lb / 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
22	**Lingcod[6/]**						
23	North of 42°00' N. lat.	5,000 lb/ 2 months					
24	42°00' N. lat. - 40°10' N. lat.	2, 000 lb/2 months					
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb / 2 months		150,000 lb / 2 months	100,000 lb / 2 months		
27	**Longnose skate**	Unlimited					
28	**Other Fish[7/]& Cabezon in California**	Unlimited					
29	**Oregon Cabezon/Kelp Greenling**	Unlimited					
30	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.(46°38.17' N. lat.),

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

■ 3. Revise Table 2 (South) to part 660, subpart E, to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 12/1/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope rockfish[2/] & Darkblotched**	40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**	40,000 lb/ 2 months					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	2,400 lb /week, not to exceed 4,800 lb /2 months					
8	South of 36°00' N. lat.	2,500 lb/ week					
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**						
11	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12	South of 34°27' N. lat.	3,000 lb/ 2 months					
13 14 15	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	10,000 lb/ month					
16	**Whiting**	10,000 lb/ trip					
17	**Minor Shelf Rockfish[2/]**						
18	40°10' N. lat. - 34°27' N. lat.	8,000 lb. / 2 months, of which no more than 500 lb. may be vermilion					
19	South of 34°27' N. lat.	5,000 lb. / 2 months, of which no more than 3,000lb. may be vermilion					
20	**Widow**						
21	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
22	South of 34°27' N. lat.	8,000 lb. / 2 months					
23	**Chilipepper**						
24	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
25	South of 34°27' N. lat.	8,000 lb. / 2 months					
26	**Shortbelly Rockfish**						
27	South of 40°10' N. lat.	200 lb/ month					
28	**Canary rockfish**	3,500 lb/ 2 months					
29	**Yelloweye rockfish**	CLOSED					
30	**Cowcod**	CLOSED					
31	**Bronzespotted rockfish**	CLOSED					
32	**Bocaccio**	6,000 lb/ 2 months					
33	**Minor Nearshore Rockfish**						
34	Shallow nearshore[4/]	2,000 lb/ 2 months					
35	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
36	**California Scorpionfish**	3,500 lb/ 2 months					
37	**Lingcod[6/]**	1,600 lb / 2 months					
38	**Pacific cod**	1,000 lb/ 2 months					
39	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
40	**Longnose skate**	Unlimited					
41	**Other Fish[7/] & Cabezon in California**	Unlimited					
42	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

■ 4. Revise Table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

12/1/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	40 fm line[1/] - 100 fm line[1/]					
3		30 fm line [1/]- 40 fm line [1/2/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[3/] & Darkblotched rockfish**	2,000 lb / months					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	600 lb/day, or 1 landing /week up to 2,000 lb, not to exceed 4,000 lb / 2 months					
7	**Shortpine thornyheads**	50 lb/month					
8	**Longspine thornyheads**	50 lb/month					
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[4/8/]**	5,000 lb/ month					
10							
11							
12	**Whiting**	300 lb/ month					
13	**Minor Shelf Rockfish[3/]**	800 lb / month					
14	**Widow rockfish**	2,000 lb/ 2 months					
15	**Shortbelly Rockfish**	200 lb / month					
16	**Yellowtail rockfish**	1,500 lb/ month					
17	**Canary rockfish**	1,000 lb/ 2 months					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[5/]					
21	42°00' N. lat. - 40°10' N. lat.	2,000 lb / 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
22	**Lingcod[6/]**						
23	North of 42°00' N. lat.	2,500 lb/ month					
24	42°00' N. lat. - 40°10' N. lat.	1,000 lb / month					
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Longnose skate**	Unlimited					
28	**Big skate**	Unlimited					
29	**Other Fish[7/] & Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
32	North	*Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.*					
33	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
34	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

■ 5. Revise Table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 12/1/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**	200 lb/ month					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	600 lb/day, or 1 landing /week up to 2,000 lb, not to exceed 4,000 lb/2 months					
8	South of 36°00' N. lat.	2,000 lb/week, not to exceed 6,000 lb/2 months					
9	**Shortpine thornyheads**						
10	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
11	**Longspine thornyheads**						
12	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine**						
14	South of 34°27' N. lat.	100 lb/day, no more than 1,000 lb/ 2 months					
15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	5,000 lb/ month					
18	**Whiting**	300 lb/ month					
19	**Minor Shelf Rockfish[2/]**						
20	40°10' N. lat. - 34°27' N. lat.	4,000 lb. / 2 months, of which no more than 400 lb. may be vermilion					
21	South of 34°27' N. lat.	3,000 lb. / 2 months, of which no more than 1,200lb. may be vermilion					
22	**Widow**						
23	40°10' N. lat. - 34°27' N. lat.	6,000 lb. / 2 months					
24	South of 34°27' N. lat.	4,000 lb. / 2 months					
25	**Chilipepper**						
26	40°10' N. lat. - 34°27' N. lat.	6,000 lb. / 2 months					
27	South of 34°27' N. lat.	4,000 lb. / 2 months					
28	**Shortbelly Rockfish**						
29	South of 40°10' N. lat.	200 lb/ month					
22	**Canary rockfish**	1,500 lb/ 2 months					
23	**Yelloweye rockfish**	CLOSED					
24	**Cowcod**	CLOSED					
25	**Bronzespotted rockfish**	CLOSED					
26	**Bocaccio**	4,000 lb/ 2 months					
30	**Minor Nearshore Rockfish**						
31	Shallow nearshore[4/]	2,000 lb/ 2 months					
32	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
33	**California Scorpionfish**	3,500 lb/ 2 months					
34	**Lingcod[6/]**	700 lb / months					
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Big skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/24/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
40	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
41	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
42	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
43	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
44	South of 40°10' N. lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40o10' and 34o27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
45	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
46	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
47	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
48	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
49	*South of 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
50		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38o57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
51	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
52	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

■ 6. In § 660.360, revise paragraph (c)(3)(ii)(B) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex. The bag limit is 10 RCG Complex fish per day coastwide, with a sub-bag limit of 4 fish for vermilion rockfish, 1 fish for quillback rockfish, and 1 fish for copper rockfish. These sub-bag limits count towards the bag limit for the RCG Complex and are not in addition to that limit. Retention of yelloweye rockfish, bronzespotted rockfish, and cowcod is prohibited. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the value of days in the fishing trip.

* * * * *

[FR Doc. 2021–27901 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 86, No. 244
Thursday, December 23, 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 ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0018]

RIN 1904–AE46

Energy Conservation Program: Test Procedure for Direct Expansion-Dedicated Outdoor Air Systems

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') is publishing a supplemental notice of proposed rulemaking (''SNOPR'') to establish a test procedure for direct-expansion dedicated outdoor systems (''DX–DOASes'') pursuant to the Energy Policy and Conservation Act, as amended. This document presents an updated proposal based on stakeholder feedback received in response to the July 7, 2021, notice of proposed rulemaking. DOE is revising its proposals regarding the terminology used to describe the equipment at issue and to provide additional direction for testing equipment with special components. DOE welcomes written comment from the public on any subject within the scope of this document, as well as the submission of data and other relevant information.

DATES: *Comments:* DOE will accept written comments, data, and information regarding this SNOPR on or before January 24, 2022. See section V, ''Public Participation,'' for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–TP–0018, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.*

2. *Email:* to *CommACHeatingEquipCat2017TP0018@ee.doe.gov.* Include docket number EERE–2017–BT–TP–0018 in the subject line of the message.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document (Public Participation).

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus (COVID–19) pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting/webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *www.regulations.gov/docket/EERE-2017-BT-TP-0018.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V (Public Participation) for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the webinar, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains its proposal to incorporate by reference the following industry standards into title 10 of the Code of Federal Regulations (''CFR'') part 431:

Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 920–2020 (I–P), ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units,'' approved February 4, 2020.

AHRI Standard 1060–2018, ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' approved 2018.

Copies of AHRI Standard 920–2020 (I–P), and AHRI Standard 1060–2018 can be obtained from the Air-conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: *www.ahrinet.org/.*

ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009.

ANSI/ASHRAE Standard 41.1–2013, ''Standard Method for Temperature Measurement,'' ANSI approved January 30, 2013.

ANSI/ASHRAE Standard 41.6–2014, ''Standard Method for Humidity Measurement,'' ANSI approved July 3, 2014.

ANSI/ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI approved January 30, 2013.

Copies of ANSI/ASHRAE Standard 37–2009, ANSI/ASHRAE Standard

41.1–2013, ANSI/ASHRAE Standard 41.6–2014, and ANSI/ASHRAE Standard 198–2013 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 180 Technology Parkway, Peachtree Corners, GA 30092, (404) 636–8400, or online at: *www.ashrae.org.*

See section IV.M of this document for a further discussion of these standards.

Table of Contents

I. Authority and Background

A. Authority

The Energy Policy and Conservation Act (''EPCA''),[1] as amended, among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C [2] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) DOE has initially determined that commercial package air conditioning and heating equipment includes unitary dedicated outdoor air systems (''Unitary DOASes'').[3] As discussed in section I.B of this document, these equipment have not previously been addressed in DOE rulemakings and are not currently subject to Federal test procedures or energy conservation standards.

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, the statute also sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedure prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including commercial package air conditioning and heating equipment to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures not to be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

As discussed in section I.B of this document, a test procedure for DX–DOASes was first specified by ASHRAE Standard 90.1 in the 2016 edition (''ASHRAE Standard 90.1–2016''). Pursuant to 42 U.S.C. 6314(a)(4)(B) and following updates to the relevant test procedures which were referenced in

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] As discussed in section III.A of this SNOPR, DOE is proposing to use the terms DX–DOAS and Unitary DOAS in this SNOPR, in place of the terms ''dehumidifying direct expansion-dedicated outdoor air systems'' and ''DX–DOAS'', respectively, which were used in the July 2021 NOPR.

ASHRAE Standard 90.1, DOE is conducting this rulemaking to establish a test procedure for DX–DOASes in satisfaction of its aforementioned obligations under EPCA.

B. Background

From a functional perspective, Unitary DOASes operate similarly to other categories of commercial package air conditioning and heat pump equipment, in that they provide conditioning using a refrigeration cycle generally consisting of a compressor, condenser, expansion valve, and evaporator. Unitary DOASes provide ventilation and conditioning of 100-percent outdoor air to the conditioned space, whereas for typical commercial package air conditioners that are central air conditioners, outdoor air makes up only a small portion of the total airflow (usually less than 50 percent). Unitary DOASes are typically installed in addition to a local, primary cooling or heating system (*e.g.,* commercial unitary air conditioner, variable refrigerant flow system, chilled water system, water-source heat pumps)—the Unitary DOAS conditions the outdoor ventilation air, while the primary system provides cooling or heating to balance building shell and interior loads and solar heat gain. According to ASHRAE, a well-designed system using a Unitary DOAS can ventilate a building at lower installed cost, reduce overall annual building energy use, and improve indoor environmental quality.[4]

On October 26, 2016, ASHRAE published ASHRAE Standard 90.1–2016, which for the first time specified a test standard and efficiency standards for DX–DOASes. ASHRAE Standard 90.1–2016 (and the subsequent 2019 edition) defines a DX–DOAS as a type of air-cooled, water-cooled, or water-source factory assembled product that dehumidifies 100 percent outdoor air to a low dew point and includes reheat that is capable of controlling the supply dry-bulb temperature of the dehumidified air to the designed supply air temperature. This conditioned outdoor air is then delivered directly or indirectly to the conditioned spaces. It may precondition outdoor air by containing an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus.

When operating in humid conditions, the dehumidification load from the outdoor ventilation air is a much larger percentage of the total cooling load for a DX–DOAS than for a typical commercial air conditioner. Additionally, compared to a typical commercial air conditioner, the amount of total cooling (both sensible and latent) is much greater per pound of air for a DX–DOAS at design conditions (*i.e.,* the warmest/most humid expected summer conditions), and a DX–DOAS is designed to accommodate greater variation in entering air temperature and humidity (*i.e.,* a typical commercial air conditioner would not be able to dehumidify 100-percent outdoor ventilation air to the levels achieved by a DX–DOAS). Not all Unitary DOASes have this dehumidification capability.

The amendment to ASHRAE Standard 90.1 to specify an industry test standard for DX–DOASes triggered DOE's obligations vis-à-vis test procedures under 42 U.S.C. 6314(a)(4)(B), as outlined previously. On October 25, 2019, ASHRAE published an updated version of ASHRAE Standard 90.1 (''ASHRAE Standards 90.1–2019''), which maintained the DX–DOAS provisions as first introduced in ASHRAE Standard 90.1–2016 without revisions.

On July 7, 2021, DOE published a notice of proposed rulemaking (''NOPR'') pertaining to small, large, and very large commercial package air conditioning and heating equipment which provide conditioning and ventilation of 100-percent outdoor air. 86 FR 36018 (July 2021 NOPR). In the July 2021 NOPR, DOE proposed to establish a definition for Unitary DOAS (referred to as ''DX–DOAS'' in the July 2021 NOPR) as a category of commercial package air conditioning and heating equipment and adopt a new test procedure for DX–DOASes (referred to as ''DDX–DOASes'' in the July 2021 NOPR) that incorporates by reference the most up to date industry consensus test standard referenced in ASHRAE Standard 90.1–2019.

The proposed test procedure would apply to all DX–DOASes for which ASHRAE 90.1–2019 specifies standards, with the exception of ground-water-source equipment, as discussed in section III.A.1 of the July 2021 NOPR. 86 FR 36018, 36023. More specifically, DOE proposed to update 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' to adopt a new test procedure for DX–DOASes as follows: (1) Incorporate by reference AHRI Standard 920–2020 (I–P), ''Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units'' (''AHRI 920–2020''), the most recent version of the test procedure recognized by ASHRAE Standard 90.1 for DX–DOASes, and the relevant industry standards referenced therein; (2) establish the scope of coverage for the test procedure; (3) add definitions for Unitary DOAS and DX–DOAS, as well as additional terminology required by the test procedure; (4) adopt the integrated seasonal moisture removal efficiency, as measured according to the most recent applicable industry standard (''ISMRE2''), and integrated seasonal coefficient of performance (''ISCOP2''), as measured according to the most recent applicable industry standard, as energy efficiency descriptors for dehumidification and heating mode, respectively; and (5) establish representation requirements. DOE also proposed to add a new appendix B to subpart F of part 431, titled ''Uniform test method for measuring the energy consumption of direct expansion-dedicated outdoor air systems,'' (''appendix B'') that would include these new test procedure requirements. In conjunction, DOE proposed to amend Table 1 in 10 CFR 431.96 to identify the proposed appendix B as the applicable test procedure for testing DX–DOASes. DOE tentatively determined that the proposed test procedure would not be unduly burdensome to conduct.

DOE received a number of comments from interested parties in response to the July 2021 NOPR. Table I–1 lists the commenters, along with each commenter's abbreviated name used throughout this SNOPR.

TABLE I–1—INTERESTED PARTIES PROVIDING COMMENTS ON THE JULY 2021 NOPR

Name	Abbreviation	Type[1]
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	IR
Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE).	Joint Advocates	EA

[4] From the June 2018 ASHRAE eSociety Newsletter (Available at: *www.ashrae.org/news/esociety/what-s-new-in-doas-and-refrigerant-research*) (Last accessed May 24, 2021).

TABLE I–1—INTERESTED PARTIES PROVIDING COMMENTS ON THE JULY 2021 NOPR—Continued

Name	Abbreviation	Type[1]
Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE), collectively referred to as California Investor-Owned Utilities (CA IOUs).	CA IOUs	U
Carrier Corporation	Carrier	M
Emerson Commercial and Residential Solutions	Emerson	M
Madison Indoor Air Quality	MIAQ	M
Northwest Energy Efficiency Alliance	NEEA	EA
Trane Technologies	Trane	M

[1] EA: Efficiency/Environmental Advocate; IR: Industry Representative; M: Manufacturer; U: Utility.

This SNOPR addresses only those comments relevant to the proposals laid out in this document; all other relevant comments will be addressed in a future stage of the rulemaking. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

II. Synopsis of the Supplemental Notice of Proposed Rulemaking

In this SNOPR, DOE is proposing revised terminology for the equipment subject to this rulemaking. DOE is proposing to define the abbreviated term Unitary DOAS to mean unitary dedicated outdoor air system, instead of the term ''DX–DOAS'' as proposed in the July 2021 NOPR. DOE also is proposing to define the abbreviated term DX–DOAS to mean a direct expansion-dedicated outdoor air system, as opposed to ''dehumidifying direct-expansion dedicated outdoor air system'' (''DDX–DOAS'') as proposed in the July 2021 NOPR. This change to the proposal would more closely align DOE's terminology with that used in industry. DOE is not, however, proposing substantial updates to the definitions of these terms. This topic is addressed in section III.A of this SNOPR.

Secondly, DOE is proposing an update to the provisions pertaining to testing and representations for equipment with special components. The July 2021 NOPR proposed to reference the entirety of Appendix F of AHRI 920–2020, ''Unit Configuration for Standard Efficiency Determination,'' in section 1.1(a)(vii) and section 2.2.1(h) of the proposed appendix B test procedure. However, Appendix F of AHRI 920–2020 includes two types of instructions: (1) Alternative test methods for certain special components, and (2) whether special components should be present during testing for the determination of energy efficiency representations. As a result, DOE has provisionally determined that it is necessary to reference these instructions in the proposed appendix B test procedure and in the proposed representation requirements at 10 CFR 429.43 to provide more detailed direction. DOE also is proposing one deviation from the instructions in Appendix F to AHRI 920–2020. This topic is addressed in section III.B of this SNOPR. Additionally, Appendix F of AHRI 920–2020 also allows an option for testing specially built models that do not include a feature if no models are distributed in commerce with that feature. DOE is proposing not to include this option in its certification and enforcement provisions. This topic is also addressed in section III.B of this SNOPR.

Finally, DOE is correcting its references in the proposal to the industry test standard AHRI 1060–2018, ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' which was incorrectly attributed as being certified by the American National Standards Institute (''ANSI'') in the July 2021 NOPR.

DOE's proposed actions are summarized in Table II.1 and addressed in detail in section III of this document.

TABLE II.1—SUMMARY OF PROPOSED TEST PROCEDURE FOR DX–DOASES ADDRESSED IN THIS SNOPR

July 2021 NOPR proposals	SNOPR	Attribution
Defines the abbreviated term ''DX–DOAS'' to refer to direct expansion-dedicated outdoor air systems and define such equipment as covered equipment.	Replaces the term ''DX–DOAS'' with Unitary DOAS.	The term ''DX–DOAS'' will be used to refer to the subcategory of equipment within the scope of the proposed test procedure.
Defines the abbreviated term ''DDX–DOAS'' to refer to the dehumidifying direct expansion-dedicated outdoor air systems proposed to be within scope of the proposed test procedure.	Replaces the term ''DDX–DOAS'' with DX–DOAS.	Align with industry terminology.
Incorporates by reference AHRI 920–2020 and other relevant industry test standards referenced by that standard, including a list of components that must be present for testing and provisions for testing units with certain optional features.	Re-organizes the instructions in AHRI 920–2020 10 CFR 429.43 for components that must be present for testing, and the proposed appendix B test procedure for provisions for testing units with certain optional features.	Re-organization of regulatory provisions.
	Proposes to include instruction that coated coils be present during testing if the individual unit under test has this special component.	Clarification of representation requirements.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for dehumidifying direct expansion-dedicated outdoor air system. (Docket No. EERE–2017–BT–TP–0018, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF PROPOSED TEST PROCEDURE FOR DX–DOASES ADDRESSED IN THIS SNOPR—Continued

July 2021 NOPR proposals	SNOPR	Attribution
	Proposal to exclude industry test standard provisions regarding testing of specially built models.	Clarification of representation requirements.
Incorrectly refers to AHRI 1060–2018 as being certified by ANSI.	Corrects the title of AHRI 1060–2018	Correction of an inaccurate citation.

III. Discussion

A. Terminology for Covered Equipment

In the July 2021 NOPR, DOE proposed to establish terms and definitions for dedicated outdoor air systems that are small, large, and very large commercial package air conditioning and heating equipment. 86 FR 36018, 36023. DOE proposed to refer to the general category of this equipment as ''DX–DOAS'' (*i.e.,* Unitary DOAS, as proposed in this SNOPR), whereas the specific equipment with the capability to dehumidify outdoor air to a low dew point would be referred to as ''DDX–DOAS'' (*i.e.,* DX–DOAS, as proposed in this SNOPR). However, the abbreviated term ''DX–DOAS'' is used in AHRI 920–2020 and ASHRAE Standard 90.1 to refer specifically to equipment with a high degree of dehumidification capacity. 86 FR 36018, 36020, 36023.

DOE requested comment upon its proposed terms and definitions in the July 2021 NOPR. 86 FR 36018, 36022–36024. In response, DOE received comments from AHRI, CA IOUs, Carrier, Emerson, MIAQ, and Trane. (AHRI, No. 18, p. 9; AHRI, No. 22, pp. 4–6; CA IOUs, No. 25, pp. 3–4; Carrier, No. 20, p. 2; MIAQ, No. 19, pp. 2–3; Trane, No. 23, p. 1) The CA IOUs and Carrier supported DOE's proposal to use ''DX–DOAS'' (*i.e.,* Unitary DOAS, as proposed in this SNOPR) as a more generic term and ''DDX–DOAS'' (*i.e.,* DX–DOAS, as proposed in this SNOPR) as the specific term to describe the equipment covered by the proposed test procedure. (CA IOUs, No. 25, p. 3; Carrier, No. 20, p. 2) AHRI, Emerson, MIAQ, and Trane raised concerns that deviating from the already industry-accepted terminology would cause supply-chain and market confusion. (AHRI, No. 18, p. 9; AHRI, No. 22, pp. 4–5; MIAQ, No. 19, pp. 2–3; Trane, No. 23, p. 1)

AHRI stated that specifiers, contractors, and manufacturers are familiar with the acronyms ''DOAS'' and ''DX–DOAS'' but not ''DDX–DOAS''. (AHRI, No. 18, p. 9) AHRI also commented that common industry terminology should be maintained to prevent market confusion because the market is familiar with the term DX–DOAS being used to refer to equipment that is capable of supplying 100-percent outdoor air for ventilation purposes, with dehumidification. (AHRI, No. 22, pp. 4–5) AHRI noted that this definition was originally established in ASHRAE Standard 90.1–2016, and AHRI 920 has referred to dehumidifying, refrigerant-driven DOAS as DX–DOAS. (*Id.*) AHRI urged DOE to adopt DX–DOAS as the term used to describe the dehumidifying equipment and stated that industry is adamantly against referring to dehumidifying DOAS as ''DDX–DOAS''. (*Id.*)

Emerson agreed with the approach suggested by AHRI to adopt the term DX–DOAS and stated that this approach may be less likely to cause confusion in the market. (Emerson, No. 27, p. 2) MIAQ also urged DOE to adopt the term DX–DOAS for this purpose. (MIAQ, No. 19, p. 2)

Trane requested that DOE use the term ''DOAS'' for the equipment under consideration and provided a collection of Trane product literature using this term across 20 years. (Trane, No. 23, p. 1) Trane commented that the industry recognizes a ''DOAS'' as equipment that is capable of dehumidifying 100-percent outdoor air below a 55 °F dew point; changing this terminology would cause confusion to customers and would undermine the purpose of the AHRI 920 standard. (*Id.*)

AHRI indicated that its members were largely in agreement with the definitions proposed, but the major concern is regarding the terminology or acronym used to describe the equipment. (AHRI, No. 18, p. 9) MIAQ also stated that MIAQ agrees with DOE's proposed terminology with the noted exception that DOE should use DX–DOAS instead of ''DDX–DOAS.'' (MIAQ, No. 19, p. 3)

DOE appreciates these comments from stakeholders and understands the concerns regarding introducing a new, unfamiliar term into the market when a different term may already be well-established. Based on comments received, DOE is revising its proposal to use the abbreviated term DX–DOAS to refer to the dedicated outdoor air system equipment called DDX–DOAS in the July 2021 NOPR. Unlike the simpler term ''DOAS'' suggested by Trane, DX–DOAS is used in ASHRAE Standard 90.1 and AHRI 920 and thus would appear to be more generally accepted by industry to specifically refer to this type of equipment.

The CA IOUs expressed that there is ambiguity regarding equipment that conditions 100-percent outdoor air but does not dehumidify to the levels specified in the DX–DOAS definition, such as makeup air units (''MUAs''). The CA IOUs noted that AHRI 920–2020 references, but does not define, ''sensible-only 100-percent outdoor air units.'' (CA IOUs, No. 25, pp. 3–4)

Other industry stakeholders suggested potential ways to define these types of equipment that do not humidify to the levels specified in the proposed DX–DOAS definition. AHRI commented that DOE's definitions should differentiate between dehumidifying and non-dehumidifying dedicated outdoor air systems. AHRI suggested defining direct-expansion units capable of providing 100-percent outdoor air but not capable of meeting the dehumidification criteria set forth in AHRI 920 as ''non-dehumidifying DX–DOAS'' or ''ND–DX–DOAS.'' AHRI stated that DOE's regulations should focus on how these products are represented in the market because operating conditions, rather than features, differentiate DX–DOASes from ND–DX–DOASes. AHRI also indicated key differences between DX–DOASes and ND–DX–DOASes and commercial unitary air conditioners (''CUACs''), specifically stating that DX–DOASes may include a reheat coil to provide space-neutral supply air, but that ND–DX–DOASes will not have a reheat coil; design conditions are different for DX–DOASes, ND–DX–DOASes, and CUACs; and design airflow rates for these equipment are around 146.5 cubic feet per minute per ton (''cfm/ton'') for DX–DOASes, 360 cfm/ton for CUACs, and 550 cfm/ton for ND–DX–DOASes. (AHRI, No. 22, pp. 4–5)

MIAQ provided similar comments discussing DX–DOASes, ND–DX–DOASes, and CUACs, and supported the adoption of a definition for ND–DX–DOASes. (MIAQ, No. 19, p. 2) AHRI and MIAQ urged DOE to adopt definitions

for DX–DOAS and ND–DX–DOAS. (AHRI, No. 22, p. 6; MIAQ, No. 19, p. 2) Emerson agreed with the approach proposed by AHRI. (Emerson, No. 27, p. 2)

DOE understands that the approach proposed by AHRI would establish mutually exclusive equipment categories—DX–DOAS and ND–DX–DOAS—where ND–DX–DOAS would likely capture the MUAs highlighted by the CA IOUs. However, in this SNOPR, DOE is not addressing substantive changes to the definitions proposed in the July 2021 NOPR. Based on stakeholder comment, DOE has tentatively determined that the DX–DOAS term proposed in this SNOPR is generally consistent with the term used in industry. Therefore, DOE is only proposing to update the terminology used to refer to the definitions proposed in the July 2021 NOPR in order to avoid confusion with industry. DOE is maintaining its approach proposed in the July 2021 NOPR (to establish one generic definition and one specific definition for dehumidifying equipment), but is revising its proposal to use the terms Unitary DOAS and DX–DOAS.

As a result, in this SNOPR, DOE is proposing the terms *Unitary dedicated outdoor air system,* or *Unitary DOAS,* and *Direct expansion-dedicated outdoor air system,* or *DX–DOAS,* be updated as set out in the regulatory text at the end of this document.

Issue-1: DOE seeks comment on the revised terms for Unitary DOAS and DX–DOAS, which replace the terms DX–DOAS and DDX–DOAS in the July 2021 NOPR, respectively.

B. Specific Components

In the July 2021 NOPR, DOE proposed to adopt Appendix F of AHRI 920–2020. AHRI 920–2020 includes Appendix F, ''Unit Configuration for Standard Efficiency Determination—Normative.'' Section F2.4 includes a list of features that are optional for testing.[6] Section F2.4 of AHRI 920–2020 further specifies the following general provisions regarding testing of units with optional features:

- If an otherwise identical model (within the same basic model) without the feature is distributed in commerce, test the otherwise identical model.
- If an otherwise identical model (within the same basic model) without the feature is not distributed in commerce, conduct tests with the feature present but configured and de-activated so as to minimize (partially or totally) the impact on the results of the test (as determined per the provisions in section D2). Alternatively, the manufacturer may indicate in the supplemental testing instructions that the test shall be conducted using a specially built otherwise identical unit that is not distributed in commerce and does not have the feature.

DOE has tentatively determined that testing specially built units would not provide ratings representative of equipment distributed in commerce. Therefore, DOE is not proposing to include this option for testing specially built units in its certification and enforcement provisions.

DOE notes that the list of features and provisions in Section F2.4 of Appendix F of AHRI 920–2020 conflates features that can be addressed by testing provisions with features that warrant enforcement relief (*i.e.,* features that, if present on a unit under test, could have a substantive impact on test results and that cannot be disabled or otherwise mitigated). This differentiation remains central to providing clarity in DOE's regulations. Further, provisions more explicit than included in Section F2.4 of AHRI 920–2020 are warranted to clarify the differences between how specific components must be treated when manufacturers are making representations as opposed to when DOE is conducting enforcement testing.

In order to provide clarity between test procedure provisions (*i.e.,* how to test a specific unit) and certification and enforcement provisions (*e.g.,* which model to test), in this SNOPR, DOE is not proposing to incorporate by reference Appendix F of AHRI 920–2020 and instead is proposing to adopt certain related provisions in appendix B to subpart F of part 431 and §§ 429.43 and 429.134.

Specifically, in appendix B, DOE proposes test provisions for specific components, including the components listed in Section F2.4 of AHRI 920–2020 for which there is a neutralizing test procedure action (*i.e.,* test procedure provisions specific to the component that are not addressed by general provisions in AHRI 920–2020 that negates the components impact on performance).[7] These provisions would specify how to test a unit equipped with such a component—*e.g.,* for a unit with hail guards, remove hail guards for testing.

In the July 2021 NOPR, DOE noted that Section F2.3 of AHRI 920–2020 specifies that for supply air filters, the filter shall have a ''minimum efficiency reporting value'' (''MERV'') specification no less than MERV 8, and that the lowest-MERV filter distributed in commerce with the DOAS model may be used if it exceeds MERV 8. DOE notes that by no longer proposing to incorporate by reference Appendix F to AHRI 920–2020, DOE would need to adopt this requirement elsewhere in the DOE test procedure. DOE is proposing to include this requirement in appendix B, consistent with what is specified in Section F2.3 of AHRI 920–2020 regarding filters. AHRI 920–2020.

DOE is proposing provisions that would allow determination of represented values of a model equipped with a particular component to be based on an individual model distributed in commerce without the component in specific cases. The provisions apply to certain components for which the test provisions for testing a unit with the component may result in differences in ratings compared to testing a unit without the component.[8] For these such components, DOE proposes in 10 CFR 429.43(a)(4) that:

- If a basic model includes only individual models distributed in commerce with a specific component, or does not include any otherwise identical individual models without the specific component, the manufacturer must determine represented values for the basic model based on performance of an individual model with the component present (and consistent with any relevant proposed test procedure provisions in appendix B).
- If a basic model includes both individual models distributed in commerce with a specific component and otherwise identical individual models without the specific component, the manufacturer may determine represented values for the basic model based on performance of an individual

[6] On January 30, 2015, DOE issued a Commercial HVAC Enforcement Policy addressing the treatment of specific features during Departmental testing of commercial HVAC equipment. Many of the features in the Commercial HVAC Enforcement Policy are present in Appendix F of AHRI 920–2020, however, the Commercial HVAC Enforcement Policy is not applicable to DX–DOASes and is therefore not applicable in this rulemaking.

[7] For the following components listed in Section F2.4 of AHRI 920–2020, DOE has tentatively concluded that there is not a neutralizing test procedure action specified in Section F2.4 of AHRI 920–2020 for testing a unit with the component present, and is therefore not proposing to include test procedure actions specific to these components in appendix B: Coated coils and VERS preheat.

[8] DOE has tentatively concluded that for the following features included in Section 2.4 of AHRI 920–2020, testing a unit with these components in accordance with the proposed test provisions would not result in differences in ratings compared to testing a unit without these components; therefore, DOE is not proposing to include these features in 10 CFR 429.43(a)(4): UV lights, high-effective indoor air filtration, power correction capacitors, and hail guards.

model either with the component present (and consistent with any relevant proposed test procedure provisions in appendix B) or without the component present.

DOE's proposed provisions in 10 CFR 429.43(a)(4) include all of the optional features specified in Section F2.4 of AHRI 920–2020 for which the test provisions for testing a unit with these components may result in differences in ratings compared to testing a unit without these components, except coated coils. DOE is proposing to exclude coated coils from the specific components list specified in 10 CFR 439.43 because DOE has tentatively concluded that the presence of coated coils does not result in a significant impact to performance of DX–DOASes, and therefore, that models with coated coils should be rated based on performance of models with coated coils present (rather than based on performance of an otherwise identical model without coated coils).

DOE notes that in some cases, individual models may include multiple of the specified components or there may be individual models within a basic model that include various dehumidification components that result in more or less energy use. In these cases, the represented values of performance must be representative of the lowest efficiency found within the basic model.

In response to the July 2021 NOPR, the CA IOUs recommended excluding furnaces from the list of optional features specified in Section F2.4 of AHRI 920–2020. The CA IOUs noted that the test procedure for commercial unitary air conditioning and heating equipment (*i.e.,* AHRI 340/360) requires that a furnace is installed when testing models that are distributed in commerce with a furnace. More specifically, the CA IOUs asserted that rating units without furnaces is unrepresentative, and that all DX–DOASes should be rated with the furnaces installed (*i.e.,* the same approach used for commercial unitary air conditioning and heating equipment). DOE understands AHRI 920–2020 to represent the industry consensus position on testing DX–DOASes and has tentatively determined that furnaces installed in a DX–DOAS may result in differences in ratings compared to testing units without these components. As such, DOE is proposing not to deviate from the approach taken in Section 2.4 of AHRI 920–2020 with respect to furnaces at this time and is therefore including furnaces in the optional features list specified in 10 CFR 429.43(a)(4).

DOE is proposing provisions in 10 CFR 429.134 regarding how DOE would assess compliance for basic models that include individual models distributed in commerce with specific components—these provisions would simply incorporate the representation provisions discussed above into DOE's product-specific enforcement provisions.

- If a basic model includes only individual models distributed in commerce with a specific component, or does not include any otherwise identical individual models without the specific component, DOE may assess compliance for the basic model based on testing an individual model with the component present (and consistent with any relevant proposed test procedure provisions in appendix B).
- If a basic model includes both individual models distributed in commerce with a specific component and otherwise identical individual models without the specific component, DOE will assess compliance for the basic model based on testing of an otherwise identical model within the basic model that does not include the component; except if DOE is not able to obtain such a model for testing. In such a case, DOE will assess compliance for the basic model based on testing of an individual model with the specific component present (and consistent with any relevant proposed test procedure provisions in appendix B).

Were DOE to adopt the provisions in appendix B, 10 CFR 429.43, and 10 CFR 429.134 as proposed, DOE may consider adding certification reporting requirements in a separate rulemaking such that manufacturers would be required to certify which otherwise identical models are used for making representations of basic models that include individual models with specific components.

Issue-2: DOE requests comment on its proposals regarding specific components in appendix B, 10 CFR 429.43, and 10 CFR 429.134.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that this test procedure rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

DOE reviewed this test procedure SNOPR pursuant to the Regulatory Flexibility Act and the procedures and policies previously discussed. DOE has concluded that this rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below.

Under 42 U.S.C. 6293, the statute sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Currently, DOE does not have a test procedure or energy conservation standards for DX–DOASes. DOE published a NOPR proposing to establish a test procedure for DX–DOASes on July 7, 2021. 86 FR 36018. DOE conducted an initial regulatory flexibility analysis (''IRFA'') as part of the July 7, 2021 NOPR, and determined that there are three domestic small businesses that manufacture DX–DOASes. Based on stakeholder feedback, DOE has revised its small business count to one domestic small business that manufacturers DX–DOASes. DOE still tentatively concludes that the proposed test procedure in that

NOPR would not present a significant burden to small manufacturers. 86 FR 36050.

In this SNOPR, DOE proposes the following:

- Revising proposed terminology, changing the ''DX–DOAS'' term proposed in the NOPR to ''Unitary DOAS'' (the category of commercial package air-conditioning and heating equipment) and the ''DDX–DOAS'' term proposed in the NOPR to ''DX–DOAS'' (the subcategory to which this test procedure applies); and
- Modifying the NOPR proposal to provide instructions on how representations shall be made for equipment with special components.
- Correcting the reference to the AHRI 1060–2018 test procedure.

The proposed test procedure amendments in this SNOPR would add no additional costs for small businesses because they align the test procedure definitions with those of industry test procedures and provide additional specific instruction for manufacturers. Therefore, DOE concludes that this SNOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA for this SNOPR is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment with applicable standards must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

DOE is not proposing certification or reporting requirements for DX–DOASes in this NOPR. Certification of DX–DOAS would not be required until such time as DOE establishes DX–DOAS energy conservation standards and manufacturers are required to comply with those standards. DOE may consider proposals to establish certification requirements and reporting for DX–DOASes under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this SNOPR, DOE proposes test procedures that it expects will be used to develop and implement future energy conservation standards for DX–DOASes. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to adopt a test procedure for measuring the energy efficiency of DX–DOASes is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed test procedure for DX–DOASes incorporate the following applicable industry consensus standards: AHRI 920–2020, AHRI 1060–2018, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this SNOPR, DOE maintains its previous proposal to incorporate by reference the following test standards:

(1) The test standard *published* by AHRI, titled ''2020 Standard for Performance Rating of DX-Dedicated Outdoor Air System Units,'' AHRI Standard 920–2020 (I–P). AHRI Standard 920–2020 (I–P) is an industry-accepted test procedure for measuring the performance of DX-dedicated outdoor air system units. AHRI Standard 920–2020 (I–P) is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_920_I-P_2020.pdf.*

(2) The test standard published by AHRI, titled ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' AHRI Standard

1060–2018. AHRI Standard 1060–2018 is an industry-accepted test procedure for measuring the performance of air-to-air exchangers for energy recovery ventilation equipment. AHRI Standard 1060–2018 is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_1060_I-P_2018.pdf.*

(3) The test standard test standard published by ASHRAE, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ANSI/ASHRAE Standard 37–2009. ANSI/ASHRAE Standard 37–2009 is an industry-accepted test procedure for measuring the performance of electrically driven unitary air-conditioning and heat pump equipment. ANSI/ASHRAE Standard 37–2009 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-37-2009?product_id=1650947.*

(4) The test standard published by ASHRAE, titled ''Standard Method for Temperature Measurement,'' ANSI/ASHRAE Standard 41.1–2013. ANSI/AHRAE Standard 41.1–2013 is an industry-accepted test procedure for measuring temperature. ANSI/ASHRAE Standard 41.1–2013 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-41-1-2013?product_id=1853241.*

(5) The test standard published by ASHRAE, titled ''Standard Method for Humidity Measurement,'' ANSI/ASHRAE Standard 41.6–2014. ANSI/AHRAE Standard 41.6–2014 is an industry-accepted test procedure for measuring humidity. ANSI/ASHRAE Standard 41.6–2014 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-41-6-2014?product_id=1881840.*

(6) The test standard published by ASHRAE, titled ''Method for Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' ANSI/ASHRAE Standard 198–2013. ANSI/ASHRAE Standard 198–2013 is an industry-accepted test procedure for measuring the performance of DX-dedicated outdoor air system units. ANSI/ASHRAE Standard 198–2013 is available on ASHRAE's website (in partnership with Techstreet) at: *www.techstreet.com/ashrae/standards/ashrae-198-2013?product_id=1852612.*

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document *marked* ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving

comments and views of interested parties concerning the following issues:

Issue-1: DOE seeks comment on the revised terms for Unitary DOAS and DX–DOAS, which replace the terms DX–DOAS and DDX–DOAS in the July 2021 NOPR, respectively.

Issue-2: DOE requests comment on its proposals regarding specific components in appendix B, 10 CFR 429.43, and 10 CFR 429.134.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 14, 2021, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 15, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.43 by adding paragraphs (a)(3) and (4) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) *Refrigerants.* For direct expansion-dedicated outdoor air systems (DX–DOASes) (see § 431.92 of this chapter), if a basic model is distributed in commerce for which the manufacturer specifies the use of more than one refrigerant option, the integrated seasonal moisture removal efficiency 2 (ISMRE2) and integrated seasonal moisture removal efficiency 2 (ISCOP2) (see § 431.92 of this chapter), as applicable, are determined for that basic model using the refrigerant that results in the lowest ISMRE2 and the refrigerant that results in the lowest ISCOP2, as applicable. For example, the dehumidification performance metric ISMRE2 must be based on the refrigerant yielding the lowest ISMRE2, and the heating performance metric ISCOP2 (if the unit is a heat pump DX–DOAS) must be based on the refrigerant yielding the lowest ISCOP2. A refrigerant is considered approved for use if it is listed on the nameplate of the single package unit or outdoor unit. Pursuant to the definition of ''basic model'' in § 431.92 of this chapter, specification of an additional refrigerant option that requires use of different hardware (*i.e.,* compressors, heat exchangers, or air moving systems that are not the same or comparably performing), results in a different basic model.

(4) *Determination of represented values for individual models with specific components for DX–DOAS equipment.* (i) If a manufacturer distributes in commerce individual models with one of the components listed in the following table, determination of represented values is dependent on the selected grouping of individual models into a basic model, as indicated in paragraphs (a)(4)(ii) through (v) of this section. For the purposes of this paragraph (a)(4)(i), ''otherwise identical'' means differing only in the presence of specific components listed in table 1 to this paragraph (a)(4)(i).

TABLE 1 TO PARAGRAPH (a)(4)(i)

Component	Description
Furnaces and Steam/Hydronic Heat Coils.	Furnaces and steam/hydronic heat coils used to provide primary or supplementary heating.
Ducted Condenser Fans	A condenser fan/motor assembly designed for optional external ducting of condenser air that provides greater pressure rise and has a higher rated motor horsepower than the condenser fan provided as a standard component with the equipment.
Sound Traps/Sound Attenuators	An assembly of structures through which the supply air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment, for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.
Ventilation energy recovery system (VERS) Preheat.	Electric resistance, hydronic, or steam heating coils used for preheating outdoor air entering a VERS.

(ii) If a basic model includes only individual models distributed in commerce without a specific component listed in paragraph (a)(4)(i) of this section, the manufacturer must determine represented values for the basic model based on performance of an individual model distributed in commerce without the component.

(iii) If a basic model includes only individual models distributed in commerce with a specific component listed in paragraph (a)(4)(i) of this section, the manufacturer must

determine represented values for the basic model based on performance of an individual model with the component present (and consistent with any component-specific test provisions specified in section 2.2.2 of appendix B to subpart F of part 431 of this chapter).

(iv) If a basic model includes both individual models distributed in commerce with a specific component listed in paragraph (a)(4)(i) of this section and individual models distributed in commerce without that specific component, and none of the individual models distributed in commerce without the specific component are otherwise identical to any given individual model distributed in commerce with the specific component, the manufacturer must consider the performance of individual models with the component present when determining represented values for the basic model (and consistent with any component-specific test provisions specified in section 2.2.2 of appendix B to subpart F of part 431 of this chapter).

(v) If a basic model includes both individual models distributed in commerce with a specific component listed in paragraph (a)(4)(i) of this section and individual models distributed in commerce without that specific component, and at least one of the individual models distributed in commerce without the specific component is otherwise identical to any given individual model distributed in commerce with the specific component, the manufacturer may determine represented values for the basic model either:

(A) Based on performance of an individual model distributed in commerce without the specific component, or

(B) Based on performance of an individual model with the specific component present (and consistent with any component-specific test provisions specified in section 2.2.2 of appendix B to subpart F of part 431 of this chapter).

(vi) In any of the cases specified in paragraphs (a)(4)(ii) through (v) of this section, the represented values for a basic model must be determined through either testing (paragraph (a)(1) of this section) or an alternative efficiency determination method (AEDM) (paragraph (a)(2) of this section).

* * * * *

■ 3. Amend § 429.70 by revising the tables in paragraphs (c)(2)(iv) and (c)(5)(vi)(B) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (c)(2)(iv)

Validation class	Minimum number of distinct models that must be tested per AEDM
Air-Cooled, Split and Packaged Air Conditioners (ACs) and Heat Pumps (HPs) less than 65,000 Btu/h Cooling Capacity (3-Phase).	2 Basic Models.
(A) Commercial HVAC Validation Classes	
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
(B) Commercial Water Heater Validation Classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial Packaged Boilers Validation Classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.

TABLE 1 TO PARAGRAPH (c)(2)(iv)—Continued

Validation class	Minimum number of distinct models that must be tested per AEDM
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial Furnace Validation Classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial Refrigeration Equipment Validation Classes [1]	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1]The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * *

(5) * * *

(vi) * * *

(B) * * *

TABLE 2 TO PARAGRAPH (c)(5)(vi)(B)

Equipment	Metric	Applicable tolerance
Commercial Packaged Boilers	Combustion Efficiency	5% (0.05)
	Thermal Efficiency	5% (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5% (0.05)
	Standby Loss	10% (0.1)
Unfired Storage Tanks	R-Value	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs less than 65,000 Btu/h Cooling Capacity (3-Phase)	Seasonal Energy-Efficiency Ratio	5% (0.05)
	Heating Season Performance Factor	5% (0.05)
	Energy Efficiency Ratio	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h CoolingCapacity.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Variable Refrigerant Flow ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Computer Room Air Conditioners	Net Sensible Coefficient of Performance	5% (0.05)
Direct Expansion—Dedicated Outdoor Air Systems	Integrated Seasonal Coefficient of Performance 2.	10% (0.1)
	Integrated Seasonal Moisture Removal Efficiency 2.	10% (0.1)
Commercial Warm-Air Furnaces	Thermal Efficiency	5% (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5% (0.05)

* * * * *

■ 4. Amend § 429.134 by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Direct expansion-dedicated outdoor air systems.* The following provisions apply for assessment and enforcement testing of models subject to standards in terms of ISMRE2 or ISCOP2:

(1) *Specific components.* For basic models that include individual models distributed in commerce with any of the specific components listed at § 429.43(a)(4)(i), the following provisions apply. For the purposes of this paragraph (s)(1), ''otherwise identical'' means differing only in the presence of specific components listed at § 429.43(a)(4)(i).

(i) If the basic model includes only individual models distributed in commerce with a specific component, or does not include any otherwise identical individual models without the specific component, DOE may assess compliance for the basic model based on testing of an individual model with the component present (and consistent with any component-specific test provisions specified in section 2.2.2 of appendix B to subpart F of 431 of this chapter).

(ii) If the basic model includes both individual models distributed in commerce with a specific component and otherwise identical individual models without the specific component, DOE will assess compliance for the basic model based on testing an otherwise identical model within the basic model that does not include the component, unless DOE is not able, through documented reasonable effort, to obtain an individual model for testing that does not include the component. In such a situation, DOE will assess compliance for the basic model based on testing of an individual model with the specific component present (and consistent with any component-specific test provisions specified in section 2.2.2 of appendix B to subpart F of 431 of this chapter).

(2) [Reserved]

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 5. Amend § 431.2 by revising the definition of ''Commercial HVAC & WH product'' to read as follows:

§ 431.2 Definitions.

* * * * *

Commercial HVAC & WH product means any small, large, or very large commercial package air-conditioning and heating equipment (as defined in § 431.92), packaged terminal air conditioner (as defined in § 431.92), packaged terminal heat pump (as defined in § 431.92), single package vertical air conditioner (as defined in § 431.92), single package vertical heat pump (as defined in § 431.92), computer room air conditioner (as defined in § 431.92), variable refrigerant flow multi-split air conditioner (as defined in § 431.92), variable refrigerant flow multi-split heat pump (as defined in § 431.92), unitary dedicated outdoor air system (as defined in § 431.92), commercial packaged boiler (as defined in § 431.82), hot water supply boiler (as defined in § 431.102), commercial warm air furnace (as defined in § 431.72), instantaneous water heater (as defined in § 431.102), storage water heater (as defined in § 431.102), or unfired hot water storage tank (as defined in § 431.102).

* * * * *

■ 6. Amend § 431.92 by:

■ a. Revising the definition of ''Basic model''; and

■ b. Adding, in alphabetical order, the definitions of ''Direct expansion-dedicated outdoor air system, or DX–DOAS,'' ''Integrated seasonal coefficient of performance 2, or ISCOP2,'' ''Integrated seasonal moisture removal efficiency 2, or ISMRE2,'' ''Unitary dedicated outdoor air system, or Unitary DOAS,'' and ''Ventilation energy recovery system, or VERS''.

The revisions and additions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model includes:

(1) *Computer room air conditioners* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(2) *Direct expansion-dedicated outdoor air system* means all units manufactured by one manufacturer, having the same primary energy source (*e.g.,* electric or gas), within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s) that have a common ''nominal'' moisture removal capacity.

(3) *Packaged terminal air conditioner (PTAC)* or *packaged terminal heat pump (PTHP)* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable air moving systems that have a cooling capacity within 300 Btu/h of one another.

(4) *Single package vertical units* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a rated cooling capacity within 1500 Btu/h of one another.

(5) *Small, large, and very large aircooled or water-cooled commercial package air conditioning and heating equipment* means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(6) *Small, large, and very large water source heat pump* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable ''nominal'' capacity.

(7) *Variable refrigerant flow systems* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s) that have a common ''nominal'' cooling capacity and the same heat rejection medium (*e.g.,* air or water) (includes variable refrigerant flow (VRF) water source heat pumps).

* * * * *

Direct expansion-dedicated outdoor air system, or *DX–DOAS,* means a unitary dedicated outdoor air system that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 (incorporated by reference, see § 431.95) with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 lb/h.

* * * * *

Integrated seasonal coefficient of performance 2, or *ISCOP2,* means a seasonal weighted-average heating efficiency for heat pump dedicated outdoor air systems, expressed in W/W,

as measured according to appendix B of this subpart.

Integrated seasonal moisture removal efficiency 2, or *ISMRE2,* means a seasonal weighted average dehumidification efficiency for dedicated outdoor air systems, expressed in lbs. of moisture/kWh, as measured according to appendix B of this subpart.

* * * * *

Unitary dedicated outdoor air system, or *Unitary DOAS,* means a category of small, large, or very large commercial package air-conditioning and heating equipment that is capable of providing ventilation and conditioning of 100-percent outdoor air or marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability.

* * * * *

Ventilation energy recovery system, or *VERS,* means a system that preconditions outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.

* * * * *

■ 7. Amend § 431.95 by:
■ a. Revising paragraph (a) and the introductory text to paragraph (b);
■ b. Redesignating paragraphs (b)(6) and (7) as paragraphs (b)(8) and (9);
■ c. Adding new paragraphs (b)(6) and (7);
■ d. Revising the introductory text to paragraph (c) and paragraph (c)(2);
■ e. Redesignating paragraphs (c)(3) and (4) as paragraphs (c)(5) and (6); and
■ f. Adding new paragraphs (c)(3) and (4) and paragraph (c)(7).

The revisions and additions read as follows:

§ 431.95 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–1445, *Buildings@ee.doe.gov* or go to: *https://www.energy.gov/eere/buildings/building-technologies-office,* and may be obtained from the other sources in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or go to: *www.ahrinet.org.*

* * * * *

(6) AHRI Standard 920–2020 (I–P), (''AHRI 920–2020''), ''2020 Standard for Performance Rating of DX-Dedicated Outdoor Air System Units,'' approved February 4, 2020, IBR approved for appendix B to this subpart.

(7) AHRI Standard 1060–2018, (''AHRI 1060–2018''), ''2018 Standard for *Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,*'' approved 2018, IBR approved for appendix B to this subpart.

* * * * *

(c) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, 180 Technology Parkway, Peachtree Corners, Georgia 30092, (404) 636–8400, or go to: *www.ashrae.org.*

* * * * *

(2) ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37'' or ''ANSI/ASHRAE 37–2009''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009, IBR approved for § 431.96 and appendices A and B to this subpart.

(3) ANSI/ASHRAE Standard 41.1–2013, (''ANSI/ASHRAE 41.1–2013''), ''Standard Method for Temperature Measurement,'' ANSI approved January 30, 2013, IBR approved for appendix B to this subpart.

(4) ANSI/ASHRAE Standard 41.6–2014, (''ANSI/ASHRAE 41.6–2014''), ''Standard Method for Humidity Measurement,'' ANSI approved July 3, 2014, IBR approved for appendix B to this subpart.

* * * * *

(7) ANSI/ASHRAE Standard 198–2013, (''ANSI/ASHRAE 198–2013''), ''Method of Test for Rating DX Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency,'' approved by ANSI on January 30, 2013, IBR approved for appendix B to this subpart.

* * * * *

■ 8. Amend § 431.96 by:
■ a. Revising paragraph (a) and Table 1 following paragraph (b)(2); and
■ b. Designating the table in paragraph (d) as Table 2 to paragraph (d).

The revisions read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

(a) *Scope.* This section contains test procedures for measuring, pursuant to EPCA, the energy efficiency of any small, large, or very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, computer room air conditioners, variable refrigerant flow systems, single package vertical air conditioners and single package vertical heat pumps, and direct expansion-dedicated outdoor air systems.

(b) * * *

(2) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity	Energy efficiency descriptor	Use tests, conditions, and procedures[1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity	Energy efficiency descriptor	Use tests, conditions, and procedures[1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase)	SEER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase)	SEER and HSPF	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
		≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B of this subpart	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity is determined according to appendix B of this subpart.

* * * * *

■ 9. Add appendix B to subpart F of part 431 to read as follows:

Appendix B to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Direct Expansion-Dedicated Outdoor Air Systems

Note: Beginning [date 360 days after publication of a test procedure final rule], representations with respect to energy use or efficiency of direct expansion-dedicated outdoor air systems must be based on testing conducted in accordance with this appendix. Manufacturers may elect to use this appendix early.

1. Referenced Materials

1.1 Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for AHRI 920–2020, AHRI 1060–2018; ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013. However, only enumerated provisions of AHRI 920–2020, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 198–2013, as set forth in paragraphs (a) through (d) of this section are applicable. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

(a) AHRI 920–2020:

(i) Section 3—Definitions, as specified in section 2.2.1(a) of this appendix;

(ii) Section 5—Test Requirements, as specified in section 2.2.1(b) of this appendix;

(iii) Section 6—Rating Requirements, as specified in section 2.2.1(c) of this appendix, omitting section 6.1.2 (but retaining sections 6.1.2.1–6.1.2.8) and 6.6.1;

(iv) Section 11—Symbols and Subscripts, as specified in section 2.2.1(d) of this appendix;

(v) Appendix A—References—Normative, as specified in section 2.2.1(e) of this appendix;

(vi) Appendix C—ANSI/ASHRAE Standard 198 and ANSI/ASHRAE Standard 37 Additions, Clarifications and Exceptions—Normative, as specified in section 2.2.1(f) of this appendix, and

(b) ANSI/ASHRAE 37–2009:

(i) Section 5.1—Temperature Measuring Instruments (excluding sections 5.1.1 and 5.1.2), as specified in sections 2.2.1(b) and (f) of this appendix;

(ii) Section 5.2—Refrigerant, Liquid, and Barometric Pressure Measuring Instruments, as specified in section 2.2.1(b) of this appendix;

(iii) Sections 5.3—Air Differential Pressure and Airflow Measurements, as specified in section 2.2.1(b) of this appendix;

(iv) Sections 5.5(b)—Volatile Refrigerant Measurement, as specified in section 2.2.1(b) of this appendix;

(iv) Section 6.1—Enthalpy Apparatus (excluding 6.1.1 and 6.1.3 through 6.1.6), as specified in section 2.2.1(b) of this appendix;

(v) Section 6.2—Nozzle Airflow Measuring Apparatus, as specified in section 2.2.1(b) of this appendix;

(vi) Section 6.3—Nozzles, as specified in section 2.2.1(b) of this appendix;

(vii) Section 6.4—External Static Pressure Measurements, as specified in section 2.2.1(b) of this appendix;

(ix) Section 6.5—Recommended Practices for Static Pressure Measurements, as specified in section 2.2.1(f) of this appendix;

(x) Section 7.3—Indoor and Outdoor Air Enthalpy Methods, as specified in section 2.2.1(f) of this appendix;

(xi) Section 7.4—Compressor Calibration Method, as specified in section 2.2.1(f) of this appendix;

(xii) Section 7.5—Refrigerant Enthalpy Method, as specified in section 2.2.1(f) of this appendix;

(xiii) Section 7.6—Outdoor Liquid Coil Method, as specified in section 2.2.1(f) of this appendix;

(xiv) Section 7.7—Airflow Rate Measurement (excluding sections 7.7.1.2, 7.7.3, and 7.7.4), as specified in section 2.2.1(b) of this appendix;

(xv) Table 1—Applicable Test Methods, as specified in section 2.2.1(f) of this appendix;

(xvi) Section 8.6—Additional Requirements for the Outdoor Air Enthalpy Method, as specified in section 2.2.1(f) of this appendix;

(xvii) Table 2b—Test Tolerances (I–P Units), as specified in sections 2.2.1(c) and 2.2(f) of this appendix; and

(xviii) Errata sheet issued on October 3, 2016, as specified in section 2.2.1(f) of this appendix.

(c) ANSI/ASHRAE 41.6–2014:

(i) Section 4—Classifications, as specified in section 2.2.1(f) of this appendix;

(ii) Section 5—Requirements, as specified in section 2.2.1(f) of this appendix;

(iii) Section 6—Instruments and Calibration, as specified in section 2.2.1(f) of this appendix;

(iv) Section 7.1—Standard Method Using the Cooled-Surface Condensation Hygrometer as specified in section 2.2.1(f) of this appendix; and

(v) Section 7.4—Electronic and Other Humidity Instruments. as specified in section 2.2.1(f) of this appendix.

(d) ANSI/ASHRAE 198–2013:

(i) Section 4.4—Temperature Measuring Instrument, as specified in section 2.2.1(b) of this appendix;

(ii) Section 4.5—Electrical Instruments, as specified in section 2.2.1(b) of this appendix;

(iii) Section 4.6—Liquid Flow Measurement, as specified in section 2.2.1(b) of this appendix;

(iv) Section 4.7—Time and Mass Measurements, as specified in section 2.2.1(b) of this appendix;

(iv) Section 6.1—Test Room Requirements, as specified in section 2.2.1(b) of this appendix;

(v) Section 6.6—Unit Preparation, as specified in section 2.2.1(b) of this appendix;

(vi) Section 7.1—Preparation of the Test Room(s), as specified in section 2.2.1(b) of this appendix;

(vii) Section 7.2—Equipment Installation, as specified in section 2.2.1(b) of this appendix;

(ix) Section 8.2—Equilibrium, as specified in section 2.2.1(b) of this appendix, and

(x) Section 8.4—Test Duration and Measurement Frequency, as specified in section 2.2.1(b) of this appendix.

1.2. Informational Materials

DOE refers to the following provision of AHRI 920–2020, for informational purposes only:

(a) Appendix E—Typical Test Unit Installations—Informative, as specified in section 2.2.1(g) of this appendix.

(b) Reserved.

2. Test Method

2.1 Capacity

Moisture removal capacity (in pounds per hour) and supply airflow rate (in standard cubic feet per minute) are determined according to AHRI 920–2020 as specified in section 2.2 of this appendix.

2.2. Efficiency

2.2.1. Determine the ISMRE2 for all DX–DOASes and the ISCOP2 for all heat pump DX–DOASes in accordance with the following sections of AHRI 920–2020.

(a) Section 3—Definitions, including the references to AHRI 1060–2018;

(i) Non-standard Low-static Fan Motor. A supply fan motor that cannot maintain external static pressure as high as specified in Table 7 of AHRI 920–2020 when operating at a manufacturer-specified airflow rate and that is distributed in commerce as part of an individual model within the same basic model of a DX–DOAS that is distributed in commerce with a different motor specified for testing that can maintain the required external static pressure.

(ii) Reserved.

(b) Section 5—Test Requirements, including the references to Sections 5.1, 5.2, 5.3, 5.5, 6.1, 6.2, 6.3, 6.4, and 7.7 (not including Sections 7.7.1.2, 7.7.3, and 7.7.4) of ANSI/ASHRAE 37–2009, and Sections 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.6, 7.1, 7.2, 8.2, and 8.4 of ANSI/ASHRAE 198–2013;

(i) All control settings are to remain unchanged for all Standard Rating Conditions once system set up has been completed, except as explicitly allowed or required by AHRI 920–2020 or as indicated in the supplementary test instructions (STI). Component operation shall be controlled by the unit under test once the provisions in section 2.2.1(c) of this appendix are met.

(ii) Reserved.

(c) Section 6—Rating Requirements (omitting sections 6.1.2 and 6.6.1), including the references to Table 2b of ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 198–2013.

(i) For water-cooled DDX–DOASes, the ''Condenser Water Entering Temperature, Cooling Tower Water'' conditions specified in Table 4 of AHRI 920–2020 shall be used. For water-source heat pump DDX–DOASes, the ''Water-Source Heat Pumps'' conditions specified in Table 5 of AHRI 920–2020 shall be used.

(ii) For water-cooled or water-source DX–DOASes with integral pumps, set the external head pressure to 20 ft. of water column, with a −0/+1 ft. condition tolerance and a 1 ft. operating tolerance.

(iii) When using the degradation coefficient method as specified in Section 6.9.2 of AHRI 920–2020, Equation 20 applies to DX–DOAS without VERS, with deactivated VERS (see Section 5.4.3 of AHRI 920–2020), or sensible-only VERS tested under Standard Rating Conditions other than D.

(iv) Rounding requirements for representations are to be followed as stated in Sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020;

(d) Section 11—Symbols and Subscripts, including references to AHRI 1060–2018;

(e) Appendix A—References—Normative;

(f) Appendix C—ANSI/ASHRAE 198–2013 and ANSI/ASHRAE 37 Additions, Clarifications and Exceptions—Normative, including references to Sections 5.1, 6.5, 7.3, 7.4, 7.5, 7.6, 8.6, Table 1, Table 2b, and the errata sheet of ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, Sections 4, 5, 6, 7.1, and 7.4 of ANSI/ASHRAE 41.6–2014, and AHRI 1060–2018;

(g) Appendix E—Typical Test Unit Installations—Informative, for information only.

2.2.2. *Set-Up and Test Provisions for Specific Components.* When testing a DX–DOAS that includes any of the features listed in Table 2.1 of this section, test in accordance with the set-up and test provisions specified in Table 2.1.

TABLE 2.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Return and Exhaust Dampers.	An automatic system that enables a DX–DOAS Unit to supply and use some return air (even if an optional VERS is not utilized) to reduce or eliminate the need for mechanical dehumidification or heating when ventilation air requirements are less than design.	All dampers that allow return air to pass into the supply airstream shall be closed and sealed. Exhaust air dampers of DOAS units with VERS shall be open. Gravity dampers activated by exhaust fan discharge airflow shall be allowed to open by action of the exhaust airflow.
VERS Bypass Dampers.	An automatic system that enables a DX–DOAS Unit to let outdoor ventilation air and return air bypass the VERS when preconditioning of outdoor ventilation is not beneficial.	Test with the VERS bypass dampers installed, closed, and sealed. However, VERS bypass dampers may be opened if necessary for testing with deactivated VERS for Standard Rating Condition D.
Fire/Smoke/Isolation Dampers.	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.	The fire/smoke/isolation dampers shall be removed for testing. If it is not possible to remove such a damper, test with the damper fully open. For any fire/smoke/isolation dampers shipped with the unit but not factory-installed, do not install the dampers for testing.

TABLE 2.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS—Continued

Component	Description	Test provisions
Furnaces and Steam/ Hydronic Heat Coils.	Furnaces and steam/hydronic heat coils used to provide primary or supplementary heating.	Test with the coils in place but providing no heat.
Power Correction Capacitors.	A capacitor that increases the power factor measured at the line connection to the equipment. These devices are a requirement of the power distribution system supplying the unit.	Remove power correction capacitors for testing.
Hail Guards	A grille or similar structure mounted to the outside of the unit covering the outdoor coil to protect the coil from hail, flying debris and damage from large objects.	Remove hail guards for testing.
Ducted Condenser Fans.	A condenser fan/motor assembly designed for optional external ducting of condenser air that provides greater pressure rise and has a higher rated motor horsepower than the condenser fan provided as a standard component with the equipment.	Test with the ducted condenser fan installed and operating using zero external static pressure, unless the manufacturer specifies use of an external static pressure greater. than zero, in which case, use the manufacturer-specified external static pressure.
Sound Traps/Sound Attenuators.	An assembly of structures through which the Supply Air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.	Removable sound traps/sound attenuators shall be removed for testing. Otherwise, test with sound traps/attenuators in place.
Humidifiers	A device placed in the supply air stream for moisture evaporation and distribution. The device may require building steam or water, hot water, electric or gas to operate.	Remove humidifiers for testing.
UV Lights	A lighting fixture and lamp mounted so that it shines light on the conditioning coil, that emits ultraviolet light to inhibit growth of organisms on the conditioning coil surfaces, the condensate drip pan, and/other locations within the equipment.	Remove UV lights for testing.
High-Effectiveness Indoor Air Filtration.	Indoor air filters with greater air filtration effectiveness than MERV 8 or the lowest MERV filter distributed in commerce, whichever is greater.	Test with a MERV 8 filter or the lowest MERV filter distributed in commerce, whichever is greater.

2.2.3. Optional Representations. Test provisions for the determination of the metrics indicated in paragraphs (a) through (d) of this section are optional and are determined according to the applicable provisions in section 2.2.1 of this appendix. For water-cooled DX–DOASes, these optional representations may be determined using either the ''Condenser Water Entering Temperature, Cooling Tower'' or the ''Condenser Water Entering Temperature, Chilled Water'' conditions specified in Table 4 of AHRI 920–2020. For water-source heat pump DX–DOASes, these optional representations may be determined using either the ''Water-Source Heat Pumps'' or ''Water-Source Heat Pump, Ground-Source Closed Loop'' conditions specified in Table 5 of AHRI 920–2020. The following metrics in AHRI 920–2020 are optional:

(a) $ISMRE_{70}$;

(b) $COP_{Full,x}$:

(c) $COP_{DOAS,x}$: and

(d) ISMRE2 and ISCOP2 for water-cooled DX–DOASes using the ''Condenser Water Entering Temperature, Chilled Water'' conditions specified in Table 4 of AHRI 920–2020 and for water-source heat pump DX–DOASes using the ''Water-Source Heat Pump, Ground-Source Closed Loop'' conditions specified in Table 5 of AHRI 920–2020.

2.3 Synonymous Terms

(a) Any references to energy recovery or energy recovery ventilator (ERV) in AHRI 920–2020 and ANSI/ASHRAE 198–2013 shall be considered synonymous with ventilation energy recovery system (VERS) as defined in § 431.92.

(b) Reserved.

[FR Doc. 2021–27460 Filed 12–22–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1074; Project Identifier MCAI–2021–00447–R]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 429 helicopters. This proposed AD was prompted by reports of failed rivets between the tailboom skin and the tail rotor (TR) gearbox support assembly. This proposed AD would require visually inspecting the external surface of the TR gearbox support assembly, borescope inspecting or visually inspecting the inside of the tailboom for certain conditions, and performing a tactile inspection. Depending on the results of the inspections, this proposed AD would require removing certain rivets from service or repairing gaps in accordance with FAA-approved methods. This proposed AD would also require repeating these inspections within certain intervals. 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 February 7, 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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No.

FAA–2021–1074; 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 Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

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

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–2021–1074; Project Identifier MCAI–2021–00447–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 Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* 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, which is the aviation authority for Canada, has issued Canadian AD CF–2021–15, dated April 14, 2021 (Transport Canada AD CF–2021–15), to correct an unsafe condition for Bell Textron Canada Limited Model 429 helicopters, serial numbers (S/N) 57001 and subsequent. Transport Canada advises of multiple in-service reports of failed rivets at the joint between the tailboom skin and the TR gearbox support assembly part number (P/N) 429–034–701–101 or P/N 429–035–705–101. Transport Canada states that in-service reports also revealed a quality escape resulted in a gapping condition between the tailboom skin and the TR gearbox support fitting at some locations around the joint, and that rivets of inadequate grip length have been installed at the affected joint. This condition, if not addressed, could result in progressive deterioration of the joint structural integrity, detachment of the TR gearbox support assembly and loss of control of the helicopter.

Accordingly, Transport Canada AD CF–2021–15 requires for certain serial-numbered helicopters an initial visual inspection of the rivets at the TR gearbox support assembly for signs of failed rivets or inadequate grip length. Transport Canada AD CF–2021–15 also requires, for all serial-numbered helicopters defined in the applicability, repeating the initial visual inspection at intervals not to exceed 400 hours air time or 12 months, whichever occurs first. Transport Canada AD CF–2021–15 also requires repair or replacement of affected parts if discrepancies are found. Transport Canada considers its AD an interim action and states that further AD action may follow.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of 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.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 429–19–47, Revision B, dated January 27, 2021 (ASB 429–19–47). This service information specifies procedures for an initial and repetitive general visual inspections and detailed inspections of the affected rivets at the joint between the tailboom skin and the TR gearbox support assembly. This service information also specifies procedures for replacing the affected rivets and repairing the gaps in accordance with an approved Bell structural repair scheme.

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

Proposed AD Requirements in This NPRM

For Model 429 helicopters with S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that, as of the effective date of this AD, have accumulated less than 300 total hours time-in-service (TIS), before accumulating 400 total hours TIS; or for helicopters with S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that, as of the effective date of this AD, have replaced certain part-numbered TR gearbox support assemblies and the helicopter has accumulated less than 300 total hours TIS since the replacement of the TR gearbox support assembly, before accumulating 400 total hours TIS since the replacement, this proposed AD would require visually inspecting the external surface of the TR gearbox support assembly for any rivet heads that have separated from their tail, measuring any gaps, and before further flight, removing affected rivets from service or repairing gaps in accordance with FAA-approved methods.

This proposed AD would also require either borescope inspecting or using a light source and mirror to visually inspect each rivet inside the tailboom for missing rivet tails, rivet tails not resting against the tailboom skin, and any rivet tails resting at the bottom of the tailboom. Depending on the inspection results, this proposed AD would require, before further flight, additional inspections or removing certain parts from service. This proposed AD would require performing a tactile inspection of certain rivets

identified in the applicable service information and depending on the inspection results, removing rivets from service before further flight.

For Model 429 helicopters with S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that are not identified in paragraph (g)(1) of this AD, this proposed AD would require, within 100 hours TIS after the effective date of this AD, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously.

For Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent this proposed AD would require, within 400 hours TIS after the initial inspections required by this proposed AD, as applicable to your helicopter, and thereafter at intervals not to exceed 400 hours TIS, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously.

For Model 429 helicopters S/N 57001 and 57211, this proposed AD would require, within 400 hours TIS after the effective date of this proposed AD and thereafter at intervals not to exceed 400 hours TIS, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously.

Differences Between This Proposed AD and the Transport Canada AD

Transport Canada AD CF–2021–15 requires replacing any rivets, and repairing any gaps that exceed 0.005 in (0.127 mm), in accordance with an approved Bell structural repair scheme, and submitting certain information to the manufacturer, whereas this proposed AD would require removing the rivets from service and repairing the gaps using an FAA-approved method instead. Transport Canada AD CF–2021–15 requires replacing any rivets if any gaps are 0.005 in (0.127mm) or less, whereas this proposed AD would require removing the rivets from service.

Transport Canada AD CF–2021–15 also requires for certain serial-numbered helicopters that have accumulated less than 300 hours air time, or have replaced a certain part-numbered TR gearbox support assembly and have accumulated less than 300 hours air time since the replacement, within 100 hours air time or 6 months upon reaching 300 hours air time, whichever occurs first, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously, whereas this proposed AD would require these actions for certain helicopters before accumulating 400 total hours TIS and for certain other helicopters, before the helicopter accumulates 400 total hours TIS since the replacement of a certain part-numbered TR gearbox support assembly.

Additionally, Transport Canada AD CF–2021–15 requires for certain serial-numbered helicopters that have accumulated 300 hours air time or more, or have replaced a certain part-numbered TR gearbox support assembly and have accumulated 300 hours air time or more since the replacement, within 100 hours air time or 6 months, whichever occurs first, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously, whereas this proposed AD would require these actions within 100 hours TIS after the effective date of this AD.

Finally, Transport Canada AD CF–2021–15 requires repeating the visual inspection of the TR gearbox support assembly, the visual inspection or borescope inspection of each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously at intervals not to exceed 400 hours air time or 12 months, whichever occurs first, whereas this proposed AD would require for certain serial-numbered helicopters, the repetitive inspections to occur within 400 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 400 hours TIS.

Interim Action

The FAA considers this proposed AD would be an interim action. Once final action has been identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 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 proposed AD.

Visually inspecting the surface of the TR gearbox support assembly would take about 0.5 work-hour for an estimated cost of $43 per inspection and $5,160 for the U.S. fleet per inspection.

If required, replacing any affected rivets would take about 1 work-hour and parts would cost about $110 per rivet for an estimated cost of $195 per rivet replacement.

If required, measuring gaps would take about 0.5 work-hour for an estimated cost of $43 per helicopter.

If required, repairing any gaps would take up to about 1 work-hour for an estimated cost of up to $85 per repair.

Visually inspecting or borescope inspecting the inside of the tailboom would take about 0.5 work-hour for an estimated cost of $43 per inspection and $5,160 for the U.S. fleet per inspection.

Performing a tactile inspection would take about 0.5 work-hour for an estimated cost of $43 per inspection and $5,160 for the U.S. fleet per inspection.

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, 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:

Bell Textron Canada Limited: Docket No. FAA–2021–1074; Project Identifier MCAI–2021–00447–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 7, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 429 helicopters, serial numbers (S/N) 57001 and subsequent, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft tail boom.

(e) Unsafe Condition

This AD was prompted by reports of failed rivets between the tailboom skin and the tail rotor (TR) gearbox support assembly. The FAA is issuing this AD to detect failed rivets and rivets with inadequate grip length. The unsafe condition, if not addressed, could result in deterioration of the joint structural integrity, detachment of the TR gearbox support assembly, and loss of helicopter control.

(f) Compliance

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

(g) Required Actions

(1) As of the effective date of this AD, for Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that have accumulated less than 300 total hours time-in-service (TIS), before accumulating 400 total hours TIS; or for Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that have replaced the TR gearbox support assembly part number (P/N) 429–034–701–101 or P/N 429–035–705–101 and the helicopter has accumulated less than 300 total hours TIS since the replacement of the TR gearbox support assembly, before accumulating 400 total hours TIS since the replacement:

(i) Visually inspect the external surface of the TR gearbox support assembly for any rivet heads that have separated from their tail. If there are any rivet heads that have separated from their tail, before further flight, measure any gaps between the TR gearbox support assembly and the tailboom skin by following the Accomplishment Instructions, Part I, paragraphs 9.b. through 9.d of Bell Alert Service Bulletin 429–19–47, Revision B, dated January 27, 2021 (ASB 429–19–47 Rev B).

(A) If there are no gaps or if any gap measures less than 0.005 in (0.127 mm), before further flight, remove the rivets from service.

(B) If there are any gaps that are equal to or exceed 0.005 in (0.127 mm), before further flight, repair the gaps in accordance with an FAA-approved method, and remove the rivets from service.

(ii) Borescope inspect or use a light source and mirror to visually inspect each rivet inside the tailboom for any missing rivet tails, any rivet tails resting at the bottom of the tailboom, and any rivet tails not resting against the tailboom skin.

(A) If there are any missing rivet tails, or any rivet tails resting at the bottom of the tailboom, before further flight, measure any gaps between the TR gearbox support assembly and the tailboom skin by following the Accomplishment Instructions, Part I, paragraphs 9.b. through 9.d of ASB 429–19–47 Rev B, and perform the corrective actions specified in paragraphs (g)(1)(i)(A) or (B) of this AD as applicable.

(B) If there are any rivet tails not resting against the tailboom skin before further flight, remove the rivets from service.

(iii) Perform a tactile inspection of the rivets identified in Figure 1 of ASB 429–19–47 Rev B, by pulling on each rivet tail with pliers or pulling by hand. If any rivet does not come out when pulled with pliers or when pulled by hand, before further flight, remove the rivet from service.

(2) For Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that are not identified in paragraph (g)(1) of this AD, within 100 hours TIS after the effective date of this AD, perform the actions as specified in paragraph (g)(1)(i) through (iii) of this AD.

(3) For Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent, within 400 hours TIS after the initial inspections required by paragraph (g)(1) or (2) of this AD, as applicable to your helicopter, and thereafter at intervals not to exceed 400 hours TIS, accomplish the actions required by paragraphs (g)(1)(i) through (iii) of this AD.

(4) For Model 429 helicopters S/N 57001 and 57211, within 400 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 400 hours TIS, accomplish the actions required by paragraphs (g)(1)(i) through (iii) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using Bell Alert Service Bulletin 429–19–47, Revision A, dated November 2, 2020, or Bell Alert Service Bulletin 429–19–47, dated August 28, 2019.

(i) 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 (j)(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.

(j) Related Information

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

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com*; or at *https://www.bellflight.com/support/contact-support*. You may view this 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.

(3) The subject of this AD is addressed in Transport Canada AD CF–2021–15, dated April 14, 2021. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–1074.

Issued on December 15, 2021.

Ross Landes,

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

[FR Doc. 2021–27622 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1077; Project Identifier MCAI–2021–00607–A]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–18–10, which applies to certain Diamond Aircraft Industries GmbH (DAI) Model DA 42, DA 42 M–NG, and DA 42 NG airplanes. AD 2017–18–10 requires modifying the flap control system, repetitively inspecting the flap bell crank, and replacing the flap bell crank as necessary. Since the FAA issued AD 2017–18–10, the European Union Aviation Safety Agency (EASA) superseded its mandatory continuing airworthiness information (MCAI) to correct an unsafe condition on these products. This proposed AD would retain the actions required by AD 2017–18–10, expand the applicability, and prohibit the installation of certain flap bell cranks. 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 February 7, 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 Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria; phone: +43 2622 26700; email: *office@diamond-air.at;* website: *https://www.diamondaircraft.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1077; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@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–2021–1077; Project Identifier MCAI–2021–00607–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2017–18–10, Amendment 39–19019 (82 FR 42029, September 6, 2017) (AD 2017–18–10), for certain serial-numbered DAI Model DA 42, DA 42 M–NG, and DA 42 NG airplanes. AD 2017–18–10 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2017–0074, dated April 28, 2017, to identify and correct an unsafe condition identified as cracks and deformation on certain flap bell cranks.

AD 2017–18–10 requires modifying the flap control system by installing two spacers to replace a single long spacer, repetitively inspecting the flap bell crank, and replacing the flap bell crank with an improved part as necessary. The FAA issued AD 2017–18–10 to prevent failure of the flap bell crank, which could result in reduced control of the airplane.

Actions Since AD 2017–18–10 Was Issued

Since the FAA issued AD 2017–18–10, EASA superseded EASA AD 2017–0074, dated April 28, 2017, and issued EASA AD 2020–0008 dated January 20, 2020 (referred to after this as ''the MCAI''). The MCAI states:

> Occurrences were reported of finding cracks and deformation on certain flap bell cranks. Investigation results identified frequent high load conditions as the cause for these events.
>
> This condition, if not detected and corrected, could lead to failure of the flap bell crank, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, DAI issued [Mandatory Service Bulletin] MSB 42–126/42NG–066 and the corresponding [Work Instructions] WI MSB 42–126/42NG–066 (single document), providing inspection and modification instructions. Consequently, EASA issued AD 2017–0074 to require modification of the flap control system by installing two spacers to

replace a single long spacer, repetitive inspections of the flap bell crank, and, depending on findings, replacement of the flap bell crank with an improved part. That [EASA] AD also provided an optional terminating action by installing an improved flap bell crank.

Since that [EASA] AD was issued, it was determined that early 'Revisions' of P/N D60–2757–11–00 flap bell cranks are no longer acceptable and should be removed from service. Prompted by that determination, DAI issued the applicable MSB, as defined in this [EASA] AD, to provide the relevant instructions.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0074, which is superseded, expands the applicability, and requires removal from service of certain affected parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1077.

EASA made the determination to increase the applicability during a continued operational safety review. EASA determined that the earlier versions of the bellcranks could be installed on all serial-numbered airplanes and expanded the applicability accordingly.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Diamond Aircraft Mandatory Service Bulletin MSB 42–126/1 and MSB 42NG–066/1, Revision 1, dated November 14, 2019 (issued as one document) published with Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–126 and WI–MSB 42NG–066, Revision 1, dated November 14, 2019 (issued as one document) attached. This service information specifies procedures for inspecting the flap bell crank for cracks, installing two spacers instead of one long spacer, and replacing early revisions of the affected flap bell crank. 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**.

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 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 is issuing this NPRM after determining 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 retain the actions of AD 2017–18–10 but would expand the applicability and prohibit installing a flap bell crank with part number D60–2757–11–00, up to and including revision ''d.''

Differences Between This Proposed AD and the MCAI

The MCAI applies to DAI Model DA 42 M airplanes, and this proposed AD would not because it does not have an FAA type certificate.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 200 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Initial inspection and modification.	4 work-hours × $85 per hour = $340.	$10	$350	$70,000.
Repetitive inspection	2 work-hours × $85 per hour = $170.	N/A	$170 per inspection cycle	$34,000 per inspection cycle.

The FAA estimates the following costs to replace the flap bell crank based on the results of the proposed inspection. The agency has no way of determining the number of airplanes that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Flap bell crank replacement	1 work-hour × $85 per hour = $85	$475	$560

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 that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive 2017–18–10, Amendment 39–19019 (82 FR 42029, September 6, 2017); and
■ b. Adding the following new airworthiness directive:

Diamond Aircraft Industries GmbH: Docket No. FAA–2021–1077; Project Identifier MCAI–2021–00607–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 7, 2022.

(b) Affected ADs

This AD replaces AD 2017–18–10, Amendment 39–19019 (82 FR 42029, September 6, 2017).

(c) Applicability

This AD applies to Diamond Aircraft Industries GmbH Model DA 42, DA 42 M–NG, and DA 42 NG airplanes, all serial numbers, certificated in any category, with a flap bell crank part number (P/N) D60–2757–11–00, up to and including revision ''f'' installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 2700, Flight Control System.

(e) Unsafe Condition

This AD was prompted by reports of cracks and deformation on certain flap bell cranks. The FAA is issuing this AD to prevent failure of the flap bell crank. The unsafe condition, if not addressed, could result in reduced control of the airplane.

(f) Compliance

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

(g) Actions

(1) Comply with paragraph (g)(2) or (g)(3) of this AD at whichever compliance time in paragraph (g)(1)(i) or (ii) of this AD occurs later.

(i) Before the flap bell crank accumulates 600 hours time-in-service (TIS); or

(ii) Within 100 hours TIS after the effective date of this AD or within 6 months after the effective date of this AD, whichever occurs first.

(2) For airplanes with a flap bell crank revision ''e'' or ''f'': Inspect the flap bell crank P/N D60–2757–11–00 for cracks and deformation and modify the flap control system by installing two spacers, P/N DS BU2–10–06–0065–C, by following section III Instructions in Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–126 and WI–MSB 42NG–066, Revision 1, dated November 14, 2019 (issued as one document) attached to Diamond Aircraft Mandatory Service Bulletin MSB 42–126/1 and MSB 42NG–066/1, Revision 1, dated November 14, 2019 (issued as one document).

(i) If there is a crack or any deformation, you must replace the flap bell crank with P/N D60–2757–11–00_01, as required by step 6 of the Instructions, before further flight.

(ii) If there are no cracks and no deformation, repeat the inspection (not the modification) at intervals not to exceed 200 hours TIS until the flap bell crank is replaced with flap bell crank P/N D60–2757–11–00_01.

(3) For airplanes with a flap bell crank up to revision ''d'': Replace the flap bell crank with P/N D60–2757–11–00_01 in accordance with section III Instructions in Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–126 and WI–MSB 42NG–066, Revision 1, dated November 14, 2019 (issued as one document) attached to Diamond Aircraft Mandatory Service Bulletin MSB 42–126/1 and MSB 42NG–066/1, Revision 1, dated November 14, 2019 (issued as one document).

(h) Prohibited Installation

As of the effective date of this AD, do not install on any airplane a flap bell crank P/N D60–2757–11–00 with a revision up to and including revision ''d.''

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g)(2) and (3) of this AD, if done before the effective date of this AD using Diamond Aircraft Industries GmbH Work Instruction WI–MSB 42–126 and WI–MSB 42NG–066, dated March 27, 2017 (issued as one document) attached to Diamond Aircraft Mandatory Service Bulletin MSB 42–126 and MSB 42NG–066, dated March 27, 2017 (issued as one document).

(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 certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD and email 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 more information about this AD, contact Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2020–0008, dated January 20, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–1077.

(3) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria; phone: +43 2622 26700; email: *office@diamond-air.at*; website: *https://www.diamondaircraft.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on December 16, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27790 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1093; Airspace Docket No. 21–ASO–8]

RIN 2120–AA66

Proposed Amendment and Removal of VOR Federal Airways; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify 11 and remove 6 VHF Omnidirectional Range (VOR) Federal Airways in support of the VOR Minimum Operational Network (MON) project in the southeastern United States. This proposal would provide for the safe and efficient use of navigable airspace within the National Airspace System (NAS) while reducing NAVAID dependencies throughout the NAS as part of the FAA VOR MON project.

DATES: Comments must be received on or before February 7, 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–2021–1093; Airspace Docket No. 21–ASO–8 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 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 modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

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–2021–1093; Airspace Docket No. 21–ASO–8) 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–2021–1093; Airspace Docket No. 21–ASO–8.'' 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 modify 11 VOR Federal airways and remove 6 VOR Federal airways in support of the VOR MON project. The proposed airway changes are described below.

V–5: V–5 currently consists of two parts: From Pecan, GA, to Choo Choo, TN; and From Louisville, KY, to Appleton, OH. The FAA proposes to remove the segments from Pecan, GA, to Choo Choo, TN. The remaining part of the route would be amended to begin at New Hope, KY, then to Louisville, KY; Cincinnati, OH; to Appleton, OH. As amended, V–5 would extend from New Hope, KY, to Appleton, OH.

V–20: V–20 currently consists of two parts: From McAllen, TX, to Palacios, TX; and From Beaumont, TX, to Nottingham, MD. This proposal would remove the segments from Montgomery, AL, to Nottingham, MD. As amended, V–20 would extend from McAllen, TX, to Palacios, TX; and from Beaumont, TX, to Monroeville, AL. Additionally, the words ''The airspace within R–4007A and R–4007B is excluded'' would be removed from the route description because V–20 would no longer pass in the vicinity of the restricted areas.

V–35: V–35 currently consists of two parts: From Dolphin, FL to Morgantown, WV; and From Phillipsburg, PA, to Syracuse, NY. This action would remove the segments between Macon, GA, to Glade Spring, VA, from the first part of the route. The second part of the route would be amended to begin at Charleston, WV, then continuing on to Syracuse, NY, as currently charted. As amended, V–35 would extend from Dolphin, FL, to Pecan, GA; and from Charleston, WV, to Syracuse, NY. In addition, the words ''The airspace below 2,000 feet MSL outside the United States is excluded,'' and ''The portion outside the United States has no upper limit,'' would be removed from the route description. A review of aeronautical charts shows that V–35 does not extend outside the U.S. territorial limit, therefore these exclusions are not necessary.

V–51: V–51 currently consists of two parts: From Pahokee, FL to Louisville, KY; and From Shelbyville, IN, to Chicago Heights, IL. The FAA proposes to amend the first part by removing the segments from Alma, GA, to Hinch Mountain, TN. A new second part of the route would extend from Livingston, TN, to Louisville, KY. The current

segments from Shelbyville, TN, to Chicago Heights, IL, would become a third part of V–51 and would remain as currently charted. As amended, V–51 would consist of three parts: From Pahokee, FL, to Craig, FL; From Livingston, TN, to Louisville, KY; and From Shelbyville, TN, to Chicago Heights, IL.

V–56: V–56 currently extends from Montgomery, AL, to New Bern, NC. The FAA proposes to remove the segments from Montgomery, AL, to Colliers, SC. As amended, V–56 would extend from Columbia, SC, to New Bern, NC.

V–66: V–66 currently consists of two parts: From Mission, Bay, CA, to Millsap, TX; and From Crimson, AL, to Franklin, VA. The FAA proposes to amend the second part of the route by removing the segments between Crimson, AL, and Greenwood, SC. As amended, V–66 would extend from Mission Bay, CA, to Millsap, TX (as currently charted); and from Sandhills, NC, to Franklin, VA.

V–70: V–70 currently consists of three parts: From Monterrey, Mexico, to Picayune, MS; From Monroeville, AL, to Allendale, SC; and, From Grand Strand, SC, to Cofield, NC. This action would remove the segments between the intersection of the Monroeville, AL, 073° and the Eufala, AL, 258° radials, and Allendale, SC, from the route. As a result, the first part of the route would extend past Picayune, MS, to Monroeville, AL. As amended, V–70 would consist of two parts: From Monterrey, Mexico, to Monroeville, AL; and from Grand Strand, SC to Cofield, NC (as currently charted).

V–97: V–97 currently consists of two parts: From Dolphin, FL, to the intersection of the Chicago Heights, IL, 358° and the Dupage, IL, 101° radials; and From Nodine, MN, to Gopher, MN. The FAA proposes to remove the segments from Atlanta, GA, to Volunteer, TN. As amended, V–97 would consist of three parts: From Dolphin, FL, to Pecan, GA; From London, KY, to the intersection of the Chicago Heights, IL 358° and the Dupage, IL, 101° radials; and, From Nodine, MN, to Gopher, MN.

V–154: V–154 currently extends from Rome, GA, to Savannah, GA. The FAA proposes to remove the entire route.

V–155: V–155 currently extends from Columbus, GA, to Brooke, VA. This action would remove the segments from Columbus, GA, to Colliers, SC. The new starting point of the route would begin at the intersection of the Colliers, SC 058°(T)/062°(M) and the Columbia, SC, 329°(T)/331°(M) radials (this is the WIDER, SC, Fix as shown on Enroute charts). V–155 would then proceed to Brooke, VA, as currently charted. Note: when proposing new radials in a NPRM, both True (T) and Magnetic (M) degrees are stated. Only True degrees are used in any subsequent final rule.

V–179: V–179 currently extends from Brunswick, GA, to the intersection of the Dublin, GA, 309° and the Athens, GA 222° radials. The FAA proposes to remove the entire route.

V–243: V–243 currently extends from Craig, FL, to Choo Choo, TN. The FAA proposes to remove the entire route.

V–267: V–267 currently extends from Dolphin, FL, to Volunteer, TN. This action would remove the segments between Dublin, GA, and Volunteer, TN. As amended, V–267 would extend from Dolphin, FL, to Craig, FL.

V–323: V–323 currently extends from Montgomery, AL, to the intersection of the Dublin, GA, 309° and the Athens, GA, 221° radials. The FAA proposes to remove the entire route.

V–362: V–362 currently extends from Brunswick, GA, to Macon, GA. The FAA proposes to remove the entire route.

V–454: V–454 currently consists of two parts: From Brookley, AL, to the intersection of the Greenwood, SC, 046° and the Charlotte, NC 227° radials; and From the intersection of the Charlotte, NC 034° and the Liberty, NC, 253° radials to Hopewell, VA. This action proposes to remove the segments from the intersection of the Monroeville, AL, 073° and the Eufala, AL, 258° radials, to the intersection of the Greenwood, SC, 046° and the Charlotte, NC, 227° radials from the first part of the route. The starting point for the second part of the route (the intersection of the Charlotte 034° and the Liberty 253° radials) would be replaced by Liberty, NC. Therefore, as amended, V–454 would extend from Brookley, AL, to Monroeville, AL; and from Liberty, NC, to Hopewell, VA.

V–578: V–578 currently extends from Pecan, GA, to Savannah, GA. The FAA proposes to remove the entire route.

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 is incorporated by reference in 14 CFR 71.1. The VOR Federal airways 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–5 [Amended]

From New Hope, KY; Louisville, KY; Cincinnati, OH; to Appleton, OH.

* * * * *

V–20 [Amended]

From McAllen, TX, INT McAllen 038° and Corpus Christi, TX, 178° radials; 10 miles 8 miles wide, 37 miles 7 miles wide (3 miles

E and 4 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; to Palacios. From Beaumont, TX; Lake Charles, LA; Lafayette, LA; Reserve, LA; INT Reserve 084° and Gulfport, MS, 247° radials; Gulfport; Semmes, AL; INT Semmes 048° and Monroeville, AL, 231° radials; to Monroeville.

The airspace on the main airway above 14,000 feet MSL from McAllen to 49 miles northeast, and the airspace within Mexico is excluded.

* * * * *

V–35 [Amended]

From Dolphin, FL; INT Dolphin 266° and Cypress, FL, 110° radials; INT Cypress 110° and Lee County, FL, 138° radials; Lee County; INT Lee County 326° and St. Petersburg, FL, 152° radials; St. Petersburg; INT St. Petersburg 350° and Cross City, FL, 168° radials; Cross City; Greenville, FL; to Pecan, GA. From Charleston, WV; INT Charleston 051° and Elkins, WV, 264° radials; Clarksburg, WV to Morgantown, WV. From Philipsburg, PA; Stonyfork, PA; Elmira, NY; to Syracuse, NY.

* * * * *

V–51 [Amended]

From Pahokee, FL; INT Pahokee 010°and Treasure, FL, 193° radials; Treasure; INT Treasure 330°and Ormond Beach, FL, 183° radials; Ormond Beach; to Craig, FL. From Livingston, TN; to Louisville, KY. From Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; to Chicago Heights, IL.

* * * * *

V–56 [Amended]

From Columbia, SC; Florence, SC; Fayetteville, NC, 41 miles 15 MSL, INT Fayetteville 098° and New Bern, NC 256° radials; to New Bern.

* * * * *

V–66 [Amended]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM,277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Sandhills, NC; Raleigh-Durham, NC; to Franklin, VA.

* * * * *

V–70 [Amended]

From Monterrey, Mexico; Brownsville, TX; INT Brownsville 338°and Corpus Christi, TX, 193° radials; 34 miles standard width, 37 miles 7 miles wide (4 miles E and 3 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; Palacios; Scholes, TX; Sabine Pass, TX; Lake Charles, LA; Lafayette, LA; Fighting Tiger, LA; Picayune, MS; Green County, MS; to Monroeville, AL. From Grand Strand, SC; Wilmington, NC; Kinston, NC; INT Kinston 050° and Cofield, NC, 186° radials; to Cofield. The airspace within Mexico is excluded.

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V–97 [Amended]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; to Pecan, GA. From London, KY; Lexington, KY; Cincinnati, KY; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and DuPage, IL, 101° radials. From Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

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V–154 [Removed]

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V–155 [Amended]

From INT Colliers, SC, 058°(T)/062°(M) and Columbia, SC 329°(T)/331°(M) radials; Chesterfield, SC; Sandhills, NC; Raleigh-Durham, NC; Lawrenceville, VA; INT Lawrenceville 034° and Flat Rock, VA; 171° radials; Flat Rock; to Brooke, VA. The airspace within R–6602A is excluded.

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V–179 [Removed]

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V–243 [Removed]

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V–267 [Amended]

From Dolphin, FL; INT Dolphin 354° and Pahokee, FL, 157° radials; Pahokee; Orlando, FL; to Craig, FL.

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V–323 [Removed]

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V–362 [Removed]

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V–454 [Amended]

From Brookley, AL; to Monroeville, AL. From Liberty, NC; Lawrenceville, VA; to Hopewell, VA.

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V–578 [Removed]

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Issued in Washington, DC, on December 15, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–27632 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

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; extension of comment period.

SUMMARY: The Department of Commerce is extending the comment period for the proposed rule entitled, ''Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications,'' that was published in the **Federal Register** on November 26, 2021. The proposed rule's comment period, which would have ended on December 27, 2021, is extended until January 11, 2022.

DATES: The comment period for the proposed rule that published at 86 FR 67379 on November 26, 2021, is extended. Comments to this proposed rule must be received on or before January 11, 2022.

ADDRESSES: All comments must be submitted by one of the following methods:

- *By the Federal eRulemaking Portal: https://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: Robyn Patterson, Deputy Director of Public Affairs and Press Secretary, U.S. Department of Commerce, telephone: (202) 482–4883, email: *PublicAffairs@doc.gov.*

SUPPLEMENTARY INFORMATION: On November 26, 2021, the Department of

Commerce (Department) published a proposed rule, ''Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications,'' (Connected Software Applications Rule) to implement provisions of Executive Order 14034, ''Protecting Americans' Sensitive Data from Foreign Adversaries,'' 86 FR 31423 (June 11, 2021). Commenters have noted that the original comment deadline of December 27, 2021, may constrain those seeking to comment on the rule and have asked that the comment date be extended. The Department agrees and will extend the comment period for this proposed rule to January 11, 2022.

Trisha Anderson,

Deputy Assistant Secretary for Intelligence and Security, U.S. Department of Commerce.

[FR Doc. 2021–27730 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–20–P

FEDERAL TRADE COMMISSION

16 CFR Part 461

Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''Commission'') proposes to commence a rulemaking proceeding to address certain deceptive or unfair acts or practices of impersonation. The Commission is soliciting written comment, data, and arguments concerning the need for such a rulemaking to prevent persons, entities, and organizations from impersonating government agencies or staff and businesses or their agents.

DATES: Comments must be received on or before February 22, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Impersonation ANPR; FTC File No. R207000'' on your comment and file your comment online at *https://www.regulations.gov.* If you prefer to file on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christopher E. Brown (202–326–2825), *cbrown3@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. General Background Information

The Commission is publishing this document pursuant to Section 18 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 57a; the provisions of Part 1, Subpart B, of the Commission's Rules of Practice, 16 CFR 1.7 through 1.20; and 5 U.S.C. 553. This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

II. Objectives the Commission Seeks To Achieve and Possible Regulatory Alternatives

A. Background

Impersonation scams are a leading source of consumer fraud reported to the Commission, with the highest total financial loss for consumers. Impersonation scams can take many forms, but they generally involve scammers pretending to be a trusted source who convinces their targets to send money or to disclose personal information.[1] In the first three quarters of 2021, more than 788,000 impersonation scams were reported to the Commission, with a total reported monetary loss of about $1.6 billion dollars.[2] These scams often specifically target older consumers and communities of color[3] as well as small businesses.[4] Two prevalent categories of impersonation scams most frequently reported by consumers are government impersonators and business impersonators.[5]

Government and business impersonators are fishing for information they can use to commit identity theft or seek monetary payment, often requesting funds via wire transfer, gift cards, or (increasingly) cryptocurrency.[6] The impersonator can take many forms, posing as, for example, a lottery official, a government official or employee, or a representative from a well-known business or charity. Impersonators may also use implicit representations, such as misleading domain names and URLs and ''spoofed'' contact information, to create an overall net impression of legitimacy.[7]

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[1] *Imposter Scams,* Fed. Trade Comm'n, *https://www.consumer.ftc.gov/features/feature-0037-imposter-scams* (last visited Nov. 4, 2021).

[2] Fed. Trade Comm'n, *Fraud Reports: Subcategories over time: Imposter Scams,* Tableau Public (Nov. 23, 2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/SubcategoriesOverTime.* While some of the increase observed in 2021 is attributable to new data contributors, including the Social Security Administration, impersonation is a massive and persistent fraud and has been the top fraud category reported to the FTC every year since 2017. *See* Fed. Trade Comm'n, *Fraud Reports: Top Reports, Tableau Public* (Nov. 23, 2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports.* For a list of Sentinel data contributors, see *https://www.ftc.gov/enforcement/consumer-sentinel-network/data-contributors.*

[3] *See, e.g.,* AARP, Consumer Fraud in America: The Black Experience (Aug. 2021), *https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/consumer-fraud-black-experience.doi.10.26419-2Fres.00456.001.pdf;* AARP, Consumer Fraud in America: The Latino Experience (Aug. 2021), *https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/consumer-fraud-latino-experience-report.doi.10.26419-2Fres.00455.001.pdf;* Fed. Trade Comm'n, *Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color* (October 2021) at 12–15, 23, 43–44, *available at https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.*

[4] *See, e.g.,* Compl. at 3–4, *FTC* v. *Ponte Invs., LLC,* No. 1:20–cv–00177–JJM–PAS (D.R.I. filed Apr. 17, 2020) (causing small businesses to believe callers were affiliated with the Small Business Administration); Compl. at 6–7, *FTC* v. *Point Break Media, LLC,* No. 0:18–cv–61017–CMA (S.D. Fla. filed May 7, 2018) (robocalls to small businesses claiming to be Google); Compl. at 2, *FTC* v. *DOTAuthority.com, Inc.,* No. 16–cv–62186 (S.D. Fla. filed Sept. 13, 2016) (''Many of the consumers harmed by Defendants' false representations are small businesses with only a few employees and fewer than five trucks.''); Compl. at 3–4, *FTC* v. *D&S Mktg. Sols., LLC,* No. 8:16–cv–1435 (M.D. Fla. filed June 6, 2016) (deceiving small businesses into spending $1.3 million on free government regulation posters); Compl. at 5, *FTC* v. *Epixtar Corp.,* No. 03–CV–8511–DAB (S.D.N.Y. filed Nov. 3, 2003) (defendants sold internet services to small businesses and falsely represented they were calling from Verizon or the yellow pages).

[5] Fed. Trade Comm'n, *Fraud Reports: Subcategories over time,* Tableau Public (Nov. 23, 2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/SubcategoriesOverTime. See also* Fed. Trade Comm'n, Consumer Sentinel Network Data Book 2020, 4 (2021), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf.*

[6] Fed. Trade Comm'n, *Explore Government Imposter Scams,* Tableau Public, *https://public.tableau.com/app/profile/federal.trade.commission/viz/GovernmentImposter/Infographic* (last visited Nov. 4, 2021). *See also* Emma Fletcher, *Cryptocurrency buzz drives record investor scam losses, FTC Data Spotlight* (May 17, 2021), *https://www.ftc.gov/news-events/blogs/data-spotlight/2021/05/cryptocurrency-buzz-drives-record-investment-scam-losses.*

[7] *See, e.g.,* Compl. at 8–12, *FTC* v. *Forms Direct, Inc.,* No. 3:18–cv–06294 (N.D. Cal. Filed Oct. 15, 2018) (government impersonator used domains including *www.usimmigration.us* and

Continued

Government impersonators typically assert an air of authority to stage their scam, and they use all methods of communication to reach their targets. These scammers sometimes threaten a target with severe consequences such as a discontinuation of benefits,[8] enforcement of tax liability,[9] and even arrest or prosecution.[10] Another observed tactic of government impersonators is to deceive consumers into paying for services that would otherwise be free,[11] or to lure them with promises of government grants, prizes, or loan forgiveness.[12] Business impersonators typically get consumers' attention with emails, telephone calls, or text messages about suspicious activity on consumers' accounts or computers or supposed good news about a refund or prize in hopes of gaining trust and receiving personal information.[13]

Data reported to the FTC and the Commission's law enforcement experience indicate strongly that government impersonation scams are highly prevalent and increasingly harmful. From January 1, 2017 through September 30, 2021, consumers reported 1,362,996 instances of government impersonation and associated total losses of roughly $922,739,109.[14] The most common such schemes involved Social Security Administration (SSA) impersonators, with more than 308,000 complaints alleging SSA impersonation, followed by the IRS (124,000) and Health and Human Services/Medicare programs (125,000).[15] There were also several thousand reports of scammers impersonating government grant-makers (19,000); FBI, police, or sheriff personnel (11,500); the FTC (9,500); the Treasury Department (14,000); and the U.S. Postal Service (6,500).[16]

Scammers have been quick to capitalize on the COVID–19 pandemic by exploiting consumers' concerns about their health and safety, public misinformation and confusion surrounding the crisis, and the government's response, which has fueled various COVID-related impersonation scams.[17]

Business impersonation scams cause a similarly enormous amount of financial harm to the public. From January 1, 2017 through September 30, 2021, consumers reported being defrauded of roughly $852 million in 753,555 business impersonation incidents.[18] For business impersonation frauds reported in the FTC's Consumer Sentinel Network, consumers most frequently identified impersonators of Amazon and Apple. Other common impersonations include Publisher's Clearing House, tech companies such as Microsoft and Facebook, retail banks (Bank of America, Wells Fargo, Citigroup, and JPMorgan), utilities (Comcast, Verizon, and AT&T), and consumer goods brands such as Costco and Walmart.[19]

Impersonation fraud in general—including business, government, friend and family, romance, and tech support impersonation—has increased during the pandemic, with reported total losses of $2 billion between October 2020 and September 2021 (up 85% year over year).[20] Since the pandemic began, COVID-specific scam reports have included 12,491 complaints of government impersonation and 8,794 complaints of business impersonation.[21] The incidence of business impersonation climbed higher during the pandemic as commerce shifted significantly online: There were 273,000 complaints about business impersonation during the period of July 2020 through June 2021, of which roughly one third—over 96,000—identify Amazon.[22] Consumers reported losing more than $27 million to Amazon impersonation alone.[23]

Although the Commission has brought many cases involving impersonator scams under Section 5 of the FTC ACT, 15 U.S.C. 45, its current remedial authority is limited. The U.S. Supreme Court recently held that equitable monetary relief, including consumer redress, is not available under Section 13(b) of the FTC Act.[24] Additionally, consumer redress under

www.uscitizenship.info); Jay Peters, *Hackers are impersonating Zoom, Microsoft Teams, and Google Meet for phishing scams,* The Verge (May 12, 2020), *https://www.theverge.com/2020/5/12/21254921/hacker-domains-impersonating-zoom-microsoft-teams-google-meet-phishing-covid-19. Cf.* Compl. at 36, *FTC* v. *Associated Cmty. Servs., Inc.,* No. 2:21–cv–10174–DML–CI (E.D. Mich. filed Jan. 26, 2021) (fake charity scammers ''spoofed'' caller ID to show names like ''Breast Cancer'' or ''Volunteer Fire'' and local area codes).

[8] *See, e.g.,* Stipulated Order at 5–6, *FTC* v. *Sun Bright Ventures LLC,* No. 8:14–cv–02153 (M.D. Fla. July 22, 2015); AARP, *Medicare Card Scams,* AARP Fraud Resource Ctr., *https://www.aarp.org/money/scams-fraud/info-2019/new-medicare-card.html* (last updated Feb. 4, 2021); Harriet Edelson, *Social Security Administration Warns of Increase in Telephone Scams, AARP* (Mar. 5, 2019), *https://www.aarp.org/money/scams-fraud/info-2019/social-security-scams-psa.html.*

[9] *See, e.g.,* Compl. at 4, *FTC* v. *PHLG Enters. LLC,* No. 8:17–cv–00220 (M.D. Fla. filed Jan. 27, 2017) (misrepresenting IRS affiliation); *see also* AARP, *IRS Imposter Scam,* AARP Fraud Resource Ctr., *https://www.aarp.org/money/scams-fraud/info-2019/irs.html* (last updated Aug. 20, 2021) (Treasury Department reports 2.5 million IRS impersonator calls from 2013–2021).

[10] *See, e.g.,* Compl. at 7, *FTC* v. *Premier Debt Acquisitions LLC,* No. 1:15–cv–00421 (W.D.N.Y. filed May 11, 2015) (threatening lawsuits and wage garnishment and posing as state law enforcement); Compl. at 2, *FTC* v. *Centro Natural Corp.,* No. 14–23879–CIV (S.D. Fla. filed Oct. 20, 2014) (threatening arrest or referral to law enforcement and posing as agents of court officials, government officials, or lawyers); *see also* Better Bus. Bureau, 2019 BBB Scam Tracker Risk Report 26–27 (2020); Emma Fletcher, *Government imposter scams top the list of reported frauds, FTC Data Spotlight* (July 1, 2019), *https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds.*

[11] *See, e.g.,* Compl. at 26–28, *FTC* v. *On Point Global LLC,* No. 19–cv–25046 (S.D. Fla. filed Dec. 9, 2019); Am. Compl. at 5–8, *FTC* v. *Starwood Consulting, LLC,* No. 4:18–cv–02368 (S.D. Tex. filed Mar. 27, 2019); Compl. at 1, *Forms Direct, Inc.,* No. 3:18–cv–06294; Compl. at 3–4, *D&S Mktg. Sols.,* No. 8:16–cv–1435.

[12] *See, e.g.,* Compl. at 15, *FTC* v. *Am. Fin. Support Servs., Inc.,* No. 8:19–cv–02109 (C.D. Cal. filed Nov. 4, 2019); Stipulated Order at 3, *FTC* v. *Nat'l Awards Serv. Advisory, LLC,* No. 4:10–cv–5418–PJH (N.D. Cal. Apr. 19, 2012).

[13] Fed. Trade Comm'n, *Imposter Scams,* Fed. Trade Comm'n Consumer Info., *https://www.consumer.ftc.gov/features/feature-0037-imposter-scams* (last visited Nov. 4, 2021); *BBB Scam Alert: Receive a text with a surprise offer? Don't click that link!, Better Bus. Bureau* (Sept. 17, 2021), *https://www.bbb.org/article/scams/25888-bbb-scam-alert-receive-a-text-with-a-surprise-offer-dont-click-that-link.*

[14] *Government Imposter Scams,* Tableau Public, *supra* note 6. Some figures are rounded to the nearest thousand for ease of reading.

[15] *Id.*

[16] *Id.*

[17] *See, e.g.,* Stipulated Final Order at 4, *Ponte Invs.,* No. 1:20–cv–00177–JJM–PAS; Admin. Compl., *Traffic Jam Events, LLC,* No. 202 3127 (F.T.C. filed Aug. 10, 2020). *See also* U.S. Cybersec. & Infrastructure Sec. Agency, avoid scams related to economic payments, covid–19 (2020), *https://www.cisa.gov/sites/default/files/publications/Avoid_Scams_Related_to_Economic_Payments_COVID-19.pdf;* Off. of Inspector Gen., *Fraud Alert: COVID–19 Scams, U.S. Dep't of Health & Human Servs., https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-covid-19-scams/* (last updated Aug. 16, 2021); *Coronavirus Scams—Consumer Resources,* Fed. Commc'ns Comm'n, *https://www.fcc.gov/covid-scams* (last updated Aug. 26, 2021); Treasury Inspector Gen. for Tax Admin., *IRS-Related Coronavirus Scam, U.S. Dep't of Treasury, https://www.treasury.gov/tigta/coronavirus.shtml* (last visited Nov. 4, 2021).

[18] Consumer Sentinel Network (Nov. 22, 2021).

[19] *Phishing Attacks,* CrowdStrike (Mar. 25, 2021), *https://www.crowdstrike.com/cybersecurity-101/phishing/.*

[20] Fed. Trade Comm'n, *Fraud Reports: Trends Over Time,* Tableau Public (Nov. 22, 2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TrendsOverTime.*

[21] Fed. Trade Comm'n, *FTC Covid-19 and Stimulus Reports,* Tableau Public, *https://public.tableau.com/app/profile/federal.trade.commission/viz/COVID-19andStimulusReports/Map* (last updated Oct. 18, 2021).

[22] Emma Fletcher, *Consumer Protection Data Spotlight, Amazon Tops List of Impersonated Businesses,* FTC Data Spotlight (Oct. 20, 2021), *https://www.ftc.gov/news-events/blogs/data-spotlight/2021/10/amazon-tops-list-impersonated-businesses. But see supra* n.2 (uptick in complaints maybe result of adding new data contributors to the Consumer Sentinel Network database).

[23] *See* Fletcher, *supra* note 22.

[24] *See AMG Cap. Mgmt., LLC* v. *FTC,* 141 S. Ct. 1341, 1352 (2021).

Section 19(b), 15 U.S.C. 57b(a) through (b), is limited and challenging to obtain without a rule violation. The Commission believes a rule addressing certain types of unfair or deceptive acts or practices involving impersonation, including affiliation and endorsement, of government and businesses could help reduce the level of fraud in this area and serve as an additional deterrent for bad actors in the future because such a trade regulation rule would subject first-time violators to civil penalties.[25] It would also enable the Commission to obtain redress for consumers who lost money to impersonation scams.

B. Objectives and Regulatory Alternatives

The Commission requests input on whether and how it should use its authority under Section 18 of the FTC Act, 15 U.S.C. 57a, to address deceptive or unfair acts or practices involving impersonation. Specifically, the Commission proposes addressing the following practices, which have been the subject of numerous Commission investigations and law enforcement actions: (a) Impersonation of a government official or agency by a person or organization without authority to act on behalf of that government; [26] (b) impersonation of a business or its agents by a person or organization without authority to act on behalf of that business; [27] and (c) entities that may provide the means and instrumentalities for these impersonators to operate.[28] Both the Mortgage Assistance Relief Services (MARS) Rule and the Telemarketing Sales Rule (TSR) already proscribe impersonation involving false government and business (including nonprofit) affiliation and endorsement claims.[29] The FTC has filed a number of law enforcement actions to protect consumers and small businesses from these types of impersonation claims outside of the purview of these rules.[30] An impersonator rule that builds on the existing sector- and method-specific rules could more comprehensively outlaw government and business impersonation. By focusing on practices that are the subject of its law enforcement experience and the subject of consumer fraud reports, the Commission anticipates streamlining this proposed rulemaking for the benefit of consumers.

The Commission seeks comment on, among other things, the prevalence of each of the above practices, the costs and benefits of a rule that would address them, and alternative or additional action to such a rulemaking, such as the publication of additional consumer and business education materials and hosting of public workshops. In their replies, commenters should provide any available evidence and data that support their position, such as empirical data, consumer-

[25] *See* 15 U.S.C. 45(m)(1)(A); *see also* COVID–19 Consumer Protection Act of the 2021 Consolidated Appropriations Act § 1401, Pub. L. 116–260, 134 Stat. 1182 (permitting the Commission to seek civil penalties for violations of Section 5 of the FTC Act associated with ''the treatment, cure, prevention, mitigation, or diagnosis of COVID–19'' or ''a government benefit related to COVID–19'').

[26] *E.g.,* Compl. at 14, *FTC* v. *Alcazar Networks, Inc.,* No. 6:20–cv–2200 (M.D. Fla. filed Dec. 3, 2020); Stipulated Final Order at 4, *Ponte Invs., LLC,* No. 1:20–cv–00177–JJM–PAS; Compl. at 9–11, *FTC* v. *Critical Res. Mediation, LLC,* No. 1:20–cv–03932 (N.D. Ga. filed Sept. 22, 2020); Admin. Compl., *Traffic Jam Events,* No. 202 3127; Stipulated Order at 2, *Starwood Consulting,* No. 4:18–cv–2368 (Dec. 10, 2019); Compl. at 27–28, *On Point Global LLC,* No. 19–cv–25046; Compl. at 15, *Am. Fin. Support Servs., Inc.,* No. 8:19–cv–02109; Stipulated Order at 3–5, *Forms Direct, Inc.,* No. 3:18–cv–06294 (Dec. 7, 2018); Stipulated Order at 6–7, *FTC* v. *Vantage Point Servs., LLC,* No. 1:15–cv–0006 (W.D.N.Y. Sept. 17, 2018); Compl. at 7, *United States* v. *Sunkey Publ'g, Inc.,* No. 3:18–cv–01444 (N.D. Ala. filed Sept. 6, 2018); Final J. at 5–6, *DOTAuthority.com,* No. 16–62186–civ (Apr. 13, 2018); Compl. at 10, *FTC* v. *4 Star Resol. LLC,* No. 1:15–cv–112S (W.D.N.Y. filed Mar. 20, 2018); Stipulated Order at 3, *D&S Marketing Sols.,* No. 8:16–cv–1435 (July 10, 2017); Compl. at 4, *PHLG Enters.,* No. 8:17–cv–00220; J. at 5–6, *FTC* v. *Fed. Check Processing, Inc.,* No. 1:14–cv–00122 (W.D.N.Y. Oct. 13, 2016); Permanent Inj. & Order at 8, *FTC* v. *CD Capital Invs., LLC,* No. 8:14–cv–01033 (C.D. Cal. Aug. 22, 2016); Order at 5, *United States* v. *Commercial Recovery Sys., Inc.,* No. 4:15–cv–36 (E.D. Tex. filed Apr. 18, 2016); Am. Final J. at 8, *FTC* v. *Lake,* No. 8:15–cv–00585–CJC (C.D. Cal. Mar. 22, 2016); Compl. at 3–5, *FTC* v. *Mun. Recovery Servs. Corp.,* No. 3:15–cv–04064 (N.D. Tex. filed Dec. 24, 2015); Stipulated Final Order at 6–7, *Premier Debt Acquisitions,* No. 1:15–cv–00421 (Jan. 7, 2016); Compl. at 4, 6, *FTC* v. *Nat'l Payment Processing LLC,* No. 1:15–cv–3811 (N.D. Ga. filed Oct. 30, 2015); Stipulated Order at 3, *FTC* v. *Broadway Global Master, Inc.,* No. 2:12–cv–0855 (E.D. Cal. filed Sept. 10, 2015); Final Order at 4, *FTC* v. *First Time Credit Sol., Corp.,* No. 2:15–cv–01921 (C.D. Cal. July 30, 2015); Final Order at 6, *Sun Bright Ventures LLC,* No. 8:14–cv–02153; Final Order at 2, 5, *FTC* v. *Centro Natural Corp.,* No. 1:14–cv–23879 (S.D. Fla. July 15, 2015); Default J. & Final Order at 4–5, 11, *FTC* v. *Williams, Scott & Assocs.,* No. 1:14–cv–1599–HLM (N.D. Ga. Apr. 2, 2015); Final Order at 7, *FTC* v. *First Consumers, LLC,* No. 2:14–cv–01608 (E.D. Pa. Feb. 19, 2015); Stipulated Final Order at 9, *FTC* v. *FMC Counseling Servs., Inc.,* No. 0:14–cv–61545 (S.D. Fla. Dec. 15, 2014); Default J. & Order at 3, 7–9, *FTC* v. *AFD Advisors, LLC,* No. 1:13–cv–06420 (N.D. Ill. Aug. 26, 2014); Final Default J. & Order at 4, 10–11, *FTC* v. *Cuban Exch., Inc.,* No. 1:12–cv–05890–NGG–RML (E.D.N.Y. July 30, 2014); Stipulated Final J. & Order at 11–12, *FTC* v. *Am. Mortg. Consulting Grp.,* No. 8:12–cv–01561 (S.D. Cal. Sept. 18, 2013); Stipulated Order at 10, *FTC* v. *Freedom Cos. Mktg., Inc.,* No. 1:12–cv–05743 (N.D. Ill. Dec. 21, 2012); Stipulated Final J. & Order at 5–6, *FTC* v. *Am. Credit Crunchers, LLC,* No. 1:12–cv–01028 (N.D. Ill. Oct. 10, 2012); Compl. at 13–14, *FTC* v. *Springtech 77376, LLC,* No. 4:12–cv–04631–PJH (N.D. Cal. filed Sept. 5, 2012); Stipulated Final Order at 9–11, *FTC* v. *Mallett,* No. 1:11–cv–01664–CKK (D.D.C. June 14, 2012); Compl. at 11–13, 15, *Nat'l Awards Serv. Advisory,* No. 4:10–cv–5418–PJH (filed Apr. 19, 2012); Stipulated Final J. at 4, *FTC* v. *Immigr. Ctr.,* No. 3:11–cv–00055–LRH (D. Nev. Dec. 27, 2011); Stipulated Final Order at 11, 13, *FTC* v. *Residential Relief Found., Inc.,* No. 1:10–cv–3214 (D. Md. Sept. 28, 2011); Compl. at 6–7, *FTC* v. *Loma Int'l. Bus. Group, Inc.,* No. 1:11–cv–01483–MJG (D. Md. filed June 1, 2011). *See also* Alvaro Puig, *Warning: Email from FTC Chair Lina M. Khan about Coronavirus money is fake,* FTC Consumer Info. (Aug. 19, 2021); Scott Graham, *Why the US PTO is Seeking to Register Its Own Trademarks, Nat'l L. J.* (Aug. 5, 2021), *https://www.law.com/nationallawjournal/2021/08/05/why-the-uspto-is-seeking-to-register-its-own-trademarks/?slreturn=20210816155611;* Better Bus. Bureau, Government Imposter Scams (July 2020), *https://www.bbb.org/globalassets/local-bbbs/council-113/media/scam-studies/bbb-government-impostors-study.pdf.*

[27] *E.g.,* Compl. at 6–9, *FTC* v. *Nat'l Web Design, LLC,* No. 2:20–cv–00846 (D. Utah filed Nov. 30, 2020) (Amazon Affiliates); Compl. at 8, *FTC* v. *One or More Unknown Parties Deceiving Consumers into Making Purchases Through www.cleanyos.com,* No. 5:20–cv–02494 (N.D. Ohio filed Nov. 4, 2020) (Lysol and Clorox); Compl. at 8–11, 13, *FTC* v. *Disruption Theory LLC,* No. 3:20–cv–06919VC (N.D. Cal. filed Oct. 5, 2020) (Global Tel*Link/Securus); Compl. at 10, *FTC* v. *Click4Support, LLC,* No. 2:15–cv–05777 (E.D. Pa. filed Oct. 26, 2015) (Apple/Microsoft); Compl. at 8–9, *FTC* v. *Modern Tech. Inc.,* No. 13–cv–8257 (N.D. Ill. filed Nov. 18, 2013) (Yellow Pages). *See also* Brooke Crothers, *Amazon, Apple, Microsoft among top brands used by scammers,* Fox News.com (Apr. 17, 2021), *https://www.foxnews.com/tech/amazon-apple-microsoft-top-brands-scammers;* Alvaro Puig, *Fake calls from Apple and Amazon support: What you need to know, FTC Consumer Info.* (Dec. 3, 2020), *https://www.consumer.ftc.gov/blog/2020/12/fake-calls-apple-and-amazon-support-what-you-need-know;* Microsoft Corp., *Protect yourself from tech support scams,* Microsoft Support, *https://support.microsoft.com/en-us/windows/protect-yourself-from-tech-support-scams-2ebf91bd-f94c-2a8a-e541-f5c800d18435* (last visited Nov. 4, 2021).

[28] *See, e.g.,* Order for Permanent Inj. & Monetary J., *FTC* v. *Moore,* No. 5:18–cv–01960, 2018 WL 4510707, at *1 (C.D. Cal. Sept. 17, 2018) (operator of fakepaystub.com ''permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, any statement or representation of material fact that misrepresents . . . any person's identity''); Compl. at 3–5 & Ex. H, *FTC* v. *Moore,* No. 5:18–cv–01960 (C.D. Cal. filed Sept. 13, 2018).

[29] *See* Regulation O (Mortgage Assistance Relief Services), 12 CFR 1015.3(b)(3) (prohibiting misrepresentations that ''a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with: (i) The United States government, (ii) Any governmental homeowner assistance plan, (iii) Any Federal, State, or local government agency, unit, or department, (iv) Any nonprofit housing counselor agency or program, (v) The maker, holder, or servicer of the consumer's dwelling loan, or (vi) Any other individual, entity, or program''); Telemarketing Sales Rule, 16 CFR 310.3(a)(2)(vii) (prohibiting misrepresentations with respect to a ''seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity'').

[30] *See, e.g.,* Compl. at 2–3, *FTC* v. *First Time Credit Sol., Corp.,* No. 2:15–cv–01921–DDP–PJW (C.D. Cal. filed Mar. 16, 2015) (company used false affiliation with the FTC to market bogus credit repair services to Spanish-speaking consumers); Compl. at 8, *FTC* v. *Gerber Prods. Co.,* No. 2:14–cv–06771–SRC–CLW (D.N.J. filed Oct. 30, 2014) (company misrepresented its baby formula qualified for or received approval for a health claim from the U.S. Food and Drug Administration); Compl. at 3–4, *Ponte Invs., LLC,* No. 1:20–cv–00177–JJM–PAS (causing small businesses to believe callers were affiliated with the Small Business Administration).

perception studies, and consumer complaints.

C. The Rulemaking Process

The Commission seeks the broadest participation in the rulemaking. It encourages all interested parties to submit written comments. The Commission also requests input in analyzing various options and in drafting a proposed rule. After reviewing comments submitted in response to this advance notice of proposed rulemaking, the Commission may proceed with further steps outlined in Section 18 of the FTC Act and Part 1, Subpart B, of the Commission's Rules of Practice.

III. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed rulemaking. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) How widespread is the impersonation of government entities, such as agencies of the U.S., state, and local governments? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of government entities? What data sources did you rely on in formulating your answer(s)?

(2) How widespread is the impersonation of businesses? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of businesses? What data sources did you rely on in formulating your answer(s)?

(3) How widespread is the impersonation of individuals or entities other than governments and businesses in interstate commerce? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of individuals or entities other than governments and businesses? What data sources did you rely on in formulating your answer(s)?

(4) How should a rule addressing the practices described in Questions 1 through 3, above, define the term ''impersonation''? What claims, images, or symbols are likely to give rise to the net impression of government or business impersonation? What evidence supports your answer(s)?

(5) For the practices described in Questions 1 through 3, above, are there individuals or entities that provide the means and instrumentalities for impersonators to conduct such practices? If so, what types of goods or services do they provide that significantly enable impersonators to conduct such practices? What type of consumer injury does this cause? Under what circumstances should the provision of such goods or services be considered deceptive or unfair? What evidence supports your answer(s)?

(6) For any practices discussed in Questions 1 through 3, above, does the practice cause consumer injury? If so, what type of consumer injury does it cause? What evidence demonstrates such practices cause consumer injury? Please provide the evidence.

(7) For each of the practices described in Questions 1 through 3, above, are there circumstances in which such practices would not be deceptive or unfair? If so, what are those circumstances and could and should the Commission exclude such circumstances from the scope of any rulemaking? Why or why not?

(8) What existing laws and regulations, other than the FTC Act, if any, address the practices described in Questions 1 through 3, above? How do those laws and regulations affect consumers? How do those laws and regulations affect businesses, particularly small businesses? What evidence supports your answer(s)?

(9) Is there a need for new regulations to prevent the practices described in Questions 1 through 3, above? If yes, why? If no, why not? What evidence supports your answer(s)?

(10) How should a rule addressing the practices described in Questions 1 through 3, above, be crafted to maximize the benefits to consumers while minimizing the costs to businesses? What evidence supports your answer(s)?

(11) Should the Commission consider publishing additional consumer and business education materials or hosting public workshops to reduce consumer harm associated with the practices described in Questions 1 through 3, above? If so, what should such education materials include, and how should the Commission communicate that information to consumers and businesses?

(12) What alternatives to regulations should the Commission consider to address the practices described in Questions 1 through 3, above? Would those alternatives obviate the need for regulation? If so, why? If not, why not? What evidence supports your answer(s)?

(13) Are there other commercial acts or practices involving impersonation that are deceptive or unfair that should be addressed in the proposed rulemaking? If so, describe the practices. How widespread are the practices? Please answer Questions 4 through 11, above, with respect to these practices.

IV. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 22, 2022. Write ''Impersonation ANPR; FTC File No. R207000'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov.*

Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Impersonation ANPR; FTC File No. R207000'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment by courier or overnight service to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. Your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or

other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before February 22, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacypolicy.*

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Statement Issued on December 16, 2021

Statement of Chair Lina M. Khan Regarding the Advance Notice of Proposed Rulemaking on Government & Business Impersonation

Government and business impersonation schemes cheat American consumers and small businesses out of billions of dollars every year. These scammers often pretend to be working for government institutions—like the Social Security Administration, the IRS, or law enforcement—and tell targets that if they don't hand over money or submit sensitive personal information, they could lose a government benefit, face a tax liability—or even be arrested. Sometimes these fraudsters pull off these schemes instead by pretending to be working for a well-known brand or company.

Both our enforcement work and consumer data suggest that government and business impersonation scams appear highly prevalent and increasingly harmful. These scams have been the top category of fraud reports and the largest source of total reported consumer financial losses for several year.[1] Impersonation fraud in general has skyrocketed during the pandemic—with impersonation fraudsters scamming Americans out of around $2 billion between October of last year and September of this year, an 85% increase year-over-year.[2] Government and business impersonators have shamelessly capitalized on the health, safety, and financial worries catalyzed by the COVID–19 crisis—not only tricking Americans into handing over their money or sensitive personal information, but also impeding access to needed goods, services, and benefits. While these scams affect consumers from all walks of life, our data show that scammers often specifically target the most vulnerable, including senior citizens, communities of color, and small businesses.[3]

The FTC routinely prosecutes these scams and has returned millions of dollars to defrauded consumers. In the last fiscal year alone, FTC's law enforcement work delivered more than $403 million back to consumers.[4] However, the recent Supreme Court decision in *AMG Capital Management, LLC* v. *FTC* has significantly curbed our ability to recover money for the victims of these schemes.[5]

To ensure that we can continue to protect Americans from these fraudsters, our staff has recommended that we initiate a rulemaking proceeding to codify a prohibition on impersonator fraud. I strongly support the issuance of this Advance Notice of Proposed Rulemaking. It is critical that our 13(b) authority be restored. It is also incumbent on the Commission to use the full range of tools that Congress has given us to ensure that Americans are protected from these fraudsters.

A rulemaking in this area could likely have a market-wide impact and serve as a deterrent for bad actors, given that a rule here would subject first-time violators to civil penalties.[6] It could also enable the Commission to obtain redress for the people who lose money to these impersonation scams. This effort is particularly critical post-*AMG* and would represent one of the most significant anti-fraud initiatives at the agency in decades.

I urge my colleagues to support this ANPR and broader efforts to use our full authority to protect Americans from government and business impersonation scams. I will look forward to public comments and engagement during our rulemaking proceeding to inform this effort.

[FR Doc. 2021–27731 Filed 12–22–21; 8:45 am]

BILLING CODE 6750–01–P

[1] Fed. Trade Comm'n, *Fraud Reports: Top Reports,* Tableau Public (Nov. 23, 2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports; see also,* Fed. Trade Comm'n, *Consumer Sentinel Network Data Book* 2020, 4–8 (2021), *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-databook-2020/csn_annual_data_book_2020.pdf.*

[2] Fed. Trade Comm'n, *Fraud Reports: Trends Over Time,* Tableau Public (November 22, 2021), *https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts.*

[3] Fed. Trade Comm'n, Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color (Oct. 2021) (noting that impersonator fraud is the highest complaint category for Latino communities and the second highest for Black communities).

[4] Fed. Trade Comm'n, Protecting Older Consumers 2020–2021: A Report of the Federal Trade Commission (Oct. 18, 2021) at 17, *https://www.ftc.gov/system/files/documents/reports/protecting-older-consumers-2020-2021-report-federal-trade-commission/protecting-older-consumers-report-508.pdf.*

[5] *AMG Capital Management, LLC* v. *FTC,* 141 S.Ct. 1341 (Apr. 2021). For government and impersonation cases that involve violations of current FTC rules, such as the Telemarketing Sale Rule, the Commission can still file actions in federal district court seeking either consumer redress under Section 19 or civil penalties under Section 5(m)(1)(A) of the FTC Act. But numerous types of impersonation schemes are not captured by these existing FTC rules. For example, numerous enforcement actions in which the FTC returned money to victims of impersonation fraud—such as *FTC* v. *Forms Direct,* which returned $2.2 million to individuals, or *FTC* v. *Corporate Compliance Services,* which returned over $1 million to small businesses—do not fall under existing FTC rules. *See, e.g., FTC* v. *Forms Direct, Inc.* (*American Immigration Center*), No. 3:18–cv–06294 (N.D. Cal. filed Oct. 16, 2018); *FTC* v. *Corp. Compliance Servs.,* Case No. 4:18–cv–02368 (S.D. Tex. Filed July 10, 2018); *FTC* v. *DOTAuthority.com, Inc.,* No. 16–cv–62186 (S.D. Fla. filed Sept. 13, 2016); *FTC* v. *Springtech 77376, LLC, also d/b/a Cedarcide.com,* No. 4:12–cv–04631–PJH (N.D. Cal. filed Sept. 5, 2012); *see also, FTC* v. *Gerber Products Co.,* No. 2:14–cv–06771–SRC–CLW (D.N.J. filed Oct. 30, 2014) (despite no consumer redress, case illustrates how businesses can make false claims of affiliation or endorsement outside of current FTC rules).

[6] *See* 15 U.S.C. 45(m)(1)(A); *see also* COVID–19 Consumer Protection Act of the 2021 Consolidated Appropriations Act Section 1401, Public Law 116–260, 134 Stat. 1182 (permitting the Commission to seek civil penalties for violations of Section 5 of the FTC Act that are associated with ''the treatment, cure, prevention, mitigation, or diagnosis of COVID–19'' or ''a government benefit related to COVID–19'').

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0799; FRL–9246–01–R9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Open Burning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or the ''District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) and particulate matter (PM) from agricultural open burning. We are proposing to approve additional local restrictions on such burning under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0799 at *https://www.regulations.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*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov.*

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

I. The State's Submittal

A. Background

Most open burning activities in the San Joaquin Valley Air Basin (''San Joaquin Valley'') are regulated by District Rule 4103 ''Open Burning'' (''Rule 4103'' or ''the Rule''), which was most recently revised by the District on April 15, 2010. Rule 4103's provisions on open burning of agricultural waste, which constitutes the bulk of activity regulated under this local measure, are implemented as a part of a broader statewide strategy on agricultural open burning, codified in California Health and Safety Code sections 41855.5 and 41855.6. Under Rule 4103's provisions implementing those State law requirements, the SJVUAPCD may grant a temporary postponement of the prohibition of open burning for specific agricultural material categories, if the following four criteria are all met: (1) The SJVUAPCD Governing Board (''District Board'') determines that there is no economically feasible alternative of eliminating the waste; (2) the District Board determines that there is no long-term Federal or State funding commitment for the continued operation of biomass combustion facilities in the San Joaquin Valley or development of alternatives to burning; (3) the District Board determines that the continued issuance of permits for that specific category or crop will not cause, or substantially contribute to, a violation of an applicable Federal ambient air quality standard; and (4) the California Air Resources Board (CARB or the ''State Board'') concurs with the District Board's determinations.[1] The District's staff reports and the associated District Board and CARB resolutions approving the postponements must be submitted to the EPA as SIP revisions.[2]

The EPA approved Rule 4103 and an initial prohibition schedule (''2010 Schedule'') (entitled ''Table 9–1, *Final Staff Report and Recommendations on Agricultural Burning*'') into the SIP on January 4, 2012.[3]

B. What did the State submit?

On November 29, 2021, CARB submitted a document entitled ''Proposed District Rule 4103 (Open Burning) Technical Submittal for Receiving SIP Credit for Reductions in Agricultural Burning,'' dated November 18, 2021 (the ''2021 Technical Submittal''), to the EPA for inclusion in the California SIP.[4] The 2021 Technical Submittal includes a document called the ''Supplemental Report and Recommendations on Agricultural Burning'' (''2021 Supplemental Report''). Table 2–1 of the 2021 Supplemental Report, ''Accelerated Reductions by Crop Category'' includes an updated schedule of prohibitions (''2021 Schedule''), which is the focus of our rulemaking. Further discussion and explanation of this material is detailed in section I.D of this proposed rule.

C. Completeness Review of the 2021 Technical Submittal

Section 110(k)(1)(B) of the CAA requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. The EPA's SIP completeness criteria are found in 40 CFR part 51, appendix V. The EPA has reviewed the 2021 Technical Submittal and finds that it fulfills the completeness criteria of appendix V.

D. What is the purpose of the submitted SIP revision?

The open burning of various materials regulated under the District's authority, including agricultural waste, generates emissions of NO_X and PM. Emissions of NO_X contribute to the production of ground-level ozone, smog, and PM, which harm human health and the environment. Direct emissions of PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM

[1] Rule 4103, section 5.5.2.

[2] Id. section 6.3.

[3] 77 FR 214.

[4] CARB had previously submitted a proposed version of this document with a request for parallel processing pursuant to 40 CFR part 51, appendix V, section 2.3.1. The only substantive revision in the final document was the addition of a response to public comments submitted during the public comment period and hearing.

equal to or less than 10 microns in diameter (PM_{10}), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) and title I, part D of the CAA require states to submit regulations that control NO_X and PM emissions.

Under the provisions of California Health and Safety Code sections 41855.5 and 41855.6 and SIP-approved District Rule 4103, the District must review at least once every five years the feasibility for prohibition from open burning the remaining categories of agricultural waste that were previously found to be infeasible under the four criteria described above in section I.A. That review results in a ''District Staff Report and Recommendations on Agricultural Burning,'' which must be approved by the District Board and receive concurrence from the State Board in order to become effective. The District reports have in the past contained a schedule for prohibiting additional categories of agricultural waste from open burning, additional limitations on open burning for that category, or a determination that open burning should be allowed. This schedule implements sections 5.5.2 and 6.3 of the Rule and supports the enforceability of the control requirements in Rule 4103. Therefore, it must be approved into the SIP to ensure the integrity of the control strategy. As noted above, the EPA approved the 2010 Schedule into the SIP in 2012.

Pursuant to Rule 4103 section 5.5.2, the District adopted the 2021 Supplemental Report, including the 2021 Schedule, on June 17, 2021. The CARB Executive Officer concurred on the 2021 Schedule in a letter dated June 18, 2021, effective through December 31, 2024.[5] The 2021 Schedule thus constitutes the enforceable measure needed to update the SIP-approved open burning control measure.

The 2021 Schedule prohibits open burning for several previously postponed categories of agricultural waste effective January 1, 2021, and establishes a schedule for phase-out of open burning for other categories including vineyard removals, orchard removals, and surface harvested prunings by January 1, 2025. The EPA's technical support document (TSD) has more information about the specific requirements in the 2021 Schedule.

[5] The State Board had delegated the authority for this concurrence on February 25, 2021.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the SIP revision?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is designated and classified as an Extreme nonattainment area for the 1979 1-hour and 1997, 2008, and 2015 8-hour ozone national ambient air quality standards (NAAQS).[6] CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. While our stringency discussion below focuses on PM emissions, we are not aware of reasonably available control measures for ozone precursors that are not also best available control measures for PM for this source category.

San Joaquin Valley is designated and classified as a Serious nonattainment area for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.[7] CAA section 189(b)(1)(B) requires Serious $PM_{2.5}$ nonattainment areas to implement best available control measures (BACM), including best available control technology (BACT), within four years after reclassification of the area to Serious. Therefore, SJVUAPCD must implement BACM, including BACT, for $PM_{2.5}$ and $PM_{2.5}$ precursors. Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. Preamble, Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010 (August 24, 2016).

[6] 40 CFR 81.305.

[7] Id. For the 2012 $PM_{2.5}$ NAAQS, the EPA reclassified the San Joaquin Valley as Serious nonattainment in a final rule published November 26, 2021. 86 FR 67343. The effective date of this reclassification is December 27, 2021.

B. Does the SIP revision meet the evaluation criteria?

The 2021 Schedule significantly enhances the overall stringency of the District's open burning requirements by prohibiting open burning for most remaining waste types by 2025. Furthermore, the District and State have justified the remaining postponements on the basis of technical and/or economic feasibility. Although the 2021 Schedule is less stringent than the 2010 Schedule for the rice stubble category, the potential emissions increase from this relaxation is more than offset by the emissions reductions from additional prohibitions on other categories of agricultural waste. Therefore, the EPA's initial evaluation indicates that this SIP revision meets CAA requirements and is consistent with relevant guidance regarding enforceability, stringency, and SIP revisions. The EPA's TSD has more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Control Measure

The EPA's TSD includes recommendations for the next time the SJVUAPCD modifies the control measure.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted SIP revision because it fulfills all relevant requirements. We will accept comments from the public on this proposal until January 24, 2022. If we take final action to approve Table 2–1 and the associated materials, our final action will incorporate this revision into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the following materials: Table 2–1 ''Accelerated Reductions by Crop Category'' of the ''Supplemental Report and Recommendations on Agricultural

Burning'' and Resolution 21–06–12 that were adopted by the SJVUAPCD Board on June 17, 2021; Resolution 21–4 ''San Joaquin Agricultural Burning Assessment'' adopted by CARB on February 25, 2021; and the letter dated June 18, 2021 from Richard W. Corey, Executive Officer, CARB, to Samir Sheikh, Executive Director, SJVUAPCD, concurring on the 2021 Supplemental Report. The EPA has made, and will continue to make, these materials 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).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 16, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–27797 Filed 12–22–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No. 211215–0260; RTID 0648–XR119]

Endangered and Threatened Wildlife and Plants; Removal of Johnson's Seagrass From the Federal List of Threatened and Endangered Species and Removal of the Corresponding Designated Critical Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, propose to remove Johnson's seagrass (*Halophila johnsonii*) from the Federal List of Threatened and Endangered Species. To correspond with this action, we are also proposing to remove the critical habitat designation for Johnson's seagrass. We propose these actions based on newly obtained genetic data that demonstrate that Johnson's seagrass is not a unique taxon but rather a clone of an Indo-Pacific species, *Halophila ovalis.*

DATES: Information and comments on the subject action must be received by February 22, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0117, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0117 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Adam Brame, Protected Resources Division, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), 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).

FOR FURTHER INFORMATION CONTACT: Adam Brame, NMFS Southeast Regional Office, *Adam.Brame@noaa.gov,* (727) 209–5958.

SUPPLEMENTARY INFORMATION:

Background

A small-statured seagrass species found within Florida's southeastern coastal lagoon system was formally identified as Johnson's seagrass (*Halophila johnsonii*) in 1980 (Eiseman and McMillan 1980). Prior to this designation, it was often referred to as *H. decipiens,* though it is most similar to the morphologically diverse Indo-Pacific species, *H. ovalis.* Morphological and physiological variations were the bases for its taxonomic identification as *H. johnsonii.* For example, Johnson's seagrass was differentiated from other Atlantic *Halophila* species by its smooth leaf margins, angle of the cross veins extending from the midrib, and the lack of hairs on the blade surface (Eiseman and McMillan 1980).

Johnson's seagrass grows in a variety of conditions within Florida's intracoastal waters from Sebastian Inlet to Virginia Key in Biscayne Bay. This is the smallest geographic distribution of any seagrass worldwide. Within this range, it is among the least abundant seagrass. It grows in small, sparse patches and may disappear from areas for months or years before reappearing. It can co-occur with other seagrasses, but its short stature precludes it from occurring within dense stands of taller species because it is outcompeted for light resources. Johnson's seagrass has a broader tolerance range for light, temperature, and salinity than congeners and seems capable of growing in suboptimal conditions where other species cannot survive. Johnson's seagrass grows in the intertidal zone, on dynamic flood deltas inside ocean inlets, at the mouths of freshwater discharge canals, and subtidal waters to depths of approximately 3–4 meters.

Johnson's seagrass is dioecious, meaning each plant only contains the flowers of one sex (male or female). Interestingly, no individual Johnson's seagrass plants have been found with male flowers. Similarly, researchers have not found any seedlings. These observations suggest that Johnson's seagrass reproduces only through vegetative fragmentation (asexual reproduction) and not through the development and dispersal of seeds (sexual reproduction). This strategy likely hinders its ability to expand in range or recolonize following disturbances.

Given the extremely limited geographical distribution of Johnson's seagrass (about 200 kilometers (km) of Florida coastline), its limited reproductive potential (only asexual reproduction), and the variety of threats that could affect survival, NMFS conducted a status review to consider whether it should be added to the Federal List of Threatened and Endangered Species. NMFS published a proposed rule to list the species as threatened on September 15, 1993 (58 FR 48326), and a proposed rule to designate critical habitat on August 4, 1994 (59 FR 39716). Additional research on the ecology of this species subsequently became available and was considered in an updated status review, which was completed in 1997. NMFS published a final rule listing Johnson's seagrass as a threatened species in 1998 (63 FR 49035, September 14, 1998) and a final rule designating critical habitat in 2000 (65 FR 17786, April 5, 2000).

At the time of listing, the best available data indicated Johnson's seagrass: (1) Had perhaps the smallest geographic range of any seagrass species worldwide; (2) had a sparse, patchy distribution throughout its range and an ability to survive in a variety of environmental conditions; (3) lacked male flowers necessary for sexual reproduction and therefore appeared to only reproduce asexually; and (4) was unique from other North American *Halophila* species based on morphology, physiological ecology, and genetic analyses. However, the 1997 status review also indicated that more detailed studies were necessary to evaluate the overall genetic structure and diversity of *H. johnsonii.* This need was reiterated in the 2002 Johnson's Seagrass Recovery Plan.

A 1997 genetics study using randomly amplified primer DNA-polymerase chain reactions (RAPD–PCR) indicated that genetic diversity was higher than expected at one location within the range of Johnson's seagrass (Jewitt-Smith *et al.* 1997). Yet this study relied on a limited sample size, and a subsequent study using similar techniques indicated very low genetic diversity within *H. johnsonii* as compared to the co-occurring species, *H. decipiens* (Freshwater 1999). The low genetic diversity was attributed to the lack of sexual reproduction. The methodology used in assessing these *Halophila* samples did not provide the resolution necessary to make species level conclusions about phylogeny (history of the evolution of a species or group, including relatedness within a group).

A molecular phylogenetic analysis of the genus *Halophila* using internal transcribed spacer (ITS) regions of nuclear ribosomal DNA indicated that *H. johnsonii* could not be distinguished from *H. ovalis* and should be further researched (Waycott *et al.* 2002). Umichura (2008) came to a similar conclusion and suggested that *H. johnsonii* and two other *Halophila* species should be reclassified as the broadly distributed *H. ovalis.* Short *et al.* (2010) used ITS regions of nuclear ribosomal sequences and morphology to demonstrate that *Halophila* samples from Antigua belonged to *H. ovalis* and were genetically identical to *H. johnsonii.* Short *et al.* (2010) also found that *Halophila* samples from both Antigua and the United States (previously identified as *H. johnsonii*) fell within the range of morphological characteristics diagnostic for *H. ovalis,* and particularly for *H. ovalis* from east Africa. The outcomes of these studies raised more questions about the taxonomy of *Halophila* species, particularly *H. johnsonii,* given its unusually restricted geographic range, its limited reproductive strategy, and its morphometric similarities to other Indo-Pacific species of *Halophila.*

NMFS began funding projects to resolve the taxonomic uncertainty of Johnson's seagrass in 2012. Waycott *et al.* (2015) used multiple genetic approaches including microsatellite DNA and next generation sequencing to detect single nucleotide polymorphisms (SNPs). Results of this work indicated a complete lack of genetic diversity across the range of Johnson's seagrass and through time, indicating all samples analyzed were from a singular clone. Samples collected and analyzed from Antigua contained the same genetic markers as samples from Florida, suggesting these too were part of the same clone (Waycott *et al.* 2015) despite the Antigua samples having been previously identified as *H. ovalis* (Short *et al.* 2010). Finally, Waycott *et al.* (2015) genetically compared samples from both Florida and Antigua with *H. ovalis* samples collected throughout that species' range (Indo-Pacific). Results indicated all samples, regardless of location or identification, had allelic overlap (same gene variations) at 6 of 10 microsatellite loci analyzed, suggesting samples from the Atlantic originated from *H. ovalis* of the Indo-Pacific. While this report provided further evidence that *H. johnsonii* was not a unique taxon, SNP locations for *H. ovalis* had yet to be verified for *H. johnsonii* samples and the report did not present a comprehensive population genetic analysis of *H. ovalis.*

NMFS provided support for a follow-up study in 2017, published as Waycott *et al.* (2021). This study expanded previous efforts with the intent of solidifying the methods and providing a robust conclusion regarding the taxonomic uncertainty within the *H. ovalis* complex. The study used multiple methodological approaches and created molecular data sets for samples of both *H. johnsonii* and *H. ovalis* collected throughout the range of each species. Phylogenetic analyses of 105 samples of *Halophila spp.* from 19 countries using plastid (17,999 base pairs (bp)) and nuclear (6,449 bp) DNA sequences derived from hybrid capture both resolved *H. johnsonii* within *H. ovalis.* A third phylogenetic analysis using 48 samples from 13 populations identified 990 genome-wide SNPs (generated via double digest restriction-site associated digest sequencing (ddRAD)) and also nested *H. johnsonii* within *H. ovalis.* All three phylogenetic analyses indicated *H. johnsonii* samples were most similar to *H. ovalis* samples from Antigua and east Africa.

Waycott *et al.* (2021) also assessed population-level differences using both the genome-wide SNPs (990) developed in the phylogenetic analysis (47 of the 48 samples from 13 populations) and microsatellites (294 samples at 10 microsatellite loci). Cluster analysis indicated three populations within the *H. ovalis* complex, with *H. johnsonii* being part of the Indo-Pacific/Atlantic clade. Other results demonstrated genetic uniformity of all 132 *H. johnsonii* samples, indicating a complete lack of genetic diversity that is consistent with clonal (asexual) reproduction and a single colonization event. These same 132 samples and the 12 *H. ovalis* samples from Antigua shared a single multilocus genotype at all nine comparable microsatellite loci. Furthermore, all 12 *H. johnsonii* samples and the single *H. ovalis* sample from Antigua genotyped with ddRAD loci shared the same multilocus genotype. In contrast, other *H. ovalis* populations, such as those from Australia, generally had multiple multilocus genotypes and substantial genetic diversity, indicating that the genetic markers would have detected differences if they were present. The population-level analyses indicate that *H. johnsonii* is genetically indistinguishable from *H. ovalis,* clustering with samples from Antigua and east Africa.

Collectively, the Waycott *et al.* (2021) study concludes that the entire range of *H. johnsonii* is a single clone of a morphological variant of the Indo-Pacific species, *H. ovalis.* While previous studies suggested a genetic similarity between the two species, they were unable to definitively clarify the taxonomy. In Waycott *et al.* (2021), the use of multiple, highly variable, co-dominant genetic markers resolved genetic relationships more clearly than previous studies, which used low variation and/or dominant genetic markers.

NMFS solicited the assistance of the NOAA Genetics Group to review Waycott *et al.* (2021). Four reviewers determined that the laboratory and statistical methods used by Waycott *et al.* (2021) were appropriate and sufficient to support the authors' conclusions. They noted that multiple independent genetic analyses confirmed that *H. johnsonii* nests within *H. ovalis,* with the greatest similarity to Antigua and East Africa samples. The reviewers agreed that the research provided in Waycott *et al.* (2021) constitutes the best available scientific (in this case, genetic) information on the taxonomy of Johnson's seagrass. They confirmed that the concordance of the results from multiple genetic data types and across complementary analytic methods provides strong support for the conclusion that *H. johnsonii* is genetically indistinguishable from *H. ovalis.* The reviewers agreed with the conclusion of the authors that ''lack of genetic diversity and the absence of sexual reproduction strongly indicate that the total range of *H. johnsonii* is actually one clone that is closely related to *H. ovalis* populations in Africa and Antigua . . .'' They found this conclusion was further supported by the complete absence of male *H. johnsonii* plants, which suggests that it consists of a single female clone.

Basis for Determination

Section 3 of the Endangered Species Act (ESA) defines the term ''species'' as any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Pursuant to implementing regulations in 50 CFR 424.11(a), in determining whether a particular taxon or population is a species under the ESA, we rely on standard taxonomic distinctions as well as our biological expertise and that of the scientific community concerning the relevant taxonomic group.

Under section 4(c)(1) and 4(c)(2) of the ESA, the Secretary is required to periodically review and revise the Federal List of Endangered and Threatened Species and consider, among other things, whether a species' listing status should be changed, including whether the species should be removed from the list. Pursuant to implementing regulations for the ESA at 50 CFR 424.11(e)—the Secretary shall delist a species if, after conducting a status review based on the best scientific and commercial data available, the Secretary determines: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or threatened species; or (3) the listed entity does not meet the statutory definition of a species. When conducting a status review, if we determine the entity under review does not meet the statutory definition of a species, the status review would conclude at that point without further evaluation because we can only list entities that qualify as species under the ESA. In this case, our status review is our assessment of the best scientific and commercial data available as presented in this proposed rule, which supports the determination that Johnson's seagrass does not meet the statutory definition of a species. Therefore, our status review concluded without a re-assessment of the five listing factors. As presented in Waycott *et al.* (2021) and independently confirmed by four expert reviewers from the NOAA Genetics Group, the results of extensive genetic and phylogenetic analyses indicate *H. johnsonii* is a single clone of a morphological variant of *H. ovalis,* and therefore, is not a unique species.

We find the best scientific and commercial data available demonstrate that *H. johnsonii* is not a unique taxon but rather a morphological variant of *H. ovalis,* and thus is not a species eligible for listing under the ESA. Therefore, we propose to remove *H. johnsonii* from the Federal List of Threatened and Endangered Species.

Effects of the Determination

If we delist *H. johnsonii* then the protections of the ESA would no longer apply to it. Since critical habitat can only be designated for species listed under the ESA, delisting *H. johnsonii* would also trigger the need to remove the currently designated critical habitat, as we propose in this rule. Delisting *H. johnsonii* and removal of the designated critical habitat are specific to the ESA and would have no effect on other Federal, state, county, or local seagrass protections that may be in place. In addition, because *H. ovalis* is not listed as an endangered species or threatened species under the ESA, our proposed delisting of *H. johnsonii* would have no effect on the status of *H. ovalis.*

Per the joint NMFS–U.S. Fish and Wildlife Service Post-Delisting Monitoring Plan Guidance (2008, updated in 2018), the post-delisting monitoring requirements of section 4(g) of the ESA apply without exception to all species delisted due to biological recovery, but do not pertain to species delisted for other reasons, such as taxonomic revision. Based on this reasoning, there is no need for a post-delisting monitoring plan for *H. johnsonii.*

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public

participation. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005.

To satisfy the requirements under the OMB Peer Review Bulletin, the Waycott *et al.* (2021) manuscript was subjected to peer review in accordance with the Bulletin. Our proposed action relies upon new information within the manuscript, which we consider ''influential scientific information.'' While the manuscript was published in the peer-reviewed journal Frontiers in Marine Science, and peer reviewed by that journal prior to publication, we also peer reviewed the manuscript. We established a peer review plan that consisted of subjecting the manuscript to review by a panel of four expert reviewers identified by NOAA's Genetics Group. The peer review plan, which included the charge statement to the peer reviewers, and the resulting peer review report are posted on the NOAA peer review agenda at: *https://www.noaa.gov/organization/information-technology/peer-review-plans.* In meeting the OMB Peer Review Bulletin requirements, we have also satisfied the requirements of the 1994 joint U.S. Fish and Wildlife Service and NMFS peer review policy (59 FR 34270, July 1, 1994).

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6A and the Companion Manual for NOAA Administrative Order 216–6A, regarding Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state and local law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed rule.

List of Subjects

50 CFR Part 223

Threatened marine and anadromous species.

50 CFR Part 226

Designated critical habitat.

Dated: December 16, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 and part 226 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

§ 223.102 [Amended]

■ 2. In § 223.102, in the table in paragraph (e), under the subheading ''Marine Plants'', remove the entry for ''Seagrass, Johnson's (*Halophila johnsonii*)''.

PART 226—DESIGNATED CRITICAL HABITAT

■ 3.The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§ 226.213 [Removed and Reserved]

■ 4. Remove and reserve § 226.213.

[FR Doc. 2021–27631 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BL00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery of the Atlantic; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) submitted Amendment 10 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery of the Atlantic (Dolphin and Wahoo FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 10 to the Dolphin and Wahoo FMP (Amendment 10) would revise the acceptable biological catch (ABC), annual catch limits (ACLs), sector allocations, accountability measures (AMs), and additional management measures for dolphin and wahoo. The additional management measures would address commercial trip limits, authorized fishing gear, the operator permit (card) requirement for dolphin and wahoo, and the recreational vessel limit for dolphin. The purpose of Amendment 10 is to base conservation and management measures for dolphin and wahoo on the best scientific information available and increase net benefits from the fishery.

DATES: Written comments must be received on or before February 22, 2022.

ADDRESSES: You may submit comments on Amendment 10, identified by ''NOAA–NMFS–2021–0093,'' 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–2021–0093'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), 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).

Electronic copies of Amendment 10, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-10-changes-catch-levels-sector-allocations-accountability-measures-and-management.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the Dolphin and Wahoo FMP that is being revised by Amendment 10. If approved, Amendment 10 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council manages the dolphin and wahoo fishery in Federal waters from Maine south to the Florida Keys in the Atlantic under the Dolphin and Wahoo FMP.

The current ABC for dolphin and wahoo was implemented in 2014 by Amendment 5 to the Dolphin and Wahoo FMP (Amendment 5), and are based on the Council's Scientific and Statistical Committee's (SSC) recommendations using the third highest annual landings value during 1999–2008 (79 FR 32878; June 9, 2014). The landings did not include recreational landings from Monroe County, Florida, and were based on recreational data from the Marine Recreational Information Program's (MRIP) Coastal Household Telephone Survey (CHTS) method. In April 2020, the Council's SSC recommended new ABC levels for dolphin and wahoo using the third highest annual landings value during 1994–2007. These landings include recreational landings from Monroe County, Florida, and used MRIP's Fishing Effort Survey (FES) method, which is considered more reliable by the Council's SSC, the Council, and NMFS, and more robust compared to the CHTS survey method. The new ABC recommendations within Amendment 10 for dolphin and wahoo are also based on the new weight estimation procedure from NMFS Southeast Fisheries Science Center (SEFSC) that uses a 15 fish minimum sample size and represents the best scientific information available.

The current total ACLs for both dolphin and wahoo were implemented in 2014 by Amendment 5 and are equal to the ABCs for dolphin and wahoo. Amendment 10 would revise the total ACLs for dolphin and wahoo to equal the new ABC values.

The current sector allocations for dolphin were implemented in 2016 by Amendment 8 to the Dolphin and Wahoo FMP (Amendment 8), with 10.00 percent of the total ACL to the commercial sector and 90.00 percent of the total ACL to the recreational sector (81 FR 3731; January 22, 2016). In 2015, the commercial sector was closed because the commercial ACL was met during that fishing year. In Amendment 8, the Council set the commercial allocation at the average of the percentages of the total commercial catch for 2008–2012, and the resulting 10 percent of the total ACL for the commercial allocation was expected to prevent subsequent closures of the commercial sector. The current sector allocations for wahoo were implemented in 2014 by Amendment 5, with 3.93 percent of the total ACL to the commercial sector and 96.07 percent of the total ACL to the recreational sector. The Council decided on these wahoo allocations by balancing long-term catch history with recent catch history, and determined this method as the most fair and equitable way to allocate fishery resources since it considered past and present participation. The current allocations for both dolphin and wahoo were applied to the respective species' total ACLs (equal to the ABCs) to obtain the sector ACLs.

Amendment 10 would specify commercial and recreational allocations for dolphin at 7.00 percent and 93.00 percent, respectively. For wahoo, Amendment 10 would specify commercial and recreational allocations at 2.45 percent and 97.55 percent, respectively. These proposed allocations would be applied to the respective species' proposed total ACLs (equal to the proposed ABCs) using the third annual highest landings value during 1994–2007 to determine the proposed sector ACLs. The proposed sector ACLs for dolphin and wahoo were derived from landings which include recreational landings from Monroe County, Florida, use MRIP's FES method, and SEFSC'S new weight estimation procedure. For dolphin, the Council has determined that the proposed allocations and revised sector ACLs could avoid a decrease in the current pounds of dolphin available to either sector's ACL. For wahoo, the Council's intent is to maintain the current commercial ACL and allocate the remaining revised ACL to the recreational sector.

Amendment 10 does not propose any changes to the commercial AMs for dolphin or wahoo. The current recreational AMs for dolphin and wahoo were implemented in 2014 by Amendment 5, and do not contain an in-season AM but instead require a monitoring for persistence in recreational landings during the year following any recreational ACL overage. Further, the current recreational post-season AMs state that if the combined commercial and recreational landings exceed the combined commercial and recreational ACLs, and dolphin and wahoo are overfished, the recreational ACL for the following year will be reduced by the amount of the recreational overage in the prior fishing year, and the recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the reduced ACL. The Regional Administrator (RA) will determine using the best scientific information available if a reduction in the recreational ACL and a reduction in the length of the following fishing season is unnecessary. These recreational post-season AMs for dolphin and wahoo are not viable because the post-season AMs would not be triggered as there is not a peer-reviewed stock assessment for dolphin and wahoo, and such an assessment is unlikely to be conducted in the near future. Therefore, there is no likely method to determine their stock status. Amendment 10 would establish a trigger to implement post-season AMs and once triggered, specify the post-season AMs for dolphin and wahoo that would not be based on their stock status.

In 2017, Regulatory Amendment 1 to the Dolphin and Wahoo FMP and

associated final rule implemented the current commercial trip limit for dolphin of 4,000 lb (1,814 kg), round weight, once 75 percent of the commercial ACL is reached (82 FR 8820; January 31, 2017). Prior to reaching 75 percent of the commercial ACL, there is no commercial trip limit for dolphin. In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the current commercial trip limit for wahoo of 500 lb (227 kg); and a commercial trip limit of 200 lb (91 kg) of dolphin and wahoo, combined, provided that all fishing on and landings from that trip are north of 39° N latitude, for a vessel that does not have a Federal commercial vessel permit for dolphin and wahoo but has a Federal commercial vessel permit in any other fishery.

In 2004, the original Dolphin and Wahoo FMP and associated final rule also implemented the currently authorized commercial gear types in the dolphin and wahoo fishery in the Atlantic Exclusive Economic Zone (EEZ) as automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear (including powerheads). A person aboard a vessel in the Atlantic EEZ that has on board gear types (including trap, pot, or buoy gear) other than authorized gear types may not possess dolphin or wahoo. In 2016, the Atlantic Offshore Lobstermen's Association initially requested that the Council modify the fishing gear regulations to allow the lobster fishery's historical practice of harvesting dolphin while in the possession of lobster pots to continue. Amendment 10 would allow a vessel in the Atlantic EEZ that possesses both a Federal Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) required to fish using trap, pot, or buoy gear; or is in compliance with permit requirements specified for the spiny lobster fishery in 50 CFR 622.400 to retain dolphin and wahoo caught by rod and reel while in possession of such gear types.

In 2004, the original Dolphin and Wahoo FMP and associated final rule implemented the requirement for a vessel operator or a crewmember to hold a valid operator permit (also called an operator card) for the Atlantic dolphin and wahoo commercial permit or a charter vessel/headboat permit for Atlantic dolphin and wahoo to be valid. The operator permit requirement was implemented to improve enforcement within the fishery, aid in data collection, and decrease costs to vessel owners from fishery violations by vessel operators. However, in actuality, the benefits of operator permits to improve enforcement have not occurred as they have not been widely used as an enforcement tool since implementation. Rather, other methods of fishery enforcement, such as vessel permits and landings, have been used by law enforcement for the fishery. Because the expected benefits from operator permits are not being realized, Amendment 10 would remove the requirement for operator permits in the dolphin and wahoo fishery.

The current dolphin recreational bag limit of 10 fish per person, not to exceed 60 fish per vessel in the Atlantic EEZ, was implemented by the final rule for the original Dolphin and Wahoo FMP in 2004. Since then, interest in recreational harvest of dolphin has increased and Council public testimony, especially from Florida and its constituents, has recommended a decrease in the recreational retention limits to further control recreational harvest. Amendment 10 would decrease the dolphin recreational vessel limit for charter vessels and private recreational vessels, excluding headboats. The dolphin individual recreational bag limit or 10 fish per person in the Atlantic EEZ remains unchanged.

Actions Contained in Amendment 10

Amendment 10 would revise the catch levels (ABCs and ACLs), sector allocations, AMs, and management measures for dolphin and wahoo. Management measures would address commercial trip limits, authorized fishing gear, the operator permit requirement for dolphin and wahoo, and the recreational vessel limit for dolphin.

If approved and implemented, Amendment 10 and the proposed rule could be expected to result in potential positive direct and indirect benefits to managing the dolphin and wahoo fishery and its commercial and recreational fishers. Revisions to the ABCs, ACLs, sector allocations, and AMs incorporate best scientific information available. Changes to recreational vessel limits for dolphin would reduce the likelihood of recreational landings reaching the revised recreational ACL. Commercial trip limits, authorized gear, and operator permit requirements respond to requests from the public in managing the dolphin and wahoo fishery more efficiently.

ABC

As discussed, Amendment 10 would revise the ABC based on the new MRIP FES catch estimation procedures and new SEFSC fish weight estimation procedure, which represent the best scientific information available. The proposed ABC was also recommended by the Council's SSC.

ACLs

Dolphin

The current total ACL for dolphin is 15,344,846 lb (6,960,305 kg), round weight. Amendment 10 would revise the total ACL for dolphin to 24,570,764 lb (11,145,111 kg), round weight, based on the ABC recommended by the Council's SSC. The revised total ACL is equal to the ABC as described in Amendment 10 and is based upon best scientific information available. As a species, dolphin are highly fecund, spawn throughout a wide geographical range, have an early age at first maturity, and a short generation time and so therefore, dolphin's life-history could support the increase in the total ACL. The Report to Congress on the Status of U.S. Stocks indicates dolphin is not overfished, and is not undergoing overfishing. Additionally, the Council noted that based on the last 20 years of total landings data for dolphin, it appears unlikely that harvest would consistently exceed the proposed total ACL, commercial landings are well tracked through electronic dealer reporting requirements, there is a commercial trip limit in place, and recreational landings for dolphin exhibit relatively low percent standard errors (PSE). The Council also noted that setting the ACL equal to the ABC may allow dolphin fishers to take advantage of years of exceptionally high abundance of dolphin.

The current commercial and recreational ACLs for dolphin are and 1,534,485 lb (696,031 kg), round weight, and 13,810,361 lb (6,264,274 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 10.00 percent and 90.00 percent, respectively. The proposed commercial and recreational ACLs for dolphin in Amendment 10 are 1,719,953 lb (780,158 kg), round weight, and 22,850,811 lb (10,364,954 kg), round weight, respectively. The proposed dolphin sector ACLs in Amendment 10 would be based on the commercial and recreational allocations of 7.00 percent and 93.00 percent, respectively.

Wahoo

The current total ACL for wahoo is 1,794,960 lb (814,180 kg), round weight. Amendment 10 would revise the total ACL for wahoo to 2,885,303 lb (1,308,751 kg), round weight based upon the ABC recommended by the Council's SSC. The revised total ACL is

equal to the ABC and is based upon best scientific information available. Wahoo also exhibit rapid growth rates, are highly migratory, and are sexually mature at an early age and so their life history also supports an increase in the ACL. The overfishing and overfished status of wahoo is unknown, however, recent studies found that wahoo did not show a negative decline in relative abundance in recent years. The Council noted that commercial landings for wahoo are also well tracked through electronic dealer reporting requirements, there is a commercial trip limit of 500 lb (227 kg), and that recreational landings for wahoo exhibit relatively low PSEs. The Council also noted that setting the ACL equal to the ABC will allow wahoo fishers to take advantage of years when there is exceptionally high abundance of wahoo.

The current commercial and recreational ACLs for wahoo are 70,542 lb (31,997 kg), round weight, and 1,724,418 lb (782,183 kg), round weight, respectively. These are based on the current commercial and recreational allocations of 3.93 percent and 96.07 percent, respectively. The proposed commercial and recreational ACLs for wahoo in Amendment 10 are 70,690 lb (32,064 kg), round weight, and 2,814,613 lb (1,276,687 kg), round weight, respectively. The proposed wahoo sector ACLs in Amendment 10 are based on the commercial and recreational allocations of 2.45 percent and 97.55 percent, respectively.

No biological effects are expected to the dolphin and wahoo stocks from these allocation changes because the proposed sector ACLs would not change the proposed total ACLs for dolphin and wahoo. The commercial sector for dolphin and wahoo has effective in-season AM already in place to help constrain commercial harvest, and Amendment 10 considers modifications to the post-season AMs to both stocks to reduce the risk of the recreational ACL from being exceeded. In deciding on new sector allocations, the Council wanted to recognize the needs of the recreational sector for dolphin and wahoo which would exhibit higher landings than previously estimated with the new accounting of recreational landings using MRIP's FES method. At the same time the Council did not want to reduce the commercial ACLs on a pound basis for dolphin and wahoo and noted that the proposed allocations and sector ACLs would strike a balance between the needs of both sectors.

AMs

Dolphin

Amendment 10 would revise the recreational AMs for dolphin. The current in-season closure and stock status based post-season AM would be replaced. The proposed recreational AM in Amendment 10 would be a post season AM that would be triggered in the following fishing year if the total ACL (commercial and recreational ACLs, combined) is exceeded. The Council's intent is to avoid closing recreational harvest in-season and extend maximum fishing opportunities to the recreational sector without triggering the recreational AM, as long as the commercial sector is under harvesting its sector ACL. The revised recreational AM trigger would also help ensure sustainable harvest by preventing the total ACL from being exceeded on a consistent basis. Once triggered, the proposed post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in the following year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that the season reduction is not necessary. The Council noted that there would be a relatively low likelihood of the recreational AM for dolphin being triggered, because the proposed recreational ACL is based on the proposed ABC which is set at a relatively high level of landings that has not often been observed in the dolphin portion of the dolphin and wahoo fishery. Additionally, any determination that the total ACL had been exceeded would allow for the monitoring of landings during the following season to evaluate whether the elevated landings from the previous fishing year are continuing to persist in the fishery. That information would inform decisions on whether a fishing season closure would actually need to occur to constrain harvest to the ACL.

Wahoo

Amendment 10 would revise the recreational AMs for wahoo. The current in-season closure and stock status based post-season AM would be replaced. The proposed recreational AM in Amendment 10 would be a post season AM that would be triggered in the following fishing year if the recreational ACLs are constant and the 3-year geometric mean of landings exceeds the recreational ACL. As described in Amendment 10, whenever the recreational ACL is changed, a single year of landings would be used an overage determination, beginning with the most recent available year of landings, then a 2-year average of landings from that single year and the subsequent year, then a 3-year average of landings from those 2 years and the subsequent year, and thereafter a progressive running 3-year average would be used to determine if the recreational AM trigger has been met. The Council noted this approach would allow the recreational AM to be triggered if the ACL was exceeded on a consistent basis. A 3-year geometric mean would help to smooth the data and potentially avoid implementing restrictive recreational post-season AMs unnecessarily if there was an anomaly in the recreational landings estimates during those 3 years that was not accurately reflecting an actual increase in the harvest of wahoo. It was also noted by the Council that a geometric mean is less sensitive to being affected by abnormally large variations in landings estimates than using the arithmetic mean or using a single year point estimate. Once triggered, the post-season recreational AM would reduce the length of the following recreational fishing season by the amount necessary to prevent the recreational ACL from being exceeded in that year. However, the length of the recreational season would not be reduced if the RA determines, using the best available science, that a fishing season reduction is not necessary. Additionally, any determination that the ACL had been exceeded would allow for the monitoring of landings for the following season to evaluate whether the elevated landings from the previous year are continuing to persist in the fishery. That information would inform decisions on whether a late season harvest closure would actually need to occur to constrain harvest to the ACL. The Council also noted the relatively equitable nature and equally distributed effects of a shortening of the recreational season, as wahoo are often targeted and caught late in the year in many areas of the Atlantic region.

Commercial Trip Limits and Authorized Gear Exemption

For vessels with a commercial permit for Atlantic dolphin and wahoo, under the current trip limits, dolphin and wahoo may only be harvested and possessed with the authorized gear types onboard. These gear types are automatic reel, bandit gear, handline, pelagic longline, rod and reel, and spearfishing gear. Possession on the vessel of any other gear type results in

a prohibition of the possession of any dolphin or wahoo.

American lobster fishers requested to the Council that they be allowed to possess dolphin or wahoo while they moved from one lobster pot to the next. The Council wanted to allow for the authorized gear exemption based on a request from the Atlantic Offshore Lobstermen's Association to allow the historical practice of harvesting dolphin with rod and reel while in the possession of lobster pots to continue and also take a broader approach to allow vessels fishing with trap, pot, or buoy gear to possess dolphin or wahoo as long as the fish were harvested with rod and reel gear. The Council decided to be more comprehensive and included other trap, pot, and buoy gear. Amendment 10 would allow for a new category of commercial trip limits for dolphin and wahoo based on a proposed authorized gear exemption for trap, pot, and buoy gear. Amendment 10 would allow the harvest and retention of 500 lb (227 kg), gutted weight, of dolphin and 500 lb (227 kg) of wahoo, on board a vessel in the Atlantic EEZ that possesses both an Atlantic Dolphin/Wahoo commercial permit and any valid Federal commercial permit(s) that allow a vessel to fish using trap, pot, or buoy gear or is in compliance with the permitting requirements for the spiny lobster of the Gulf of Mexico and South Atlantic as described at 50 CFR 622.400, caught by rod and reel while in possession of such gear types. The proposed commercial trip limits in Amendment 10 under the authorized gear exemption may not be combined with the current commercial trip limits for commercially permitted dolphin and wahoo vessels. The Council determined that this additional regulatory flexibility would have positive economic effects within the fishery while also limiting the potential for any unforeseen significant increases in commercial landings through the specific setting of the 500 lb (227 kg), gutted weight, trip limit.

Operator Permits

Currently, an operator of a vessel with either a commercial permit or a charter vessel/headboat permit for dolphin and wahoo is required to have an operator permit. Such operator permit must be onboard the vessel and the vessel owner is required to have a permitted operator onboard the vessel while it is at sea or offloading. This operator permit requirement was implemented in 2004, through the original FMP for dolphin and wahoo, as a way to assist in law enforcement efforts within the fishery by holding the vessel operator accountable for any violation of regulations and to aid in data collection (69 FR 30235; May 27, 2004).

Amendment 10 would remove the current requirements for operator permits and permitted operators for both the dolphin and wahoo commercial and charter vessel/headboat permitted vessels. At the March 2016 Council meeting, the NMFS Office of Law Enforcement gave a presentation on operator permits, and stated that the operator permits are not actually used to a large extent by them or their law enforcement partners for gathering data, distributing information or enforcement. The Council noted that there is some potential value for operator permits in aiding law enforcement efforts, but the inconsistent requirements between Atlantic fisheries greatly diminishes this utility. Public testimony indicated that operator permits are rarely checked by enforcement personnel during fishing trips and are burdensome for fishermen to renew and maintain. The Council determined that the limited use of operator permits in the dolphin and wahoo fishery did not outweigh the cost to fishermen to obtain the permit, and removing this requirement would yield positive social, economic, and administrative benefits.

Recreational Bag and Vessel Limits for Dolphin

For Atlantic dolphin, the current bag and possession limits are 10 fish per person, not to exceed 60 fish per vessel, whichever is less, except onboard a headboat where the limit is 10 per paying passenger. Amendment 10 would decrease the recreational dolphin vessel limit from 60 fish per vessel to 54 fish per vessel for charter vessels and private recreational vessels, excluding headboats, in the Atlantic EEZ. The recreational bag limit for private recreational anglers and passengers onboard charter vessels and headboats will remain at 10 fish per person in the Atlantic EEZ. As a result of the proposed possession limit reduction in Amendment 10, the total estimated annual reduction in recreational landings is expected to be 114,051 lb (51,733 kg), round weight. Data analysis in Amendment 10 demonstrated that most of the recreational trips in the Atlantic EEZ targeting dolphin harvested less than 10 fish per vessel. Therefore, as a result of the very small proportion of recreational trips that might reach the proposed vessel limit of 54 fish per vessel, no change in fishing activity or behavior is anticipated. The Council noted that one of the goals of the Dolphin and Wahoo FMP is to maintain a precautionary approach to management. While there is no Southeast Data and Assessment Review stock assessment for dolphin and the stock is listed as not overfished or undergoing overfishing, the Council heard public testimony, particularly from anglers in Florida that dolphin abundance appears to be low and there was concern over the health of the dolphin stock and the associated fishery. The Council determined a coast-wide reduction in the vessel limit was appropriate to maintain consistency of regulations across the region in the retention limits for dolphin and noted that such a change in retention limits would lead to more substantial harvest reductions than a Florida-specific or regional approach.

Goals and Objectives

The goals and objectives of the Dolphin and Wahoo FMP were implemented through the original fishery management plan in 2004 and have not been revised since then. In 2016, the Fisheries Allocation Review Policy (NMFS Policy Directive 01–119) encouraged the use of adaptive management with respect to allocation revisions, and recommended periodic re-evaluation and updating of the management goals and objectives of any FMP to ensure they are relevant to current conditions and needs. Amendment 10 would revise these Dolphin and Wahoo FMP goals and objectives in response to the 2016 Fisheries Allocation Review Policy and ensure the goals and objectives reflect the current dolphin and wahoo fishery. Specifically, the revised goals and objectives seek to manage the dolphin and wahoo fishery using a precautionary approach that maintains access, minimizes competition, preserves the social and economic importance of the fishery, as well as promotes research and incorporation of ecosystem considerations where practicable.

Proposed Rule for Amendment 10

A proposed rule to implement Amendment 10 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 10 to determine whether it is consistent with the Dolphin and Wahoo FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 10 for Secretarial review,

approval, and implementation. Comments on Amendment 10 must be received by February 22, 2022. Comments received during the respective comment periods, whether specifically directed to Amendment 10 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove, Amendment 10. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–27845 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 244
Thursday, December 23, 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

December 20, 2021.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 these information collections are best assured of having their full effect if received by January 24, 2022. 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 Marketing Service

Title: Meat and Poultry Inspection Readiness Grant (MPIRG).

OMB Control Number: 0581–0324.

Summary of Collection: The information collection requirements in this request are needed for the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) to administer a new competitive grant program, entitled the Meat and Poultry Interstate Shipment and Inspection Readiness Program (MPIRG), under its Transportation and Marketing Program's Grants Division and in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular) (2 CFR part 200).

MPIRG is authorized and funded by the Consolidated Appropriations Act, 2021 in response to the ongoing COVID–19 pandemic and supply chain risks in U.S. meat and poultry processing systems. The MPIRG supports meat and poultry slaughter and processing facilities in making facility improvements and carrying out other planning activities necessary to attain Federal inspection and allow for interstate shipment.

Need and Use of the Information: The information collected is needed to certify that grant participants are complying with applicable program regulations, and the data collected is the minimum information necessary to effectively carry out the program requirements. The information collection requirements in this request are essential to carry out the intent of section 764 of the CAA, to provide the respondents the type of service they request, and for AMS to administer this program.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 2,798.

Frequency of Responses: Recordkeeping; Reporting.

Total Burden Hours: 12,005.

Agricultural Marketing Service

Title: AMS Research Cooperative Agreements Generic Clearance.

OMB Control Number: 0581–New.

Summary of Collection: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), AMS is responsible for conducting research to enhance market access for small and medium sized farmers. The role of the Marketing Services Division (MSD) within AMS is to research marketing and distribution of U.S. agricultural products. The division identifies marketing challenges and opportunities, researches and provides analysis to help business enterprises, local communities, governments, and other stakeholders take advantage of those opportunities, and also develops, evaluates, and disseminates strategies including methods to diversify and expand direct-marketing farming and producer operations. MSD works to improve market access for producers and develop new markets through three main roles as a researcher, a convener, and a technical assistance provider.

In AMS' vision, local food producers, markets, and communities have access to ideas, innovations, and research in order to grow and sustain productive businesses and support community development. Such information ensures that opportunities for U.S. food producers are readily available and communities are equipped to successfully grow and sell regionally produced foods, while also supporting increased access to locally produced foods.

Need and Use of the Information: This generic clearance will allow AMS to respond quickly to emerging issues and data collection needs. The surveys will cover topics such as: Feasibility studies, challenges and opportunities facing local and regional food systems, market access, community development, local, regional and State ordinances, development and expansion of marketing opportunities, food safety, and food access, as well as adjustments to market disruptions (such as the current pandemic restrictions) and logistical impediments.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 30,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,000.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–27895 Filed 12–22–21; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–21–Business–0035]

Notice of Solicitation of Applications for Inviting Applications for the Intermediary Relending Program for Fiscal Year 2022

AGENCY: Rural Business-Cooperative Service, USDA Rural Development.

ACTION: Notice.

SUMMARY: This Notice is to invite applications under the Intermediary Relending Program (IRP) for fiscal year (FY) 2022, subject to availability of funding. This Notice is being issued in order to allow applicants enough time to leverage financing, prepare and submit their applications, and give the Agency time to process program applications within FY 2022. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. An announcement on the website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas* will identify the amount received in the appropriations. The Agency advises that all interested parties bear the financial burden of preparing and submitting an application in response to the notice whether or not funding is appropriated for this Program in FY 2022.

DATES: The deadlines for completed applications to be received in the USDA Rural Development State Office for quarterly funding competitions is no later than 4:30 p.m. (local time) on: Second Quarter—December 31, 2021, Third Quarter—March 31, 2022, and Fourth Quarter—June 30, 2022.

ADDRESSES: Applications must be submitted to the USDA Rural Development State Office for the state where the applicant is located. Applications may be submitted in paper or electronic format to the appropriate Rural Development State Office and must be received by 4:30 p.m. local time on the deadline date(s) to compete for available funds in the fiscal quarter. Applicants are encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission deadline date(s). A list of the USDA Rural Development State Office contacts can be found at: State Offices √ Rural Development (*usda.gov*).

FOR FURTHER INFORMATION CONTACT: Lori Pittman, *lori.pittman1@usda.gov,* Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 5160–S, Washington, DC 20250–3226, or call (202) 720–1400. For further information on this notice, please contact the USDA Rural Development State Office in the State in which the applicant's headquarters is located. A list of Rural Development State Office contacts is provided at the following link: State Offices | Rural Development (*usda.gov*).

SUPPLEMENTARY INFORMATION: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Overview

Solicitation Opportunity Type: Intermediary Relending Program.

Announcement Type: Solicitation of Applications for FY 2022 loan funds.

Catalog of Federal Domestic Assistance Number: 10.767.

Dates: Applications are accepted on a continuous basis and compete for available funds on a quarterly basis. Applications received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on: Second Quarter—December 31, 2021, Third Quarter—March 31, 2022 and Fourth Quarter—June 30, 2022, will compete for available funds in the fiscal quarter.

Set-Aside Funding Dates: The Consolidated Appropriations Act, 2021 authorized set-aside funding to projects and intermediaries serving Federally-Recognized Native American Tribes, and for Mississippi Delta Region Counties (as determined in accordance with Public Law 100–460). Eligible applicants for the set-aside funds, if such funds are appropriated, must demonstrate that at least 75 percent of the benefits of an approved loan in this program will assist ultimate recipients in the designated areas. Applications for set-aside funds must be submitted to the Rural Development State Office where the project is located by 4:30 p.m. (local time) on the following deadline dates. The completed application deadline for the Federally Recognized Native American Tribes and Mississippi Delta Region Counties projects is May 31, 2022. Funds may also be appropriated for projects located in Rural Empowerment Zone/Enterprise Communities/Rural Economic Area Partnership areas. Completed applications for these projects subject to available funding, must be submitted by July 15, 2022.

A. Program Description

1. *Purpose of the Program.* The purpose of the program is to provide direct loans to intermediaries that establish revolving loan programs for the purpose of providing loans to ultimate recipients for business purposes and community development in a rural area as defined in 7 CFR 4274.302. All applicable program requirements in their entirety can be found at 7 CFR part 4274, subpart D.

2. *Statutory Authority.* This program is authorized under Section 310H of the Consolidated Farm and Rural Development Act (7 U.S.C. 1936b) and is administered through regulations at 7 CFR part 4274, subpart D.

3. *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4274.302.

4. *Application Awards.* The Agency will review, evaluate and score applications received in response to this notice based on the provisions found in 7 CFR 4274.341.

B. Federal Award Information

Type of Award: Loan.

Fiscal Year Funds: FY 2022.

Available Funds: Funding for the IRP program in FY 2022 is anticipated with the amount of any available funds to be determined in an Appropriations Act for FY 2022.

Maximum Award: The Agency anticipates a maximum award of $1 Million for eligible Intermediaries submitting a loan request.

Anticipated Award Dates—Regular Funding: Second Quarter—February 28, 2022, Third Quarter—May 31, 2022, Fourth Quarter—August 31, 2022.

Anticipated Award Date—Federally Recognized Native American Tribes and Mississippi Delta Region Counties Funding: June 15, 2022.

Anticipated Award Date—Empowerment Zones/Enterprise Communities/Rural Economic Area Partnership Funding: August 1, 2022.

Renewal or Supplemental Awards: None.

C. Eligibility Information

1. Eligible Applicants

IRP loans may be made to a private non-profit corporation, a public agency,

an Indian Tribe, or a cooperative entity, identified as eligible borrowers in accordance with 7 CFR 4274.310.

2. Cost Share or Matching

Applicants will receive points in compliance with 7 CFR 4274.341(b) if a cash contribution at a minimum of five percent of the loan amount is contributed to the IRP revolving loan fund at the time of application. An application will score higher with a higher cash contribution percentage to the application amount. The IRP revolving fund share of the eligible project cost of an ultimate recipient's project shall not exceed 75 percent of the total cost of the ultimate recipient's project for which the loan is being made, in accordance with 7 CFR 4274.352.

3. Discretionary Points

The Administrator may assign up to 35 discretionary points to an application when under their approval authority. Assignment of discretionary points must include a written justification. Permissible justifications are geographic distribution of funds, special Secretary of Agriculture initiatives such as Priority Communities, or a state's strategic goals. The number of points to be awarded will be determined by the impact of the project on the stated initiative. Discretionary points may only be assigned to initial grants. However, in the case where two Projects have the same score, the State Director may add one point to the Project that best fits the State's strategic plan regardless of whether the Project is an initial or subsequent grant. The following are examples of special Secretary of Agriculture initiatives that can support obtaining discretionary points.

(i) *COVID–19 Recovery.* Applicant may receive priority points if the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score in the United States. The website, *https://www.rd.usda.gov/priority-points,* has the data to confirm if your location qualifies or not.

(ii) *Equity.* Applicant may receive priority points if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. The website, *https://www.rd.usda.gov/priority-points,* has the data to confirm if your location qualifies or not.

(iii) *Climate Impact.* Applicants may receive points if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The website, *https://www.rd.usda.gov/priority-points,* has the data to confirm if your location qualifies or not. Or, applicants may receive points by demonstrating how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

4. Other

Applications will only be accepted from eligible intermediaries that will establish, or have established, revolving loan programs for the purpose of providing loans to ultimate recipients for business purposes and community developments in a rural area.

There are no ''responsiveness'' or ''threshold'' eligibility criteria for these loans. However, not more than one loan will be approved by the Agency for an intermediary in any single fiscal year unless the additional request is from this program's set-aside funding.

5. Completeness Eligibility

Applications will not be considered for funding if they do not provide enough information to determine eligibility, are not suitable for evaluation or are missing required elements as stated in 7 CFR 4274.340.

D. Application and Submission Information

1. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office where they are located, provided in the **ADDRESSES** section of this notice, to obtain copies of the application package. Applicants are also are encouraged to contact their respective Rural Development State office for an email contact to submit an electronic application prior to the submission deadline date(s). Please note that applicants may locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number, which is 10.767.

All applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* In compliance with 2 CFR part 200, all applicants for direct loans must also be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov.*

2. Content and Form of Submission

An application must contain all the required elements and each selection priority criterion outlined in 7 CFR 4274.343 must be addressed in the application. An original copy of the application must be filed with a Rural Development State Office for the state where the Intermediary is located.

The applicant documentation and forms needed for a complete application are located in 7 CFR 4274.340. There are no specific formats or limitations on the number of pages required for an application narrative, and applicants may request any Agency forms and addresses from the **ADDRESSES** section of this notice. Any form that requires an original signature, but is signed electronically in the application submission, must be signed in ink by the authorized person prior to the disbursement of funds.

3. Submission Dates and Times

Applications must be received by the specified USDA Rural Development State Office by the dates and times as indicated above to compete for available funds in a fiscal quarter. If the due date falls on a Saturday, Sunday or federal holiday, the application is due the next business day. The Agency will determine the application receipt date based on the actual date an application is received electronically, in person, or when a paper application is postmarked.

E. Application Review Information

1. Criteria

All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4274.341(b). Failure to address any of the application criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

2. Review and Selection Process

The Rural Development State Offices will review applications to determine if they are eligible for assistance based on the requirements contained in 7 CFR part 4274, subpart D. If determined eligible, your application will be submitted to the National Office for funding competition with all eligible applications received by the quarterly application deadline. The Agency Administrator reserves the right to award up to 10 discretionary points with justification under 7 CFR 4274.341(b)(10).

In order to distribute funds among the greatest number of projects possible, State application submissions will be reviewed, organized and ranked in order from highest to lowest and funded up to the maximum funding available.

F. Federal Award Administration Information

1. Federal Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the loan award will be obligated. An eligible application competing for regular IRP funds, but not selected, will be reconsidered in three subsequent quarterly funding competitions, for a total of four competitions, provided the application and eligibility requirements have not changed. After competing in four quarterly competitions, any unsuccessful applicant for regular funds will receive written notification indicating that their application will no longer be considered for funding. Applicants competing for set-aside funding have only one application period per fiscal year. Unsuccessful applicants for set-aside funding will receive written notification indicating that their application was not successful. An unsuccessful applicant for set-aside funding may elect, in writing, to submit their project for IRP regular fund competitions commencing with the next quarterly application period.

2. Administrative and National Policy Requirements

Additional requirements that apply to intermediaries selected for this Program can be found in 7 CFR part 4274, subpart D. All successful applicants will be notified by letter which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions, which are not approval determinations. The loan will be considered approved when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the Project.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

Intermediaries must collect and maintain data provided by Ultimate Recipients on race, sex, and national origin and also ensure that Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the Ultimate Recipients must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

G. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice is approved by OMB under OMB Control Number 0570–0021.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://fedgov.dnb.com/webform.* In compliance with 2 CFR part 200, all applicants for direct loans must also be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2021–27770 Filed 12–22–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–041]

Truck and Bus Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain producers and/or exporters of truck and bus tires from the People's Republic of China (China), received countervailable subsidies during the period of review (POR), February 15, 2019, through December 31, 2019.

DATES: Effective December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson or Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631 and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on June 25, 2021, and invited comments from interested parties.[1] On October 1, 2021, Commerce extended the deadline for the final results of this administrative review until December 17, 2021.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The products covered by the order are truck and bus tires from China. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD 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 the comments received from interested parties, we revised the calculation of the net countervailable subsidy rates for all respondents. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of facts otherwise available, including, adverse facts available, pursuant to sections 776(a) and (b) of the Act.

Rate for Non-Selected Companies Under Review

There are 41 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. For these companies, because the rates calculated for the mandatory respondents, Qingdao Ge Rui Da Rubber Co., Ltd. (GRT) and Prinx Chengshan (Shandong) Tire Co., Ltd. (PCT), were above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies the average of the net subsidy rates calculated for GRT and PCT, which we calculated using the publicly ranged sales data submitted by GRT and PCT. This methodology to establish the all-others subsidy rate is consistent with our practice and section 705(c)(5)(A) of the Act, which governs the calculation of the all-others rate in investigations. For further information on the calculation of the non-selected respondent rate, refer to the section in the Issues and Decision Memorandum entitled ''Non-Selected Companies Under Review.'' For a list of non-selected companies, *see* Appendix II.

Final Results of Review

We determine the following net countervailable subsidy rates for the POR February 15, 2019, through December 31, 2019:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Prinx Chengshan (Shandong) Tire Co., Ltd.[5]	17.47
Qingdao Ge Rui Da Rubber Co., Ltd.[6]	14.77
Review-Specific Average Rate Applicable to the Following Companies	
Other Respondents[7]	15.67

[1] *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2019,* 86 FR 33644 (June 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Truck and Bus Tires from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019,'' dated October 1, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Truck and Bus Tires from the People's Republic of China; 2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Disclosure

We intend to disclose to interested parties the calculations and analysis performed for these final results of this review within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of this 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

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final 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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 17, 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

Appendix II—List of Companies Not Individually Examined

1. Aeolus Tyre Co., Ltd.
2. Chaoyang Long March Tyre Co., Ltd.
3. Doublestar International Trading (Hongkong) Co., Limited
4. Giti Radial Tire (Anhui) Company
5. Giti Tire (Fujian) Company Ltd.
6. Giti Tire Global Trading Pte Ltd.
7. Guangrao Kaichi Trading Co., Ltd.
8. Guizhou Tyre Co., Ltd.
9. Guizhou Tyre Import and Export Co., Ltd.
10. Hefei Wanli Tire Co., Ltd.
11. Hongtyre Group Co.
12. Jiangsu General Science Technology Co., Ltd.
13. Koryo International Industrial Limited
14. Maxon Int'l Co., Limited
15. Megalith Industrial Group Co., Limited
16. Qingdao Awesome International Trade Co., Ltd
17. Qingdao Doublestar Overseas Trading Co., Ltd.
18. Qingdao Doublestar Tire Industrial Co., Ltd.
19. Qingdao Fullrun Tyre Corp. Ltd
20. Qingdao Jinhaoyang International Co., Ltd.
21. Qingdao Keter International Co., Limited
22. Qingdao Lakesea Tyre Co., Ltd
23. Qingdao Powerich Tyre Co., Ltd.
24. Qingdao Shinego Tire Tech Co., Limited (also known as Qingdao Shinego Tyre Tech Co., Ltd.)
25. Qingdao Sunfulcess Tyre Co., Ltd.
26. Shandong Habilead Rubber Co., Ltd.
27. Shandong Haohua Tire Co., Ltd.
28. Shandong Huasheng Rubber Co., Ltd
29. Shandong Hugerubber Co., Ltd.
30. Shandong Kaixuan Rubber Co., Ltd
31. Shandong Province Sanli Tire Manufactured Co., Ltd
32. Shandong Qilun Rubber Co., Ltd.
33. Shandong Transtone Tyre Co., Ltd
34. Shandong Wanda Boto Tyre Co., Ltd.
35. Shandong Yongsheng Rubber Group Co., Ltd.
36. Shanghai Huayi Group Corporation Limited
37. Shengtai Tyre Co., Ltd.

[5] Cross-owned affiliates are Chengshan Group Co., Ltd.; Shanghai Chengzhan Information and Technology Center; Prinx Chengshan (Qingdao) Industrial Research & Design Co., Ltd.; and Shandong Prinx Chengshan Tire Technology Research Co., Ltd.

[6] Cross-owned affiliates are Cooper Tire (China) Investment Co. Ltd.; Cooper (Kunshan) Tire Co., Ltd.; and Qingdao Yiyuan Investment Co., Ltd.

[7] *See* Appendix II.

38. Sichuan Kalevei Technology Co., Ltd.
39. Tongli Tyre Co., Ltd.
40. Triangle Tyre Co., Ltd.
41. Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.

[FR Doc. 2021–27846 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Administrative Review, and Preliminary Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that, with the exception of the three companies with no shipments, the companies under review sold subject merchandise at less than normal value during the period of review (POR), December 1, 2019, through November 30, 2020. Additionally, Commerce is rescinding this review with respect to three companies. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2021, in response to review requests from multiple parties, Commerce initiated an administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China).[1] The POR is December 1, 2019, through November 30, 2020. On August 25, 2021, and October 8, 2021, Commerce extended the time limit for completing the preliminary results of this review.[2] The extended deadline for issuing the preliminary results of this review is December 16, 2021.

On February 25, 2021, Commerce selected two exporters to examine individually as mandatory respondents,[3] Jinko Solar Import and Export Co., Ltd. (Jinko)[4] and Risen Energy Co., Ltd. (Risen).[5] During the course of this review, the mandatory respondents filed responses to Commerce's questionnaire and supplemental questionnaires, the petitioner (the American Alliance for Solar Manufacturing) commented on those responses, and multiple other companies for which Commerce initiated the review filed either no-shipment claims or applications or certifications for separate rates status. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise covered by the order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.[7] Merchandise covered by this order is classifiable under subheadings 8501.61.0010, 8507.20.80, 8541.40.6015, 8541.40.6025, and 8501.31.8010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

We found no evidence calling into question the no-shipment claims of the following companies/company groupings: (1) JingAo Solar Co., Ltd.; (2) Yingli;[8] and (3) Canadian Solar.[9] Therefore, we have preliminarily determined that JingAo Solar Co., Ltd., Yingli, and Canadian Solar did not ship subject merchandise to the United States during the POR. For additional information regarding this preliminary determination, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested a review withdraw their requests within 90 days of the date of publication of the notice of initiation of the requested review. All parties withdrew their requests for an administrative review of Jiawei Solarchina Co., Ltd.; Shanghai BYD Co., Ltd.; and Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company within 90 days of the date of publication of the *Initiation Notice.* Accordingly, Commerce is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 8166 (February 4, 2021) (*Initiation Notice*). Commerce subsequently corrected the end date of the POR listed in the *Initiation Notice* (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 12599 (March 4, 2021)).

[2] *See* Memorandum, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated August 25, 2021; *see also* Memorandum, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated October 8, 2021.

[3] *See* Memorandum, ''2019–2020 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Respondent Selection,'' dated February 25, 2021.

[4] ''Jinko'' refers to the following companies which Commerce is treating as a single entity: Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd; JinkoSolar Technology (Haining) Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jiangsu Jinko Tiansheng Solar Co., Ltd.; JinkoSolar (Chuzhou) Co., Ltd.; JinkoSolar (Yiwu) Co., Ltd.; and JinkoSolar (Shangrao) Co., Ltd. (collectively, Jinko).

[5] ''Risen'' refers to the following companies which Commerce is treating as a single entity: Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengzhao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch, Risen Energy (HongKong) Co., Ltd., Risen Energy (Changzhou) Co., Ltd. (Changzhou) and Risen Energy (Yiwu) Co., Ltd. (collectively, Risen).

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China,'' issued concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[7] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

[8] The Yingli entity is made up of Shenzhen Yingli New Energy Resources Co., Ltd.; Baoding Jiasheng Photovoltaic Technology Co., Ltd.; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co., Ltd.; Hainan Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Lixian Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Yingli Energy (China) Company Limited.

[9] The Canadian Solar entity is made up of Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc.; CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.

Preliminary Affiliation and Single Entity Determination

Consistent with Commerce's treatment of Jinko in the prior administrative review, we have continued to find that the following companies are affiliated pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (the Act), and that they should be treated as a single entity pursuant to 19 CFR 351.401(f)(1)–(2): Jinko Solar Import and Export Co., Ltd.; Jinko Solar Co., Ltd.; JinkoSolar Technology (Haining) Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jiangsu Jinko Tiansheng Solar Co., Ltd.; JinkoSolar (Chuzhou) Co., Ltd.; JinkoSolar (Yiwu) Co., Ltd.; and JinkoSolar (Shangrao) Co., Ltd. (collectively, Jinko). For additional information, *see* the Preliminary Decision Memorandum.

Also, consistent with Commerce's treatment of Risen in the prior administrative review, we have continued to treat the following companies as a single entity pursuant to section 771(33)(F) of the Act and 19 CFR 351.401(f)(1)–(2): Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengzhao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd.,[10] Ruichang Branch, Risen Energy (HongKong) Co., Ltd., Risen Energy (Changzhou) Co., Ltd. (Changzhou) and Risen Energy (Yiwu) Co., Ltd. For additional information, *see* the Preliminary Decision Memorandum.

Separate Rates

We have preliminarily determined that the information placed on the record by Jinko and Risen, as well as by the other companies listed in the rate table in the ''Preliminary Results of Review'' section below, demonstrates that these companies are entitled to separate rate status.

We have preliminarily determined that the companies listed in Appendix II have not demonstrated their eligibility for a separate rate because they did not file a separate rate application or a separate rate certification with Commerce. We are treating the companies listed in Appendix II as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* 238.95 percent) is not subject to change.[11] For additional information regarding Commerce's preliminary separate rate determinations, *see* the Preliminary Decision Memorandum.

Dumping Margins for Separate Rate Companies

The statute and Commerce's regulations do not address what dumping margin to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the dumping margin for non-selected respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins calculated for individually-examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Because we calculated preliminary dumping margins for the mandatory respondents Jinko and Risen which are not zero, *de minimis,* or based entirely on facts available, consistent with Commerce's practice and section 735(c)(5)(A) of the Act, we assigned the separate rate recipients a dumping margin equal to the weight average of Jinko and Risen's preliminary dumping margins. We weight averaged Jinko and Risen's preliminary dumping margins using the public values of their reported sales of subject merchandise to the United States during the POR.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Act. In determining the dumping margins in this review, we calculated export and constructed export prices in accordance with section 772 of the Act. Because Commerce has determined that China is a non-market economy country,[12] within the meaning of section 771(18) of the Act, we calculated normal value in this review in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum. 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 can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

We are assigning the following dumping margins to the firms listed below for the period December 1, 2019, through November 30, 2020:

[10] Risen has alternatively used either ''Shengzhao'' or ''Shengchao,'' and ''Trade'' or ''Technology'' in the names of the companies Jiujiang Shengzhao and Ruichang Branch, despite one company being a branch of the other company. However, Risen sold these companies on December 23, 2019, and despite being capable of producing and selling solar cells and panels, neither company produced solar cells or solar panels, or sold subject merchandise to the United States, during the POR. Therefore, the only action that we have taken regarding the various versions of the company names was to include the alternative versions of the company names in the CBP module. *See* Risen's Letter, ''Section A & Appendix X Questionnaire Responses,'' dated April 2, 2021 at 3–4.

[11] The China-wide entity rate was last changed in the first administrative review of this proceeding and has been the applicable rate for the entity in each subsequent review, including the most recently completed review. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012–2013,* 80 FR 40998, 41002 (July 14, 2015) (*AR1 Final*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 58871 (October 25, 2021) (*AR7 Final Results*).

[12] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, ''China's Status as a Non-Market Economy,'' dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

Exporter	Weighted-average dumping margin (percent)
Jinko Solar Import and Export Co., Ltd./Jinko Solar Co., Ltd./JinkoSolar Technology (Haining) Co., Ltd./Yuhuan Jinko Solar Co., Ltd./Zhejiang Jinko Solar Co., Ltd./Jiangsu Jinko Tiansheng Solar Co., Ltd./JinkoSolar (Chuzhou) Co., Ltd./JinkoSolar (Yiwu) Co., Ltd./and JinkoSolar (Shangrao) Co., Ltd	32.69
Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengzhao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch,[13] Risen Energy (HongKong) Co., Ltd., Risen Energy (Changzhou) Co., Ltd. (Changzhou) and Risen Energy (YIWU) Co., Ltd	19.26
Review-Specific Average Rate Applicable to the Following Companies:	
Anji DaSol Solar Energy Science & Technology Co., Ltd	23.17
Chint Solar (Zhejiang) Co., Ltd., Chint New Energy Technology (Haining) Co., Ltd.,[14] Chint Solar (Jiuquan) Co., Ltd., Chint Solar (Hong Kong) Company Limited	23.17
JA Solar Technology Yangzhou Co., Ltd	23.17
LONGi Solar Technology Co., Ltd.[15]	23.17
Shanghai JA Solar Technology Co., Ltd	23.17
Shenzhen Topray Solar Co., Ltd	23.17
Wuxi Suntech Power Co., Ltd	23.17
Wuxi Tianran Photovoltaic Co., Ltd	23.17
Xiamen Yiyusheng Solar Co., Ltd	23.17
Zhejiang Aiko Solar Energy Technology Co., Ltd	23.17

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[16] Rebuttal briefs may be filed no later than seven days after case briefs are due and may respond only to arguments raised in the case briefs.[17] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[18]

Interested parties who wish to request a hearing must submit a written request for a hearing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**.[19] Requests should contain the party's name, address, and telephone number, the number of individuals from the requesting party's firm(s) that will attend the hearing, and a list of the issues the party intends to discuss at the hearing. Oral arguments 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 date and time to be determined.[20] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date of the hearing.

All submissions must be filed electronically using ACCESS.[21] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date.[22] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[23] Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[24] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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

[13] Risen has alternatively used either ''Shengzhao'' or ''Shengchao'', and ''Trade'' or ''Technology'' in the names of the companies Jiujiang Shengzhao and Ruichang Branch, despite one company being a branch of the other company. However, Risen sold these companies on December 23, 2019, and despite being capable of producing and selling solar cells and panels, neither company produced solar cells or solar panels, or sold subject merchandise to the United States, during the POR. Therefore, the only action that we have taken regarding the various versions of the company names was to include the alternative versions of the company names in the CBP module.

[14] In the *Initiation Notice,* we stated that we were initiating a review of Chint Energy (Haining) Co., Ltd. However, Commerce previously determined that Chint Energy (Haining) Co., Ltd.'s correct name is Chint New Energy Technology (Haining) Co., Ltd. *See AR7 Final Results* IDM at Comment 5. We have corrected the name of this company in the CBP module and will refer to this company as Chint New Energy Technology (Haining) Co., Ltd. henceforth.

[15] In the *Initiation Notice,* we stated that we were initiating a review of LONGi Solar Technology Co. Ltd.; Lerri Solar Technology Co., Ltd. However, Commerce previously determined that LONGi Solar Technology Co. Ltd. was the successor-in-interest to Lerri Solar Technology Co., Ltd., effective March 23, 2017. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 35616 (July 27, 2018). Therefore, we will refer to this company as LONGi Solar Technology Co. Ltd. henceforth.

[16] *See* 19 CFR 351.309(c)(ii).

[17] *See* 19 CFR 351.309(d).

[18] *See* 19 CFR 351.309(c)(2), (d)(2).

[19] *See* 19 CFR 351.310(c).

[20] *See* 19 CFR 351.310(d).

[21] *See generally* 19 CFR 351.303.

[22] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[23] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[24] *See* 19 CFR 351.212(b)(1).

assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer/customer-specific assessment rates.[25] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer/customer and dividing this amount by the total entered value of the merchandise sold to the importer/customer.[26] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[27] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[28]

For the respondents that were not selected for individual examination in this administrative review, but which qualified for a separate rate, the assessment rate will be based on the weighted-average dumping margin(s) assigned to the respondent(s) selected for individual examination, as appropriate, in the final results of this review.[29]

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate the entry of such merchandise at the dumping margin assigned to the China-wide entity.[30] Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the dumping margin assigned to the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, 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 antidumping duties, where applicable.

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which normal value exceeds U.S. price. The following cash deposit requirements apply to all subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review for the exporter (except, if the dumping margin is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that are not listed in the table above but that have separate rates, the cash deposit rate will continue to be the exporter-specific rate established in the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 238.95 percent) [31] and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

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 and/or countervailing 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 and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: December 16, 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 Sections in the Preliminary Decision Memorandum

Appendix II

Companies Preliminarily Determined To Be Part of the China-Wide Entity

1. BYD (Shangluo) Industrial Co., Ltd.
2. De-Tech Trading Limited HK
3. Hengdian Group DMEGC Magnetics Co., Ltd.
4. JA Solar Co., Ltd.
5. Jiawei Solarchina (Shenzhen) Co., Ltd.
6. JinkoSolar International Ltd.

[25] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[26] *See* 19 CFR 351.212(b)(1).

[27] *Id.*

[28] *See Final Modification,* 77 FR at 8103.

[29] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying IDM at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[30] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[31] *See AR1 Final,* 80 FR at 41002.

7. Lightway Green New Energy Co., Ltd.
8. Ningbo ETDZ Holdings, Ltd.
9. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
10. Renesola Jiangsu Ltd.
11. Sumec Hardware & Tools Co., Ltd.
12. Shenzhen Sungold Solar Co., Ltd.
13. Suntech Power Co., Ltd.
14. Taizhou BD Trade Co., Ltd.
15. tenKsolar (Shanghai) Co., Ltd.
16. Trina Solar Co., Ltd.; Trina Solar (Changzhou) Science and Technology Co., Ltd.; Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Trina Solar (Hefei) Science and Technology Co., Ltd.; Changzhou Trina Hezhong Photoelectric Co., Ltd.
17. Yingli Green Energy International Trading Company Limited

[FR Doc. 2021–27847 Filed 12–22–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–074]

Common Alloy Aluminum Sheet From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet), from the People's Republic of China (China) during the period of review (POR) April 23, 2018, through December 31, 2019.

DATES: Applicable December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Moses Song or Natasia Harrison, 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) 482–7885 or (202) 482–1240, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on June 25, 2021, and invited interested parties to comment.[1] On July 26, 2021, we received timely case briefs from the following interested parties: Jiangsu Foil Aluminum Co. Ltd. (Jiangsu Alcha)[2] and the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group (the domestic industry). On August 2, 2021, we received timely rebuttal briefs from Jiangsu Alcha and the domestic industry.

On October 14, 2021, Commerce extended the deadline for issuing the final results of this review by 55 days, until December 17, 2021.[3]

Scope of the Order

The product covered by the order is aluminum sheet from China. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which Commerce responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *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 comments in case and rebuttal briefs and record evidence, Commerce made certain changes from the *Preliminary Results* with regard to the calculation of Jiangsu Alcha's program rates for the Government Provision of Electricity for Less than Adequate Remuneration (LTAR) program, Government Provision of Land for LTAR program, and Policy Loans to the Aluminum Sheet Industry. As a result of these changes to Jiangsu Alcha's program rates, the final total adverse facts available (AFA) rates for the Henan Mingtai Industrial Co., Ltd./Zhengzhou Mingtai Industry Co. (collectively, Mingtai) and Yong Jie New Material Co., Ltd. (Yong Jie New Material) (*i.e.,* the non-cooperative mandatory respondents) also changed. These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found to be countervailable, Commerce finds that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying all of Commerce's conclusions, including any determination that relied upon the use of AFA pursuant to section 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Rescission of Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[6] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[7] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty

[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind, in Part; 2018–2019,* 86 FR 33650 (June 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] Jiangsu Alcha and its cross owned companies include Alcha International Holdings Limited; Baotou Alcha Aluminum Co., Ltd.; and Jiangsu Alcha New Energy Materials Co., Ltd.

[3] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 04/23/2018–12/31/2019,'' dated October 14, 2021.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Common Alloy Aluminum Sheet from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[7] *See* 19 CFR 351.212(b)(2).

assessment rate calculated for the review period.[8]

As noted in the *Preliminary Results,* Commerce timely received no-shipment certifications from Teknik Aluminyum Sanayi A.S. and Companhia Brasileira De Aluminio. We inquired with U.S. Customs and Border Protection (CBP) as to whether these companies had shipped merchandise to the United States during the POR, and CBP provided no evidence to contradict the claims of no shipments made by these companies.[9] Accordingly, in the *Preliminary Results,* Commerce stated its intention to rescind the review with respect to these companies in the final results. We continue to find these two companies had no shipments of the subject merchandise during the POR[10] and that three additional companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended.[11] Because there is no evidence on the record of this segment of the proceeding to indicate that these five companies had entries, exports, or sales of subject merchandise to the United States during the POR, we are rescinding this review with respect to these companies, consistent with 19 CFR 351.213(d)(3).

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely {on the basis of facts available}.''

There is one company for which a review was requested, that had reviewable entries, and that was not selected for individual examination as a mandatory respondent or found to be cross-owned with a mandatory respondent. In these final results, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Jiangsu Alcha. Consequently, as discussed above, the rate calculated for Jiangsu Alcha is also assigned as the rate for the producer/exporter subject to this review but not selected for individual examination (*i.e.,* the non-selected company).[12]

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), Commerce calculated the following net countervailable subsidy rates for the period April 23, 2018, through December 31, 2019:

Company	Subsidy rate—2018 (percent *ad valorem*)	Subsidy rate—2019 (percent *ad valorem*)
Henan Mingtai Industrial Co., Ltd./Zhengzhou Mingtai Industry Co.[13]	277.35	277.35
Jiangsu Alcha Aluminum Co., Ltd.[14]	37.70	32.22
Yinbang Clad Material Co., Ltd.[15]	37.70	32.22
Yong Jie New Material Co., Ltd.[16]	277.35	277.35

Disclosure

Commerce will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[17]

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce will determine, CBP shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review. We intend to issue assessment instructions to CBP 35 days after the date of publication of these final results of review. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the

[8] *See* 19 CFR 351.213(d)(3).

[9] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China; No Shipment Inquiry for Teknik Aluminyum Sanayi A.S. and Companhia Brasileira de Aluminio during the period 04/23/2018 through 12/31/2019,'' dated June 11, 2021.

[10] *See* Memorandum, ''Common Alloy Aluminum Sheet from the People's Republic of China; No Shipment Inquiry for Teknik Aluminyum Sanayi A.S. and Companhia Brasileira de Aluminio during the period 04/23/2018 through 12/31/2019,'' dated June 11, 2021. These two companies are Teknik Aluminyum Sanayi A.S. and Companhia Brasileira De Aluminio.

[11] These three additional companies are: Choil Aluminum Co., Ltd.; PMS Metal Profil Aluminyum San. Ve Tic. A.S. Demirtas Organize Sanayi Bolgesi; and United Metal Coating LLC.

[12] The domestic industry initially requested a review and did not subsequently withdraw its request for review of one company: Yinbang Clad Material Co., Ltd.

[13] This rate applies to Henan Mingtai Industrial Co., Ltd./Zhengzhou Mingtai Industry Co., and their cross-owned company: Henan Gongdian Thermal Co., Ltd. In the CVD investigation of aluminum sheet from China, we made this cross-ownership finding. *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Alignment of Final CVD Determination With Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances,* 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum, unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination,* 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (collectively, *Aluminum Sheet from China Investigation*). Accordingly, the subject merchandise that was produced/exported by these companies entered under a single CBP case number during the period of review.

[14] This rate applies to Jiangsu Alcha and its cross-owned companies.

[15] Yinbang Clad Material Co., Ltd. was not individually examined during the POR and, therefore, has received the non-selected company rate.

[16] This rate applies to Yong Jie New Material Co., Ltd. and its cross-owned companies: Nanjie Resources Co., Ltd.; Shejiang Nanjie Industry Co., Ltd, Zhejiang Yongjie Aluminum Co., Ltd. also known as Zhejiang Yong Jie Aluminum Co., Ltd., and Zhejiang Yongjie Holding Co., Ltd. In the *Aluminum Sheet from China Investigation,* we made this cross-ownership finding. Accordingly, the subject merchandise that was produced/exported by these companies entered under a single CBP case number during the POR.

[17] *See* 19 CFR 351.224(b).

time of entry, or withdrawal from warehouse, for consumption, during the POR in accordance with 19 CFR 351.212(c)(l)(i).

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the order, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a 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 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

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 17, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–27893 Filed 12–22–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–079]

Cast Iron Soil Pipe From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2018–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that an exporter of cast iron soil pipe from the People's Republic of China made sales at prices below normal value during the period of review (POR) August 31, 2018, through April 30, 2020.

DATES: Applicable December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, 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) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2021, the Department of Commerce (Commerce) published the *Preliminary Results* and invited interested parties to comment.[1]

On October 8, 2021, Commerce received the petitioner's case brief.[2] On October 15, 2021, Commerce received a rebuttal brief from the sole mandatory respondent in this review, Yuncheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd. (HengTong).[3] On December 1, 2021, Commerce extended the deadline for the final results of this review until December 17, 2021.[4] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

Scope of the Order

The merchandise covered by the order is cast iron soil pipe from the People's Republic of China. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. The appendix to this notice identifies the sole issue which parties raised. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Cast Iron Soil Pipe from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2018–2020,* 86 FR 43523 (August 9, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Petitioner's Letter, ''Cast Iron Soil Pipe from the People's Republic of China: Petitioner's Case Brief,'' dated October 8, 2021. The petitioner is the Cast Iron Soil Pipe Institute.

[3] *See* HengTong's Letter, ''Cast Iron Soil Pipe from the People's Republic of China A–570–079 (Review 8/31/18–4/30/20). HengTong's Rebuttal Brief,'' dated October 15, 2021.

[4] *See* Memorandum, ''Cast Iron Soil Pipe from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2018–2020,'' dated December 1, 2021.

[5] *See* Memorandum, ''Cast Iron Soil Pipe from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2018–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *Id.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, and for the reasons explained in the Issues and Decision Memorandum, we made changes to the *Preliminary Results*.[7] For these final results, Commerce is now applying facts available with an adverse inference (AFA) to HengTong.[8] Accordingly, we are applying the highest rate from any segment of this proceeding, *i.e.,* 235.93 percent, as AFA.[9] For a discussion of this change, *see* the ''Discussion of the Issue'' section of the Issues and Decision Memorandum.

Final Results of Administrative Review

We are assigning the following dumping margin to the firm listed below for the POR, August 31, 2018, through April 30, 2020:

Exporter	Weighted-average dumping margin (percent)
Yuncheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd (aka HengTong Casting Co., Ltd.)	235.93

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of a review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results, in accordance with 19 CFR 351.224(b). However, because Commerce applied a rate based on total AFA to the mandatory respondent in this review, in accordance with section 776 of Tariff Act of 1930, as amended (the Act), there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. We intend to issue appropriate 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).

For the final results, we will instruct CBP to apply an *ad valorem* assessment rate equal to the dumping margin shown above to all entries of subject merchandise during the POR which were exported by HengTong. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212 (d).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For HengTong, the cash deposit rate will be equal to the dumping margin assigned in the final results of this review; (2) for previously investigated or reviewed China and non-China exporters not listed above that, at the time of entry are eligible for a separate rate based on a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate at the time of entry, the cash deposit rate will be that for the China-wide entity (*i.e.,* 235.93 percent); [10] and (4) for all non-China exporters of subject merchandise which at the time of entry are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 the 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.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 violation which is subject to sanction.

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: December 15, 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

[FR Doc. 2021–27849 Filed 12–22–21; 8:45 am]

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[7] *Id.*

[8] *Id.*

[9] *See Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 84 FR 6767, 6769 (February 28, 2019).

[10] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of call for nominations for NOAA's Hydrographic Services Review Panel (HSRP) federal advisory committee.

SUMMARY: The National Oceanic and Atmospheric Administration is seeking nominations for members to serve on the Hydrographic Services Review Panel with nominations due by April 15, 2022.

DATES: Nominations are sought for submission by April 15, 2022, and will be kept on file to be used for future HSRP vacancies. Five vacancies will occur on January 1, 2023, for a four-year term. Current members who may be eligible for a second term in 2023 must reapply. HSRP maintains an active pool

of candidates and advertises once a year to fulfill the Hydrographic Services Improvement Act (HSIA) requirement on membership solicitation.

ADDRESSES: Nominations will be accepted by email and should be sent to: *Hydroservices.panel@noaa.gov, Melanie.Colantuno@noaa.gov and Lynne.Mersfelder@noaa.gov.* You will receive a confirmation response.

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, NOAA HSRP program manager, email *Lynne.Mersfelder@noaa.gov* or phone: 240–533–0064.

SUPPLEMENTARY INFORMATION: In accordance with the HSIA, (33 U.S.C. 892c), the Administrator of the National Oceanic and Atmospheric Administration (NOAA) is required to solicit nominations for membership once a year for the HSRP. The HSRP, a Federal advisory committee, advises the NOAA Administrator on matters related to the responsibilities and authorities set forth in section 303 of the HSIA, the ''charts and related information for the safe navigation of marine and air commerce, and to provide basic data for engineering and scientific purposes and for other commercial and industrial needs'' as is set forth in section 883a (Surveys and other activities) of the Coast and Geodetic Survey Act of 1947, as amended (33 U.S.C. 883a *et seq.*), and such other appropriate matters as the Administrator refers to the Panel for review and advice. Those responsibilities and authorities include, but are not limited to: Acquiring and disseminating hydrographic data and providing hydrographic services, as those terms are defined in the HSIA; promulgating standards for hydrographic data and services; ensuring comprehensive geographic coverage of hydrographic services; and testing, developing, and operating vessels, equipment, and technologies necessary to ensure safe navigation and maintain operational expertise in hydrographic data acquisition and hydrographic services.

The HSIA states ''the voting members of the Panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields relating to hydrographic data and hydrographic services, marine transportation, port administration, vessel pilotage, coastal and fishery management, and other disciplines as determined appropriate by the Administrator.'' The NOAA Administrator seeks individuals with expertise in marine navigation and technology, port administration, marine shipping or other intermodal transportation industries, cartography and geographic information systems, geodesy, physical oceanography, coastal resource management, including coastal preparedness and emergency response, and other related fields.

In accordance with applicable Department of Commerce guidance, NOAA seeks a balanced membership and members are selected on a standardized basis. Subject matter expertise, as specified in the HSIA, is the primary criteria considered in the evaluation process. Professional sector representation (academia, industry, research, scientific institution, state and local government, tribal interests, consultant, non-governmental organization, etc.), geographic expertise, experience working productively with committees and working groups, and leadership with navigation, observations, and positioning are other criteria that will be considered. The diverse membership of the HSRP assures expertise reflecting the full breadth of the HSRP's responsibilities. Where possible, NOAA will also consider the ethnic, racial, and gender diversity of the United States. NOAA is an equal opportunity employer.

Nominees are required to submit four items including a cover letter that responds to the five short response questions below. The entire nomination package should include all components, be submitted in word and PDF, and be no longer than eight pages.

(1) A cover letter that responds to the five questions listed below and serves as a statement of interest to serve on the panel. Please see ''Five Short Response Questions'' below. Please be sure to highlight the nominee's specific area(s) of expertise relevant to the purpose of the HSRP from the list in the **Federal Register** Notice.

(2) A short biography of 300–400 words.

(3) A resume of no more than 2–3 pages.

(4) The nominee's full work and home contact information including: Full name, work title, institutional affiliation, work and home mailing addresses, email(s), phones, and fax. Please note preferred email, phone number and mailing address.

Five Short Response Questions for the Cover Letter:

(1) List your area(s) of expertise, from the list above.

(2) List the geographic region(s) of the country with which you primarily associate your expertise.

(3) Describe your leadership or professional experiences which you believe will contribute to the effectiveness of the HSRP panel.

(4) Describe your familiarity and experience with NOAA National Ocean Service (NOS) navigation, observations and positioning data, products, and services.

(5) Generally describe the breadth and scope of your knowledge of stakeholders, users, or other groups who interact with NOAA and whose views and input you believe you can share with the panel.

Information on NOS and HSRP Members Responsibilities

Under 33 U.S.C. 883a *et seq.,* NOAA's NOS is responsible for providing nautical charts and related information for safe navigation. NOS collects and compiles hydrographic, tidal and current, geodetic, and a variety of other data in order to fulfill this responsibility. The HSRP provides advice on current and emerging oceanographic and marine science technologies relating to operations, research and development; and dissemination of data pertaining to:

(a) Hydrographic surveying;
(b) Shoreline surveying;
(c) Nautical charting;
(d) Water level measurements;
(e) Current measurements;
(f) Geodetic measurements;
(g) Geospatial measurements;
(h) Geomagnetic measurements; and
(i) Other oceanographic/marine related sciences.

The HSRP has fifteen voting members appointed by the NOAA Administrator in accordance with 33 U.S.C. 892c. Two NOAA employees, the Directors of the National Geodetic Survey and the Center for Operational Oceanographic Products and Services, and the Co-Directors of the Center for Coastal and Ocean Mapping/Joint Hydrographic Center serve as non-voting members. The Director, NOAA Office of Coast Survey, serves as the Designated Federal Officer (DFO) along with two Alternate DFOs.

Voting members are individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more disciplines relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, coastal or fishery management, and other oceanographic or marine science areas as deemed appropriate by the Administrator. Full-time officers or employees of the United States may not be appointed as a voting member. Any voting member of the Panel who is an applicant for, or beneficiary of (as

determined by the Administrator) any assistance under 33 U.S.C. 892c shall disclose to the Panel that relationship, and may not vote on any other matter pertaining to that assistance.

Voting members of the Panel serve a four-year term, except that vacancy appointments are for the remainder of the unexpired term of the vacancy. Members serve at the discretion of the Administrator and are subject to government ethics standards. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve until his or her successor has taken office. The Panel selects one voting member to serve as the Chair and another to serve as the Vice Chair. The Vice Chair acts as Chair in the absence or incapacity of the Chair but will not automatically become the Chair if the Chair resigns. Public meetings occur at least twice a year, and at the call of the Chair or upon the request of a majority of the voting members or of the Administrator. Voting members receive compensation at a rate established by the Administrator, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when engaged in performing duties for the Panel during the public meeting. Members are reimbursed for actual and reasonable travel expenses incurred in performing such duties according to the Federal Travel Regulation.

Additional HSRP information and past HSRP public meeting summary reports, agendas, presentations, transcripts, webinars, and other information is available online at:

Membership: https://www.nauticalcharts.noaa.gov/hsrp/panel.html

Recommendations: https://www.nauticalcharts.noaa.gov/hsrp/recommendations.html

Public meeting materials: https://www.nauticalcharts.noaa.gov/hsrp/meetings.html

Individuals Selected for Panel Membership

Upon selection and agreement to serve on the HSRP Panel, you become a Special Government Employee (SGE) of the United States Government. An SGE, as defined in 18 U.S.C. 202(a), is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a full time or intermittent basis. After the selection process is complete, applicants selected to serve on the Panel must complete the following actions before they can be appointed as a Panel member:

(a) Security Clearance (online Background Security Check process and fingerprinting conducted through NOAA's Office of Security and Office of Human Capital Services); and

(b) Confidential Financial Disclosure Report. SGEs are required to file a Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. You may find information on the Confidential Financial Disclosure Report: *https://www.oge.gov/Web/oge.nsf/Resources/OGE+Form+450.*

Kathryn L. Ries,

Deputy Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–27844 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–JE–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Applicable Date:* December 23, 2021.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain 100% polyester 3-layered bonded fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Thomas Newberg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 510–3982.

For Further Information On-line: https://itaprodingress.eastus.cloudapp.azure.com/otexacapublicsite/requests/cafta under ''Approved Requests,'' Reference number: CA2021002.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background: The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25.4 and 3.25.5, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On November 15, 2021, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sandler, Travis and Rosenberg, P.A., on behalf of VF Corp. for certain 100% polyester 3-layered bonded fabric. On November 17, 2021, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by November 30, 2021, and any Rebuttal Comments to a Response must be submitted by December 6, 2021, in accordance with sections 6 and 7 of CITA's procedures. No interested entity

submitted a Response to the Request advising CITA of its objection to the Request and its offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA–DR Commercial Availability proceedings, at *https://itaprodingress.eastus.cloudapp.azure.com/otexacapublicsite/shortsupply/cafta.*

Specifications: 3-layered bonded fabric with woven outer layer and knit pile inner layer, bonded with plastic.

HTS: 6001.22.

Face Fabric:

Fiber Content: 100% Polyester.

Yarn Size: 290D–350D/144F.

Thread Count:

Warp: 55–67 warp ends per inch.

Filling: 50–60 filling picks per inch.

Fabric Construction: Plain weave.

Fabric Weight: 175.7–214.5 g/m2.

Coloration: Dyed and/or printed.

Back Fabric:

Fiber Content: 100% Polyester.

Yarn Size: 70D–95D (before pile process).

Fabric Construction: Pile knit.

Fabric Weight: 145.5–181.5 g/m2.

Coloration: Dyed.

Composite Fabric:

Weight: 336.6–412.5 g/m2.

Bonding: Full or dot contact bonding meeting 2.5 Lbf/inch (Initial and 5x wash) per ASTM D2724.

Air Permeability: Initial ≤1.0 cfm per ASTM D737.

Durable Water Repellency: Initial ≥90 Points per AATCC 22.

Low Range Hydrostatic: Initial 8,000 mm–30,000 mm per AATCC 127.

Note: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing, and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing, and knitting can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Paul E. Morris,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2021–27830 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Applicable Date:* December 23, 2021.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain polyester/spandex 3-layered bonded fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Eric Sguazzin, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 510–0859.

FOR FURTHER INFORMATION ON-LINE: *https://itaprodingress.eastus.cloudapp.azure.com/otexacapublicsite/requests/cafta* under ''Approved Requests,'' Reference number: CA2021001.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background: The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25.4 and 3.25.5, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On November 15, 2021, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sandler, Travis & Rosenberg, P.A., on behalf of VF Corp. for certain polyester/spandex 3-layered bonded fabric. On November 17, 2021, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by November 30, 2021, and any rebuttal to a Response must be submitted by December 6, 2021, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request with an offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA–DR Commercial Availability proceedings, at *https://itaprodingress.eastus.cloudapp.azure.com/otexacapublicsite/requests/cafta.*

Specifications: 3-Layered Bonded Fabric With Woven Outer Layer and Knit Pile Inner Layer, Bonded With Plastic

HTS: 6001.22

Face Fabric

Fiber Content: 81–91% Polyester/9–19% Spandex

Yarn Size: 85D–110D/148F

Thread Count:

Warp: 107.1–130.9 warp ends per inch

Filling: 90–110 filling picks per inch

Fabric Construction: Plain weave

Fabric Weight: 111.6–136.4 g/m2

Coloration: Dyed and/or printed

Back Fabric

Fiber Content: 100% Polyester

Yarn Size: 70D–95D (before pile process)

Fabric Construction: Pile knit

Fabric Weight: 145.5–181.5 g/m2

Coloration: Dyed and/or printed

Composite Fabric

Weight: 315.9–386.1 g/m2

Bonding: Full or dot contact bonding meeting 2.5 Lbf/inch (Initial and 5x wash) per ASTM D2724

Air Permeability: Initial ≤1.0 cfm per ASTM D737

Durable Water Repellency: Initial ≥90 Points per AATCC 22

Low Range Hydrostatic: Initial 8,000 mm–30,000 mm per AATCC 127

Note: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing, and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing, and knitting can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Paul E. Morris,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2021–27832 Filed 12–22–21; 8:45 am]

BILLING CODE 3510–DR–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) and service(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:* January 22, 2022.

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 6/25/2021, 8/20/2021, 10/1/2021, and 10/22/2021, 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 service(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): 7510–00–134–8179—Binder, Awards Certificate, Silver USAF Seal, Blue, 14½″ x 11½″
Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2
Distribution: A-List
Mandatory For: Total Government Requirement

NSN(s)—Product Name(s): 5110–00–510–4505—Riffler Set, Die Sinker's, 12PC
Designated Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: FEDERAL ACQUISITION SERVICE, FAS HEARTLAND REGIONAL ADMINISTRATO
Distribution: B-List
Mandatory For: Broad Government Requirement

NSN(s)—Product Name(s):
6135–01–554–4281—Battery, Non-rechargeable, 9.0V Lithium
6135–01–616–2203—Battery, Non-rechargeable, 7.5V Alkaline
Designated Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME
Distribution: C-List
Mandatory For: 100% of the requirement of the Department of Defense

NSN(s)—Product Name(s):
6515–01–656–4831—Tourniquet, Tactical Pneumatic 2 Inch
6515–01–656–6223—Tourniquet, Tactical Pneumatic, 3 Inch
Designated Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
Mandatory For: 100% of the requirement of the Department of Defense
Distribution: C-List

Service(s)

Service Type: Facility Support Services

Mandatory for: National Park Service, National Capital Region Office Headquarters, Washington, DC
Designated Source of Supply: Portco, Inc., Portsmouth, VA
Contracting Activity: NATIONAL PARK SERVICE, NCR REGIONAL CONTRACTING(30000)

Service Type: Custodial Service
Mandatory for: FAA, Multiple Locations, Key West, FL
Designated Source of Supply: Mavagi Enterprises, Inc., San Antonio, TX
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2021–27905 Filed 12–22–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* January 22, 2022.

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.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s): MR 1023—Holder, Pot, Deluxe, Green
Designated Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
MR 1124—Basket, Suction, Sink, Steel
MR 13035—Dispenser, Sugar, Plastic
MR 13074—Set, Bowls, Glass, Prep, 4 Piece
MR 13075—Set, Mini Grate and Slice
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s): 7125–01–667–1407—Cabinet, Storage, Blow-Molded, 72″, Platinum
Designated Source of Supply: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI
Contracting Activity: GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7420–01–484–4565—Portfolio, Calculator, Writing Pad and Pen, Leather-Look, Black, 6¼″ x 4¾″
7520–01–492–8463—Pen, Retractable, Neon, LVX Ink Gripper, Black, Fine point
7520–01–492–8464—Pen, Retractable, Neon, LVX Ink Gripper, Black, Medium point
Designated Source of Supply: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 6645–01–467–8479—Clock, Wall, Black Custom Logo, 22″ Diameter
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 7520–00–281–5896—Stapler, Long Reach, 12″ Throat, Black
Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Parts Machining
Mandatory for: U.S. Postal Service: National Inventory Control Center, Topeka, KS
Designated Source of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: U.S. Postal Service, Washington, DC

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2021–27904 Filed 12–22–21; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0110]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Implementation Study of Student Support and Academic Enrichment Grants (Title IV, Part A)

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new collection.

DATES: Interested persons are invited to submit comments on or before January 24, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Michael Fong, (202) 245–8407.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Implementation Study of Student Support and Academic Enrichment Grants (Title IV, Part A).

OMB Control Number: 1850–NEW.

Type of Review: New collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 661.

Total Estimated Number of Annual Burden Hours: 327.

Abstract: This study will collect information about policy and program implementation of the grants administered under Title IV, Part A of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESSA), to describe and report on districts' decision-making process for use of Title IV, Part A funds, how states help inform districts' decisions, and what topic areas and activities are funded with Title IV, Part A funds.

Dated: December 20, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–27860 Filed 12–22–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–44–000]

LA Storage, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Hackberry Storage Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Hackberry Storage Project (Project), proposed by LA Storage, LLC (LA Storage) in the above-referenced docket. LA Storage requests authorization to construct and operate natural gas storage and transmission facilities in Louisiana. The Project is designed to provide 20.03 billion cubic feet of working gas storage capacity and 1.5 billion cubic feet per day (Bcf/d) of gas deliverability and injectability, and interconnecting with the Cameron Interstate Pipeline (CIP) facilities operated by Cameron Interstate Pipeline, LLC and the Port Arthur Pipeline Louisiana Connector (PAPLC) facilities to be operated by Port Arthur Pipeline, LLC.

The draft EIS assesses the potential environmental effects of the construction and operation of the Hackberry Storage Project in accordance with the requirements of the National Environmental Policy Act (NEPA). With the exception of climate change impacts, FERC staff concludes that approval of the Project would not result in significant environmental impacts. FERC staff is unable to determine the significance level of climate change impacts.

The draft EIS addresses the potential environmental effects of the construction and operation of the following Project facilities: The Project would involve the conversion of three existing salt dome caverns to natural gas storage service and the development of one new salt dome cavern for additional natural gas storage service, all within a permanent natural gas storage facility on a 160-acre tract of land owned by LA Storage in Cameron Parish, Louisiana. In addition to the storage caverns, LA Storage would construct and operate on-site compression facilities (Pelican Compressor Station) and up to six solution mining water supply wells at the storage facility on LA Storage's property. LA Storage would also construct and operate the following natural gas facilities in in Cameron and Calcasieu Parishes, Louisiana: The Hackberry Pipeline, consisting of approximately 11.1 miles of 42-inch-diameter natural gas pipeline connecting the certificated PAPLC pipeline (CP18–7) to the natural gas storage caverns; the CIP Lateral, an approximately 4.9-mile-long, 42-inch-diameter natural gas pipeline extending from the existing CIP to the planned natural gas storage caverns; metering and regulating at the CIP and PAPLC interconnects; and an approximately 6.2-mile-long, 16-inch-diameter brine disposal pipeline that would transport brine from the caverns to four saltwater disposal wells located on two new pads north of the facility.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Proposed Hackberry Storage Project* to federal, state, and local government representatives and agencies; local libraries; newspapers; elected officials; Native American Tribes; and other interested parties. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–44–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts, and the completeness of the submitted alternatives, information and analyses. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on February 7, 2022.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select

''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–44–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27870 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–26–000]

Northern Natural Gas Company; Notice of Application and Establishing Intervention Deadline

Take notice that on December 3, 2021, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, NE 68124, filed an application under sections 7(c) and 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to: (1) Abandon in-place and by removal the A-line and associated branch line, tie-over piping and aboveground facilities; and (2) install and operate the replacement North C-line Extension and South Cline Extension and associated branch line, tie-over piping and aboveground facilities, all with appurtenances and all located in Boone, Dallas and Polk counties in Iowa. Specifically, Northern proposes to abandon approximately 29.63 miles of its 16-inch-diameter Des Moines IAB65001 A-line (A-line) and appurtenances in Boone, Dallas and Polk counties, Iowa. Northern also requests authorization to construct and operate an approximately 9.07-mile extension of its 20-inch-diameter Des Moines IAB65003 C-line (C-line) and appurtenances in Boone, Dallas and Polk counties, Iowa, to replace the capacity associated with the abandoned A-line. Northern estimates the cost of the project to be $36,981,705, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Michael T. Loeffler, Senior Director of Certificates and External Affairs for Northern, 1111 South 103rd Street, Omaha, NE 68124, by telephone at (402) 398–7103, or by email at *mike.loeffler@nngco.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on January 7, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 7, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–26–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy

[1] 18 CFR 157.9.

method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–26–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is January 7, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–26–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–26–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: 1111 South 103rd Street, Omaha, NE 68124 or at *mike.loeffler@nngco.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on January 7, 2022.

Dated: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27867 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–128]

Sabine River Authority—LA & TX; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity amendment of license for project boundary administration.

b. *Project No:* 2305–128.

c. *Date Filed:* September 7, 2021.

d. *Applicant:* Sabine River Authority—LA & TX.

e. *Name of Project:* Toledo Bend Hydroelectric Project.

f. *Location:* The Sabine River on the Texas-Louisiana border in Panola, Shelby, Sabine, and Newton counties in Texas and DeSoto, Sabine, and Vernon parishes in Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jim Brown, (409) 746–2192, *jbrown@sratx.org*.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov*.

j. *Deadline for Filing Comments, Motions To Intervene, and Protests:* January 14, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2305–128. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Request:* Sabine River Authority—LA & TX proposes a new article (*i.e.,* Article 417—*Project Administration*) to be included in the project license. The project boundary is based mostly on metes and bounds surveys over 1,130 miles around the reservoir that were meant to provide a 50-foot buffer from the water's edge. At the time of initial surveying (*i.e.,* the 1960s), surveyors were allowed variances of up to 75 feet to the landward side of the project boundary, which resulted in the licensee acquiring, in many instances, more property than is needed for project purposes. The article would allow the licensee to adjust the project boundary under certain circumstances without prior Commission approval to ensure that the project boundary includes only those lands needed for project purposes. Specifically, the licensee would be able to make adjustments for lands that meet all three of these conditions: (1) Located entirely above the elevation 175 feet mean sea level contour; (2) located at least 50 feet from the reservoir shoreline; and (3) not otherwise needed for project purposes (*i.e.,* project works, recreation, aquatic and terrestrial resource protection, shoreline control, or cultural resource protection). The licensee would file biennial reports describing its activities under the article, including revised Exhibit G (project boundary) drawings, if necessary.

l. *Locations of the Application:* 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 document field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3673 or TYY, (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 15, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27788 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP22–21–000; CP22–22–000; PF21–1–000]

Notice of Application and Establishing Intervention Deadline: Venture Global CP2 LNG, LLC; Venture Global CP Express, LLC

Take notice that on December 2, 2021, Venture Global CP2, LLC (CP2 LNG) and Venture Global CP Express, LLC (CP Express) (together the Applicants), 1001 19th Street North, Suite 1500, Arlington, Virginia 22209, filed an application pursuant to sections 3 and 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's Regulations requesting authority to

construct a liquefied natural gas (LNG) export terminal and pipeline facilities located in Louisiana and Texas. The proposals are referred to as the CP2 LNG and CP Express Project, or collectively, Project. Specifically, the Applicants request Commission authorization to: (1) Site, construct, own, operate, and maintain CP2 LNG's proposed new LNG export terminal and associated facilities in Cameron Parish, Louisiana; (2) construct the 85.4 mile, 48-inch-diameter CP Express Pipeline in Louisiana and Texas; (3) construct the 6.0 mile, 24-inch-diameter Enable Gulf Run Lateral in Calcasieu Parish, Louisiana; (4) construct the 187,000 hp gas-fired Moss Lake Compressor Station in Calcasieu Parish, Louisiana; and (5) construct various meter stations. CP Express further requests Part 157, Subpart F and Part 284, Subpart G blanket certificates and approval of its proposed pro forma tariff and initial recourse rates. The proposed terminal has a nameplate liquefaction capacity of 20 million tonnes per annum (mtpa) and a peak capacity of 28 mtpa. The CP Express Pipeline has a capacity of 2.2 billion cubic feet per day (Bcf/d), of which 2.17 Bcf/d is subscribed by CP2 LNG. Total cost of the pipeline portion of the project is estimated to be approximately $1.483 billion.

The Applicants' application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from the Louisiana Department of Environmental Quality. The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Fory Musser, Senior Vice President, Development, Venture Global LNG, Inc., 1001 19th Street North, Suite 1500, Arlington, Virginia 22209, by phone (202) 759–6738, or by email at *fmusser@ventureglobalLNG.com.*

On February 17, 2021 the Commission granted the Applicant's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF21–1–000 to staff activities involved in the Project. Now, as of the filing of the December 2, 2021 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP22–21–000 and CP22–22–000 as noted in the caption of this Notice.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on January 6, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 6, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket numbers CP22–21–000 and CP22–22–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket numbers CP22–21–000 and CP22–22–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

[1] 18 CFR (Code of Federal Regulations) § 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is January 6, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket numbers CP22–21–000 and CP22–22–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket numbers CP22–21–000 and CP22–22–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 1001 19th Street North, Suite 1500, Arlington, Virginia 22209 or at *fmusser@ventureglobalLng.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on January 6, 2022.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27782 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15038–001]

Let It Go, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 15038–001.

c. *Date Filed:* December 9, 2021.

d. *Applicant:* Let It Go, LLC.

e. *Name of Project:* Jefferson Mill Hydroelectric Project.

f. *Location:* On the Hardware River near the Town of Scottsville, Albemarle County, Virginia. The project does not occupy federal land.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708, *amended by* the Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 127 Stat. 493 (2013).

h. *Applicant Contacts:* Aaron Van Duyne III, Let It Go, LLC c/o Van Duyne, Bruno & Co., P.A.; 18 Hook Mountain Road, Suite 202, P.O. Box 896, Pine Brook, NJ 07058; *avanduyne@vb-cpa.com;* Kevin O'Brien, 809 Bolling Ave., Unit C, Charlottesville, VA 22902; (703) 966–2438 or *kaob@fpcinc.biz;* and/or Jessica Penrod (lead contact for project questions), Natel Energy, 2401 Monarch St., Alameda, CA 94501; 415–845–1933 or *Jeffersonmill@natelenergy.com.*

i. *FERC Contact:* Andy Bernick at (202) 502–8660; or email at *andrew.bernick@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 7, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Jefferson Mill Hydroelectric Project (P–15038–001).

m. This application is not ready for environmental analysis at this time.

n. *The proposed project would consist of:* (1) An existing 140-foot-long, 9-foot-high masonry dam that impounds a 1.46-acre reservoir with a gross volume of 5.3 acre-feet at the normal pool elevation of 320.0 feet mean sea level; (2) a new 12.5-foot-wide, 4-foot-high intake rack with 0.75-inch spacing to prevent river debris from entering the intake; (3) a new 14-foot-long, 12-foot-wide, and 10-foot-high reinforced concrete intake structure, mostly constructed below-grade and upstream of the dam on the west side of the river; (4) a new 70-foot-long, 3-foot-diameter penstock; (5) a new eel ramp for the upstream passage of American eel and sea lamprey; (6) an existing 3-foot-wide and 0.9-foot-high low-flow notch and 4.6-foot-deep plunge pool for downstream fish passage; (7) an existing 33-foot-wide, 8-foot-long, 14-foot-high powerhouse with one new 20-kilowatt (kW) turbine-generator unit; (8) two new 100-foot-long underground utility trenches (containing conduits for utility power, generator power, and communications) between the powerhouse and control equipment shed; (9) a new draft tube that connects the exit of the turbine to the tailrace; (10) a transmission line connecting the project to the distribution system owned by the Appalachian Power Company; and (11) appurtenant facilities. The project is estimated to generate an average of 111,000 kW-hours annually. The applicant proposes to operate the project in a run-of-river mode.

o. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Virginia State Historic Preservation Officer (SHPO), as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate (*e.g.,* if there are no deficiencies or a need for additional information, the schedule would be shortened).

Issue Deficiency Letter (if necessary)—March 2022
Request Additional Information—March 2022
Issue Acceptance Letter—June 2022
Issue Scoping Document 1 for comments—July 2022
Request Additional Information (if necessary)—September 2022
Issue Scoping Document 2—October 2022
Issue Notice of Ready for Environmental Analysis—October 2022

Dated: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27873 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–28–000.
Applicants: Northern Wind Energy Redevelopment, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Northern Wind Energy Redevelopment, LLC.
Filed Date: 12/16/21.
Accession Number: 20211216–5212.
Comment Date: 5 p.m. ET 1/6/22.

Docket Numbers: EG22–29–000.
Applicants: Red Barn Energy, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Red Barn Energy, LLC.
Filed Date: 12/16/21.
Accession Number: 20211216–5224.
Comment Date: 5 p.m. ET 1/6/22.

Docket Numbers: EG22–30–000.
Applicants: Rock Aetna Power Partners, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rock Aetna Power Partners, LLC.
Filed Date: 12/16/21.
Accession Number: 20211216–5225.
Comment Date: 5 p.m. ET 1/6/22.

Docket Numbers: EG22–31–000.
Applicants: Arrow Canyon Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Arrow Canyon Solar, LLC.
Filed Date: 12/17/21.
Accession Number: 20211217–5235.
Comment Date: 5 p.m. ET 1/7/22.

Take notice that the Commission received the following electric rate filings:

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: 12/17/21.
Accession Number: 20211217–5107.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER20–1418–001.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: FERC Order No. 864 TO Tariff Second Compliance Filing to be effective 1/27/2020.

Filed Date: 12/17/21.
Accession Number: 20211217–5000.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–226–001.
Applicants: Avista Corporation.
Description: Tariff Amendment: First Amendment to OATT revisions for EIM Entry, Att M to be effective 2/1/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5199.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–333–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: NorthWestern (South Dakota) Amendment to Formula Rate Tariff filing to be effective 1/3/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5232.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–667–000.
Applicants: Mulligan 3 Wind LLC.
Description: Petiton for Limited Waiver of Mulligan 3 Wind LLC.
Filed Date: 12/15/21.
Accession Number: 20211215–5308.
Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–673–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: 2022 TACBAA Update to be effective 1/1/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5001.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–674–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: 2022 RS Filing to be effective 1/1/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5002.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–675–000.
Applicants: New York State Reliability Counsel, L.L.C.
Description: New York State Reliability Council submits Revised Install Capacity Requirement for the New York Control Area for the period Beginning May 1, 2021 ending April 30, 2022.
Filed Date: 12/16/21.
Accession Number: 20211216–5247.
Comment Date: 5 p.m. ET 1/6/22.

Docket Numbers: ER22–676–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original SA No. 6261, Dynamic Schedule Agreement between PJM and NIPSCO to be effective 12/1/2021.
Filed Date: 12/17/21.
Accession Number: 20211217–5060.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–677–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule No. 338 to be effective 11/17/2021.
Filed Date: 12/17/21.
Accession Number: 20211217–5170.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–678–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Rate Schedule No. 81 to be effective 11/17/2021.
Filed Date: 12/17/21.
Accession Number: 20211217–5171.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–680–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: WDAT Enhancements 2021 to be effective 2/16/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5222.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–681–000.
Applicants: Exelon Generation Company, LLC.
Description: § 205(d) Rate Filing: Filing of Letter Agreement to be effective 1/25/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5292.
Comment Date: 5 p.m. ET 1/7/22.

Docket Numbers: ER22–682–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP–NCEMPA—Revisions to Rate Schedule No. 200 to be effective 3/1/2022.
Filed Date: 12/17/21.
Accession Number: 20211217–5303.
Comment Date: 5 p.m. ET 1/7/22.

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: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27871 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–40–006]

Spire STL Pipeline LLC; Notice of Intent To Prepare a Supplemental Environmental Impact Statement for The Spire STL Pipeline Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a supplemental environmental impact statement (EIS) that will discuss the environmental impacts related to the continued operation of the Spire STL Pipeline Project facilities by Spire STL Pipeline LLC (Spire) in Scott, Greene, and Jersey Counties, Illinois and St. Charles and St. Louis Counties, Missouri. By way of background, on June 22, 2021, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion vacating and remanding the Commission's August 3, 2018 *Order Issuing Certificate* (2018 Order) that approved the Spire STL Pipeline Project.[1] On September 14, 2021, and December 3, 2021, the Commission issued temporary certificates of public convenience and necessity to Spire to continue to operate the facilities constructed under the earlier terms, conditions, and authorizations, including Spire's tariff. On remand, the Commission will evaluate Spire's pending certificate application,[2] and consider whether to grant a certificate of public convenience and necessity to Spire to continue operation of the Spire STL Pipeline Project in Illinois and Missouri.

The Commission must determine whether the project is in the public convenience and necessity under the Natural Gas Act, taking into consideration the factors discussed in the Court's decision. The supplemental EIS will tier off Commission staff's

[1] *Environmental Defense Fund* v. *FERC*, 2 F.4th 953 (D.C. Cir. 2021).

[2] Following the D.C. Circuit's vacatur and remand of the Commission's 2018 Order, Spire's January 26, 2017 application for a certificate of public convenience and necessity to construct and operate the Spire STL Pipeline Project is again pending before the Commission.

analysis and conclusions as documented in staff's environmental assessment (EA) for the project issued on September 29, 2017,[3] as well as the environmental discussion contained in the 2018 Order. The Commission will use this supplemental EIS in its decision-making process to determine whether the Spire STL Pipeline Project is in the public convenience and necessity in light of the Court's vacatur and remand. The schedule for preparation of the supplemental EIS is discussed in the *Schedule for Environmental Review* section of this notice.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the supplemental EIS on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and the Supplemental EIS* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the supplemental EIS, including comments on potential alternatives and impacts related specifically to the continued operation of the Spire STL Pipeline Project. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on January 14, 2022. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP17–40–006) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Project Facilities

The Spire STL Pipeline Project consists of the following facilities:

- 59.2 miles of 24-inch-diameter pipeline (the Mainline);
- 6.0 miles of 24-inch-diameter pipeline (designated as the North County Extension);
- three new meter and regulator stations (meter stations);
- three new mainline valves; and
- installation of three pig[4] launcher/receivers.

The project currently transports up to 400 million standard cubic feet per day of firm natural gas transportation service to the St. Louis metropolitan area, eastern Missouri, and southwestern Illinois. According to Spire, the Spire STL Pipeline Project was developed as a new source of supply that would provide its customers with supply diversity and greater reliability.

The general location of the project is shown in appendix 1.[5]

The NEPA Process and the Supplemental EIS

The supplemental EIS will discuss environmental impacts that could occur as a result of the continued operation of the Spire STL Pipeline Project. As a result, the supplemental EIS will include a reevaluation of the operational impacts previously analyzed in the EA, including environmental justice, air emissions, and noise levels. Additionally, Commission staff will evaluate reasonable alternatives (further discussed below) and will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The supplemental EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft supplemental EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft supplemental EIS and revise the document, as necessary, before issuing a final supplemental EIS. Any draft and final supplemental EIS will be available in electronic format in the public record through eLibrary[6] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The supplemental EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action involving the continued operation of the Spire STL

[3] The EA is filed in FERC's eLibrary system in Docket Nos. CP17–40–000 and CP17–40–001 under Accession No. 20170929–3022.

[4] A pipeline ''pig'' is a device to clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[5] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[6] For instructions on connecting to eLibrary, refer to the last page of this notice.

Pipeline Project.[7] Alternatives currently under consideration include the no-action alternative (*i.e.,* the project would no longer be authorized to continue operating after the expiration of its current temporary certificate). Potential actions that will be analyzed as part of the no-action alternative also include:

- Pipeline and aboveground facility abandonment by removal;
- pipeline and aboveground facility abandonment in place; and
- system alternatives (*e.g.,* Natural Gas Pipeline Company of America, LLC; MoGas Pipeline, LLC; and Spire Missouri Inc. systems, as identified in Spire's filing of November 12, 2021).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion of the final supplemental EIS for the project, which is based on an issuance of the draft supplemental EIS in June 2022.

Issuance of Notice of Availability of the final supplemental EIS: October 7, 2022

If a schedule change becomes necessary for the final supplemental EIS, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) for the original Spire STL Pipeline Project and anyone who submits comments on the present case. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP17–40 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. *OR*

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP17–40). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: December 15, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27785 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

[7] 40 CFR 1508.1(z).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–23–000]

Notice of Availability of Final Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 18—Level 2 Risk Analysis

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final ''Chapter 18—Level 2 Risk Analysis'' of its Engineering Guidelines for the Evaluation of Hydropower Projects (Guidelines). This chapter is one of four new chapters of the Guidelines intended to provide additional guidance related to 18 CFR part 12, Safety of Water Power Projects and Project Works, Docket No. RM20–9–000, Order No 880, issued by the Commission on December 16, 2021.

On July 16, 2020, the Commission issued a Notice of Proposed Rulemaking (NOPR) to revise its part 12 regulations. On the same day, the Commission solicited public review and comment on four new draft chapters of its Guidelines. Draft Chapter 18 was part of that issuance.

The Commission received nine comment letters in response to draft Chapter 18. Most of the comments were submitted by licensees and individuals through trade associations, including National Hydropower Association, Dam Safety Interest Group of CEATI International, and US Society on Dams, as well as the US Army Corps of Engineers. Comments were also received from individual licensees, corporations, and individuals, including McMillen Jacobs Associates, David L. Mathews, City of North Little Rock Electric, Central Nebraska Public Power and Irrigation District, and Upper Peninsular Power Company.

In all, the nine comment letters consisted of over 250 discrete comments. The comments received were varied and ranged from requesting clarification of the overall need and approach to a risk analysis process to questions regarding implementation and execution of the risk analysis process. Commenters requested clarification of procedural aspects of performing a risk analysis and recommended improvements to the risk analysis process and methodology. Commenters asked the Commission to:

- Consider that there is a limited availability of qualified individuals and consultants with the requisite experience and training to perform a semi-quantitative risk analysis;
- Consider that the risk analysis process will increase the cost of conducting a Part 12D report;
- Provide additional guidance on conducting hydrologic hazard analyses and consequence estimates;
- Clarify whether training will be available from FERC or others for risk analysis facilitators and others conducting risk analyses; and
- Provide additional guidance on the screening of potential failure modes prior to conducting the risk analysis.

Commission staff has considered all comments in finalizing Chapter 18 of the Engineering Guidelines. Based on the comments received, Chapter 18 has been revised to:

- Clarify the qualifications and role of the risk analysis facilitator(s) and team members;
- Clarify the identification and screening of potential failure modes;

• Provide additional discussion and examples of the critical load method to estimate the likelihood of failure;

• Provide clarification and additional guidance on estimating consequences (*e.g.,* life safety consequences, economic consequences, financial consequences for damage state potential failure modes, and environmental and other non-monetary consequences);

• Add a risk analysis matrix for incremental financial/damage state consequences; and

• Include background information on developing hydrologic hazard curves for semi-quantitative risk analyses.

All information related to ''Chapter 18—Level 2 Risk Analysis,'' including the draft chapter, all submitted comments, and the final chapter, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–23). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

The final version of Chapter 18 is also available on the Commission's Division of Dam Safety and Inspections website at: Engineering Guidelines for the Evaluation of Hydropower Projects | Federal Energy Regulatory Commission (*ferc.gov*).

Information Collection Statement

Chapter 18 includes information collection activities for which the Paperwork Reduction Act, 44 U.S.C. 3501–3521, requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities related to this chapter in the rulemaking document (Docket No. RM20–9–000, Order No. 880). The Commission has designated the information collection activities in the rule as FERC–517. Upon final approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

Send written comments on FERC–517 to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–TBD) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**. OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

For assistance with any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27779 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD22–2–000]

Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene; City of Beaverton, Oregon

On December 7, 2021, as supplemented on December 15, 2021, the City of Beaverton, Oregon filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Sexton Mountain Pump Station Hydroelectric Project would have an installed capacity of up to 200 kilowatts (kW), and would be located along an existing 30-inch pipeline adjacent to the Sexton Mountain Pumping Station in the City of Beaverton, Washington County, Oregon.

Applicant Contact: Ronan Igloria, GSI Water Solutions, Inc., 55 SW Yamhill St., Suite 300, Portland, OR 97204, 971–200–8510, *rigloria@gsiws.com.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) One Francis turbine unit with a capacity of 100 kW, with a second up to 100-kW unit planned in the future; (2) intake and discharge pipes connecting to the 30-inch pipeline; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 392 megawatt-hours during the first year of operation.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Sexton Mountain Pump Station Hydroelectric Project will not alter the primary purpose of the conduit, which is to transport water for municipal use. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a

qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD22–2) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27783 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–554–009 and CP15–555–007]

Atlantic Coast Pipeline, LLC, Eastern Gas Transmission and Storage, Inc.; Notice of Availability of the Final Supplemental Environmental Impact Statement for the Proposed Atlantic Coast Pipeline Restoration Project and Supply Header Restoration Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final supplemental environmental impact statement (sEIS) for the Atlantic Coast Pipeline, LLC's (Atlantic) Atlantic Coast Pipeline Restoration Project, and Eastern Gas Transmission and Storage, Inc.'s (EGTS) Supply Header Restoration Project (Restoration Projects), in the above-referenced dockets. Atlantic and EGTS request authorization to implement the Restoration Projects in order to stabilize lands affected by previous construction efforts for the Atlantic Coast Pipeline and Supply Header Project, respectively, and to facilitate cessation of all project-related activities. Implementation of the plans is proposed because Atlantic and EGTS have cancelled their respective projects and do not intend to complete them.

The final sEIS assesses the potential impacts that would result from the Restoration Projects, in accordance with the requirements of the National Environmental Policy Act (NEPA).[1] The FERC staff concludes that the proposed actions, with the additional mitigation measures recommended in the sEIS, would continue to avoid or reduce impacts to less than significant levels, with the exception of climate change impacts, for which FERC staff is unable to determine significance.

The U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Fish and Wildlife Service participated as cooperating agencies in the preparation of the sEIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The sEIS addresses the potential environmental effects of the following activities:

- Atlantic proposes to leave all installed pipeline in place (approximately 31.4 miles of the pipeline right-of-way), restore lands that were cleared and graded (approximately 82.7 miles of the pipeline right-of-way), and leave felled trees in place in areas where trees have not yet been cleared (approximately 25.2 miles of the pipeline right-of-way). For aboveground facilities, Atlantic proposes to restore the sites and manage the disposition of the materials and land through an investment recovery process. Workspace for these activities would occur in West Virginia, Virginia, and North Carolina.
- EGTS proposes to leave all installed pipeline in place (approximately 11.7 miles), leave approximately 0.13 mile of felled trees in place, and complete final restoration of approximately 9 miles of the pipeline right-of-way that EGTS previously cleared and/or graded. EGTS proposes to stabilize all aboveground facility sites and prepare assets for long term preservation. Workspace for these activities would occur in Pennsylvania and West Virginia.

The Commission mailed a copy of the *Notice of Availability* for the final sEIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project areas. The final sEIS is only available in electronic format. It may be

[1] The construction and operation impacts of the then-proposed Atlantic Coast Pipeline and Supply Header Project were evaluated in a final EIS, which was issued by the Commission on July 21, 2017, in Docket Nos. CP15–554–00, CP15–554–001; and CP15–555–000.

viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the sEIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search,'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP15–554 or CP15–555). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets.

This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27872 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–20–000]

Notice of Availability of Final Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 15—Supporting Technical Information Document and Digital Project Archive

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final ''Chapter 15—Supporting Technical Information Document and Digital Project Archive'' of its *Engineering Guidelines for the Evaluation of Hydropower Projects* (*Guidelines*). This chapter supersedes the portions of ''Chapter 14—Dam Safety Performance Monitoring Program'' that pertain to the Supporting Technical Information Document, and is one of four new chapters of the Guidelines intended to provide additional guidance related to 18 CFR part 12, Safety of Water Power Projects and Project Works, Docket No. RM20–9–000, Order No 880, issued by the Commission on December 16, 2021.

On July 16, 2020, the Commission issued a Notice of Proposed Rulemaking (NOPR) to revise its part 12 regulations. On the same day, the Commission solicited public review and comment on four new draft chapters of its Guidelines. Draft Chapter 15 was part of that issuance.

The Commission received ten comment letters in response to draft Chapter 15. Most of the comments were submitted by licensees and individuals through trade associations, including National Hydropower Association, Dam Safety Interest Group of CEATI International, and U.S. Society on Dams, as well as the U.S. Army Corps of Engineers. Comments were also received from individual licensees, corporations, and individuals, including David L. Mathews, McMillen Jacobs Associates, City of North Little Rock Electric, Alaska Electric Light and Power Company, Central Nebraska Public Power and Irrigation District, and Copper Valley Electric Association.

In all, the ten comment letters consisted of approximately 105 discrete comments. The comments received were varied. Most comments requested clarification of the information to include in the Supporting Technical Information Document (STID), when STID updates should be submitted, and how the information should be stored and filed. Commenters asked the Commission to:

- Clarify the use of hyperlinks in the STID;
- Clarify when STID updates are to be submitted;
- Clarify the requirement for providing searchable electronic documents from original hard copies;
- Consider adding the use of secured shared drives as a storage option;
- Reconsider the need for a hard copy of the STID;
- Avoid the duplication of information included in the Standard Operating Procedures section that is also included in other sections of the STID;
- Provide additional guidance on the type of information and reports to be included in each section of the engineering analyses; and
- Clarify the information to be included in the digital references.

Commission staff has considered all comments in finalizing Chapter 15 of the Engineering Guidelines. Based on the comments received, Chapter 15 has been revised to:

- Provide additional guidance on the types of information to include in the digital references, now termed the Digital Project Archive (DPA);
- Clarify how to file the DPA;
- Clarify the purpose of the STID and the DPA;
- Clarify the contents and format of the STID;
- Provide a file structure and organization for the DPA; and
- Clarify when updates of the STID and DPA should be submitted.

All information related to ''Chapter 15—Supporting Technical Information Document and Digital Project Archive,'' including the draft chapter, all submitted comments, and the final chapter, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–20). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

The final version of Chapter 15 is also available on the Commission's Division of Dam Safety and Inspections website at: Engineering Guidelines for the Evaluation of Hydropower Projects | Federal Energy Regulatory Commission (*ferc.gov*).

Information Collection Statement

Chapter 15 includes information collection activities for which the Paperwork Reduction Act, 44 U.S.C. 3501–3521, requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities related to this chapter in the rulemaking document (Docket No. RM20–9–000, Order No. 880. The Commission has

designated the information collection activities in the rule as FERC–517. Upon final approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

Send written comments on FERC–517 to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–TBD) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**. OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

For assistance with any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27776 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15249–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Lewis Ridge Pumped Storage, LLC

On November 22, 2021, Lewis Ridge Pumped Storage, LLC., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a pumped storage hydropower project located in Bell County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Lewis Ridge Pumped Storage Hydroelectric Project would consist of the following: (1) A 5,700-foot-long, 77-foot-high zoned rockfill embankment ring dike; (2) an upper reservoir with a surface area of 30 acres and a storage capacity of 2,300 acre-feet; (3) a 4,987-foot-long, 20-foot-diameter power tunnel; (4) a 120-foot-high, 30-foot-diameter steel surge tower; (5) a 420-foot-long, 80-foot-wide powerhouse containing four 54-megawatt (MW) reversible pump-turbines with a total capacity of 216 MW; (6) a 1,700-foot-long, 3.5-foot-diameter pipeline from a concrete pump station on the Cumberland River for fill/refill water; (7) a 1,400-foot-long, 100-foot-high zoned rockfill dam with a 5,900-foot-long, 10-foot-high zoned rockfill embankment ring dike surrounding (8) a 23 acre lower reservoir with a storage capacity of 2,300 acre-feet; and (9) a 1.3-mile-long, 161 kilovolt overhead transmission line. The proposed project would have an estimated annual generation of 605,000 megawatt-hours.

Applicant Contact: Nate Sandvig, Lewis Ridge Pumped Storage, LLC., 220 NW 8th Ave., Portland, OR 97209; phone: (503) 309–2496, email: *nathan@ryedevelopment.com.*

FERC Contact: Michael Spencer; phone: (202) 502–6093, or by email at *michael.spencer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15249) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27780 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–1–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Southside Reliability Enhancement Project and Notice of Public Virtual Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Southside Reliability Enhancement Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Mecklenburg and Pittsylvania Counties, Virginia, and Davidson, Hertford, and Iredell Counties, North Carolina. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues.

Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on January 14, 2022. Comments may be submitted in written or oral form. Further details on how to submit written or oral comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or verbal comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on October 1, 2021, you will need to file those comments in Docket No. PF22–1–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov*.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing;''

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (PF22–1–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852; or

(4) In lieu of sending written comments, the Commission invites you to attend a virtual public scoping session its staff will conduct by telephone, scheduled as follows:

Date: Wednesday, January 5, 2022
Time: 6–8 p.m. Eastern Standard Time
Dial-in Number: 888–604–9359
Participant passcode: 8998724

The primary goal of the scoping session is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID–19 pandemic.

There will not be a formal presentation by Commission staff. The scoping session is scheduled from 6 p.m. to 8 p.m. Eastern Standard Time. You may call at any time after 6 p.m. at which time you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of five minutes will be implemented for each commentor.

Transcripts of all comments received during the scoping session will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided verbally at a virtual scoping session. Although there will not be a formal presentation, Commission staff may answer questions about the environmental review process during individual's time with the court reporter.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Planned Project

Transco plans to modify two existing compressor stations and three existing meter stations and construct and operate one new 30,500 horsepower (hp) compressor station in North Carolina and Virginia. The general location of the planned project facilities is shown in

appendix 1.[1] Specifically, the Southside Reliability Enhancement Project would consist of the following facilities:

- Installation of a new compressor station (Compressor Station 168) which includes one new 30,500 hp electric motor-driven compressor unit, and installation of new mainline valves on South Virginia Lateral A-Line and B-Line at the new Compressor Station 168 in Mecklenburg County, Virginia;
- Addition of one 16,000 hp electric motor-driven compressor unit at existing Compressor Station 166 in Pittsylvania County, Virginia;
- Installation of piping modifications to allow for flow reversal at existing Compressor Station 155 in Davidson County, North Carolina;
- Replacement of one meter run to increase delivery volumes by 40,000 dekatherms per day (Dth/d) of natural gas at the existing Ahoskie meter and regulatory (M&R) station in Hertford County, North Carolina;
- Installation of new facilities to increase delivery volumes by 120,000 Dth/d at the existing Pleasant Hill M&R station in Northampton County, North Carolina; and
- Upgrade meter and controls and debottleneck piping to increase delivery volumes by 263,400 Dth/d at the existing Iredell M&R station in Iredell County, North Carolina.

The Southside Reliability Enhancement Project would enable Transco to provide 160,000 Dth/d of incremental firm transportation capacity from Transco's Compressor Station 165 in Pittsylvania County, Virginia and 263,400 Dth/d from the Pine Needle storage facility to delivery points in North Carolina. As described by Transco, the total delivery capacity of 423,400 Dth/d would reduce supply constraints when natural gas demand is the highest, support overall reliability and diversification of energy infrastructure in the mid-Atlantic, and benefit the public by promoting competitive markets and increasing the security of natural gas supplies to major delivery points serving the mid-Atlantic.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Land Requirements for Construction

Construction and modification of the planned facilities would disturb about 117 acres of land, which includes temporary construction workspace, permanent easement, and permanent access roads. Following construction, Transco would maintain all 117 acres for permanent operation of the project's facilities.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified minority and/or low-income environmental justice communities adjacent to the existing compressor stations and M&R stations. Community groups, schools, churches, and businesses within these environmental justice communities, along with known environmental justice organizations, have been included on the Commission's environmental mailing list for the project, as further explained in the *Environmental Mailing List* section of this notice.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.8.

tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; local community groups, schools, churches, and businesses; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF22–1–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once Transco files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp*. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* PF22–1). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: December 15, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27789 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–25–000]

Venture Global Calcasieu Pass, LLC; Notice of Application To Amend and Establishing Intervention and Protest Deadline

Take notice that on December 3, 2021, Venture Global Calcasieu Pass, LLC (Calcasieu Pass), 1001 19th Street North, Suite 1500, Arlington, VA 22209, filed in the above referenced docket, an application pursuant to section 3 of the natural Gas Act (NGA) and Part 153, Subpart B, of the Commission's regulations for an amendment to the authorizations granted by the Commission on February 21, 2019 in Docket No. CP15–550–000. Those actions authorized Calcasieu Pass to site, construct, and operate a new liquified natural gas (LNG) export terminal and associated facilities (Export Terminal) along the Calcasieu Ship Channel in Cameron Parish, Louisiana. In this amendment Calcasieu Pass proposes to increase the Export Terminal's peak achievable liquefaction capacity from 12.0 million metric tons per annum (MTPA) to 12.4 MTPA of LNG under optimal operating conditions. Calcasieu Pass states that the requested increase in peak liquefaction capacity reflects refinements in the conditions and assumptions concerning the maximum potential operations and does not involve construction of any new facilities nor any modification of the previously authorized facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this filing should be directed to Calcasieu Pass' outside counsel, Patrick Nevins of Latham & Watkins, LLP, 555 Eleventh Street NW, Suite 1000 Washington, DC 20004, telephone: (202) 637–3363.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[1] 18 CFR 157.9.

issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 5, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is January 5, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is January 5, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 5, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–25–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''.

The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22–25–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail at: Patrick Nevins of Latham & Watkins, LLP, 555 Eleventh Street NW, Suite 1000, Washington, DC 20004 or email (with a link to the document) at: *patrick.nevins@lw.com*. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific

dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

Intervention Deadline: 5:00 p.m. Eastern Time on January 5, 2022.

Dated: December 15, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27786 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–21–000]

Notice of Availability of Final Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 16—Part 12D Program

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final ''Chapter 16—Part 12D Program'' of its *Engineering Guidelines for the Evaluation of Hydropower Projects* (*Guidelines*). This chapter is one of four new chapters of the Guidelines intended to provide additional guidance related to 18 CFR part 12, Safety of Water Power Projects and Project Works, Docket No. RM20–9–000, Order No 880, issued by the Commission on December 16, 2021.

On July 16, 2020, the Commission issued a Notice of Proposed Rulemaking (NOPR) to revise its part 12 regulations. On the same day, the Commission solicited public review and comment on four new draft chapters of its Guidelines. Draft Chapter 16 was part of that issuance.

The Commission received twelve comment letters in response to draft Chapter 16. Most of the comments were submitted by licensees and individuals through trade associations, including National Hydropower Association, Dam Safety Interest Group of CEATI International, and US Society on Dams, as well as the US Army Corps of Engineers. Comments were also received from individual licensees, corporations, and individuals, including David L. Mathews, McMillen Jacobs Associates, City of North Little Rock Electric, Kodiak Electric Association, Alaska Electric Light and Power Company, Central Nebraska Public Power and Irrigation District, Copper Valley Electric Association, and Upper Peninsular Power Company.

In all, the twelve comment letters consisted of approximately 335 discrete comments. The comments received were varied. Most comments requested clarification of scope, schedule requirements, and other details of the Part 12D process and procedures. Commenters asked the Commission to:

- Provide additional guidance and clarification regarding the Part 12D process, schedule, and review durations;
- Clarify the difference between a Comprehensive Assessment waiver and a Part 12D exemption;
- Consider deleting the requirement to submit a Pre-inspection Preparation Report since this task adds additional burden and cost of performing a Part 12D report;
- Provide additional guidance regarding the limitations of the Independent Consultant Team and the Licensee to communicate and review the draft Part 12D recommendations;
- Provide clarification that limits the Independent Consultant team from reviewing their own prior work on the project;
- Provide additional guidance and explanation of the Independent Consultant Team qualifications and experience requirements;
- Clarify the role of the Independent Consultant versus the role of the Potential Failure Mode Analysis/Risk Analysis facilitator;
- Clarify the potential postponement of the site inspection due to submittal of an insufficient Pre-inspection Preparation Report;
- Clarify the review requirements of the Owner's Dam Safety Program (ODSP) and how that review differs from an ODSP audit;
- Clarify what is expected of the Independent Consultant Team in performing independent calculations as part of the Comprehensive Assessment Report;
- Clarify the scope of work for the physical site inspection, including spillway gate testing and inspection of inaccessible features; and
- Include additional information on the purpose of the Comprehensive Assessment Review Meeting or, in the alternative, consider deleting this requirement.

Commission staff has considered all comments in finalizing Chapter 16 of the Engineering Guidelines. Based on the comments received, Chapter 16 has been revised to:

- Provide additional guidance on:
  - The Part 12D process and schedule;
  - the limitations of an individual performing consecutive inspections, including Periodic Inspections following Comprehensive Assessments;
  - the submittal of information for supporting Independent Consultant Team members;
  - the review status of Pre-inspection Preparation Reports;
  - the review requirements of the ODSP;
  - the scope of the physical site inspection;
  - the evaluation of spillway adequacy;
  - the summary of findings for the Comprehensive Assessment Report; and
  - the purpose of the Comprehensive Assessment Review Meeting.
- Remove the requirement that the Potential Failure Mode Analysis/Risk Analysis facilitator must be from a different organization or company than the Independent Consultant Team; and
- Update the appendices, as appropriate.

All information related to ''Chapter 16—Part 12D Program,'' including the draft chapter, all submitted comments, and the final chapter, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–21). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

The final version of Chapter 16 is also available on the Commission's Division of Dam Safety and Inspections website at: Engineering Guidelines for the Evaluation of Hydropower Projects | Federal Energy Regulatory Commission (*ferc.gov*).

Information Collection Statement

Chapter 16 includes information collection activities for which the Paperwork Reduction Act, 44 U.S.C. 3501–3521, requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities related to this chapter in the rulemaking document (Docket No. RM20–9–000, Order No. 880). The Commission has

designated the information collection activities in the rule as FERC–517. Upon final approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

Send written comments on FERC–517 to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–TBD) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**. OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

For assistance with any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27777 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–22–000]

Notice of Availability of Final Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 17—Potential Failure Mode Analysis

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final ''Chapter 17—Potential Failure Mode Analysis'' of its Engineering Guidelines for the Evaluation of Hydropower Projects (Guidelines). This chapter supersedes the portions of ''Chapter 14—Dam Safety Performance Monitoring Program'' that pertain to Potential Failure Mode Analysis, and is one of four new chapters of the Guidelines intended to provide additional guidance related to 18 CFR part 12, Safety of Water Power Projects and Project Works, Docket No. RM20–9–000, Order No 880, issued by the Commission on December 16, 2021.

On July 16, 2020, the Commission issued a Notice of Proposed Rulemaking (NOPR) to revise its part 12 regulations. On the same day, the Commission solicited public review and comment on four new draft chapters of its Guidelines. Draft Chapter 17 was part of that issuance.

The Commission received eight comment letters in response to draft Chapter 17. Most of the comments were submitted by licensees and individuals through trade associations, including National Hydropower Association, Dam Safety Interest Group of CEATI International, and US Society on Dams, as well as the US Army Corps of Engineers. Comments were also received from individual licensees, corporations, and individuals, including David L. Mathews, City of North Little Rock Electric, Central Nebraska Public Power and Irrigation District, and Upper Peninsular Power Company.

In all, the eight comment letters consisted of over 180 discrete comments. The comments received were varied and ranged from requesting clarification of the overall purpose and approach to a Potential Failure Mode Analysis (PFMA) to questions regarding implementation and execution of this revised process. Commenters requested clarification of procedural aspects of performing a potential failure mode analysis and suggested improvements to the potential failure mode process and procedures. Commenters asked the Commission to:

- Consider whether the PFMA process should take more advantage of potential failure modes and information collected from previously performed PFMA workshops;
- Consider integrating the PFMA process and the risk analysis process described in Chapter 18 of the Engineering Guidelines;
- Provide additional guidance to help bound the expanded definition of ''failure'' as it could create a limitless combination of potential failure modes;
- Provide additional emphasis and guidance to ensure the PFMA team understands how the project works as a system prior to conducting the brainstorming session;
- Provide additional guidance on identifying and screening potential failure modes, including damage state potential failure modes; and
- Provide additional guidance on the qualifications and roles of the PFMA core team members.

Commission staff has considered all comments in finalizing Chapter 17 of the Engineering Guidelines. Based on the comments received, Chapter 17 has been revised to:

- Clarify the application of PFMAs for design and construction projects;
- Clarify the qualifications and roles of a PFMA facilitator;
- Clarify the PFMA brainstorming session and provide additional guidance on the PFMA screening processes;
- Provide additional guidance on financial/damage state and asset management potential failure mode categories; and
- Add a new appendix to provide guidance on an approach for evaluating complex systems as part of a PFMA.

All information related to ''Chapter 17—Potential Failure Mode Analysis,'' including the draft chapter, all submitted comments, and the final chapter, can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* AD20–22). Be sure you have selected an appropriate date range. The Commission also offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with electronic notification of these filings and direct links to the documents. Go to the Commission's website (*www.ferc.gov*), select the FERC Online option from the left-hand column, and click on eSubscription. Users must be registered in order to use eSubscription.

The final version of Chapter 17 is also available on the Commission's Division of Dam Safety and Inspections website at: Engineering Guidelines for the Evaluation of Hydropower Projects √ Federal Energy Regulatory Commission (*ferc.gov*).

Information Collection Statement

Chapter 17 includes information collection activities for which the Paperwork Reduction Act, 44 U.S.C. 3501–3521, requires approval by the Office of Management and Budget (OMB). The Commission has included the burden and cost estimates for information collection activities related to this chapter in the rulemaking document (Docket No. RM20–9–000, Order No. 880. The Commission has designated the information collection activities in the rule as FERC–517. Upon final approval of FERC–517, OMB will assign an OMB Control Number and expiration date.

Send written comments on FERC–517 to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number

(1902–TBD) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**. OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

For assistance with any of the Commission's online systems, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8258.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27778 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–9353–000]

Notice of Filing; Smita N. Shah, P.E.

Take notice that on December 10, 2021, Smita N. Shah, P.E. submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on January 3, 2022.

Dated: December 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27781 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM16–17–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes; Notice on Upcoming Triennial Filings

Notice is hereby given that triennial filings remain due in accordance with the schedule established in Appendix D to Order No. 697–A.[1] Pursuant to Order No. 860,[2] after February 1, 2022, Sellers[3] will submit market power analyses into the market-based rate relational database. For triennial filings due in December 2021, Sellers should continue to submit indicative screens and asset appendices in electronic spreadsheet format through the eFiling system.

Dated: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27866 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

[1] *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.,* Order No. 697, 119 FERC ¶ 61,295, at P 540, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 123 FERC ¶ 61,055, at app. D, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, 125 FERC ¶ 61,326 (2008), *order on reh'g,* Order No. 697–C, 127 FERC ¶ 61,284 (2009), *order on reh'g,* Order No. 697–D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011).

[2] *Data Collection for Analytics & Surveillance and Mkt.-Based Rate Purposes,* Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g,* Order No. 860–A, 170 FERC ¶ 61,129 (2020).

[3] A Seller is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act. 18 CFR 35.36(a)(1) (2021); 16 U.S.C. 824d.

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: RP22–422–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Agency Agreement Option Filing to be effective 1/16/2022.

Filed Date: 12/16/21.

Accession Number: 20211216–5131.

Comment Date: 5 p.m. ET 12/28/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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: December 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27864 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–27–000]

Gas Transmission Northwest LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 6, 2021, Gas Transmission Northwest LLC (GTN) filed a prior notice request for authorization, in accordance with 18 CFR Sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and GTN's blanket certificate issued in Docket Nos. CP82–530–000, et al., to conduct hydrostatic testing along it's A-Line and subsequently restore its original Maximum Allowable Operating Pressure of those sections located in Boundary and Bonner Counties, Idaho. GTN states that the proposed testing will have no impact on GTN's existing customers. GTN states that the restored MAOP will alleviate operational constraints and improve line pack management, which will ultimately improve reliability and flexibility of GTN's system. GTN estimates that the cost of the Project is approximately $22 million. GTN states that the proposed MAOP restoration will not change available capacity on GTN's system, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Gas Transmission Northwest LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477; or email at *david_alonzo@tcenergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 14, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is February 14, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is February 14, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 14, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–27–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP22–27–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Gas Transmission Northwest LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002–2700, at (832) 320–5477; or email at *david_alonzo@tcenergy.com*. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

Dated: December 15, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27787 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM22–5–000]

Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. In addition, the Commission seeks comments on the ratemaking implications of potential accounting and reporting changes. The Commission also seeks comments on whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare purposes.

DATES: Initial Comments are due February 22, 2022, and Reply Comments are due March 23, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Adam Pollock, (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8458, *Adam.Pollock@ferc.gov.*

Neal Anderson, (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8760, *Neal.Anderson@ferc.gov.*

Daniel Birkam, (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8035, *Daniel.Birkam@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry (NOI), the Federal Energy Regulatory Commission (Commission) seeks comments on the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses. In addition, the Commission seeks comment on the ratemaking implications of potential accounting and reporting changes. The Commission also seeks comments on whether additional transparency or guidance is needed with respect to defining donations for charitable, social, or community welfare purposes.

2. First, we seek comments on the delineation of recoverable and nonrecoverable industry association dues for rate purposes. Second, we seek comments on increased transparency in

industry association expenses and segments of industry association dues charged to utilities, in addition to comments on utilities' and industry associations' expenses from civic, political, and related activities. Finally, we seek comments on a framework for guidance should the Commission determine action is necessary to further define the recoverability of industry association dues charged to utilities and/or utilities' expenses from civic, political, and related activities.

I. Background

3. The Commission has authority pursuant to the Federal Power Act (FPA) and the Natural Gas Act (NGA) to determine whether a rate is unjust, unreasonable, unduly discriminatory or preferential, and if the Commission determines that the rate is unlawful, to establish a just and reasonable replacement rate.[1] The Commission also has the authority to prescribe and maintain systems of accounts entitled ''Uniform System of Accounts'' for public utilities and licensees subject to the provisions of the FPA, and natural gas companies under the NGA,[2] and the rules and regulations contained therein.[3]

4. The regulatory authority to modify rates, terms, and conditions rests with the Commission where any rate, charge, or classification, collected by any utility for any transmission, transportation, or sale subject to the Commission's jurisdiction is unjust, unreasonable, unduly discriminatory or preferential.[4] The USofA contains accounts to record the portions of industry association dues paid by utilities as either operating or nonoperating in nature.[5] The USofA gives instructions on the separation of the expenses paid by utilities that industry associations incur and bill to utilities into the appropriate above the line (operating) and below the line (nonoperating) accounts.[6] For example, Account 930.2 (Miscellaneous and general expenses), which includes the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere in the USofA, is considered above the line (*i.e.,* generally included in rate recovery) and covers industry association dues for company memberships.[7] Account 426.4 (Expenditures for certain civic, political and related activities), which is used for costs for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances or for the purpose of influencing the decisions of public officials, is considered below the line (*i.e.,* generally excluded from rate recovery).[8]

5. The Commission has not previously adopted a bright line rule or specific guidelines that delineate between above the line and below the line expenses for informing and influencing the public, including industry association dues for such activities, instead allowing utilities to determine the portion of their industry association dues to include in above the line and below the line accounts, respectively, based on information provided by the industry associations about their activities and associated costs. The Commission relies on the principle that the ''intended use and the reason behind the payment[ ]'' to inform and influence the public dictates its accounting assignment.[9] Although the Commission applies this principle to the accounting treatment of utility expenditures, ''where the line between public outreach and educational expenses and lobbying expenses is drawn has not been clearly delineated.'' [10] The Commission generally considers the appropriate delineation between above the line and below the line expenditures on a case-by-case basis given the facts presented.[11] The Commission's case-by-case application of the ''intended use'' and ''reason behind'' tests on expenditures incurred by industry associations and borne by their utility members may have led to stakeholder confusion as to what expenses are properly recoverable in rates.[12]

6. The Commission presumes that expenses recorded in above the line, operating accounts may be recovered through rates, unless a showing is made that the expense is nonoperating in nature and the utility fails to rebut this showing. The Commission presumes that expenses recorded in below the line, nonoperating accounts may not be recovered in rates, without a further showing justifying such recovery for ratemaking purposes. Thus, if a utility records amounts in Account 930.2, those expenses are presumptively recoverable, while costs recorded in Account 426.4 are presumptively nonrecoverable.

7. The Commission, as a part of its Office of Enforcement audit program, and if within the scope of an audit, evaluates whether a utility's classification of expenses between Accounts 930.2 and 426.4 complies with the USofA. Such audits of the classification of industry association costs between above the line and below the line accounts are limited to examination by the Commission of the recordkeeping and accounting of industry association dues by member

[1] 16 U.S.C. 824e(a); 15 U.S.C. 717d(a).

[2] 16 U.S.C. 825; 15 U.S.C. 717g; 18 CFR 101, 201 (2021).

[3] ''Utilities'' is used hereinafter to refer to both public utilities as defined by FPA section 201(e) and natural gas companies as defined by NGA section 2(6). This NOI does not contemplate any changes to oil pipeline regulation under the Uniform System of Accounts (USofA), because the instructions for oil pipelines differ from those for utilities. The Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act, 18 CFR 352 (2021), does not address industry association dues or civic and political expenses.

[4] 16 U.S.C. 824e(a); 15 U.S.C. 717d(a).

[5] 18 CFR 101, 201. Hereinafter, citations are made only to part 101 of the Commission's regulations because they reflect the same provisions as part 201 for the accounts discussed herein. References to the USofA are to both part 101 and part 201 of the Commission's regulations.

[6] *See Delmarva Power & Light Co.,* 58 FERC ¶ 61,169, at 61,509 (1992) (The Commission ''has allowed utilities to allocate [Edison Electric Institute (EEI)] contributions to wholesale customers only to the extent the contributions are for *research and development* programs to which wholesale customers themselves could not contribute. However, that portion of EEI contributions used for lobbying activities *may not, under any circumstances,* be included in the utility's cost-of-service.'') (emphasis added). Typically, the ''line'' refers to the break between operating and nonoperating income and expenses on the Statements of Income for the year. For ratemaking purposes, the Commission has found that expenses above the line are usually chargeable to the ratepayer because they pertain solely to supplying a regulated utility service and are used in determining rates. Expenses usually chargeable to the utility, rather than ratepayers, appear below the line.

[7] 18 CFR 101, Account 930.2.

[8] 18 CFR 101, Account 426.4.

[9] *Alaskan Nw. Nat. Gas Transp. Co.,* 19 FERC ¶ 61,218, at 61,429 (1982).

[10] *Potomac-Appalachian Transmission Highline, LLC,* Opinion No. 554, 158 FERC ¶ 61,050 (2017), *order on compliance,* 166 FERC ¶ 61,035 (2019), *order on reh'g,* Opinion 554–A, 170 FERC ¶ 61,050, at P 79 (2020) (*PATH*) (citing *ISO New England Inc.,* 117 FERC ¶ 61,070, at P 40 (2006) (*ISO New England*), *order on reh'g,* 118 FERC ¶ 61,105 (2007) (*ISO New England Rehearing*), *aff'd sub nom. Braintree Elec. Light Dep't* v. *FERC,* 550 F.3d 6 (D.C. Cir. 2008)).

[11] *See, e.g., ISO New England,* 117 FERC ¶ 61,070 at P 47 (''On a number of occasions the Commission has found 'lobbying' expenses of any type to be non-recoverable, while on other occasions the Commission has determined that even if the costs are related to lobbying and should be recorded in Account 426.4, they are appropriately recoverable from ratepayers, upon sufficient showing that they were undertaken for the benefit of ratepayers.'').

[12] *See N. Border Pipeline Co.,* 23 FERC ¶ 61,213, at 61,439 (1983) (''the distinction between influencing public opinion and public relations activities lies in the intended use and reason behind these payments''); *see also PATH,* 170 FERC ¶ 61,050 at P 79 (citing *Potomac-Appalachian Transmission Highline, LLC,* 152 FERC ¶ 63,025, at PP 30, 40 (2015)).

utilities.[13] Typically, the information available to audit staff lacks detailed descriptions of the industry association's activities for which members are charged. Also, a party to a utility's FPA section 205 rate case or NGA section 4 rate case may challenge the utility's accounting classification and/or recovery of expenses by protesting the utility's proposed rates. In addition, a complainant may file an FPA section 206 complaint or an NGA section 5 complaint alleging that the current rate treatment is unjust and unreasonable. For transmission formula rates and certain other formula rates, stakeholders also have the ability to file formal challenges before the Commission concerning utilities' implementation of their formula rates following review of annual updates.[14]

8. In a typical rate proceeding, opposing parties bear the burden of raising an initial challenge of whether the company properly designated expenses between above the line and below the line accounts, or whether recovery of expenses appropriately booked to above the line accounts is reasonable.[15] A challenge with reviewing the accounting of industry association dues—whether through the Commission's Office of Enforcement audit program, or pursuant to a utility's rate case, complaint proceedings, or formula rate challenges—is that utilities typically have not required their industry association to provide more than simple invoices and thus lack detailed information on the nature of the association's activities for purposes of determining the appropriate classification of costs into above the line and below the line accounts.

9. On March 17, 2021, the Center for Biological Diversity filed a petition for rulemaking, requesting that the Commission amend USofA requirements relating to utility payments to industry associations engaged in lobbying or other influence-related expenses.[16] The CBD Petition requested that the Commission amend the USofA to allocate all industry association dues paid by utilities to Account 426.4 which would highlight them for scrutiny, where ''the utility, not the consumer, must bear the burden of proof to demonstrate an entitlement to recover expenses from ratepayers.'' [17] In response to the CBD Petition, some commenters recommended that the Commission remove all industry association dues from rates, whereas others suggested that such a move was unnecessary because industry association dues were properly allocated between recoverable and non-recoverable accounts and contrary to the fundamental principles of accounting.

II. Discussion

10. We find it appropriate to initiate this NOI to: (i) Examine the Commission's current policies and regulations governing the rate recovery, reporting, and accounting treatment of industry association dues and certain civic, political, and related expenses; and (ii) identify potential changes that may be necessary to ensure that such expenditures are appropriately accounted for under the USofA and that recovery of these expenditures through Commission jurisdictional rates is just and reasonable. First, the NOI outlines the accounts utilities use to recover industry association dues. Second, we seek comments on the delineation of recoverable and nonrecoverable industry association dues for rate purposes. Third, we seek comments on increased transparency on industry association activities and expenses; comments on utilities' and industry associations' expenses from civic, political, and related activities; and what, if any, steps to increase transparency would assist the Commission in determining whether recovery of industry association dues in rates is just and reasonable.[18] Finally, we seek comments on a framework for guidance should we determine action is necessary to further define the recoverability of industry association dues charged to utilities and/or utilities' expenses from civic, political, and related activities.

A. Cost Recovery and Current Accounting

11. As discussed above, utilities record industry association dues in two distinct accounts—Account 930.2 (Miscellaneous and general expenses) for above the line expenses and Account 426.4 (Expenditures for certain civic, political and related activities) for below the line expenses.[19] Account 930.2 captures industry association dues that are operating in nature and therefore presumptively recoverable by utilities. The account states that ''this account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.'' [20] The illustrative list of expenses included in Account 930.2 includes ''industry association dues for company memberships.'' [21]

12. Utilities may include certain portions of industry association dues in Account 426.4, even though the definition of Account 426.4 does not specifically reference industry association dues.[22] This is because Account 426.4 is defined to include ''miscellaneous expense items which are *nonoperating* in nature but which are properly deductible before determining total income before interest charges.'' [23] Whereas a certain proportion of industry association dues may fall under the operating cost category for miscellaneous general expenses, the proportion of an industry association's costs for nonoperating expenses is properly allocated to accounts in the Account 426 series. Namely, Account 426.4 includes:

> expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public

[13] Unlike utilities, industry associations are not jurisdictional entities and thus are not subject to the Commission's accounting, record keeping, or reporting requirements. Moreover, industry associations are not subject to the Commission audits program.

[14] *See, e.g., Pacific Gas & Elec. Co.,* 176 FERC ¶ 61,196, at P 15 (2021) (recognizing protest of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California). Utilities with formula rates are required to demonstrate that amounts are appropriately recorded through discovery (as part of an annual update information sharing process) and upon request.

[15] *See, e.g., PATH,* 170 FERC ¶ 61,050 at PP 25–26 (noting that PATH, in an FPA section 205 filing, booked certain costs to an above the line account, but that certain participants subsequently argued that the costs should instead be booked to Account 426.4).

[16] Center for Biological Diversity, Petition for Rulemaking to Amend the Uniform System of Accounts' Treatment of Industry Association Dues, Docket No. RM21–15–000, at 1 (filed Mar. 17, 2021) (CBD Petition). The CBD Petition requested changes to the USofA for both public utilities and natural gas companies. *See id.* at 4 n.9.

[17] *Id.* at 8 (quoting *Potomac-Appalachian Transmission Highline LLC,* 152 FERC ¶ 63,025 at P 29); *id.* at 16 (citing 16 U.S.C. 824d(e)).

[18] Although the Commission has well-established precedent disallowing the cost recovery of donations for charitable, social, or community welfare purposes included in Account 426.1, we also seek comment on whether additional transparency or guidance is necessary to ensure such costs are appropriately treated for accounting and rate recovery purposes. *See, e.g., Ameren Ill. Co.,* 169 FERC ¶ 61,147, at P 81 (2019).

[19] *See supra* notes 5, 7–8 and accompanying text.

[20] 18 CFR 101, Account 930.2.

[21] *Id.,* Item 2.

[22] *See Expenditures for Political Purposes—Amendment of Account 426, Other Income Deductions, Unif. Sys. of Accounts, and Report Forms Prescribed for Elec. Utils. and Licensees and Nat. Gas Cos.—FPC Forms Nos. 1 and 2,* Order No. 276, 30 FPC 1539 (1963).

[23] 18 CFR 101, Special Instructions—Accounts 426.1, 426.2, 426.3, 426.4, and 426.5.

officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.[24]

As described above, while recording costs in certain accounts provides useful information to regulators, it is not necessarily dispositive regarding recoverability.[25] The Commission employs the ''intended use'' and ''reason behind'' the payment standard to delineate costs incurred to inform or influence public opinion as either operating or nonoperating.[26] With regard to rate recovery, the Commission has required utilities to record costs for lobbying, civic engagement, public information campaigns, and the like to Account 426.4, except those costs that the utility demonstrates provide a benefit to ratepayers, thus determining whether the costs are recoverable or nonrecoverable.[27]

13. Questions 1 through 5 seek information regarding how industry associations and their member utilities currently classify, record, and recover industry association costs, the nature of costs incurred, and dues assigned by industry associations. In particular, these questions seek to clarify which industry association costs member utilities currently book to Account 426.4 and which costs they book to Account 930.2. The responses to these questions may highlight cost categories that utilities include in rate recovery, which may, in turn, require further instruction from the Commission to ensure the proper rate treatment.

14. Questions 6 through 14 explore how much transparency for such costs exists and potential ways to improve this transparency. Due to the lack of transparency of industry association costs and the wide variety of activities and their specific contexts, the ''intended use'' and ''reason behind'' standard is difficult to apply to industry association dues and often requires case-by-case consideration.

15. Questions 15 to 20 below are intended to inform whether modifications to Commission regulations or additional guidance are needed to ensure the proper classification of utility and industry association costs between Accounts 426.4 and 930.2. The Commission has noted that recording expenses in Account 426.4 ''simply means that those costs are not presumed to be recoverable, shifting the burden on the filing entity to demonstrate why such costs should be recoverable.'' [28] Further Commission instruction may reduce the frequency of rate proceedings that review industry association dues and help ensure that industry association dues are appropriately categorized for recovery purposes.

B. Industry Association Dues

16. We are considering whether to clarify the delineation of recoverable and nonrecoverable industry association dues for rate purposes.

(Q1) The CBD Petition, in an example it argues is emblematic of practices among other industry associations, asserts that during the period when the EEI budget was subject to audits by the National Association of Regulatory Utility Commissioners (NARUC), ''EEI was spending up to 50% of its income on advocacy and lobbying efforts.'' [29] The Solar Energy Industries Association contends that in at least one instance, an investor owned utility's EEI invoice noted only 7% of its membership dues related to influencing legislation. The investor-owned utility therefore recorded 93% of its EEI dues to Account 930.2.[30]

(a) For the three most recent fiscal years, what are the annual dues charged to individual utilities for their membership in each industry association for which utilities seek recovery in rates?

(b) What percentage of industry association dues did industry association utility members classify and book as operating and nonoperating for the three most recent fiscal years?

(c) What percentage of EEI dues did members classify as operating and nonoperating in the last three years subject to a NARUC audit? What are the reasons for any difference between these amounts and the percentages in question 1?

(Q2) What methodologies do industry associations use to apportion industry association operating budgets into dues among member companies? To what extent are industry association expenses assigned and apportioned based on member classes or sectors and/or directly assigned to specific members, and if so, what are the bases for such assignment/apportionment and/or direct assignment?

(Q3) What internal controls and accounting methodologies are used by industry associations to track their costs generally and specifically to determine how costs are billed to members? In addition:

(a) What cost categories are used in budgetary and accounting processes internal to industry associations to account for industry association dues? What were the budgets by cost category for the three most recent fiscal years?

(b) What processes do industry associations use to derive and inform utilities of their categorization of programs to allow the utilities to apportion their dues among various accounting classifications?

(c) How do industry associations derive and inform all jurisdictional companies of the portion of the total invoice payments associated with lobbying, public outreach on legislative and regulatory issues, and other categories of costs not recovered through rates?

(d) To what extent is information of any such methodologies or the underlying budgetary information shared with industry association members?

(Q4) To what extent do industry associations provide utilities with estimated itemized expenses in dues invoices? To what extent do the associations conduct reviews or other activities to determine and evaluate the actual level of cost incurred related to influencing legislation and lobbying expenses, and compare such actual levels to the estimated percentages of such activities provided to jurisdictional companies? What is the frequency and scope of such reviews or activities and how were the results used? Please identify and explain any substantial

[24] 18 CFR 101, Account 426.4.

[25] *See supra* P 6.

[26] The Commission has found that

The distinction lies in the intended use and reason behind the payments. Expenditures incurred to influence the opinion of the public during the selection process have little or no *benefit to the ratepayers,* and therefore must be borne by stockholders. Just and reasonable expenditures incurred to keep the general public informed on the progress of the project and other public relations activities are proper expenses to be borne by ratepayers after operations commence.

Alaskan Nw. Nat. Gas Transp. Co., 19 FERC at 61,429 (emphasis added).

[27] *See* Order No. 276, 30 FPC at 1540; *Alaskan Nw. Nat. Gas Transp. Co.,* 19 FERC at 61,428.

[28] *ISO New England Rehearing,* 118 FERC ¶ 61,105 at P 46.

[29] CBD Petition at 11 (citing Ex. A, David Anderson et al., *Paying for Utility Politics: How Utility Ratepayers are Forced to Fund the Edison Electric Institute and Other Political Organizations,* Energy and Policy Institute, at 6 (2017) (''One of the final audits from NARUC revealed that 50% of EEI's expenditures went to the following categories: Legislative advocacy; regulatory advocacy; advertising; marketing; public relations; legislative policy research; regulatory policy research.'')). NARUC ended its EEI budget audits over 10 years ago. *See id.*

[30] Solar Energy Industries Association, Comments in Support of Petition, Docket No. RM21–15–000, at 4–5 (filed Apr. 26, 2021). A copy of the 2006 invoice was attached to a pleading in Docket No. ER18–1122–001. Ameren Services Company, Motion for Leave to Answer and Answer, Docket No. ER18–1122–001, attach. EEI Invoice (filed Feb. 11, 2020).

impediments to, or industry association concerns with, providing utilities detailed information on the percentage of the association's charges attributable to civic, political, public outreach on legislative and regulatory issues, and similar activities.

(Q5) For industry associations, what is the nature of the activities and associated costs that fall into the following categories, and for each item, what percentage of the associated costs is classified as operating expense by the utility members:

(a) Engineering or reliability standards development;

(b) *Legislative affairs including:* (i) Political contributions; (ii) following legislative events and informing members; (iii) preparation and research in connection with correspondence with legislators, their staff, or legislative committees; and (iv) correspondence with legislators, their staff, or legislative committees;

(c) Financial support of other organizations (list organizations with corresponding contributions);

(d) *Public information or outreach related to:* (i) Safety; (ii) promotion of utilities; (iii) existing or potential state or federal environmental regulations and/or laws; (iv) proceedings at FERC or before other administrative agencies; or (iv) other subjects (describe each element with corresponding expenditures);

(e) Training for: (i) Employee safety; (ii) accounting; (iv) planning; (v); reliability/resilience; (vi) market participation; and (vii) other (describe each element with corresponding expenditure);

(f) Regulatory affairs including: (i) Participation in regulatory proceedings including listing each proceeding and its primary issue(s); (ii) research conducted for regulatory proceedings; (iii) following regulatory proceedings; (iv) informing members of regulatory proceedings;

(g) Meetings/conferences (to the extent not covered in the other categories listed here);

(h) Administrative costs including rents and other overhead; and

(i) Other (describe each element with corresponding expenditure).

C. Increased Transparency

17. We are considering whether increased transparency into industry association costs may improve public knowledge into industry association dues and therefore ensure the just and reasonable recovery of industry association dues.

(Q6) What mechanisms currently exist for stakeholders to examine the costs and activities of industry associations?

(Q7) Do industry associations disclose the nature of their costs and activities in any state regulatory proceedings? If yes, please provide citations.

(Q8) Have any industry associations been the subject of audits by any regulatory bodies? If yes, please provide a summary of the purpose and findings of the audit(s).

(Q9) What, if any, additional transparency is needed for stakeholders to evaluate the reasonableness of industry association costs that are recovered through rates?

(Q10) If additional transparency is needed for stakeholders, should any transparency requirements for industry association costs be limited to certain rates, such as electric transmission and natural gas transportation rates, in light of the potentially larger costs involved, or should they apply to all types of rates (*e.g.,* power sales agreements, reactive power, and sale of electricity)?

(Q11) Specific to the electric industry, should any transparency requirements for industry association costs be limited to investor-owned utilities or should they also apply to municipal utilities and rural electric cooperatives who recover costs for Commission-jurisdictional service?

(Q12) Industry associations rely on certain cost categories to enable utilities to determine what portion of their industry association dues are properly recovered from ratepayers and what costs are borne by shareholders. Please describe any additional or alternative cost categories to those in Question 5, above, that industry associations or their members should disclose to provide sufficient transparency.

(Q13) What specific methods to enhance transparency of industry association costs should the Commission consider? For each of the following methods to enhance transparency, as well as others you may identify, please explain whether and how much would they (a) improve transparency; (b) impose burdens on industry associations and/or their members; (c) help ensure that utility rates are just and reasonable:

(a) Utilities that seek to recover dues must possess detailed data that sufficiently explains such costs within their books and records, and such amounts must be subject to Commission audits, similar to that requested in Question 5, above;

(b) limit a utility's ability to seek and obtain recovery of industry association dues to industry associations that publicly disclose detailed cost data, similar to that requested in Question 5, above; and/or

(c) utilities must include in their FPA section 205 stated rate filings and their supporting workpapers to their formula rate annual updates, information similar to that requested in Question 5, above?

(Q14) If the Commission imposed a requirement, such as one of those discussed in Question 13, above, should that requirement be limited to associations whose dues per utility exceed a certain minimum monetary threshold and, if so, what threshold?

18. We also seek comments on whether increased transparency into donations for charitable, social, or community welfare purposes is needed to improve public knowledge of such costs and therefore ensure just and reasonable treatment of donations or other charitable contributions.

(Q15) What, if any, additional transparency is needed for stakeholders to evaluate whether donations for charitable, social, or community welfare purposes are treated appropriately for ratemaking purposes?

D. Guidance

19. We are considering whether the Commission should provide further guidance related to: (i) Defining recoverable/nonrecoverable industry association costs for rate purposes; (ii) clarifying how certain ''grey area'' costs should be booked to accounts and treated in rates; and/or (iii) modifying Commission policies and instituting potential regulations with respect to costs that may currently be recoverable, but that the Commission may find should no longer be recovered.

(Q16) Do utilities currently base the amount of their costs recoverable through rates on (i) the USofA, specifically the definitions in Accounts 930.2 and 426.4, (ii) the Internal Revenue Service (IRS) definition of lobbying, (iii) some other basis, or (iv) some combination thereof? What percentage of dues would be considered recoverable for each the four options for the most recent fiscal year?

(Q17) What material differences, if any, are there between industry association costs considered nonoperating per the definition of Account 426.4 and industry association costs that may be deducted for tax purposes based on the Internal Revenue Code or IRS regulations? What are examples of such activities and expenditures?

(Q18) For what, if any, industry association costs is the classification as operating or nonoperating through utility rates unclear and ambiguous? Please describe any such ''gray areas.''

(Q19) The Commission currently allows all costs related to regulatory interventions and litigation by both utilities and industry associations to be recorded to above the line accounts. Further, Account 426.4 provides as an exception to the political advocacy activities utilities are required to report in that below the line account, namely, ''expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.'' [31] What is the appropriate scope of this exemption for utilities and, by extension, their industry associations? Are there types of appearances before regulatory or governmental bodies for which the related expenditures should be excluded from rates, and if so, on what basis?

(Q20) Please provide examples as to what, if any, costs for

(a) information campaigns carried out by industry associations are currently recoverable in utility member rates;

(b) information campaigns carried out by industry associations are currently recoverable in rates that the Commission should exclude from recovery in rates either by clarifying or revising its existing regulations;

(c) gifts, grants, donations, payments, dues, or contributions to other organizations by either utilities or industry associations are currently recoverable and should not be recoverable in utility member rates; and

(d) conferences or trainings are carried out by industry associations for which the Commission should prohibit from recovery in rates, and on what basis.

(Q21) Please describe any other guidance that the Commission should provide with respect to the rate recovery of industry association dues or utilities' civic, political, and related expenses.

(Q22) Please indicate whether there are any above the line, operating accounts other than Account 930.2 in which expenses related to civic, political, public outreach, and similar activities may be recorded (*e.g.,* accounts pertaining to advertising costs) and, if so, what issues the Commission should consider with respect to those accounts.

III. Comment Procedures

20. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 22, 2022, and Reply Comments are due March 23, 2022. Comments must refer to Docket No. RM22–5–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

21. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

22. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

IV. Document Availability

23. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

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

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

By direction of the Commission. Commissioner Danly is dissenting with a separate statement to be issued at a later date. Commissioner Christie is concurring with a separate statement attached. Commissioner Phillips is not participating.

Issued: December 16, 2021.

Kimberly D. Bose,

Secretary.

United States of America Federal Energy Regulatory Commission

Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses

Docket No. RM22–5–000
(Issued December 16, 2021)

Christie, Commissioner, *concurring:*

1. I concur with today's order instituting a Notice of Inquiry (NOI) related to the treatment of industry association dues and certain civic, political, and related expenses. The NOI asks a number of important questions regarding transparency and current accounting practices that will assist this Commission in ensuring that rates paid by consumers are just and reasonable. I write separately because I respectfully disagree with any suggestion that First Amendment rights are implicated, much less threatened, by this inquiry.

2. The Supreme Court of the United States has ruled that commercial speech by corporations and other business entities is protected by the First Amendment,[1] and that political speech by such entities is likewise protected.[2] It is also true that spending on protected speech is inextricably part of such speech and is thus protected as well.[3]

3. That said, the questions raised in this NOI are not related to whether a corporation or other business entity is allowed to spend money in the exercise of its First Amendment right to free speech or ''to petition the government

[31] 18 CFR 101, Account 426.4 (stating that this subaccount ''shall not include . . . expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.'').

[1] *See 44 Liquormart* v. *Rhode Island,* 517 U.S. 484 (1996).

[2] *See Citizens United* v. *Federal Election Commission,* 558 U.S. 310 (2010).

[3] *Id.; see also Buckley* v. *Valeo,* 424 U.S. 1 (1976).

for a redress of grievances'' [4] (a/k/a ''lobbying''). They can. Neither is it aimed at suppressing or burdening the protected speech of some limited subset of trade associations. Rather, the central question here is the same one present in so many of the cases before an economic regulator such as FERC, and that is the less headline-grabbing, albeit critically important, question: *Who pays?*

4. Relevant to the ''who pays?'' question is the type of business. A business in a competitive market has a First Amendment right to spend its own money on speech, including lobbying the legislators who pass laws that affect it. These activities may be aimed at rent-seeking through regulation or subsidies (or seeking protection from other special interests' rent-seeking). James Madison made it clear in *The Federalist No. 10* that special interests (''factions'') would always seek to gain advantage at the expense of others through the political process; but it was also Madison who authored the First Amendment that protected the freedom of all to pursue their interests in the public arena, and left it up to (hopefully) *public*-spirited legislators—elected by the *public*—to protect the *public* interest from the special interests (including those claiming to represent the public interest) and their rent-seeking behavior.

5. Privately-owned businesses get funds from two primary sources: (i) Investors who put up capital; and (ii) customers who purchase its goods and/or services. A company that holds a state-granted and state-protected monopoly franchise is fundamentally different, however, from a business in a competitive market, not in its First Amendment rights, but in how it can pay for certain activities. Unlike the business in a competitive market whose customers *voluntarily* choose to purchase its products over the products of its competitors, the state-protected monopoly gets its money from captive customers who have *no choice* but to purchase, for example, electrical power, a vital necessity of modern life, from the monopoly. The state-protected monopoly is also guaranteed recovery of its prudent costs incurred to serve the public (hence the term ''public service company,'' or ''public service corporation,'' defined terms typically applicable to public utilities under many state laws).[5] The question asked herein, therefore, is which of its costs should be charged to investors, who have voluntarily invested in the company, and which to captive customers, who have no choice but to purchase an essential product such as electricity from it.[6]

6. Nothing keeps the monopoly from spending money on First Amendment protected speech, including lobbying legislators and related public-relations activities, but its investors should pay those costs, *not* captive customers.[7] That is the issue implicated by this NOI, which seeks to better understand whether costs permitted to be ''above the line'' (chargeable to customers) and those required to be ''below the line'' (chargeable to investors) for privately-owned companies are being treated as such on a transparent and consistent basis.

7. While in a typical rate proceeding, the opposing parties bear the initial burden of challenging the accounting or rate treatment of ''above the line'' or ''below the line'' expenses, under section 205 of the Federal Power Act, the ultimate burden has always been on the regulated public utility to demonstrate the justness and reasonableness of its proposed rate. Based on the record before us, and the Commission audit staff's own experience, it may be that the Commission, customers, and other interested parties are not able to access the information necessary to determine whether the costs included in a jurisdictional utility's rates are appropriately classified. The questions raised in the NOI relate to issues squarely within, and essential to, the Commission's jurisdictional responsibilities to ensure just and reasonable rates.

8. *Let me also emphasize:* It may well be that the Commission's existing rules, regulations and precedent are sufficient to ensure the just and reasonable allocation of such costs, but it is worth reviewing. As always with energy regulation, the devil is in the details.

9. On a more specific topic, I also support asking whether it is time to clarify our regulations or further codify what is now established primarily through Commission precedent, *i.e.,* not allowing a monopoly to recover from customers the costs of its contributions and grants to charitable and civic organizations. Giving away other people's money is not altruism.

For these reasons, I respectfully concur.

Mark C. Christie,
Commissioner.

[FR Doc. 2021–27784 Filed 12–22–21; 8:45 am]

BILLING CODE 6717–01–P

[4] U.S. Const. Adt. 1.

[5] *See, e.g.,* Va. Code § 56–1 *et seq.*

[6] This analysis applies to privately-owned companies, not publicly-owned or government-owned providers or co-operatives.

[7] Legal fees are a more complicated matter.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0082; FRL–9365–01–OCSPP]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request (December 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of application 91868–EUP–R from Biotalys NV, Buchtenstraat 11, requesting an experimental use permit (EUP) for the ASFBIOF01–02. The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0082, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Ann Overstreet, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *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 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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Biotalys NV, Buchtenstraat 11, 9051 Sint-Denijs-Westrem, Belgium. *Experimental Use Permit Number:* 91868–EUP–R. *Docket ID Number:* EPA–HQ–OPP–2021–0685. *Pesticide Chemical:* ASFBIOF01–02.

Summary of Request: Biofungicide for treatment of plant diseases on grapes and strawberry food crops. *Quantity of pesticide:* 174 pounds. *Total acreage:* 235 acres treated over a two-year period. *Location of area of application:* California, Florida, Oregon, and Washington states. *Contact:* BPPD.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 14, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–27902 Filed 12–22–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0080; FRL–8795–06–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses—December 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of the EPA registration Number of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *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 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 preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

A. Notice of Receipt—New Uses

1. *EPA Registration Number:* 264–1077. *Docket ID number:* EPA–HQ–OPP–2021–0449. *Applicant:* Bayer CropScience LP, 800 N Lingbergh Blvd., St. Louis, MO 63167. *Active ingredient:* Fluopyram. *Product type:* Fungicide. *Proposed use:* Brassica, leafy greens, except watercress, subgroup 4–16B; celtuce; coffee; fennel, Florence, fresh leaves and stalk; kohlrabi; leafy greens subgroup 4–16A; leaf petiole vegetables subgroup 22B; papaya; peppermint; spearmint; spice group 26; vegetable, brassica, head and stem, group 5–16; individual crops of proposed subgroup 6–18A: Edible podded bean legume vegetable subgroup; individual crops of proposed subgroup 6–18B: Edible podded pea legume vegetable subgroup; individual crops of proposed subgroup 6–18C: Succulent shelled bean subgroup; individual crops of proposed subgroup 6–18D: Succulent shelled pea subgroup; and individual crops of proposed subgroup 6–18E: Dried shelled bean, except soybean, subgroup. *Contact:* RD.

2. *EPA Registration Number:* 264–1078. *Docket ID number:* EPA–HQ–OPP–2021–0449. *Applicant:* Bayer CropScience LP, 800 N Lingbergh Blvd., St. Louis, MO 63167. *Active ingredient:* Fluopyram. *Product type:* Fungicide. *Proposed use:* Brassica, leafy greens, except watercress, subgroup 4–16B; celtuce; coffee; fennel, Florence, fresh leaves and stalk; kohlrabi; leafy greens subgroup 4–16A; leaf petiole vegetables subgroup 22B; papaya; peppermint; spearmint; spice group 26; vegetable, brassica, head and stem, group 5–16; individual crops of proposed subgroup 6–18A: Edible podded bean legume vegetable subgroup; individual crops of proposed subgroup 6–18B: Edible podded pea legume vegetable subgroup; individual crops of proposed subgroup 6–18C: Succulent shelled bean subgroup; individual crops of proposed subgroup 6–18D: Succulent shelled pea subgroup; and individual crops of proposed subgroup 6–18E: Dried shelled bean, except soybean, subgroup. *Contact:* RD.

3. *EPA Registration Number:* 264–1090. *Docket ID number:* EPA–HQ–OPP–2021–0449. *Applicant:* Bayer CropScience LP, 800 N Lingbergh Blvd., St. Louis, MO 63167. *Active ingredient:* Fluopyram. *Product type:* Fungicide. *Proposed use:* Brassica, leafy greens, except watercress, subgroup 4–16B; celtuce; fennel, Florence, fresh leaves and stalk; kohlrabi; leafy greens subgroup 4–16A; leaf petiole vegetables subgroup 22B; papaya; spice group 26; vegetable, brassica, head and stem, group 5–16. *Contact:* RD.

4. *EPA Registration Numbers:* 10163–355 and 10163–356. *Docket ID number:* EPA–HQ–OPP–2021–0130. *Applicant:* Gowan Company, LLC 370 S Main St. Yuma, AZ 85366. *Active ingredient:* Ethalfluralin. *Product type:* Herbicide. *Proposed use:* Hemp, stevia, vegetable, tuberous and corm, subgroup 1C, dried shelled bean, except soybean, subgroup 6–18E, and dry shelled pea subgroup 6–18F. *Contact:* RD.

5. *EPA Registration Numbers:* 11195–1 & 68506–2. *Docket ID number:* EPA–HQ–OPP–2021–0203. *Applicant:* Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. *Active ingredient:* Sulfur dioxide. *Product type:* Fungicide. *Proposed use:* Blueberry. *Contact:* RD.

6. *EPA Registration Number or File Symbol:* 56228–AA and 56228–AL. *Docket ID number:* EPA–HQ–OPP–2021–0829. *Applicant:* United States Department of Agriculture, 4700 River Road, Riverdale, MD 20737. *Active ingredient:* Bromethalin. *Product type:* Rodenticide. *Proposed Use:* Island Conservation. *Contact:* RD.

7. *EPA Registration Number:* 71512–25. *Docket ID number:* EPA–HQ–OPP–2021–0386. *Applicant:* The State University of New Jersey Rutgers, 500 College Road East, Suite 201 W, Princeton, NJ 08540. *Active ingredient:* Pyriofenone. *Product type:* Fungicide. *Proposed use:* New greenhouse uses of Pyriofenone on tomato subgroup 8–10A, pepper/eggplant subgroup 8–10B and cucumber. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 8, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–27501 Filed 12–22–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9059–9]

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 December 13, 2021 10 a.m. EST Through December 17, 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. 20210185, Draft, FERC, LA, Hackberry Storage Project, Comment Period Ends: 02/07/2022, Contact: Office of External Affairs 866–208–3372.

EIS No. 20210186, Final Supplement, FERC, PA, Atlantic Coast Pipeline Restoration Project and Supply Header Restoration Project, Review Period Ends: 01/24/2022, Contact: Office of External Affairs 866–208–3372.

EIS No. 20210187, Draft, USFS, UT, Southern Monroe Mountain Allotments Livestock Grazing Authorization, Comment Period Ends: 02/07/2022, Contact: Jason Kling 435–896–1080.

Dated: December 17, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–27863 Filed 12–22–21; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Information Request on Potential Parameters of Export-Import Bank Financing for Domestic Projects

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: The Export-Import Bank of the United States (EXIM) is soliciting comments and feedback concerning a recommendation resulting from Executive Order 14017 on America's Supply Chains. The report ''Building resilient supply chains, revitalizing American manufacturing, and fostering broad-based growth'', recommends that EXIM consider developing an option to provide financing in support of the establishment and/or expansion of U.S. manufacturing facilities and infrastructure projects in the United States that would facilitate U.S. exports.

EXIM requests:

(1) Comments on the usefulness of such an option and need for EXIM to extend its medium and long-term loans and guarantees to domestic projects as described in the E.O. 14017 Report recommendation; and

(2) Feedback on the hypothetical parameters of such an EXIM program as described in the ''supplementary information'' below.

DATES: Consideration will be given to all written comments received by January 20, 2022.

ADDRESSES: Interested parties may submit comments on this transaction electronically on *www.regulations.gov.* To submit a comment, enter ''Information Request on Potential Parameters of Export-Import Bank Financing for Domestic Projects'' under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and ''Information Request on Potential Parameters of Export-Import Bank Financing for Domestic Projects'' on any attached document. Comments can also be sent by email or mail to Scott Condren, *Scott.Condren@exim.gov,* Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Scott Condren by telephone at 202–565–3777 or by email at *Scott.Condren@exim.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 8th, 2021, the White House released a report ''Strengthening America's Supply Chains'' which recommended that

> EXIM develop a proposal for Board consideration regarding whether and how to implement a new Domestic Financing Program to support the establishment and/or expansion of U.S. manufacturing facilities and infrastructure projects in the United States that would support U.S. exports. The proposal would support and facilitate U.S. exports while rebuilding U.S. manufacturing capacity

This notice seeks comment on the value of expanding EXIM's foreign buyer financing program to include domestic transactions, and feedback on the hypothetical parameters such as described below. In general, this notice only describes where transactions would face different requirements or standards from EXIM's medium and long-term overseas support. Terms, conditions, and requirements not addressed here, such as additionality, should be presumed to be the same as EXIM's standard export credit offering.

Hypothetical Parameters

Export Nexus: EXIM can only support transactions that have a nexus to exports. Foreign ECAs tend to require as a standard (but not rigorously applied minimum) 20% content for their export transactions. Moreover, the British have created a domestic financing program for companies that have an export ''basis'' that requires at least 5% of annual revenues in any three-year period be from exports, or 20% in one of any three years. EXIM may consider projects between a 25–50% export nexus for support. For example, 25% of a project's production (*e.g.,* goods produced at an EXIM-supported manufacturing facility) or capacity (*e.g.,* 25% of the traffic at a port) would need to be for export for the transaction to eligible. This export connection could stretch back through a supply chain and account for ''indirect exports''. For example, if a company sells 50% of its output to a domestic company, which in turn uses 50% of the supplier's inputs for exports, this transaction would meet the 25% threshold.

Pricing: Because financing with no direct export component is not considered official export financing, EXIM's financing would not be subject to the Organisation for Economic Co-Operation and Development (OECD) Arrangement terms and conditions. However, supporting domestic transactions that facilitate exports must comply with both EXIM's budget and World Trade Organization (WTO) rules. The former requires transactional ''break even''; the latter which would require EXIM to provide ''market'' pricing. EXIM may meet both tests via one of two approaches:

(1) *Direct Market Proxy:* There are several options, including lending on identical terms and conditions (or provide cover so that the buyer faces identical all-in pricing on both covered and uncovered tranches) as part of a syndicate, price using issuer specific credit default swaps (CDS) or price using comparable public bond information.

(2) *Implicit Market Benchmark:* In cases where there is no direct market benchmark (*e.g.,* no debt of a comparable term exists), EXIM may as a back-up utilize the OECD ''Through the Cycle Market Benchmark'' pricing methodology. This methodology uses commercial pricing information to generate market reflective pricing for a wide range of tenors and credit ratings.

Jobs supported: EXIM may connect to its jobs mission by scaling its financing in relation to the number of U.S. jobs such financing would support. For purposes of calculating maximum support, EXIM may include the U.S. jobs involved in construction of the project and the U.S. jobs involved in ongoing use of the project over the life of EXIM financing (per year—*e.g.,* 50 jobs per year for five years would be counted as 250 jobs). As all such jobs estimates are projections of the future, EXIM may ask applicants to provide supporting information on why their projections are accurate (*e.g.,* similar projects had similar employment, projections from their EPC when applicable), as well as requesting that EXIM's independent consultants on projects may be asked to opine on the reasonableness of the jobs projections. EXIM may choose to use a lower jobs number than the applicant provided to determine maximum financing.

U.S. flag shipping: EXIM may require U.S. flag shipping on major discrete equipment imports specifically sourced for the project with the same exceptions as EXIM's current policy. Items that had been imported with no expectation or foreknowledge they would end up being purchased with EXIM financing would not require U.S. flag shipping (such items could also be termed ''Commercial off the shelf'').

Comments:

EXIM seeks comments on the eligibility criteria laid out above. In addition, EXIM specifically asks

(1) Comments on the usefulness of such an option and need for EXIM to extend its medium and long-term loans and guarantees to domestic projects with an export connection as described in the E.O. 14017 report recommendation; and

(2) Feedback on the hypothetical parameters of such an EXIM program as described in the ''supplementary information'' above.

Scott Condren,

Sr. Policy Analyst.

[FR Doc. 2021–27835 Filed 12–22–21; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0856; FR ID 63574]

Information Collection 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 February 22, 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: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service Support Program Reimbursement Forms.

Form Numbers: FCC Forms 472, 473, and 474.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit institutions, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 16,600 respondents; 96,500 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403 and 503(b) of the Communications Act of 1934, as amended. 5 U.S.C. 553(b)(3), 601–612; 15 U.S.C. 1, 632; 44 U.S.C. 3506(c)(4); 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403, 503(b).

Total Annual Burden: 144,750 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: If the Commission requests applicants or service providers to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under section *47 CFR 0.459* of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to OMB, which is an extension of a currently approved collection, to obtain a full three-year clearance from OMB.

The FCC Form 472 is used by an applicant (also known as the billed entity) to seek reimbursement for the discounts on services paid in full. After receiving an invoice from the service provider, together with an FCC Form 472, USAC is able to verify the eligible service and approved amounts that should be reimbursed and can make the appropriate payment to the applicant. The FCC Form 472 is also used to ensure that each service provider has provided discounted services within the current funding year and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.

The FCC Form 473 is used to verify that the service provider is eligible to participate in the schools and libraries universal service support program (E-Rate program) and to confirm that the invoice forms submitted by the service provider are in compliance with the Federal Communications Commission's E-Rate program rules. The FCC Form 473 is also used by USAC to assure that the dollars paid out by the universal service fund go to eligible providers.

The FCC Form 474 is used by an eligible service provider to seek payment for the discounted costs of services it provided to applicants (or billed entities) for eligible services. After receiving an invoice from the service provider, together with an FCC Form 474, USAC is able to verify that the eligible and approved amounts can be paid. The FCC Form 474 is also used to ensure that each service provider has provided discounted services within the current funding year for which it submits an invoice to USAC and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.

All of the requirements contained in this information collection are necessary to implement the Congressional mandate for the E-Rate program and reimbursement process.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison, Office of the Secretary.

[FR Doc. 2021–27803 Filed 12–22–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as

other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 24, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Texas State Bankshares, Inc., Harlingen, Texas;* to merge with Access Bancorp, Inc., and therefore indirectly acquire AccessBank Texas, both of Denton, Texas.

Board of Governors of the Federal Reserve System, December 20, 2021.

Maragaret M. Shanks,

Deputy Secretary of the Board.

[FR Doc. 2021–27884 Filed 12–22–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ACF Uniform Project Description

AGENCY: Office of Administration, Office of Grants Policy, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the ACF Uniform Project Description (UPD) (OMB #0970–0139, expiration 2/28/2022). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed information collection would renew the ACF UPD. The UPD provides a uniform format for applicants to submit project information in response to ACF discretionary Notices of Funding Opportunities. The UPD requires applicants to describe how program objectives will be achieved and provide a rationale for the project's budgeted costs. All ACF discretionary grant programs are required to use the UPD.

ACF uses this information, along with other OMB-approved information collections (Standard Forms), to evaluate and rank applications. Use of the UPD protects the integrity of the ACF award selection process.

Respondents: Applicants responding to ACF Discretionary Notices of Funding Opportunities.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ACF Uniform Project Description	3,218	1	60	193,080	64,360

Estimated Total Annual Burden Hours: 64,360.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 45 CFR 75.203–75.204 and 45 CFR part 75, Appendix I.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–27837 Filed 12–22–21; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0980]

Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.'' Computational modeling and simulation (CM&S) can be used in a variety of ways in medical device applications, including to perform ''in silico'' device testing or as part of software embedded in a device. This guidance provides a risk-based framework that can be used in the credibility assessment of computational modeling and simulation (CM&S) used in medical device regulatory submissions. The draft guidance is intended to improve the consistency and transparency of the review of computational modeling evidence. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance

by February 22, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0980 for ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Pras Pathmanathan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1133, Silver Spring, MD 20993–0002, 301–796–3490.

SUPPLEMENTARY INFORMATION:

I. Background

CM&S can be used in a variety of ways in medical device applications, including to perform in silico (virtual) device testing or as part of algorithms within software embedded in a device. However, regulatory submissions involving CM&S often lack clear information for why model predictions can be considered credible. This draft guidance provides a risk-based framework that can be used in the credibility assessment of CM&S used in medical device regulatory submissions. This draft guidance builds upon the FDA-recognized consensus standard American Society of Mechanical Engineers V&V 40, ''Assessing Credibility of Computational Modeling Through Verification and Validation: Application to Medical Devices,'' by providing a general framework for demonstrating CM&S credibility that incorporates the different types of evidence typically generated for regulatory submissions. The framework is intended to be applicable to any use of CM&S in a medical device submission. It is not specific to any device type, modeling discipline or clinical specialty.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This draft guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download

an electronic copy of ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500056 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidances have been approved by OMB as listed in the following table:

21 CFR part; or guidance	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''	De Novo classification process	0910–0844
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions; pre-submissions	0910–0756

Dated: December 17, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27812 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0996]

Technical Considerations for Medical Devices With Physiologic Closed-Loop Control Technology; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Technical Considerations for Medical Devices with Physiologic Closed-Loop Control Technology.'' Physiologic Closed-Loop Control (PCLC) devices are intended for automatic control of a physiologic variable(s) through delivery of energy or substance using feedback from physiologic sensors. PCLC devices may play an important role in reducing cognitive overload, minimizing human error, and enhancing medical care during emergency response and medical surge situations. This draft guidance provides technical considerations for PCLC technology in order to promote development and availability of safe and effective PCLC medical devices. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by February 22, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0996 for ''Technical Considerations for Medical Devices with Physiologic Closed-Loop Control Technology.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not

in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Technical Considerations for Medical Devices with Physiologic Closed-Loop Control Technology'' to the Office of Policy, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Christopher Scully, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 1129, Silver Spring, MD 20993–0002, 301–796–2928.

SUPPLEMENTARY INFORMATION:

I. Background

PCLC technology can enable automation in a variety of medical device types including infusion systems, ventilators, extracorporeal systems, and stimulation systems. Automated adjustments of a physiologic variable(s) through the delivery of energy or substance (*i.e.,* therapy), such as automated fluid resuscitation, ventilation/oxygenation, and anesthesia delivery, are emerging applications for the critical and emergency care environments. PCLC devices may benefit the patient by facilitating safe and effective, consistent, and timely delivery of appropriate therapy with improved and distraction-free performance. However, introducing automation and reducing clinician involvement can incur new types of hazards which may render the medical device unsafe if not properly designed or evaluated. This guidance provides technical considerations for PCLC technology during device development to support the safe and effective design and evaluation of PCLC medical devices.

CDRH held a public workshop entitled ''Physiological Closed-Loop Controlled Devices'' on October 13 and 14, 2015,[1] with the aim of fostering an open discussion on design and evaluation considerations associated with PCLC devices used in critical care environments. This workshop provided a forum for medical device manufacturers, clinical users, and academia to discuss technical considerations for automated medical devices with PCLC technology. The feedback and recommendations provided at the meeting were incorporated in this draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Technical Considerations for Medical Devices with Physiologic Closed-Loop Control Technology. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Technical Considerations for Medical Devices with Physiologic Closed-Loop Control Technology'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500085 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
800, 801, and 809	Medical Device Labeling Regulations	0910–0485

[1] See *http://wayback.archive-it.org/7993/20170112084803/http:/www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm457581.htm.*

21 CFR part; guidance; or FDA form	Topic	OMB Control No.
803	Medical Devices; Medical Device Reporting; Manufacturer reporting, importer reporting, user facility reporting, distributor reporting.	0910–0437
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119

Dated: December 17, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27825 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1118]

Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 Public Health Emergency; Draft Guidance for Industry and Food and Drug Administration Staff; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of the draft guidance entitled ''Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.'' FDA recognizes that it will take time for device manufacturers, healthcare facilities, healthcare providers, patients, consumers, and FDA to adjust from policies adopted and operations implemented during the declared public health emergency (PHE) to normal operations. To provide a clear policy for all stakeholders and FDA staff, the Agency is issuing this guidance to describe FDA's general recommendations for a phased transition process with respect to devices that fall within enforcement policies issued during the COVID–19 PHE, including recommendations regarding submitting a marketing submission, as applicable, and taking other actions with respect to these devices. FDA is concurrently issuing a companion guidance to describe FDA's recommendations for this transition process with respect to devices issued Emergency Use Authorizations (EUAs) during the COVID–19 PHE. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by March 23, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit either electronic or written comments on the collection of information by February 22, 2022.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1118 for ''Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; or Jacqueline Gertz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1655, Silver Spring, MD 20993–0002, 240–402–9677.

With regard to the proposed collection of information: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This guidance applies to devices that fall within the enforcement policies described in List 1 of the draft guidance. FDA is concurrently issuing a companion guidance to describe FDA's recommendations for this transition process with respect to devices issued EUAs during the COVID–19 PHE.

Given the magnitude of the COVID–19 PHE, FDA recognizes that continued flexibility, while still providing necessary oversight, will be appropriate to facilitate an orderly and transparent transition back to normal operations. Further, FDA is taking into account that the manufacture, distribution, and use of devices in the context of the COVID–19 PHE raises unique considerations. These unique considerations include, for example, the manufacturing of devices by non-traditional manufacturers to address supply issues and the distribution and use of capital or reusable equipment (*e.g.,* ventilators, extracorporeal membrane oxygenation systems) that fall within enforcement policies.

FDA is proposing a 180-day transition period that will begin on the implementation date and end on the date that the guidances in List 1 of the draft guidance are withdrawn. FDA requests public comment on this timeline from all interested stakeholders. FDA believes a phased approach over the course of 180 days following the implementation date as set forth in this guidance can help foster compliance with applicable statutory and regulatory requirements once the relevant enforcement policies are no longer in effect.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 21012 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency

OMB Control Numbers 0910–0120 and 0910–0231—Revision

The following paragraphs discuss the one-time burdens associated with information collections found in the draft guidance, ''Transition Plan for Medical Devices That Fall Within Enforcement Policies Issued During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.''

The draft guidance is intended to help facilitate continued patient, consumer, and healthcare provider access to devices needed in the prevention,

treatment, and diagnosis of COVID–19. The information collections proposed in the draft guidance would assist the Agency in resource planning for marketing submission review and providing increased support to manufacturers. The information collections also include recommended information to provide in labeling for certain devices to inform potential users of the device's regulatory status, including physical labeling for life-supporting/life-sustaining devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ONE-TIME BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notification of intent	100	1	100	1	100
Transition plan	340	1	340	2	680
Labeling mitigation for reusable devices	170	1	170	1.25	213
Total					993

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Notification of intent: In Section V.C.(1) of the draft guidance, '' 'Notifications of Intent' for Certain Reusable Life-Supporting or Life-Sustaining Devices,'' FDA recommends that manufacturers of certain life-supporting or life-sustaining devices submit to FDA information regarding their intent to submit a marketing submission or not. The guidance recommends that manufacturers of such devices include in this notification, general information (*e.g.,* contact information); the title of the relevant enforcement policy guidance; submission number(s) for related premarket submissions; a list of all model numbers or other device identifying information; whether the manufacturer plans to submit a marketing submission; and, if not planning to submit a marketing submission, the manufacturer should discuss, as applicable, its plan to discontinue distribution of the device, to restore the device to a previously FDA-cleared or -approved version (if applicable), to provide a physical copy or electronic updated labeling, and any other efforts to address or mitigate potential risks of devices that remain distributed after the transition period has ended and the guidances in List 1 of the draft guidance have been withdrawn. If the device was previously FDA-cleared or -approved and a modified version was distributed as described in a policy in a guidance in List 1 of the draft guidance, the manufacturer should submit this information as a premarket notification (*i.e.,* 510(k)) or premarket approval application (PMA) ''amendment'' to the manufacturer's existing device submission that was previously cleared or approved. FDA recommends that manufacturers notate the following on the cover letter of the submission: ''Attention: Notification of Intent''. Based on the number of devices that may be marketed under the immediately in effect guidance enforcement policies, we estimate we will receive 100 notifications of intent for certain life-supporting or life-sustaining devices. Considering the recommended content of a notification, we estimate that the average burden per response is 1 hour.

Transition implementation plan: Section V.D.1 of the draft guidance recommends that manufacturers who intend to continue distribution of their device include with their marketing submissions a ''transition implementation plan'' that addresses the manufacturers' plans for devices already distributed in the case of a positive decision or a negative decision on its marketing submission. The ''transition implementation plan'' should include information regarding the estimated number of devices distributed under the enforcement policy currently in U.S. distribution, and a benefit-risk based plan for disposition of distributed product as detailed in the draft guidance.

Considering the amount of devices that may fall within enforcement policies, the amount of these products that are 510(k) exempt, and the amount of respondents we estimate are likely to pursue marketing submission, we estimate that we will receive transition plans for approximately 340 products. Based on the recommended content of a transition plan, we estimate that the average burden per response is 2 hours.

Labeling mitigation: The draft guidance indicates that when manufacturers of certain reusable devices do not intend to continue to distribute their devices beyond the transition period, FDA does not intend to object to the disposition of already distributed devices (*i.e.,* FDA does not intend to request market removal), as detailed in the draft guidance.

The draft guidance states that FDA does not intend to object to reusable, non-life-supporting/non-life-sustaining devices that were distributed before the withdrawal of the relevant guidance remaining distributed and being used by their end user. Such devices should either be restored by the manufacturer to the previously FDA-cleared or -approved version or have publicly available labeling that accurately describes the product features and regulatory status (*i.e.,* that the product lacks FDA clearance or approval). In addition, the draft guidance recommends that reusable life-supporting/life-sustaining devices (*e.g.,* ventilators, extracorporeal membrane oxygenation systems) that were distributed before the withdrawal of the relevant guidance remain distributed. Such devices should either be restored by the manufacturer to the previously FDA-cleared or -approved device, or have both publicly available and a physical copy of labeling that specifies that the device lacks FDA clearance or approval. We estimate that, on average, updating the labeling will take approximately 1 hour and 15 minutes. We believe these reusable devices represent about half of the marketing submissions (170).

This draft guidance also refers to previously approved FDA collections of information. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 2—GUIDANCES AND COLLECTIONS

21 CFR part or guidance	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions	0910–0756
803	Medical Devices; Medical Device Reporting; Manufacturer reporting, importer reporting, user facility reporting, distributor reporting.	0910–0437
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
807, subparts A through D	Electronic Submission of Medical Device Registration and Listing	0910–0625
806	Corrections and Removals	0910–0359
830 and 801.20	Unique Device Identification	0910–0720
800, 801, and 809	Medical Device Labeling	0910–0485
''Emergency Use Authorization of Medical Products and Related Authorities''.	Emergency Use Authorization	0910–0595

IV. Other Issues for Consideration

As discussed in the draft guidance, FDA understands that it will take time for device manufacturers, healthcare facilities, healthcare providers, patients, consumers, and FDA to adjust from policies adopted and operations implemented during the declared PHE to normal operations. FDA encourages all stakeholders to comment on the following topics:

1. Whether the 180-day transition period before FDA withdraws the guidances identified in List 1 would sufficiently allow for an appropriate transition period that avoids exacerbating product shortages and supply chain disruptions.

2. Suggestions to add or remove guidances documents to or from List 1 of the draft guidance.

3. FDA's proposal to extend the effectiveness of the guidances in List 1 of the draft guidance either for 180 days or for at least 225 days, if the PHE declaration under section 319 of the Public Health Service Act expires before the finalization of this guidance.

Dated: December 20, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27892 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5606]

Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions.'' FDA has developed this guidance document to assist in the preparation of premarket notification submissions (510(k)) for arthroscopy pump tubing sets intended for multiple patient use. This guidance outlines the device design considerations, risk mitigation strategies, and testing recommendations for arthroscopy pump tubing sets intended for multiple patient use. This guidance also clarifies the terminology used to describe arthroscopy pump tubing sets intended for multiple patient use.

DATES: The announcement of the guidance is published in the **Federal Register** on December 23, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5606 for ''Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Laurence Coyne, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4512, Silver Spring, MD 20993–0002, 301–796–6450.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and FDA staff entitled ''Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions.'' FDA has developed this guidance document to assist in the preparation of premarket notification submissions (510(k)) for arthroscopy pump tubing sets intended for multiple patient use. These devices are designed to deliver irrigation fluid to the surgical site, such as knee, shoulder, hip, elbow, ankle, and wrist joint cavities, during arthroscopic procedures. In arthroscopic procedures, clinicians often use a single source of irrigation fluid for multiple patients without replacing the source of irrigation fluid or replacing/reprocessing the irrigation tubing system between patients. This practice may increase the risk of cross-contamination between patients and subsequent iatrogenic infection because the irrigation system can become contaminated with patient fluids that travel back through the irrigation tubing (''backflow''). FDA has received reports of backflow of patient fluids which raises the question of potential for disease transmission when using irrigation and tubing systems in such a manner on multiple patients.

This guidance is intended to provide recommendations for information to include in premarket notifications (510(k)s) for arthroscopy pump tubing sets intended for multiple patient use. This guidance outlines device design considerations, risk mitigation strategies, and testing recommendations for these devices, and clarifies the terminology used to describe arthroscopy pump tubing sets intended for multiple patient use.

A notice of availability of the draft guidance appeared in the **Federal Register** of January 28, 2020 (85 FR 4997). FDA considered a comment received and revised the guidance to add a reference to an applicable FDA guidance, ''Applying Human Factors and Usability Engineering to Medical Devices.''

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*. This guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*. Persons unable to download an electronic copy of ''Arthroscopy Pump Tubing Sets Intended for Multiple Patient Use—Premarket Notification (510(k)) Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500066 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: December 17, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27823 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1149]

Transition Plan for Medical Devices Issued Emergency Use Authorizations During the Coronavirus Disease 2019 Public Health Emergency; Draft Guidance for Industry and Food and Drug Administration Staff; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.'' FDA recognizes that it will take time for device manufacturers, healthcare facilities, healthcare providers, patients, consumers, and FDA to adjust from policies adopted and operations implemented during the declared public health emergency (PHE) to normal operations. To provide a clear policy for all stakeholders and FDA staff, the Agency is issuing this guidance to describe FDA's general recommendations for this transition process with respect to devices issued EUAs during the COVID–19 PHE, including recommendations regarding submitting a marketing submission, as applicable, and taking other actions with respect to these devices. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by March 23, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit either electronic or written comments on the proposed collection of information in the draft guidance by February 22, 2022.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1149 for ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for

information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; or Jacqueline Gertz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1655, Silver Spring, MD 20993–0002, 240–402–9677.

With regard to the proposed collection of information: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance applies to devices that have been issued EUA under section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb–3) on the basis of a device-related COVID–19 EUA declaration. This draft guidance does not apply to devices for which FDA has revoked the EUA under section 564(g)(2)(B)–(C) of the FD&C Act because the criteria under section 564(c) of the FD&C Act were no longer met or because other circumstances made such revocation appropriate to protect the public health or safety. FDA is concurrently issuing a companion guidance to describe FDA's recommendations for transitioning devices that fall within enforcement policies issued during the COVID–19 PHE.

Given the magnitude of the COVID–19 PHE, FDA recognizes that some continued flexibility, while still providing necessary oversight, will be appropriate to facilitate an orderly and transparent transition back to normal operations. Further, FDA is taking into account that the manufacture, distribution, and use of devices in the context of the COVID–19 PHE raises unique considerations. These unique considerations include, for example, the manufacturing of devices by non-traditional manufacturers to address supply issues and the distribution and use of capital or reusable equipment (*e.g.,* ventilators, extracorporeal membrane oxygenation systems) under an EUA.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

FDA is concurrently issuing a companion draft guidance to describe FDA's recommendations for transitioning devices that fall within enforcement policies issued during the COVID–19 PHE.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This draft guidance is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the COVID–19 Public Health Emergency'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 21012 and complete title to identify the draft guidance you are requesting.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency OMB Control Number 0910–0595; Revision

The following paragraphs discuss the one-time burdens associated with information collections found in the draft guidance, ''Transition Plan for Medical Devices Issued Emergency Use Authorizations (EUAs) During the COVID–19 Public Health Emergency.''

The draft guidance is intended to help facilitate continued patient, consumer, and healthcare provider access to devices needed in the prevention, treatment, and diagnosis of COVID–19. The information collections proposed in the draft guidance would assist the Agency in resource planning for marketing submission review and providing increased support to manufacturers. The information collections also include recommended information to provide in labeling for certain devices to inform potential users of the device's regulatory status, including physical labeling for life-supporting/life-sustaining devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ONE-TIME BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notification of intent	100	1	100	1	100
Transition plan	340	1	340	2	680
Labeling mitigation for reusable devices	170	1	170	1.25	213
Labeling mitigation for devices under FDA review after the EUA termination date	340	1	340	1.25	425
Total					1,418

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Notification of intent: In section V.A of the draft guidance, '' 'Notifications of Intent' for Certain Reusable Life-Supporting or Life-Sustaining Devices,'' FDA recommends that manufacturers of certain life-supporting or life-sustaining devices submit to FDA information regarding whether or not they intend to submit a marketing submission to continue distributing their product after the EUA termination date. The draft guidance recommends that manufacturers of such devices include in this notification: (1) General information (*e.g.,* contact information); (2) the EUA request number; (3) a list of all model numbers or other device identifying information; (4) whether the manufacturer plans to submit a marketing submission; and (5) if not planning to submit a marketing submission, the manufacturer should discuss, as applicable, its plan to stop distribution of the device, to restore the device to a previously FDA-cleared or approved version, to provide a physical copy or electronic updated labeling, and any other efforts to address or mitigate potential risks of devices that remain distributed after the EUA termination date. The manufacturer should submit this information designated with the EUA number as an ''EUA report.'' FDA recommends that manufacturers notate the following on the cover letter of the submission: ''Attention: Notification of Intent.''

Based on the current EUA submissions and authorizations, we estimate we will receive 100 notifications of intent for certain life-supporting or life-sustaining devices. Considering the recommended content of a notification, we estimate that the average burden per response is 1 hour.

Transition implementation plan: Section V.B.1 of the draft guidance recommends that manufacturers who intend to continue distribution of their device include with their marketing submissions a ''transition implementation plan'' that addresses the manufacturers' plans for devices already distributed in the case of a positive decision or a negative decision on its marketing submission. The ''transition implementation plan'' should include information regarding the estimated number of devices distributed under an EUA currently in U.S. distribution, and a benefit-risk based plan for disposition of distributed product as detailed in the draft guidance.

Considering the current EUA submissions and authorizations, the amount of these products that are 510(k) exempt, and the amount of respondents we estimate are likely to pursue marketing submission, we estimate that we will receive transition plans for approximately two-thirds of these products, or about 340 products. Based on the recommended content of a transition plan, we estimate that the average burden per response is 2 hours.

Labeling mitigation for reusable devices: The draft guidance indicates that when manufacturers of certain reusable devices do not intend to distribute their device beyond the EUA termination date, FDA does not intend to object to the disposition of already distributed devices (*i.e.,* FDA does not intend to request market removal), as detailed in the draft guidance.

The draft guidance states that FDA does not intend to object to reusable, non-life-supporting/non-life-sustaining devices that were distributed before the EUA termination date remaining distributed and being used by their end user. Such devices should either be restored by the manufacturer to the previously FDA-cleared or approved version or have publicly available labeling that accurately describes the product features and regulatory status (*i.e.,* that the product lacks FDA clearance or approval). In addition, the draft guidance recommends that reusable life-supporting/life-sustaining devices (*e.g.,* ventilators, extracorporeal membrane oxygenation systems, continuous renal replacement therapy systems) that were distributed before the EUA termination date remain distributed. Such devices should either be restored by the manufacturer to the previously FDA-cleared or approved version of the device, or have both publicly available and a physical copy of labeling that specifies that the device lacks FDA clearance or approval. We estimate that, on average, updating the labeling will take approximately 1 hour and 15 minutes. We estimate 170 respondents, which is about one-third of devices currently under an EUA issued during the COVID–19 PHE, will make such labeling available.

Labeling mitigation for devices under FDA review after the EUA termination date: During the period after the EUA termination date, for devices for which a marketing submission has been accepted by FDA but before FDA has taken final action on the submission, labeling should be updated to accurately state that the product was authorized under an EUA issued during the COVID–19 PHE and remains under FDA review for clearance or approval. We believe updating this labeling will also take approximately 1 hour and 15 minutes per device. We estimate that the majority of devices for which manufacturers pursue a marketing submission may remain under FDA review for clearance or approval during the period after the EUA termination date.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 2—GUIDANCES AND COLLECTIONS

21 CFR part or guidance	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions	0910–0756
803	Medical Devices; Medical Device Reporting; Manufacturer reporting, importer reporting, user facility reporting, distributor reporting.	0910–0437
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
807, subparts A through D	Electronic Submission of Medical Device Registration and Listing.	0910–0625
806	Corrections and Removals	0910–0359
830 and 801.20	Unique Device Identification	0910–0720
800, 801, and 809	Medical Device Labeling	0910–0485
''Emergency Use Authorization of Medical Products and Related Authorities''.	Emergency Use Authorization	0910–0595

IV. Other Issues for Consideration

As discussed in the draft guidance, FDA understands that it will take time for device manufacturers, healthcare facilities, healthcare providers, patients, consumers, and FDA to adjust from policies adopted and operations implemented during the declared PHE to normal operations. FDA encourages all stakeholders to comment on the following topics:

1. Whether the 180-day period proposed for advance notice of termination of each EUA declaration pertaining to devices would sufficiently allow for an appropriate transition period that avoids exacerbating product shortages and supply chain disruptions.

2. Whether FDA's issuance of this draft guidance with a proposed transition policy and requesting public comment may help the Agency to satisfy, or otherwise determine how to best satisfy, while also effectively managing Agency resources, the requirement in section 564(b)(2)(B) of the FD&C Act to consult with a manufacturer that was issued an EUA for an unapproved product on the appropriate disposition of the product.

Dated: December 20, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27891 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1128]

Digital Health Technologies for Remote Data Acquisition in Clinical Investigations; Draft Guidance for Industry, Investigators, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry, investigators, and other stakeholders entitled ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' This guidance provides recommendations to sponsors, investigators, and other stakeholders on the use of digital health technologies (DHTs) to acquire data remotely from participants in clinical investigations evaluating medical products. DHTs may take the form of hardware and/or software and may be used to gather health-related information from study participants and transmit that information to study investigators and/or other authorized parties to evaluate the safety and effectiveness of medical products.

DATES: Submit either electronic or written comments on the draft guidance by March 23, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1128 for ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kunkoski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3332, Silver Spring, MD 20993, 301–796–6439; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911; or Matthew Diamond, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5540, Silver Spring, MD 20993–0002, 301–796–5386.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry, investigators, and other stakeholders entitled ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' Advances in sensor technology, general-purpose computing platforms, and methods for data transmission and storage have revolutionized the ability to remotely obtain and analyze clinically relevant information from individuals. DHTs used for remote data acquisition are playing a growing role in healthcare and offer important opportunities in clinical research. DHTs provide opportunities to record data directly from trial participants (*e.g.,* ambulation, sleep, performance of everyday tasks) wherever the participants may be (*e.g.,* home, school, work, outdoors); this may provide a broader picture of how participants function in their daily lives. DHTs may also facilitate the direct collection of information from participants who are unable to report their experiences (*e.g.,* infants, cognitively impaired individuals).

This guidance outlines recommendations intended to facilitate the use of DHTs in a clinical investigation as appropriate for the evaluation of medical products. The guidance provides recommendations on (1) selection of DHTs that are suitable for use in a clinical investigation; (2) the description of DHTs in regulatory submissions; (3) verification and validation of DHTs for use in a clinical investigation; (4) the definition and evaluation of clinical endpoints from data collected using DHTs; (5) risk management considerations when using DHTs; (6) the protection and retention of records; and (7) additional sponsor and investigator considerations for using DHTs in a clinical investigation.

On October 29, 2015, FDA published a notice in the **Federal Register** (80 FR 66543) establishing a public docket (FDA–2015–N–3579) to solicit input from a broad group of stakeholders on the scope and direction of the use of technologies and innovative methods in the conduct of clinical trials. FDA considered relevant stakeholder comments received to the public docket when writing this draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by the OMB under the PRA. The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information in 21 CFR part 312, including submissions under subpart E, and 21 CFR 312.41, 312.57, 312.58, 312.62, and 312.120 have been approved under OMB control number 0910–0014; the collections of

information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information under 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information under 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information under 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information for the De Novo Classification Process (Evaluation of Automatic Class III Designation) have been approved under OMB control number 0910–0844; and the collections of information in the guidance document entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' have been approved under OMB control number 0910–0756. The collections of information in 21 CFR part 314 (Applications for FDA Approval to Market a New Drug) and 21 CFR part 601 (General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension) have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively. The collections of information in 21 CFR parts 50 and 56 (Protection of Human Subjects: Informed Consent; Institutional Review Boards) have been approved under OMB control number 0910–0130.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov*.

Dated: December 20, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27894 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4206]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee Small Business Qualification and Certification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form FDA 3602 and Form FDA 3602A, on which domestic and foreign applicants certify that they qualify as a small business and pay certain medical device user fees at reduced rates.

DATES: Submit either electronic or written comments on the collection of information by February 22, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 22, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 22, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–4206 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee Small Business Qualification and Certification.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device User Fee Small Business Qualification and Certification

OMB Control Number 0910–0508—Extension

Medical device user fees were first established in 2002 by the Medical Device User Fee and Modernization Act (MDUFMA) (Pub. L. 107–250). User fees were renewed in 2007, with the Medical Device User Fee Amendments to the FDA Amendments Act (MDUFA II), in 2012 with the Medical Device User Fee Amendments to the FDA Safety and Innovation Act (MDUFA III), and in 2017 with the Medical Device User Fee Amendments to the FDA Reauthorization Act (MDUFA IV). MDUFA IV will be in place from October 1, 2017, until September 30, 2022.

A ''small business'' is eligible for reduced or waived fees. If an applicant does not provide information to FDA demonstrating to FDA's satisfaction that the applicant is a small business, the applicant must pay the standard (full) fee for any application it submits.

Section 738(d)(2)(A) and (e)(2)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(d)(2)(A) and (e)(2)(A)) define a ''small business'' as an entity that reported $100 million or less of gross receipts or sales in its most recent Federal income tax return, including such returns of its affiliates, partners, and parent firms. If a firm's gross receipts or sales are no more than $30 million (including all affiliates, partners, and parent firms), they will also qualify for a waiver of the fee for their first (ever) premarket application, product development protocol, biological licensing application, or premarket report.

Forms FDA 3602 (''MDUFA Small Business Certification Request for a Business Headquartered in the United States'') and FDA 3602A (''MDUFA Foreign Small Business Certification Request for a Business Headquartered Outside the United States'') are submitted to FDA to demonstrate that an applicant qualifies as a MDUFA small business. The guidance ''Medical Device User Fee Small Business Qualification and Certification; Guidance for Industry, Food and Drug Administration Staff and Foreign Governments'' [1] describes the process by which a business may request certification as a small business and the criteria FDA will use to decide whether an entity qualifies as a MDUFA small business and is eligible for a reduction in user fees.

This estimated burden is based on the number of applications received in the last few years and includes time required to collect the required information. Based on our experience with Forms FDA 3602 and FDA 3602A, FDA believes it will take respondents 1 hour to complete either form.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA 3602—MDUFA Small Business Certification Request For a Business Headquartered in the United States	2,500	1	2,500	1	2,500
FDA 3602A—MDUFA Foreign Small Business Certification Request For a Business Headquartered Outside the United States	2,000	1	2,000	1	2,000

[1] The guidance ''Medical Device User Fee Small Business Qualification and Certification Guidance for Industry, Food and Drug Administration Staff and Foreign Governments'' is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/medical-device-user-fee-small-business-qualification-and-certification.*

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total					4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated ''No. of Respondents'' has been updated to better reflect the recent submission volume. This adjustment has resulted in a 2,500-hour decrease in the estimated ''Total Hours'' burden.

Dated: December 17, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27889 Filed 12–22–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0479]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, Health and Human Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 24, 2022.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When requesting information, please include the document identifier 0990–0479–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Family Planning Annual Report 2.0.

Type of Collection: Revision.

OMB No. 0990–0479.

Abstract: The Office of Population Affairs (OPA), within the Office of the Assistant Secretary for Health, seeks approval for a revision of the 3-year encounter level data collection for the Family Planning Annual Report (FPAR). This annual reporting requirement is for competitively awarded grants authorized and funded by the Title X Family Planning Program. Currently approved under 0990–0479, this revision is adding the collection of two new data elements, sexual orientation and gender identity. OPA does not expect the addition of these elements to substantially change the burden.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grantees	70	1	102	7140
Total	70	1	102	7140

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–27829 Filed 12–22–21; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Substance Abuse and Suicide Prevention Program: Suicide Prevention, Intervention, and Postvention; Correction

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a Notice of Funding Opportunity in the **Federal Register** of November 4, 2021, for the Suicide Prevention, Intervention, and Postvention grant program. The notice was missing a section in the description of the required Project Narrative that applicants must submit with their application. The Project Narrative will have a fourth section added, Statement of Need, and the page limit for the Project Narrative will increase from 15 to 17 pages.

FOR FURTHER INFORMATION CONTACT: Paul Gettys, Acting Director, Division of Grants Management, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443–2114.

SUPPLEMENTARY INFORMATION:

Corrections

1. In the **Federal Register** of November 4, 2021, in FR Doc 2021–24022, on page 60861, in the second column, under IV. Application and Submission Information, under 3. SF–424B, Assurances—Non-Construction Programs, correct ''Project Narrative'' to read: Project Narrative (not to exceed 17 pages).

2. In the **Federal Register** of November 4, 2021, in FR Doc 2021–24022, starting on page 60861, in the third column and continuing to page 60862, in the first column, correct ''A. Project Narrative,'' to read:

A. *Project Narrative:* This narrative should be a separate document that is no more than 17 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be

single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 17-page limit for the narrative does not include the standard forms, Tribal Resolutions, budget, budget justification and narrative, and/or other items.

There are four parts to the narrative: Part 1—Statement of Need; Part 2—Program Planning; Part 3—Program Data Collection and Evaluation; and Part 4—Program Accomplishments Report. See below for additional details about what must be included in the narrative. The page limits below are for each narrative and budget submitted.

Part 1: Statement of Need (Limit—2 Pages)

The project narrative must include the statement of need that addresses the nature and scope of the problem (*e.g.,* suicide rates, ideations, attempts, and contagions). For more information, refer to Section V.1.A, Evaluation Criteria—Statement of Need details.

Part 2: Program Planning (Limit—10 Pages)

Describe the scope of work the Tribe, Tribal organization, or UIO is planning by clearly and concisely outlining the following required components:

1. Goals and Objectives. Reference all required objectives.

2. Project Activities. Link your project activities to your outlined goals and objectives.

3. Organization Capacity and Staffing/Administration. State your organization's current capacity to implement and manage this award (*i.e.,* current staffing, facilities, information systems, and experience with previous similar projects).

Part 3: Program Data Collection and Evaluation (Limit—3 Pages)

Based on the required objectives, describe how the Tribe, Tribal organization, or UIO plans to collect data for the proposed project and activities. Identify any type(s) of evaluation(s) that will be used and how you will collaborate with partners (*i.e.,* Tribal Epidemiology Center (TEC)) to complete any evaluation efforts or data collection. Funded projects are encouraged to coordinate data collection efforts with their TEC or Urban Epidemiology Center (for urban awardees) and should describe their plan for coordination and collaboration with the TEC.

Part 4: Program Accomplishments Report (Limit—2 Pages)

Describe the Tribe's, Tribal organization's, or UIO's significant program activities and achievements/accomplishments over the past 5 years associated with suicide prevention, intervention, and postvention activities. Provide success stories, data, or other examples of how other funded projects/programs made an impact in your community to address suicide. If applicable, provide justification for lack of progress of previous efforts.

Elizabeth A. Fowler,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2021–27875 Filed 12–22–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Substance Abuse and Suicide Prevention Program: Substance Abuse Prevention, Treatment, and Aftercare; Correction

AGENCY: Indian Health Service, HHS.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a Notice of Funding Opportunity in the **Federal Register** of November 4, 2021, for the Substance Abuse Prevention, Treatment, and Aftercare grant program. The notice was missing a section in the description of the required Project Narrative that applicants must submit with their application. The Project Narrative will have a fourth section added, Statement of Need, and the page limit for the Project Narrative increased from 15 to 17 pages.

FOR FURTHER INFORMATION CONTACT: Paul Gettys, Acting Director, Division of Grants Management, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443–2114.

SUPPLEMENTARY INFORMATION:

Corrections

1. In the **Federal Register** of November 4, 2021, in FR Doc. 2021–24020, on page 60852, in the third column, correct ''Project Narrative (not to exceed 15 pages)'' to read: Project Narrative (not to exceed 17 pages).

2. In the **Federal Register** of November 4, 2021, in FR Doc. 2021–24020, on page 60853, starting in the first column, correct ''A. Project Narrative: This narrative should be a separate document that is no more than 15 pages and must . . .'' to read:

A. *Project Narrative:* This narrative should be a separate document that is no more than 17 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 17-page limit for the narrative does not include the standard forms, Tribal Resolutions, budget, budget justification and narrative, and/or other items.

There are four parts to the narrative: Part 1—Statement of Need; Part 2—Program Planning; Part 3—Program Data Collection and Evaluation; and Part 4—Program Accomplishments Report. See below for additional details about what must be included in the narrative. The page limits below are for each narrative and budget submitted.

Part 1: Statement of Need (Limit—2 Pages)

The project narrative must include the statement of need that addresses the nature and scope of the problem (*e.g.,* substance use rates, need for treatment, and need for aftercare services). For more information, refer to Section V.1.A, Evaluation Criteria—Statement of Need details.

Part 2: Program Planning (Limit—10 Pages)

Describe the scope of work the Tribe, Tribal organization, or UIO is planning by clearly and concisely outlining the following required components:

1. *Goals and Objectives.* Reference all required objectives.

2. *Project Activities.* Link your project activities to your outlined goals and objectives.

3. *Organization Capacity and Staffing/Administration.* State your organization's current capacity to implement and manage this award (*i.e.,* current staffing, facilities, information systems, and experience with previous similar projects).

Part 3: Program Data Collection and Evaluation (Limit—3 Pages)

Based on the required objectives, describe how the Tribe, Tribal organization, or UIO plans to collect data for the proposed project and activities. Identify any type(s) of evaluation(s) that will be used and how you will collaborate with partners (*i.e.,* Tribal Epidemiology Center (TEC)) to complete any evaluation efforts or data collection. Funded projects are encouraged to coordinate data collection efforts with their TEC or Urban Epidemiology Center (for urban awardees) and should describe their plan for coordination and collaboration with the TEC.

Part 4: Program Accomplishments Report (Limit—2 Pages)

Describe the Tribe's, Tribal organization's, or UIO's significant program activities and achievements/accomplishments over the past 5 years associated with substance abuse prevention, treatment, and aftercare activities. Provide success stories, data, or other examples of how other funded projects/programs made an impact in your community to address substance abuse. If applicable, provide justification for lack of progress of previous efforts.

Elizabeth A. Fowler,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2021–27890 Filed 12–22–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

This meeting is being held virtually only; there is no in-person option. The open sessions will be videocast and may be accessed by the public from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: January 20–21, 2022.

Closed: January 20, 2022, 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, One Democracy Plaza, Room 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: January 20, 2022, 1:00 p.m. to 5:00 p.m.

Agenda: Report from the Institute Director and other staff; view and discuss Clearance of Concepts.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, One Democracy Plaza, Room 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: January 21, 2022, 1:00 p.m. to 5:00 p.m.

Agenda: Program Updates; view and discuss Clearance of Concepts; NCATS Triennial Inclusions Report; Proposed Organizational Change: Division of Extramural Activities and Division of Rare Diseases Innovation.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, One Democracy Plaza, Room 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting at *NCATSCouncilInput@mail.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 20, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–27911 Filed 12–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: February 2–3, 2022.

Time: February 2, 2022, 10:45 a.m. to 6:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Virtual Meeting).

Time: February 3, 2022, 11:00 a.m. to 6:20 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 20, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–27862 Filed 12–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of Availability of the Fifteenth Report on Carcinogens

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services released the 15th Report on Carcinogens (RoC) to the public on December 21, 2021. The report is available on the RoC website at: *https://ntp.niehs.nih.gov/go/roc* or from the Office of the RoC (see ADDRESSES below).

DATES: The 15th RoC is available to the public on December 21, 2021.

ADDRESSES: Dr. Ruth Lunn, Integrated Health Effects Branch, Division of the NTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; telephone: (919) 316–4637; FAX: (301) 480–2970; *lunn@niehs.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the 15th RoC should be directed to Dr. Ruth Lunn (telephone: 919–316–4637 or *lunn@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background Information on the RoC

This notice is in accordance with the Public Health Service Act Section 301(b)(4). The Report on Carcinogens (RoC) is a Congressionally mandated document that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a hazard to human health because of their carcinogenicity. Substances are listed in the report as either *known* or *reasonably anticipated to be human carcinogens.* The listing of a substance in the RoC indicates a potential hazard; it does not establish the exposure conditions that pose a cancer hazard to individuals in their daily lives. For each listed substance, the RoC provides information from cancer studies that support the listing, as well as information about potential sources of exposure and current federal regulations to limit exposures. Each edition of the RoC is cumulative, that is, it lists newly reviewed substances in addition to substances listed in the previous edition. Information about the RoC is available on the RoC website (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see **ADDRESSES** above).

The National Institute of Environmental Health Science, National Toxicology Program (NTP) prepares the RoC on behalf of the Secretary of Health and Human Services. For the 15th RoC, NTP followed an established, multi-step process with multiple opportunities for public input, and used established criteria to evaluate the scientific evidence on each candidate substance under review (*http://ntp.niehs.nih.gov/go/rocprocess).*

New Listings in the 15th RoC

The 15th RoC contains 256 listings, some of which consist of a class of structurally related chemicals or agents. There are eight new listings in this edition. The new listing in the category of *known to be a human carcinogen* is *Helicobacter pylori* (chronic infection). Seven of the new listings are in the category of *reasonably anticipated to be a human carcinogen:* Antimony trioxide and six haloacetic acids found as water disinfection by-products, including bromochloroacetic acid, bromodichloroacetic acid, chlorodibromoacetic acid, dibromoacetic acid, dichloroacetic acid, and tribromoacetic acid.

Dated: December 20, 2021.

Richard P. Woychik,

Director, National Institute of Environmental Health Science and National Toxicology Program.

[FR Doc. 2021–27910 Filed 12–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request an Extension From OMB of One Current Public Collection of Information: Cybersecurity Measures for Surface Modes

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently-approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0074, abstracted below, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). On November 30, 2021, OMB approved TSA's request for an emergency approval of this collection to address the ongoing cybersecurity threat to surface transportation and associated infrastructure. TSA is now seeking to renew the collection, which expires on May 31, 2022, with incorporation of the subject of the emergency request. The ICR describes the nature of the information collection and its expected burden. The collection allows TSA to address the ongoing cybersecurity threat using a risk-based approach to transportation security.

DATES: Send your comments by February 22, 2022.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0074; Cybersecurity Measures for Surface Modes. Under the Aviation and Transportation Security Act [1] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of

[1] Public Law 107–71 (115 Stat. 597; Nov. 19, 2001), codified at 49 U.S.C. 114.

Transportation.'' [2] TSA is specifically empowered to assess threats to transportation; [3] develop policies, strategies, and plans for dealing with threats to transportation; [4] oversee the implementation and adequacy of security measures at transportation facilities; [5] and carry out other appropriate duties relating to transportation security.[6]

On November 30, 2021, OMB approved TSA's request for an emergency approval of this information collection that covers both mandatory reporting and voluntary reporting of information. The OMB approval allowed for the institution of mandatory reporting requirements and collection of information voluntarily submitted. *See* ICR Reference Number: 202111–1652–003. TSA is now seeking renewal of this information collection for the maximum three-year approval period.

The request for a new collection was necessary as a result of actions TSA took to address the ongoing and escalating cybersecurity threat to surface transportation and associated infrastructure. On December 2, 2021, TSA issued Security Directive (SD) 1580–2021–01 or SD1582–2021–02 mandating TSA-specified owner/operators of ''higher risk'' railroads and rail transit systems, respectively, to implement an array of cybersecurity measures to prevent disruption and degradation to their infrastructure.[7] The scope of these SDs align with the railroads and rail transit systems required to report significant security incidents to TSA under 49 CFR 1570.203.

On that same date, TSA also issued an ''information circular'' (IC), which contains non-binding recommendations with the same measures for railroad owner/operators, public transportation agencies, rail transit system owner/operators, and certain over-the-road bus owner/operators not specifically covered under SDs 1580–2021–01 or 1582–2021–02. The requirements in the SDs and the recommendations in the IC allow TSA to execute its security responsibilities within the surface transportation industry, through awareness of potential security incidents and suspicious activities. The SDs require, and the IC recommends, the following security measures:

1. Designate a Cybersecurity Coordinator who is available to TSA 24/7 to coordinate cybersecurity practices and address any incidents that arise;

2. Report cybersecurity incidents to the Cybersecurity and Infrastructure Security Agency (CISA);

3. Develop a cybersecurity incident response plan; and

4. Complete a cybersecurity vulnerability assessment to address cybersecurity gaps using the form provided by TSA.

TSA, in conjunction with federal partners such as CISA, will use the reports of cybersecurity incidents to evaluate and respond to imminent and evolving cybersecurity incidents and threats as they occur, and as a basis for creating new cybersecurity policy moving forward. This monitoring will allow TSA and federal partners to take action to contain threats, take mitigating action, and issue timely warnings to similarly-situated entities against further spread of the threat. TSA and its federal partners will also use the information to inform timely modifications to cybersecurity requirements to improve transportation security and national economic security. TSA will use the collection of information to ensure compliance with TSA's cybersecurity measures required by the SDs and the recommendations under the IC.

Table 1 provides more detail on the measures included in the SDs and IC.

TABLE 1—SUMMARY OF SECURITY MEASURES IN THE SECURITY DIRECTIVE AND INFORMATION CIRCULAR

Title	Security measure
Designate a Cybersecurity Coordinator.	Owner/Operators are required or recommended, as applicable, to appoint a U.S. Citizen Cybersecurity Primary and Alternate Coordinator who must or should, as applicable, submit contact information. The Cybersecurity Coordinator serves as the primary contact for cyber-related intelligence information and cybersecurity-related activities and communications with TSA and CISA; must/should be accessible to TSA and CISA 24 hours a day, seven days a week; must/should coordinate cyber and related security practices and procedures internally; and must/should work with appropriate law enforcement and emergency response agencies.
Cybersecurity Incident Reporting.	Owner/Operators Cybersecurity Coordinators are required or recommended, as applicable, to report actual and potential cybersecurity incidents to CISA within 24 hours of identification of a cybersecurity incident. The information provided to CISA pursuant to the SD is shared with TSA and may also be shared with the National Response Center and other agencies as appropriate. Conversely, information provided to TSA pursuant to this directive is shared with CISA and may also be shared with the National Response Center and other agencies as appropriate. Cybersecurity incident reports are submitted using the CISA Reporting System form at: *https://us-cert.cisa.gov/forms/report.* Incident reports can also be reported by calling (888) 282–0870. CISA has an approved information collection for cybersecurity incident reporting. *See* OMB control number 1670–0037.
Cybersecurity Incident Response Plan.	Owner/Operators are required or recommended, as applicable, to develop and adopt a Cybersecurity Incident Response Plan to reduce the risk of operational disruption should their Information Technology and/or Operational Technology systems be affected by a cybersecurity incident. Owner/operators must provide or are recommended to provide, as applicable, evidence of compliance to TSA upon request.

[2] *See* 49 U.S.C. 114(d). The TSA Administrator's current authorities under the Aviation and Transportation Security Act have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Public Law 107–296 (116 Stat. 2135, Nov. 25, 2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator of TSA, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

[3] 49 U.S.C. 114(f)(2).

[4] 49 U.S.C. 114(f)(3).

[5] 49 U.S.C. 114(f)(11).

[6] 49 U.S.C. 114(f)(15).

[7] Companies and agencies that are identified as higher-risk service the regions with the highest surface transportation-specific risk. Risk ranking is based on considerations related to ridership, location of services provided (use of the same stations and stops), and relationship between feeder and primary systems. *See https://www.tsa.gov/sites/default/files/guidance-docs/high_threat_urban_area_htua_group_designations_0.pdf.*

TABLE 1—SUMMARY OF SECURITY MEASURES IN THE SECURITY DIRECTIVE AND INFORMATION CIRCULAR—Continued

Title	Security measure
Cybersecurity Vulnerability Assessment.	Owner/Operators are required or recommended, as applicable, to assess their current cybersecurity posture consistent with the functions and categories found in the National Institute of Standards and Technology Cybersecurity Guidance Framework. The assessment and identification of cybersecurity gaps must or should, as applicable, be completed using a using a form provided by TSA. As part of this assessment, the owners and operators must/may identify remediation measures to address the vulnerabilities and cybersecurity gaps identified during the assessment and a plan for implementing the identified measures if necessary, and report the results to TSA. TSA will use the results of the assessments to make a global assessment of the cyber risk posture of the industry and possibly impose additional security measures as appropriate or necessary. TSA may also use the information, with company-specific data redacted, for TSA's intelligence-derived reports. TSA and CISA may also use information submitted for vulnerability identification, trend analysis, or to generate anonymized indicators of compromise or other cybersecurity products to prevent other cybersecurity incidents. All reported information will be protected in a manner appropriate for the sensitivity and criticality of the information.

Certification of Completion of SD Requirements

The SDs and IC took effect on December 31, 2021. Within 7 days of the effective date of the SDs, owner/operators must provide their designated Cybersecurity Coordinator information; within 90 days of the effective date of the SDs owner/operators must complete the Vulnerability Assessment (TSA form); within 180 days of the effective date of the SDs, owner/operators must adopt a Cybersecurity Incident Response Plan; within 7 days of completing the Cybersecurity Incident Response Plan requirement, owner/operators must submit a statement to TSA via email certifying that the owner/operator has completed this requirement of the SD. Owner/Operators can complete and submit the required information via email or other electronic options provided by TSA. Documentation of compliance must be provided upon request. As the measures in the IC are voluntary, the IC does not require owner/operators to report on their compliance.

Portions of the responses that are deemed Sensitive Security Information (SSI) are protected in accordance with procedures meeting the transmission, handling, and storage requirements of SSI set forth in 49 CFR part 15 and 1520.

TSA estimates this collection applies to 457 railroad owner/operators, 115 public transportation agencies and rail transit system owner/operators, and 209 over-the-road bus owner/operators, for a total of 781 respondents. TSA estimates the total hour burden for this collection to be 96,163 hours.

Dated: December 20, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–27886 Filed 12–22–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–26514]

Intent To Request Extension From OMB of One Current Public Collection of Information: Rail Transportation Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0051, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of contact information of security coordinators (SCs) and alternate SCs from certain freight rail and passenger rail entities; reporting of significant security concerns; documenting the transfer of custody and control of certain hazardous materials rail cars; and providing location and shipping information for certain hazardous materials rail cars.

DATES: Send your comments by February 22, 2022.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0051; Rail Transportation Security. TSA collects and uses information collected under 49 CFR parts 1570 and 1580 to enhance the security of the Nation's rail systems. Sections 1570.201 and 1570.203 require freight railroad carriers, certain rail hazardous materials shipper and receiver facilities, passenger railroad carriers, and rail mass transit systems to designate and submit contact information for a SC and at least one alternate SC to TSA.

Sections 1570.203 require freight railroad carriers, certain rail hazardous materials shipper and receiver facilities, passenger railroad carriers, and rail

mass transit systems to report to TSA significant security concerns, which include security incidents, suspicious activities, and threat information.[1]

Section 1580.203 requires freight railroad carriers, hazardous materials shippers, and hazardous materials receivers in a high threat urban area (HTUA) that handle certain categories and quantities of hazardous materials set forth in § 1580.3, known as ''rail security-sensitive materials'' (RSSM), to provide location and shipping information on rail cars under their physical custody and control to TSA upon request. The specified categories and quantities of RSSM cover explosive materials, materials poisonous by inhalation, and radioactive materials.

Section 1580.205 requires a secure chain of physical custody for rail cars containing RSSM which, in turn, requires freight railroad carriers and certain hazardous materials shippers and receivers of RSSM to document the transfer of custody of certain rail cars in writing or electronically and to retain these records for a minimum of 60 calendar days. Specifically, § 1580.205 requires documentation of the secure exchange of custody of rail cars containing RSSM between: A rail hazardous materials shipper and a freight railroad carrier; two separate freight railroad carriers, when the transfer of custody occurs within a HTUA, or outside of an HTUA, but the rail car may subsequently enter an HTUA; and a freight railroad carrier and a rail hazardous materials receiver located within an HTUA. The documentation must uniquely identify that the rail car was attended during the transfer of custody, including car initial and number; identification of individuals who attended the transfer (names or uniquely identifying employee number); location of transfer; and date and time the transfer was completed.

The total number of respondents for this collection is 1,760, and the annual burden is approximately 112,764 hours.

Dated: December 20, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2021–27876 Filed 12–22–21; 8:45 am]

BILLING CODE 9110–05–P

[1] The requirements of this section also apply to certain over-the-road bus owner/operators and owner/operators of bus-only public transportation systems. The collection of information associated with bus operations is covered by OMB Control No. 1652–0066; Security Training Program for Surface Transportation Employees.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000.L10200000.DF0000. LXSSH1040000.222.HAG 22–0004]

Notice of Public Meetings for the John Day Snake Resource Advisory Council (RAC) Planning Subcommittee and the John Day-Snake RAC, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) John Day-Snake Resource Advisory Council (RAC) and its Planning Subcommittee will meet.

DATES: The John Day-Snake Planning Subcommittee will meet from 6 p.m. Pacific Time (PT) to 8:30 p.m. PT Wednesday, January 12, 2022, via Zoom conference.

The John Day-Snake RAC will also meet via Zoom conference Thursday and Friday, February 17 and 18, 2022. The February 17 meeting will begin at 1:30 p.m. PT and conclude at 5:30 p.m. PT. The February 18 meeting will begin at 8 a.m. PT and conclude at 1 p.m. PT.

All meetings are open to the public and public comment periods will be held each day of the RAC and Subcomimttee meetings.

ADDRESSES: Both the RAC and Subcommittee Zoom meeting details and agendas will be published on the RAC web page at least 2 weeks in advance at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac.* Written comments can be sent to BLM, Baker Field Office, 3100 H St., Baker City, OR 97814, or emailed to *lbogardus@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, telephone: (541) 219–6863; email: *lbogardus@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Ms. Bogardus during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member John Day-Snake RAC was chartered and appointed by the Secretary of the Interior. Its diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to the BLM and, as needed, to the U.S. Forest Service resource managers regarding management plans and proposed resource actions on public land within the Vale and Prineville BLM Districts and the Wallowa-Whitman, Umatilla, Malheur, Ochoco, and Deschutes National Forests. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested prior to the start of each meeting. Agenda topics for the February RAC meeting include amenity recreation fee proposals; reports on the Central Cascades Wilderness Permit implementation and Thirtymile Recreation and Travel Management Plan; Bureau updates on energy and minerals, timber, rangeland and grazing, wildland fire and fuels, and wild horses and burros; and any other business that may reasonably come before the RAC.

The Planning Subcommittee was established to gather information, conduct research, and analyze relevant issues and facts on selected topics for future consideration by the RAC. The Subcommittee's primary goal is to provide information to the RAC members that allows them to better respond to time-sensitive issues, such as responding to an environmental document within the public comment period. No decisions are made at the subcommittee level. Agenda topics for the January Subcommittee meeting include research and discussion on Wallowa-Whitman National Forest recreation fee proposals for selected developed campgrounds and cabin rentals; Malheur National Forest recreation fee proposal for selected developed cabins and campgrounds; and a Lower Deschutes Business Plan and Fee Proposal update.

The Designated Federal Officer will attend the meetings, take minutes, and publish these minutes on the RAC web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac.*

For members of the public who want to provide comments to the RAC and/or Subcommittee, before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Dennis C. Teitzel,

Prineville District Manager.

[FR Doc. 2021–27881 Filed 12–22–21; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NPS32651; PPWOVPADU0, PPMPRLE1Y.Y00000]

El Portal Administrative Site; Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: On behalf of the United States, the National Park Service has accepted concurrent criminal legislative jurisdiction from the State of California over federally-owned lands administered by the National Park Service comprising the El Portal Administrative Site adjacent to Yosemite National Park.

DATES: Concurrent criminal legislative jurisdiction with the El Portal Administrative Site became effective on March 22, 2021. The cession shall continue only so long as the lands are owned by the United States and used for the purposes for which jurisdiction is ceded or for 10 years, whichever period is less.

FOR FURTHER INFORMATION CONTACT: Kevin Killian, Chief Ranger, Yosemite National Park; *telephone:* 209.372.0211; *email: Kevin_Killian@nps.gov.*

SUPPLEMENTARY INFORMATION: On March 22, 2021, a Resolution of Cession of Concurrent Criminal Legislative Jurisdiction was recorded at the request of the State of California in the Mariposa County Recorder's Office at 8:50 a.m. The Resolution certifies that the Commissioners for the California State Lands Commission met on February 23, 2021, and made a cession of concurrent criminal legislative jurisdiction to the United States over lands within the El Portal Administrative Site in Mariposa County pursuant to the authority conferred upon them by California Government Code Section 126. The National Park Service, on behalf of the United States, has accepted the cession of jurisdiction pursuant to 40 U.S.C. 3112.

Jennifer Flynn,

Associate Director, Visitor and Resource Protection, National Park Service.

[FR Doc. 2021–27859 Filed 12–22–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–567 (Advisory Opinion Proceeding 3]

Certain Foam Footwear; Institution of an Advisory Opinion Proceeding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. of Niwot, Colorado. 71 FR 27514–15 (May 11, 2006). The complaint alleged, *inter alia,* violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear, by reason of infringement of claims 1–2 of U.S. Patent No. 6,993,858 (''the '858 patent'') and U.S. Patent No. D517,789 (''the '789 patent''). The notice of investigation named several respondents.

On July 25, 2008, the Commission issued a final determination finding no violation of section 337 based on non-infringement and failure to satisfy the technical prong of the domestic industry requirement with respect to the '789 patent and based on invalidity of the '858 patent as obvious under 35 U.S.C. 103. 73 FR 45073–74 (Aug. 1, 2008). On July 15, 2011, after an appeal to the U.S. Court of Appeals for the Federal Circuit and subsequent remand vacating the Commission's previous finding of no violation, the Commission found a violation of section 337 based on infringement of the asserted claims of the patents and issued, *inter alia,* a general exclusion order (''GEO''). 76 FR 43723–24 (July 21, 2011). On March 28, 2020, the '789 patent expired, so the GEO is now only directed to articles that infringe one or more of claims 1 and 2 of the '858 patent.

On November 17, 2021, non-respondent, Triple T Trading Ltd. (''Triple T'') of Marysville, Washington, petitioned for institution of an expedited advisory opinion proceeding to determine whether its fleece-lined shoes and shoes with plastic washers are covered by the GEO. On November 29, 2021, Crocs opposed Triple T's petition for an expedited advisory opinion proceeding. On December 9, 2021, Triple T filed a motion for leave to respond to Crocs' opposition. The Commission has determined to grant the motion.

The Commission has determined that Triple T's petition complies with the requirements for institution of an advisory opinion proceeding under Commission Rule 210.79 to determine whether its fleece-lined shoes and shoes with plastic washers fall within the scope of the GEO. Accordingly, the Commission has determined to institute an advisory opinion proceeding and refer it to the Office of the General Counsel. The parties will furnish the Office of the General Counsel with information as requested in the accompanying order, and the Commission will issue an advisory opinion within ninety (90) days of the date of publication of this notice in the **Federal Register**. The following entities are named as parties to the proceeding: (1) Triple T and (2) Crocs.

The Commission vote for this determination took place on December 17, 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: December 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27800 Filed 12–22–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1262]

Certain Skin Rejuvenation Resurfacing Devices, Components Thereof, and Products Containing the Same; Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Terminate the Investigation in Its Entirety Based on Settlement; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 12) of the presiding administrative law judge (''ALJ'') granting complainants' unopposed motion to terminate the investigation in its entirety based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 21, 2021, the Commission instituted this investigation based on a complaint filed by InMode Ltd. of Yokneam, Israel and Invasix Inc. d/b/a InMode of Lake Forest, California (collectively, ''InMode''). 86 FR 20712–13 (Apr. 21, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain skin rejuvenation resurfacing devices, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 10,799,285. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation (''NOI'') named ILOODA Co., Ltd. (''ILOODA'') of Suwon, Republic of Korea and Cutera, Inc. (''Cutera'') of Brisbane, California (collectively, ''Respondents'') as respondents. *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On September 22, 2021, the Commission determined to review an ID (Order No. 8) of the ALJ granting InMode's motion to amend the complaint and NOI in the above-captioned investigation to add a claim asserting a violation of 19 U.S.C. 1337(a)(1)(A) against Cutera. On review, the Commission determined to vacate the ID and to remand the issue to the ALJ for further proceedings. On remand, the ALJ denied InMode's motion on September 23, 2021.

On November 22, 2021, InMode filed an unopposed motion to terminate the investigation as to Respondents based on a settlement agreement between InMode and Respondents.

On December 2, 2021, the ALJ issued the subject ID (Order No. 12) granting InMode's unopposed motion to terminate the investigation as to Respondents based on settlement. The ID finds that the motion satisfies the requirements of Commission Rule 210.21(b) (19 CFR 210.21(b)) and that terminating the investigation as to Respondents is not contrary to the public interest. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The investigation is terminated.

The Commission vote for this determination took place on December 20, 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: December 20, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27908 Filed 12–22–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–1574 (Preliminary)]

Superabsorbent Polymers From South Korea

Determination

On the basis of the record [1] developed in the subject investigation, 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 superabsorbent polymers (''SAP'') from South Korea, provided for in subheading 3906.90.50 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'').[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of an affirmative preliminary determination in the investigation under § 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. 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 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 investigation.

Background

On November 2, 2021, the Ad Hoc Coalition of American SAP Producers, whose members include BASF Corporation (''BASF''), Florham Park,

[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 6715 (November 30, 2021).

New Jersey; Evonik Superabsorber LLC (''Evonik''), Greensboro, North Carolina; and Nippon Shokubai America Industries, Inc. (''NSAI''), Pasadena, Texas, filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of superabsorbent polymers from South Korea. Accordingly, effective November 2, 2021, the Commission instituted antidumping duty investigation No. 731–TA–1574 (Preliminary).

Notice of the institution of the Commission's investigation 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 November 10, 2021 (86 FR 52565). 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. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on December 17, 2021. The views of the Commission are contained in USITC Publication 5273 (December 2021), entitled *Superabsorbent Polymers from South Korea: Investigation No. 731–TA–1574 (Preliminary).*

By order of the Commission.

Issued: December 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27801 Filed 12–22–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–771–772 and 775 (Fourth Review)]

Stainless Steel Wire Rod From Japan, South Korea, and Taiwan; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on stainless steel wire rod from Japan, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 4, 2021.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202–708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 35124, July 1, 2021) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on January 4, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before January 12, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by January 12, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response to its notice of institution filed on behalf of on behalf of Carpenter Technology Corporation, North American Stainless, and Universal Stainless & Alloy Products, Inc., which are all domestic producers of stainless steel wire rod, to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27799 Filed 12–22–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Adalimumab, Processes for Manufacturing or Relating to Same, and Products Containing Same, DN 3585;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of AbbVie Inc.; AbbVie Biotechnology Ltd.; and AbbVie Operations Singapore Pte. Ltd. on December 17, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adalimumab, processes for manufacturing or relating to same, and products containing same. The complainant names as respondents: Alvotech hf. of Iceland; Alvotech Germany GmbH of Germany; Alvotech Swiss AG of Switzerland; Alvotech USA Inc. of Arlington, VA; Teva Pharmaceutical Industries Ltd. of Israel; Teva Pharmaceuticals USA Inc. of North Wales, PA; and Ivers-Lee AG of Switzerland. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3585'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27811 Filed 12–22–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. 2021R–01]

Commerce in Explosives; 2021 Annual List of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: This notice publishes the 2021 List of Explosive Materials, as required by law. The 2021 list is the same as the 2020 list published by ATF.

DATES: The list becomes effective December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Marianna Mitchem, Chief; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Department of Justice; 99 New York Avenue NE, Washington, DC 20226; (202) 648–7120.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department of Justice must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as ''explosive materials'' in 18 U.S.C. 841(c).

Each material listed, as well as all mixtures containing any of these materials, constitute ''explosive materials'' under 18 U.S.C. 841(c). Materials constituting blasting agents are marked by an asterisk. Explosive materials are listed alphabetically, and, where applicable, followed by their common names, chemical names, and/or synonyms in brackets. This list supersedes the List of Explosive Materials published in the **Federal Register** on December 23, 2020 (Docket No. 2020R–01, 85 FR 83999).

The 2021 List of Explosive Materials is a comprehensive list, but is not all-inclusive. The definition of ''explosive materials'' includes ''[e]xplosives, blasting agents, water gels and detonators. Explosive materials, include, but are not limited to, all items in the 'List of Explosive Materials' provided for in § 555.23.'' 27 CFR 555.11. Accordingly, the fact that an explosive material is not on the annual list does not mean that it is not within coverage of the law if it otherwise meets the statutory definition of ''explosives'' in 18 U.S.C. 841. Subject to limited exceptions in 18 U.S.C. 845 and 27 CFR 555.141, only Federal explosives licensees and permittees may possess and use explosive materials, including those on the annual list.

Notice of the 2021 Annual List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as ''explosive materials'' covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
* ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
Black powder substitutes.
* Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfide [hexanitrodiphenyl sulfide].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrotriazolone [3-nitro-1,2,4-triazol-5-one].
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
Pyrotechnic fuses.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzenesulfonic acid [picryl sulfonic acid].
Trinitrobenzoic acid.
Trinitrocresol.
Trinitrofluorenone.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthomonas hydrophilic colloid explosive mixture.

Marvin G. Richardson,

Acting Director.

[FR Doc. 2021–27852 Filed 12–22–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On December 20, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States* v. *H. Kramer & Co., et al.,* Case No. 1:21–cv–6749.

The United States filed a Complaint in this lawsuit under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607. The Complaint seeks reimbursement of more than $2.189 million in costs that the U.S. Environmental Protection Agency (''EPA'') incurred for environmental cleanup-related response activities relating to the Pilsen Area Soil Site in Chicago, Illinois. The three defendants in the lawsuit are H. Kramer & Co., BNSF Railway Company, and the City of Chicago.

When the Complaint was filed, the United States also lodged a proposed Consent Decree that would settle the claims asserted in the Complaint on agreed terms and conditions. The defendants would pay the United States a total of $1.95 million in settlement of the United States' claims for recovery of EPA's unreimbursed past costs.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *H. Kramer & Co., et al.,* D.J. Ref. No. 90–11–3–12477. 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 Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia A. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–27879 Filed 12–22–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments (CM–908)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Program (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 24, 2022.

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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Coal mine operators who pay monthly benefits must notify the Department's Division of Coal Mine Workers' Compensation (DCMWC) of any change in payments and the reason for that change. DCMWC uses this notification to monitor payments and ensure that beneficiaries receive the correct benefit rate. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 24, 2021 (86 FR 33377).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments (CM–908).

OMB Control Number: 1240–0030.

Affected Public: Private Sector: Businesses or other for-profit institutions.

Total Estimated Number of Respondents: 325.

Total Estimated Number of Responses: 4,900.

Total Estimated Annual Time Burden: 980 hours.

Total Estimated Annual Other Costs Burden: $2,078.

Authority: 44 U.S.C. 3507(a)(1)(D).

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2021–27804 Filed 12–22–21; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the addition of four test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of SGS of North America, Inc. (SGS), as a NRTL. SGS's expansion covers the addition of eighteen test standards to the scope of recognition. Additionally, OSHA announces the addition of four test standards to the NRTL Program's List of Appropriate Test Standards.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS submitted an application to OSHA to expand recognition as a NRTL to include twenty additional test standards on June 5, 2020 (OSHA–2006–0040–0070). This application was amended on June 8, 2021, to remove one standard from the original application (OSHA–2006–0040–0071). OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing SGS's expansion application and proposed addition to the NRTL Program's List of Appropriate Test Standards in the **Federal Register** on November 1, 2021 (86 FR 60299). As OSHA noted therein, OSHA preliminarily determined that one of the standards requested in the application, UL 4200A, Standard for Products Incorporating Button or Coin Cell Batteries of Lithium Technologies, does not meet the appropriate test standard requirements in 29 CFR 1910.7(c) because it does not specify the safety requirements for specific equipment or a class of equipment as required by the regulation. Therefore the agency did not consider this standard in SGS's expansion application. The expansion in this notice includes the remaining eighteen standards.

The agency requested comments by November 16, 2021, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of SGS's scope of recognition.

To obtain or review copies of all public documents pertaining to SGS's application, go to *http://www.regulations.gov.* Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350, TTY (877) 889–5627.

II. Final Decision and Order

OSHA staff examined SGS's expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for expansion of the recognition, subject to the specified limitation and conditions listed. OSHA, therefore, is proceeding with this final notice to grant expansion of SGS's scope of recognition. OSHA limits the expansion of SGS's scope of recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 50	Enclosures for Electrical Equipment.
UL 458	Power Converters/Inverters and Power Converter/Inverter Systems for Land Vehicles and Marine Crafts.
UL 1973	Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications.
UL 2054	Standard for Household and Commercial Batteries.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
UL 2097	Reference Standard for Double Insulation Systems for Use in Electronic Equipment.
UL 2271	Standard for Batteries for Use in Light Electric Vehicles (LEV) Applications.
UL 2272*	Standard for Electrical Systems for Personal E-Mobility Devices.
UL 2738	Standard for Induction Power Transmitters and Receivers for Use with Low Energy Products.
UL 2743*	Standard for Portable Power Packs.
UL 8139*	Electrical Systems of Electronic Cigarettes and Vaping Devices.
UL 1090	Electric Snow Movers.
UL 1447	Electric Lawn Mowers.
UL 61010–2–040	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–040: Particular Requirements for Sterilizers and Washer-Disinfectors Used to Treat Medical Materials.
UL 61010–2–081	Standard for Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–081: Particular Requirements for Automatic and Semi-Automatic Laboratory Equipment for Analysis and Other Purposes.
UL 61010–2–091	Standard for Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–091: Particular Requirements for Cabinet X-Ray Systems.
UL 61010–2–101	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment.
UL 61010–2–201	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–201: Particular Requirements for Control Equipment.
UL 2849*	Standard for Electrical Systems for eBikes

*Represents the standards OSHA is adding to the NRTL Program's List of Appropriate Test Standards (see Table 2, below).

In this notice, OSHA also announces the addition of four new test standards to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA has determined that these test standards are appropriate test standards and will include them in the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 2272	Standard for Electrical Systems and Personal E-Mobility Devices.
UL 2743	Standard for Portable Power Packs.
UL 8139	Electrical Systems of Electronic Cigarettes and Vaping Devices.
UL 2849	Standard for Electrical Systems for eBikes

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standard listed above as an American National Standard. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), only standards determined to be appropriate test standards may be approved for NRTL recognition. Any NRTL recognized for an appropriate test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, SGS must abide by the following conditions of recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in the operations as a NRTL, and provide details of the change(s);

2. SGS must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of SGS, subject to the limitations and conditions specified above. OSHA also adds four new test standards to the NRTL Program's List of Appropriate Test Standards.

III. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–27802 Filed 12–22–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of virtual open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at *ACVETEO@dol.gov*. Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at *https://www.dol.gov/agencies/vets/about/advisorycommittee*. This notice also describes the functions of the ACVETEO. This document is intended to notify the general public.

DATES: Thursday, January 27, 2022 beginning at 10:00 a.m. and ending at approximately 12:00 p.m.(EDT).

ADDRESSES: This ACVETEO meeting will be held via TEAMS and teleconference. Meeting information will be posted at the link below under the Meeting Updates tab. *https://www.dol.gov/agencies/vets/about/advisorycommittee*

Notice of Intent to Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, January 14, 2022, via email to Mr. Gregory Green at *ACVETEO@dol.gov,* subject line ''January 2022 ACVETEO Meeting.''

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, January 14, 2022 by contacting Mr. Gregory Green at *ACVETEO@dol.gov*. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, *ACVETEO@dol.gov,* (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

10:00 a.m. Welcome and remarks, James Rodriguez, Principal Deputy Assistant Secretary, Veterans' Employment and Training Service
10:10 a.m. Administrative Business, Gregory Green, Designated Federal Official
10:15 a.m. Discussion and review of Fiscal Year 2021 Annual Report Recommendations Committee Chairman, Darrell Roberts
10:45 a.m. Wounded Warriors and Caregiver Employment Workshop (WWCEW) brief
11:15 a.m. Off-Base Transition Training (OBTT) brief
11:45 a.m. Public Forum, Gregory Green, Designated Federal Official
12:00 p.m. Adjourn

Authority: Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Signed in Washington, DC, this 17th day of December 2021.

James D. Rodriquez,

Principal Deputy Assistant Secretary, Veterans' Employment and Training.

[FR Doc. 2021–27806 Filed 12–22–21; 8:45 am]

BILLING CODE 4510–79–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; System of Records

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the U.S. Merit Systems Protection Board (MSPB) proposes to establish a new system of records titled ''MSPB—3, Reasonable Accommodations.'' This system of records includes information that MSPB collects, maintains, and uses on applicants for employment and employees who request and/or receive reasonable accommodations from MSPB for medical or religious reasons.

DATES: Please submit comments on or before January 24, 2022. This new system is effective upon publication in today's **Federal Register**, with the exception of the routine uses, which are effective January 24, 2022.

ADDRESSES: You may submit written comments to the Office of the Clerk of the Board by email to *privacy@mspb.gov* or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. All comments must reference ''MSPB—3, Reasonable Accommodations SORN.'' Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to MSPB's website (*https://www.mspb.gov*) and will include any personal information you provide, such as your name, address, phone number, email address, or any other personally identifying information in your comment or materials. Therefore, any submissions will be made public and without change.

FOR FURTHER INFORMATION CONTACT: For general questions or privacy issues, please contact: D. Fon Muttamara, Chief Privacy Officer, Office of the Clerk of the Board, 1615 M Street NW, Washington, DC 20419 at (202) 653–7200 or *privacy@mspb.gov.* Please include ''Reasonable Accommodations SORN'' with your question(s).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, 5 U.S.C. 552a, the MSPB proposes to establish a new system of records titled ''MSPB—3, Reasonable Accommodations.'' This system of records covers MSPB's collection, maintenance, and use of records on applicants for employment and employees who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical or religious reasons.

Title V of the Rehabilitation Act of 1973, as amended, prohibits discrimination in services and employment on the basis of disability, and Title VII of the Civil Rights Act of 1964 prohibits discrimination, including on the basis of religion. These prohibitions on discrimination require

Federal agencies to provide reasonable accommodations to individuals with disabilities and those with sincerely held religious beliefs unless doing so would impose an undue hardship. In some instances, individuals may request modifications to their workspace, schedule, duties, or other requirements for documented medical reasons that may not qualify as a disability but may necessitate an appropriate modification to workplace policies and practices. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Reasonable accommodations on the basis of disability typically fall into the following categories: (1) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a position; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; and (3) modifications or adjustments that enable a qualified employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly-situated employees without disabilities. Applicants and employees may obtain exceptions to rules or policies in order to follow their religious beliefs or practices, and employers may grant certain accommodations for religious reasons but still refuse to grant them for secular reasons.

MSPB's Office of Equal Employment Opportunity is responsible for processing requests for reasonable accommodations from applicants for employment and employees who seek an accommodation due to a medical or religious reason, as well as processing requests based on documented medical reasons that may not qualify as a disability but that may necessitate an appropriate modification to workplace policies and practices.

The request and any related records provided to support the request, any evaluation conducted internally, or by a third party under contract with MSPB, the decision regarding whether to grant or deny a request, and the details and conditions of the reasonable accommodation are all included in this system of records, pursuant to the Privacy Act, which will be included in MSPB's inventory.

The Privacy Act embodies fair information practice principles in a statutory framework governing how Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of MSPB by complying with MSPB Privacy Act regulations at 5 CFR part 1205, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The new Reasonable Accommodations System of Records Notice is published in its entirety below. In accordance with the Privacy Act, 5 U.S.C. 552a(r), and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act'' (Dec. 2016), MSPB has submitted a report of a new system of records to the Office of Management and Budget and Congress.

Jennifer Everling,

Acting Clerk of the Board, U.S. Merit Systems Protection Board.

SYSTEM NAME AND NUMBER:

MSPB—3, Reasonable Accommodations.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Office of Equal Employment Opportunity, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Records may be located in locked cabinets and offices, on MSPB's local area network, or in designated U.S. data centers for cloud service providers certified by the Federal Risk and Authorization Management Program or FedRAMP.

SYSTEM MANAGER(S):

Director of the Office of Equal Employment Opportunity, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419, *accommodation@mspb.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR 1605 (Guidelines on Discrimination Because of Religion); 29 CFR 1614 (Federal Sector Equal Employment Opportunity); 29 CFR 1630 (Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act); Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to allow MSPB to collect and maintain records on applicants for employment and employees who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical or religious reasons; to process, evaluate, and make decisions on individual requests; and to track and report the processing of such requests MSPB-wide to comply with applicable requirements in law, regulation, and policy, and to maintain the confidentiality of the information provided in support of the accommodation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for MSPB employment and former and current MSPB employees who requested and/or received reasonable accommodations or other appropriate modifications from MSPB for medical or religious reasons.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Requester status (applicant or former or current employee);
2. Requester name;
3. Date of request;
4. Employee's position title, grade, series, step, and agency component;
5. Position title, grade, series, step of the position, and agency component the requester is applying for (if applicable);
6. Requester's contact information (addresses, phone numbers, and email addresses);
7. Name and contact information of medical professionals or religious or spiritual advisors or institutions;
8. Description of the requester's medical condition or disability and any medical documentation provided in support of the request;

9. Requester's statement of a sincerely held religious belief and any additional information provided concerning that religious belief and the need for an accommodation to exercise that belief;

10. Description of the accommodation being requested;

11. Description of previous requests for accommodation and dispositions;

12. Documentation by an MSPB official concerning whether the disability is obvious, and the accommodation is obvious and uncomplicated, whether medical documentation is required to evaluate the request, whether research is necessary regarding possible accommodations, and any extenuating circumstances that prevent the MSPB official from meeting the relevant timeframe;

13. Whether the request for reasonable accommodation was granted or denied, and if denied the reason(s) for denial;

14. The identity of the decision-maker for the request;

15. The number of days taken to process the request;

16. The sources of technical assistance consulted in trying to identify a possible reasonable accommodation;

17. Any reports or evaluations prepared in determining whether to grant or deny the request; and

18. Any other information collected or developed in connection with the request for a reasonable accommodation.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants for employment and employees who request and/or receive a reasonable accommodation or other appropriate modification from MSPB, directly or indirectly from an individual's medical provider or another medical professional who evaluates the request, directly or indirectly from an individual's religious or spiritual advisors or institutions, and from management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside MSPB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys; or another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party or potential party or the party's or potential party's authorized representative in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

(1) MSPB, or any component thereof;

(2) Any employee or former employee of MSPB in his or her official capacity;

(3) Any employee or former employee of MSPB in his or her individual capacity where the Department of Justice or MSPB has agreed to represent the employee; or

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the MSPB General Counsel's approval, pursuant to 5 CFR part 1216 or otherwise.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

c. To a member of Congress or the White House from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.

d. To the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

e. To appropriate agencies, entities, and persons when (1) MSPB suspects or has confirmed that there has been a breach of the system of records; (2) MSPB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, MSPB (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 MSPB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when MSPB 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.

g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for MSPB when MSPB determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to MSPB employees.

h. To another Federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation.

i. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge or administrative law judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an individual who requested a reasonable accommodation or other appropriate modification.

j. To another Federal agency, including but not limited to the Equal Employment Opportunity Commission and the Office of Special Counsel, to obtain advice regarding statutory, regulatory, policy, and other requirements related to requests for reasonable accommodation, and to evaluate and report on the agency's performance responding to requests for reasonable accommodation.

k. To a Federal agency or entity authorized to procure assistive technologies and services in response to a request for reasonable accommodation.

l. To first aid, medical, and safety personnel if the individual's medical condition requires emergency treatment.

m. To another Federal agency or oversight body charged with evaluating MSPB's compliance with the laws, regulations, and policies governing reasonable accommodation requests.

n. To another Federal agency pursuant to a written agreement with MSPB to provide services (such as medical evaluations), when necessary, in support of reasonable accommodation decisions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system are stored electronically on MSPB's local area network or with FedRAMP-authorized cloud service providers. Access is limited to a small number of authorized personnel at MSPB. In addition, if paper records exist, they are stored in locked file cabinets in access-restricted offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name or other unique personal identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records maintained in this system of records are subject to NARA General Records Schedule (GRS) 2.3 (Employee Relations Records), Item 20 (Reasonable accommodation case files). NARA GRS 2.3 instructs disposition three years after employee separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures, such as access controls, mandatory security and privacy training, encryption, multi-factor authentication, security guards, and locked offices.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Individuals requesting access must comply with MSPB's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 1205).

CONTESTING RECORD PROCEDURES:

Individuals may request that records about them be amended by writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Individuals requesting amendment must follow MSPB's Privacy Act regulations regarding verification of identity and amendment to records (5 CFR part 1205).

NOTIFICATION PROCEDURES:

See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–27874 Filed 12–22–21; 8:45 am]

BILLING CODE 7400–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 21–13]

Report on the Selection of Eligible Countries for Fiscal Year 2022

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with the Millennium Challenge Act of 2003, as amended. The report is set forth in full below.

Authority: Section 608(d)(2) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(d)(2) (the Act).

Dated: December 20, 2021.

Thomas G. Hohenthaner,

Acting VP/General Counsel and Corporate Secretary.

Report on the Selection of Eligible Countries for Fiscal Year 2022

Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, as amended (the Act) (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting poverty reduction through economic growth, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (MCC) to determine the countries that will be eligible to receive assistance for the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty through economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are ''candidate countries'' for assistance for fiscal year (FY) 2022 based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries, but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

2. The criteria and methodology that the Board of Directors of MCC (the Board) used to measure and evaluate the policy performance of the ''candidate countries'' consistent with the requirements of section 607 of the Act in order to determine ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act (22 U.S.C. 7707(b))); and

3. The list of countries determined by the Board to be ''eligible countries'' for FY 2022, with justification for eligibility determination and selection for compact negotiation, including with which of the eligible countries the Board will seek to enter into compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY 2022. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY 2022 with which the MCC will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions. The report also identifies countries selected by the Board to receive assistance under MCC's threshold program pursuant to section 616 of the Act (22 U.S.C. 7715).

Eligible Countries

The Board met on December 14, 2021 to select those eligible countries with which the United States, through MCC, will seek to enter into a Millennium Challenge Compact pursuant to section 607 of the Act (22 U.S.C. 7706). The Board selected the following eligible countries for such assistance for FY 2022: Belize and Zambia. The Board also selected the following previously selected countries for compact assistance for FY 2022: Benin, Burkina Faso, Côte d'Ivoire, Indonesia, Lesotho, Malawi, Mozambique, Niger, Sierra Leone, and Timor-Leste.

Criteria

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2022'' formally submitted to Congress on September 29, 2021, selection was based primarily on a country's overall performance in three broad policy categories: *Ruling Justly, Encouraging Economic Freedom,* and *Investing in People.* The Board relied, to the fullest extent possible, upon transparent and

independent indicators to assess countries' policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries' performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of countries with a GNI per capita equal to or less than $1,965, or the group with a GNI per capita between $1,966 and $4,095.

The criteria and methodology used to assess countries on the annual scorecards are outlined in the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance for Fiscal Year 2022.'' [1] Scorecards reflecting each country's performance on the indicators are available on MCC's website at *https://www.mcc.gov/who-we-select/scorecards.*

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption, investments in human development outcomes, or poverty rates. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds.

The Board sees the selection decision as an annual opportunity to determine where MCC funds can be most effectively used to support poverty reduction through economic growth in relatively well-governed, poor countries. The Board carefully considers the appropriate nature of each country partnership—on a case-by-case basis—based on factors related to poverty reduction through economic growth, the sustainability of MCC's investments, and the country's ability to attract and leverage public and private resources in support of development.

This was the fourth year the Board considered the eligibility of countries for concurrent compacts. In addition to the considerations for compact eligibility detailed above, the Board considered whether a country being considered for a concurrent compact is making considerable and demonstrable progress in implementing the terms of its existing compact.

This was the thirteenth year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(l) of the Act. MCC's engagement with partner countries is not open-ended, and the Board is deliberate when selecting countries for follow-on partnerships, particularly regarding the higher bar applicable to subsequent compact countries. In making these selection decisions, the Board considered—in addition to the criteria outlined above—the country's performance implementing its prior compact, including the nature of the country's partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country implemented the compact in accordance with MCC's core policies and standards. To the greatest extent possible, these factors were assessed using pre-existing monitoring and evaluation targets and regular quarterly reporting. This information was supplemented with direct surveys and consultation with MCC staff responsible for compact implementation, monitoring, and evaluation. MCC published a Guide to Supplemental Information [2] and related webpages [3] regarding how MCC assesses performance on the Access to Credit, Land Rights and Access, and Business Start-Up indicators on the scorecard, in order to increase transparency about the type of supplemental information the Board uses to assess a country's policy performance. The Board also considered a country's commitment to further sector reform, as well as evidence of improved scorecard policy performance.

In addition, this is the sixth year where the Board considered an explicit higher bar for those countries close to the upper end of the candidate pool, looking closely in such cases at a country's access to development financing, the nature of poverty in the country, and its policy performance.

Countries Newly Selected for Compact Assistance

Using the criteria described above, two candidate countries under section 606(a) of the Act (22 U.S.C. 7705(a) were newly selected for assistance under section 607 of the Act (22 U.S.C. 7706): Belize and Zambia. In accordance with section 609(k) of the Act, no candidate countries were newly selected to explore development of a concurrent compact program under section 607 of the Act (22 U.S.C. 7706).

Belize: Belize offers MCC the opportunity to engage with a country that is committed to democratic governance but that faces rising poverty rates, significant challenges to economic growth, and vulnerability to external shocks. Belize meets the scorecard criteria, passing 13 of 20 indicators overall in FY 2022, with strong performance on both the Control of Corruption and Democratic Rights ''hard hurdles.'' By selecting Belize for a compact, MCC will support the government's efforts to strengthen economic growth to reduce poverty and address the development challenges facing the country.

Zambia: Zambia's recent democratic transition and demonstrated commitment to pursuing critical economic and democratic governance reforms contributed to the Board's decision to select Zambia for a subsequent compact. Zambia passes the scorecard in FY 2022, passing 15 of 20 indicators overall, including both the Control of Corruption and Democratic Rights ''hard hurdles.'' By selecting Zambia for a compact, MCC can support the government's efforts to make key economic and governance reforms, reduce poverty and strengthen economic growth, and address the country's pressing development challenges.

Countries Selected To Continue Compact Development

Ten of the countries selected for compact assistance for FY 2022 were previously selected for FY 2021. Indonesia, Lesotho, Malawi, Mozambique, Sierra Leone, and Timor-Leste were selected to continue developing ''domestic'' compacts. Benin, Burkina Faso, Côte d'Ivoire, and Niger were selected to continue developing concurrent compacts for the purpose of regional integration. Selection of these countries for FY 2022 was based on an assessment of their policy performance since their prior selection.

Although the Board reselected Benin, it endorsed MCC's determination to significantly reduce the portion of the planned regional investment that would be made in Benin through a concurrent compact due to Benin's multi-year decline in its commitment to the principles that underpin MCC's eligibility criteria, including the core principles of democratic governance.

[1] Available at *https://www.mcc.gov/resources/doc/report-selection-criteria-methodology-fy22.*

[2] Available at *https://www.mcc.gov/resources/doc/guide-to-supplemental-information.*

[3] Available at *https://www.mcc.gov/blog/entry/blog-101921-financial-inclusion* (Access to Credit and Land Rights and Access) and *https://www.mcc.gov/who-we-select/indicators/doing-business-indicators-fy22* (Business Start-Up).

Countries Selected To Receive Threshold Program Assistance

The Board did not newly select any countries to receive threshold program assistance for FY 2022.

Countries Selected To Continue Developing Threshold Programs

The Board selected Kenya and Kiribati to continue developing threshold programs. Selection of these countries for FY 2022 was based on their continued performance since their prior selection.

Ongoing Review of Partner Countries' Policy Performance

The Board emphasized the need for all partner countries to maintain or improve their policy performance. If it is determined during compact implementation that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.[4]

[FR Doc. 2021–27955 Filed 12–21–21; 11:15 am]

BILLING CODE 9211–03–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–32 and CP2022–39; MC2022–33 and CP2022–40]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 28, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

[4] Available at *https://www.mcc.gov/who-we-select/suspension-or-termination.*

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).:* MC2022–32 and CP2022–39; *Filing Title:* USPS Request to Add Priority Mail Contract 734 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 17, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 28, 2021.

2. *Docket No(s).:* MC2022–33 and CP2022–40; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 128 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 17, 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:* December 28, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–27865 Filed 12–22–21; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93825; File No. SR–CboeBZX–2021–082]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Juneteenth National Independence Day a Holiday of the Exchange

December 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2021, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its rules to make Juneteenth National Independence Day a holiday of the Exchange. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.1 (Hours of Trading and Trading Days) to make Juneteenth National Independence Day a holiday of the Exchange. On June 17, 2021, Juneteenth National Independence Day was designated a legal public holiday.[3] Consistent with broad industry sentiment [4] and the approach recommended by the Securities Industry and Financial Markets Association (''SIFMA''),[5] the Exchange proposes to add ''Juneteenth National Independence Day'' to the existing list of holidays set forth in Rule 11.1(b). As a result, the Exchange will not be open for business on Juneteenth National Independence Day, which falls on June 19 of each year. In accordance with Rule 11.1(b), when a holiday falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and when it falls on a Sunday, the Exchange will not be open for business on the succeeding Monday, unless otherwise indicated by the Exchange.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed amended rule would clearly state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 fell on a Saturday or Sunday. The change would thereby promote clarity and transparency in the Exchange rules by updating the list of holidays of the Exchange. The proposed rule change is also based on recent proposals by other exchanges.[10] Therefore, the proposed change does not raise any new or novel issues.

For these 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,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to conform to industry practice with respect to holidays.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Exchange believes that waiver of operative delay would be consistent with the protection of investors and the public interest because the proposed rule change would state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken

[3] Public Law 117–17.

[4] See *e.g., https://www.bloomberg.com/news/articles/2021-06-18/bofa-makesjuneteenth-a-holiday-joining-jpmorgan-wells-fargo?sref=Hhue1scO.*

[5] SIFMA recommends a full market close in observance of Juneteenth National Independence Day. See *https://www.sifma.org/resources/general/holidayschedule/.* See also *https://www.sifma.org/resources/news/sifma-revises-2022-fixed-income-market-close-recommendations-in-the-u-s-to-include-full-close-for-juneteenth-national-independence-day/.*

[6] See BZX Exchange Rule 11.1(b).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5)

[9] 15 U.S.C. 78f(b)(1).

[10] See *e.g.,* Securities Exchange Act Release No. 93186 (September 30, 2021), 86 FR 55068 (October 5, 2021) (SR–NYSE–2021–56). *See also* Securities Exchange Act Release No. 93461 (October 28, 2021), 86 FR 60670 (November 3, 2021) (SR–MIAX–2021–55).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 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 satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

off if June 19 falls on a Saturday or Sunday. The Exchange also notes that a waiver would allow the Exchange to update the schedule on its website more quickly. Further, the Exchange states that the proposed rule change was based on recent proposals by other exchanges.[17] 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 does not raise any new or novel issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[18]

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–CboeBZX–2021–082 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–2021–082. 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–2021–082 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27809 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* note 10.

[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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93814; File Nos. SR–BX–2021–018; SR–C2–2021–008; SR–CBOE–2021–030; SR–CboeBYX–2021–011; SR–CboeBZX–2021–034; SR–CboeEDGA–2021–010; SR–CboeEDGX–2021–024; SR–GEMX–2021–03; SR–ISE–2021–08; SR–MRX–2021–05; SR–NASDAQ–2021–029; SR–PHLX–2021–25]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc., Cboe Exchange, Inc.; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NASDAQ PHLX LLC and the NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Changes To Adopt a Fee Schedule To Establish Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

December 17, 2021.

On April 21, 2021, Cboe BYX Exchange, Inc. (''Cboe BYX''), Cboe BZX Exchange, Inc. (''Cboe BZX''), Cboe C2 Exchange, Inc. (''C2''), Cboe EDGA Exchange, Inc. (''Cboe EDGA''), Cboe EDGX Exchange, Inc. (''Cboe EDGX''), Cboe Exchange, Inc. (''Cboe''), NASDAQ BX, Inc. (''BX''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq ISE, LLC (''ISE''), Nasdaq MRX, LLC (''MRX''), NASDAQ PHLX LLC (''Phlx''), The NASDAQ Stock Market LLC (''Nasdaq'') 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] proposed rule changes[3] to adopt a fee schedule to establish fees for Industry Members[4] related to the National Market System Plan Governing the Consolidated Audit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 91750 (May 4, 2021), 86 FR 25045 (May 10, 2021) (SR–BX–2021–018); 91751 (May 4, 2021), 86 FR 24941 (May 10, 2021) (SR–PHLX–2021–25); 91752 (May 4, 2021), 86 FR 24921 (May 10, 2021) (SR–NASDAQ–2021–029); 91753 (May 4, 2021), 86 FR 24994 (May 10, 2021) (SR–MRX–2021–05); 91755 (May 4, 2021), 86 FR 25035 (May 10, 2021) (SR–ISE–2021–08); 91756 (May 4, 2021), 86 FR 24979 (May 10, 2021) (SR–GEMX–2021–03); 91757 (May 4, 2021), 86 FR 24911 (May 10, 2021) (SR–C2–2021–008); 91758 (May 4, 2021), 86 FR 25004 (May 10, 2021) (SR–CboeEDGX–2021–024); 91759 (May 4, 2021), 86 FR 24956 (May 10, 2021) (SR–CboeEDGA–2021–010); 91760 (May 4, 2021), 86 FR 24966 (May 10, 2021) (SR–CBOE–2021–030); 91761 (May 4, 2021), 86 FR 25016 (May 10, 2021) (SR–CboeBYX–2021–011); and 91762 (May 4, 2021), 86 FR 24931 (May 10, 2021) (SR–CboeBZX–2021–034).

[4] The CAT NMS Plan defines ''Industry Member'' as ''a member of a national securities exchange or a member of a national securities association.'' *See* CAT NMS Plan, *infra* note 5, at Section 1.1.

Trail (''CAT NMS Plan'').[5] The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[6] The proposed rule changes were published for comment in the **Federal Register** on May 10, 2021.[7] On June 17, 2021, the Commission temporarily suspended the proposed rule changes and instituted proceedings to determine whether to approve or disapprove the proposed rule changes.[8] On October 27, 2021, the Commission designated a longer period within which to conclude proceedings regarding the proposed rule changes.[9] The Commission has received no comments on the proposed rule changes.

On December 10, 2021, Nasdaq, BX, ISE, GEMX, MRX and Phlx withdrew their proposed rule changes (SR–BX–2021–018, SR–NASDAQ–2021–029, SR–ISE–2021–08, SR–GEMX–2021–03, SR–MRX–2021–05, SR–PHLX–2021–25). On December 16, 2021, Cboe BYX, Cboe BZX, C2, Cboe, Cboe EDGA and Cboe EDGX withdrew their proposed rule changes (SR–CboeBYX–2021–011, SR–CboeBZX–2021–034, SR–C2–2021–008, SR–CBOE–2021–030, SR-CboeEDGA–2021–010, SR–Cboe–EDGX–2021–024).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27818 Filed 12–22–21; 8:45 am]

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[5] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC, which became the Company. *See* Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905. The latest version of the CAT NMS Plan is available at *https://catnmsplan.com/about-cat/cat-nms-plan.*

[6] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[7] *See supra* note 3.

[8] Securities Exchange Act Release No. 92207, 86 FR 33448 (June 24, 2021).

[9] Securities Exchange Act Release No. 93437, 86 FR 60524 (November 2, 2021).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93818; File No. SR–NYSEArca–2021–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend Rule 6.87–O

December 17, 2021.

I. Introduction

On October 20, 2021, NYSE Arca, Inc. (''NYSE Arca'' 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 Rule 6.87–O (''Nullification and Adjustment of Options Transactions including Obvious Errors''). The proposed rule change was published for comment in the **Federal Register** on November 4, 2021.[3] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

Pursuant to Rule 6.87–O, when reviewing an options transaction as potentially erroneous, the Exchange needs to determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. If the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is generally the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction.[4] However, there may be situations where the NBB or NBO is not available or may not be reliable. Specifically, under Rule 6.87–O(b)(1)–(3), these situations occur when there are no quotes or no valid quotes for comparison purposes, when the NBBO is determined to be too wide to be reliable, and at the open of each trading day. In each of these circumstances, because the NBB or NBO is not available or is deemed to be unreliable, the Exchange determines Theoretical Price.[5]

Under Rule 6.87–O(c), the Exchange determines whether an obvious error has occurred by comparing the execution price of the transaction with the Theoretical Price.[6] If the execution price is determined to be higher or lower than the Theoretical Price by a minimum amount, as described in Rule 6.87–O(c)(1), the Exchange will either adjust or bust the transaction as provided for by Rule 6.87–O(b)(4).

Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend Rule 6.87–O(b)(3) to permit the Exchange to determine the Theoretical Price of a customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend Rule 6.87–O(c)(4)(B) to adjust, rather than nullify, customer transactions in obvious error situations, provided the adjustment does not violate the limit price. According to the Exchange, other options exchanges will also submit substantively identical proposals to the Commission following approval of this proposal.[7]

B. Rule 6.87–O(b)(3)

Pursuant to Rule 6.87–O(b)(3), the Exchange will determine the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the rule) existed during the ten seconds prior to the transaction. Rule 6.87–O(b)(3) further specifies that, should there be no narrow quotes during the ten seconds prior to the transaction, the Theoretical Price for the affected series will be the NBBO that existed at the time of execution (regardless of its width).[8] The Exchange observes, however, that in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' [9] According to the Exchange, the Industry Working Group has further observed that prices in certain series can be disjointed at the start of trading.[10] Accordingly, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93472 (October 29, 2021), 86 FR 60926 (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2021-91/srnysearca202191.htm.*

[4] *See* Rule 6.87–O(b).

[5] This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC). *See* Notice, *supra* note 3, at 60926.

[6] *See* Rule 6.87–O(c)(1).

[7] *See* Notice, *supra* note 3, at 60926.

[8] *See also id.* at 60927.

[9] *See id.*

[10] *See id.*

Exchange proposes to amend Rule 6.87–O(b)(3) to address trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market by allowing the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening.

The proposed rule change would also better harmonize section (b)(3) with section (b)(1) of the Rule. Under section (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the opening auction process (as defined in Rule 6.64–O) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. In contrast, under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during core trading. Thus, if an erroneous trade occurs on the Exchange during the 10-second period immediately following an opening or reopening, and an erroneous trade occurs on another exchange as a part of its opening auction during the first 10 seconds of trading, the trade on the other exchange could be submitted for review under (b)(1) and only that exchange would be able to determine the Theoretical Price. Under the current version of section (b)(3), the Exchange would not be able to determine the Theoretical Price because the erroneous transaction occurred during the first 10 seconds of core trading and not as a part of the opening process. Under the proposed rule change, however, both trades would be entitled to the same review regarding the same Theoretical Price based upon the same time.[11]

Pursuant to the proposed rule change, the Exchange would determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the minimum amount set forth in proposed Rule 6.87–O(b)(3)(A) [12] and there was a bid/ask differential less than the minimum amount during the 10 seconds prior to the transaction.[13] If there was no bid/ask differential less than the minimum amount during the 10 seconds prior to the transaction, then the Exchange would determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the minimum amount set forth in proposed Rule 6.87–O(b)(3)(A) and there was a bid/ask differential less than the minimum amount anytime during the 10 seconds after an opening or re-opening.[14] If there was no bid/ask differential less than the minimum amount during the 10 seconds following an opening or re-opening, then the Theoretical Price of an option series would be the last NBB or NBO just prior to the customer transaction in question, as set forth in Rule 6.87–O(b).[15] Customer transactions occurring more than 10 seconds after an opening or re-opening would continue to be subject to proposed Rule 6.87–O(b)(3)(A).[16]

C. Rule 6.87–O(c)(4)(B)

Current Rule 6.87–O(c)(4) provides that obvious error transactions involving non-customers would be adjusted, while transactions involving customers are nullified, unless a certain specified condition applies.[17] Under this proposed rule change, Rule 6.87–O(c)(4)(B) would be amended to provide that even obvious error transactions involving a customer will be adjusted, instead of nullified, as long as the adjustment does not violate the customer's limit price. Specifically, pursuant to proposed Rule 6.87–O(c)(4)(B), where at least one party to an erroneous transaction is a customer, the execution price of the transaction would be adjusted pursuant to the adjustment criteria in Rule 6.87–O(c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price. Any customer obvious error exceeding 50 contracts would be subject to the size adjustment modifier defined in Rule 6.87–O(a)(4).[18] However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the customer's limit price, the trade would be nullified.[19]

D. Implementation Date

The Exchange represents that it will announce the effective date of the proposed rule change in a Trader Update distributed to all OTP Holders and OTP Firms, which will be no sooner than six months from the approval of this proposal.[20]

III. Discussion and Commission Findings

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.[21] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [22] and with Section 6(b)(5) of the Act,[23] 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. Further, the Commission believes that proposed modifications to Rule 6.87–O will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

One commenter, a LOMSWG member, expressed broad support for the proposal, stating that the proposal is designed to protect retail customers.[24] Specifically, the commenter argues that the proposed change to Rule 6.87–O(b)(3) would provide a more uniform treatment of customer erroneous transactions occurring during the 10-second period immediately following an opening or re-opening.[25] The commenter also argues that the proposed change to Rule 6.87–O(c)(4)(B) would provide for uniform treatment of customer and non-customer erroneous transactions, stating that the proposal reflects changes in the dynamics of options market customers by extending hedging protections previously available to non-customers.[26]

The Commission believes that the proposal to amend Rule 6.87–O(b)(3)(B)

[11] *See* Notice, *supra* note 3, at 60928.

[12] The Exchange proposes to move the existing text of Rule 6.87–O(b)(3) into a new subparagraph (A).

[13] *See* proposed Rule 6.87–O(b)(3)(B)(i).

[14] *See* proposed Rule 6.87–O(b)(3)(B)(ii).

[15] *See* proposed Rule 6.87–O(b)(3)(B)(iii).

[16] *See supra* note 12. See also Notice, *supra* note 3, for additional description and examples of the proposed rule change.

[17] Specifically, current Rule 6.87–O(c)(4)(C) provides that if an OTP Holder has 200 or more customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of two minutes or less, where at least one party to the obvious error is a non-customer, then the Exchange will apply the non-customer adjustment criteria found in Rule 6.87–O(c)(4)(A).

[18] *See* proposed Rule 6.87–O(c)(4)(B).

[19] *See id.*

[20] *See* Notice, *supra* note 3, at 60928.

[21] 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).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, dated November 23, 2021, at 2 (''SIFMA Letter'').

[25] *See id. See also* text accompanying note 11.

[26] *See* SIFMA Letter, *supra* note 25, at 2.

is designed to achieve more consistent results for participants across U.S. options exchanges than under the current harmonized rules, while maintaining a fair and orderly market, protecting investors, and protecting the public interest. Specifically, the proposed change to Rule 6.87–O(b)(3) is designed to increase the consistency and transparency in the handling of erroneous options transactions in situations immediately after an opening or re-opening where there is no 10-second period prior to the transaction by allowing for the calculation of a Theoretical Price during the 10-second period immediately following an opening and reopening.[27]

The Commission also believes that the Exchange's proposed change to Rule 6.87–O(c)(4) is consistent with the Act and would further the goal of providing increased transparency and uniformity in the handling of erroneous options transactions involving customers and non-customers. As the Exchange observes, the proposed rule change would better harmonize the treatment of non-customer transactions and customer transactions under the Rule and provide greater certainty of execution for all participants to options transactions, while still respecting a customer's limit price.[28]

The proposed rule change will become operative no sooner than six months following its approval, on a date to be announced in a Trader Update made available by the Exchange to its OTP Holders and OTP Firms. This delayed implementation is designed to allow other options exchanges time to adopt rules consistent with this proposal and for all options exchanges to coordinate the date of implementation of such harmonized rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2021–91) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27821 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Notice, *supra* note 3, at 60928.

[28] *See id.* at 60928–29.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93808; File No. SR–MIAX–2021–62]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the cToM Market Data Product

December 17, 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 December 10, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to establish fees for the market data product known as MIAX Complex Top of Market (''cToM'').

The text of the proposed rule change is available on the Exchange's website at *http://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.

[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

The Exchange proposes to amend Section (6)(a) of the Fee Schedule to establish fees for the cToM data product. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees to be effective beginning July 1, 2021 (''First Proposed Rule Change'').[3] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[4] Although the Commission did not receive any comment letters on the First Proposed Rule Change, on August 27, 2021, the Commission issued its Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Establish Fees for the Exchanges' cToM Market Data Products (relating to the First Proposed Rule Change and a similar filing by the Exchange's affiliate, MIAX Emerald, LLC (''MIAX Emerald''), to also adopt cToM fees).[5] The Exchange withdrew the First Proposed Rule Change on September 30, 2021[6] and re-submitted the proposal, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[7] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed comments provided by the Commission Staff. On October 14, 2021, the Exchange withdrew the Second Proposed Rule Change and submitted its proposal to adopt cToM fees to again provide additional justification for the proposed fee changes and address comments provided by the Commission Staff (''Third Proposed Rule Change'').[8] The Third Proposed Rule Change was published for comment in the **Federal Register** on November 1, 2021.[9] Although the Commission did not again receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed

[3] *See* Securities Exchange Act Release No. 92359 (July 9, 2021), 86 FR 37393 (July 15, 2021) (SR–MIAX–2021–28).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (the ''Suspension Order'').

[6] *See* Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

[7] *See* SR–MIAX–2021–44.

[8] Securities Exchange Act Release No. 93426 (October 26, 2021), 86 FR 60314 (November 1, 2021) (SR–MIAX–2021–50).

[9] *Id.*

Rule Change on December 10, 2021 and now submits this proposal for immediate effectiveness (''Fourth Proposed Rule Change''). This Fourth Proposed Rule Change meaningfully attempts to provide additional justification and explanation for the proposed fee change in response to a telephone conversation with Commission Staff on December 7, 2021 relating to the Third Proposed Rule Change.

Background

The Exchange previously adopted rules governing the trading of Complex Orders [10] on the MIAX System [11] in 2016.[12] At that time, the Exchange also adopted the market data product cToM and expressly waived fees for cToM to provide an incentive to prospective market participants to subscribe to that market data feed.[13] The Exchange has not charged fees to cToM subscribers in the nearly five years since it was first available for subscription.

In summary, cToM provides subscribers with the same information as the MIAX Top of Market (''ToM'') data product as it relates to the Strategy Book,[14] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is a distinct market data product from ToM. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[15]

Proposal

The Exchange now proposes to amend Section (6)(a) of the Fee Schedule to charge monthly fees to Distributors [16] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[17] The Exchange notes that the proposed monthly cToM fees for Internal and External Distributor are the same prices that the Exchange charges for its ToM data product, and are identical to the prices the Exchange's affiliate, MIAX Emerald, proposes to charge for its cToM product.

Like it does today for ToM, MIAX proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, like the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees in the table in Section (6)(a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes that other exchange's fees for complex market data are useful examples and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar data. As shown by the below table, the Exchange's proposed fees similar to or less than fees charged for similar data products provided by other options exchanges.

Exchange	Monthly fee
MIAX (as proposed)	$1,250—Internal Distributor. $1,750—External Distributor.
NYSE American, LLC (''Amex'') [18]	$1,500 Access Fee. $1,000 Redistribution Fee.
NYSE Arca, Inc. (''Arca'') [19]	$1,500 Access Fee. $1,000 Redistribution Fee.
NASDAQ PHLX LLC (''PHLX'') [20]	$3,000—Internal Distributor. $3,500—External Distributor.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section (6)(a) of the Fee Schedule to make a minor, non-substantive corrective edit. In particular, the Exchange proposes to delete the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is also not the exclusive source for Complex Order information from the Exchange and market participants may choose to subscribe to the Exchange's other data products to receive such information. It is a business decision of market participants whether to subscribe to the cToM data product or not. Market participants that choose not to subscribe to cToM can derive much,

[10] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[11] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[12] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (Order Approving a Proposed Rule Change to Adopt New Rules to Govern the Trading of Complex Orders).

[13] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR–MIAX–2016–36) (providing a complete description of the cToM data feed).

[14] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[15] *See supra* note 13.

[16] A ''Distributor'' of MIAX data is any entity that receives a feed or file of data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Distributor Agreement. *See* Section (6)(a) of the Fee Schedule.

[17] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section (6)(a) as it will not change fees for both the ToM and cToM data feeds.

[18] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[19] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[20] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

if not all, of the same information provided in the cToM feed from other Exchange sources, including, for example, the MIAX Options Order Feed (''MOR'').[21] The following cToM information is provided to subscribers of MOR: The Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to the cToM information contained in MOR, complex strategy last sale information can be derived from the Exchange's ToM data feed. Specifically, market participants may deduce that last sale information for multiple trades in related options series that are disseminated via the ToM data feed with the same timestamp are likely part of a Complex Order transaction and last sale.

Implementation

The proposed rule change is immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[22] in general, and furthers the objectives of Section 6(b)(4) of the Act[23] 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 in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange sets certain non-transaction fees, including market data fees. The Exchange believes that it is important to demonstrate that these fees are based on its costs to provide these products and reasonable business needs.

In its Guidance, the Commission Staff stated that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.''[24] The Commission Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.''[25] In its Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.''[26] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing services to supply cToM data and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[27] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.''[28] The Exchange provides this analysis below.

Based on this analysis, the Exchange believes the proposed fees are reasonable and do not result in a ''supra-competitive''[29] profit. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs. The Exchange believes the proposed fees will allow the Exchange to offset expenses the Exchange has and will incur, and that the Exchange provides sufficient transparency (described below) into the costs and revenue underlying the proposed fees. Accordingly, the Exchange provides an analysis of its revenues, costs, and profitability associated with the proposed fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the proposed fees. As a result of this analysis, the Exchange believes the proposed fees are fair and reasonable as a form of cost recovery plus present the possibility of a reasonable return for the Exchange's aggregate costs of offering cToM data, which has been offered for free for over five years.

The proposed fees are based on a cost-plus model. In determining the appropriate fees to charge, the Exchange considered its costs to provide cToM data, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly related to the provision and maintenance of cToM data) to estimate such costs,[30] as well as the relative costs of providing and maintaining cToM data feeds, and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining cToM data feeds because of the uncertainty of forecasting subscriber decision making with respect to firms' needs for cToM data and the likely potential for increased costs to procure

[21] *See* MIAX website, Market Data & Offerings, at *https://www.miaxoptions.com/market-data-offerings* (last visited December 10, 2021). In general, MOR provides real-time ulta-low [sic] latency updates on the following information: New Simple Orders added to the MIAX Order Book; updates to Simple Orders resting on the MIAX Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX listed series updates; MIAX Complex Strategy definitions; the state of the MIAX System; and MIAX's underlying trading state.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(4) and (5).

[24] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] For example, the Exchange only included the costs associated with providing and supporting cToM data feeds and excluded from its cost calculations any cost not directly associated with providing and maintaining such cToM data feeds. Thus, the Exchange notes that this methodology underestimates the total costs of providing and maintaining cToM data feeds.

the third-party services described below.

To determine the Exchange's costs to provide cToM data associated with the proposed fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the proposed fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the cToM data product associated with the proposed fees.

The Exchange also provides detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the services associated with the proposed fees. The Exchange conducted a thorough internal analysis to determine the portion (or percentage) of each expense to allocate to the support of services associated with the proposed fees. This analysis included discussions with each Exchange department head to determine the expenses that support services associated with the proposed fees. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing services for the proposed fees. The sum of all such portions of expenses represents the total cost to the Exchange to provide services associated with the proposed fees. For the avoidance of doubt, no expense amount was allocated twice.

To determine the Exchange's projected revenue associated with the proposed fees, the Exchange analyzed the number of Members and non-Members currently subscribing to the cToM data feeds and used a recent monthly billing cycle representative of 2021 monthly revenue. The Exchange also provided its baseline by analyzing June 2021, the monthly billing cycle prior to the proposed fees going into effect, and compared it to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing market data needs of market participants and potential increase in internal and third party expenses. The Exchange is presenting its revenue and expense associated with the proposed fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the proposed fees were not in place in 2020 or for the first six months of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not representative of its current total annualized revenue and costs associated with the proposed fees. Accordingly, the Exchange believes it is more appropriate to analyze the proposed fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the proposed fees are reasonable because they will allow the Exchange to recover its costs associated with providing services related to the proposed fees and not result in excessive pricing or supra-competitive profit. Since 2016, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[31] The cToM data product allows market participants to better utilize the Exchange's Complex Order functionality by providing insights into the Exchange's Complex Order flow. The Exchange notes that one market participant ceased subscribing to the cToM feed since July 1, 2021, the date on which the fees became effective when proposed in the First Proposed Rule Change.

As outlined in more detail below, the Exchange projects that its annualized expense for 2021 to provide cToM data to be approximately $273,494 per annum or an average of $22,791.17 per month. The Exchange implemented the proposed fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the proposed fees, Exchange Members and non-Members subscribed to a total of 17 cToM data feeds for which the Exchange charged $0, as it has for the past five years. This resulted in a loss of approximately $22,791.17 for that month. For the month of November 2021, which includes the proposed fees, Exchange Members and non-Members purchased 16 cToM data feeds, for which the Exchange charged approximately $21,000 for that month.[32] This resulted in a loss of approximately $1,791.17 for that month (a margin of approximately −8.5%). The Exchange cautions that this margin may fluctuate from month to month based on the uncertainty of predicting how many cToM data feeds may be purchased from month to month as Members and non-Members are able to add and drop subscriptions at any time based on their own business decisions. This margin may also decrease due to the significant inflationary pressure on capital items that the Exchange needs to purchase to maintain the Exchange's technology and systems.[33] The Exchange has been subject to price increases upwards of 30% on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

Further, the Exchange chose to provide cToM data for free for the past five years to attract order flow and encourage market participants to experience the determinism and resiliency of the Exchange's trading systems and market data products. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees. The Exchange could

[31] *See* Securities Exchange Act Release Nos. 79405 (November 28, 2016), 81 FR 87086 (December 2, 2016) (SR–MIAX–2016–44) (amendment to clarify the manner in which the System allocates contracts at the end of a Complex Auction); 80089 (February 22, 2017), 82 FR 12153 (February 28, 2017) (SR–MIAX–2017–06) (adopting the Complex MIAX Options Price Collar, an additional price protection feature); 81229 (July 27, 2017), 82 FR 36023 (August 2, 2017) (SR–MIAX–2017–34) (amendment to ensure price and trade protections apply to Complex Orders); 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR–MIAX–2020–16) (adopting new order type, Complex Attributable Order).

[32] The Exchange notes that one market participant cancelled its cToM subscription since the First Proposed Rule change became effective on July 1, 2021.

[33] See ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, available at *https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html* (October 18, 2021); and ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, available at *https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

have sought to charge some fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a free exchange product to the options industry, which resulted in no initial revenues, going on five years. The Exchange now proposes to amend its fee structure to enable it to continue to maintain and improve its overall market and systems while also providing a highly reliable and deterministic trading system to the marketplace, complete with robust market data products, including cToM.

As mentioned above, the Exchange projects that its annualized expense for 2021 to provide cToM data to be approximately $273,494 per annum or an average of $22,791.17 per month and that these costs are expected to increase not only due to anticipated significant inflationary pressure, but also periodic fee increases by third parties.[34] The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange and various Exchange products. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases the cost to the Exchange to provide services associated with the proposed fees. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide services and products to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of the costs to the Exchange associated with providing certain Exchange products.

The Exchange only has four primary sources of revenue and cost recovery mechanisms: transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.[35] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and market data products or provide them at a very marginal cost, which has not been profitable to the Exchange, but beneficial to the overall options industry. This resulted in the Exchange forgoing revenue it could have generated from assessing any amount of fees.

The Exchange believes that the proposed fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the proposed fees. As mentioned above, for 2021,[36] the total annual expense for providing the services associated with the proposed fees is projected to be approximately $273,494 per annum, or approximately $22,791.17 per month. This projected total annual expense is comprised of the following, all of which are directly related to the services associated with the proposed fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the proposed fees.[37] As noted above, the Exchange believes it is more appropriate to analyze the proposed fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[38] The $273,494 projected total annual expense is directly related to the services associated with the proposed fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice.

As discussed above, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the proposed fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the proposed fees.

External Expense Allocations

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the services associated with the proposed fees, is projected to be $5,398. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center

[34] For example, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their Secure Financial Transaction Infrastructure (''SFTI'') network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. The Exchange further notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network.

[35] The Exchange has incurred a cumulative loss of $175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28 [sic], 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000460.pdf.*

[36] The Exchange has not yet finalized its 2021 year end results.

[37] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[38] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

locations; and (3) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.). For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the services associated with the proposed fees.

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the market data product associated with the proposed fees. Further, the Exchange notes that, with respect to the expenses included herein, those expenses only cover the MIAX market; expenses associated with MIAX PEARL, LLC (''MIAX Pearl'') for its options and equities markets and MIAX Emerald, are accounted for separately and are not included within the scope of this filing. As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which, in turn, resulted in a revised percentage allocations in this filing.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the proposed fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the cToM product associated with the proposed fees to its Members, non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the cToM product associated with the proposed fees, only that portion which the Exchange identified as being specifically mapped to providing the cToM product associated with the proposed fees, approximately 0.20% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM product associated with the proposed fees, and not any other service, as supported by its cost review.[39]

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX Pearl and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the cToM data associated with the proposed fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the cToM data associated with the proposed fees, only the portion which the Exchange identified as being specifically mapped to providing the cToM data associated with the proposed fees, approximately 0.20% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data associated with the proposed fees, and not any other service, as supported by its cost review.[40]

The Exchange did not allocate any expense associated with the proposed fees towards SFTI and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) because the MIAX architecture takes advantage of an advance in design to eliminate the need for a market data distribution gateway layer. The computation and dissemination via an API is done solely within the match engine environment and is then delivered via the Member and non-Member connectivity infrastructure. This architecture delivers a market data system that is more efficient both in cost and performance. Accordingly, the Exchange determined not to allocate any expense associated with SFTI and various other service providers.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide cToM data to its Members, non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the cToM data associated with the proposed fees, only the portions which the Exchange identified as being specifically mapped to providing the cToM data associated with the proposed fees, approximately 0.20% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data associated with the proposed fees.[41]

Internal Expense Allocations

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the cToM data associated with the proposed fees, is projected to be $268,096. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the cToM data product associated with the proposed fees, including staff in network operations, trading operations, development, system operations, and business that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the cToM data product associated with the proposed fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3)

[39] As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Again, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

[40] *Id.*

[41] *Id.*

occupancy costs for leased office space for staff that provide the cToM data associated with the proposed fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the cToM data associated with the proposed fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the cToM data associated with the proposed fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the cToM data associated with the proposed fees is projected to be approximately $251,427, which is only a portion of the $12.6 million total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features, products and enhancements), and Trade Operations. As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by nearly every employee on matters relating to cToM. Without these employees, the Exchange would not be able to provide the cToM product to its Members, non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the cToM product, only the portion which the Exchange identified as being specifically mapped to providing the cToM product associated with the proposed fees, approximately 2.0% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data associated with the proposed fees, and not any other service, as supported by its cost review.[42]

The Exchange's depreciation and amortization expense relating to providing the cToM data associated with the proposed fees is projected to be $3,884, which is only a portion of the $4.8 million total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the cToM product. Without this equipment, the Exchange would not be able to operate the network and provide the cToM product to its Members, non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the cToM product, only the portion which the Exchange identified as being specifically mapped to providing the cToM product, approximately 0.20% of the total applicable depreciation and amortization expense, as this product would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM product associated with the proposed fees, and not any other service, as supported by its cost review.[43]

The Exchange's occupancy expense relating to providing the cToM product associated with the proposed fees is projected to be $12,785, which is only a portion of the $0.60 million total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the cToM product. This amount consists primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network and Exchange products. The Exchange currently has approximately 200 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with the proposed fees. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the market data services associated with the proposed fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the market data services associated with the proposed fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 2.0% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the market data services associated with the proposed fees, and not any other service, as supported by its cost review.[44]

Based on the above, the Exchange believes that its provision of market data services associated with the proposed fees will not result in excessive pricing or supra-competitive profit. As discussed above, the Exchange projects that its annualized expense for 2021 to provide the cToM data associated with the proposed fees is projected to be approximately $273,494, or approximately $22,791.17 per month on average. The Exchange implemented the proposed fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the proposed fees, Members and non-Members subscribed to a total of 17 cToM data feeds, for which the Exchange charged $0, for the past five years. This resulted in a month over month loss of approximately $22,791.17. For the month of November 2021, which includes the proposed fees, Members and non-Members subscribed to 16 cToM data feeds, for which the Exchange charged approximately $21,000 for that month. This resulted in a loss of $1,791.17 for that month (a margin of approximately −8.5%). Therefore, the Exchange believes that the proposed fees are reasonable because the Exchange is operating at a negative margin for this product.

Again, the Exchange cautions that this margin may fluctuate from month to month based in the uncertainty of predicting how many market data feeds may be purchased from month to month as Members and non-Members are free to add and drop subscriptions at any time based on their own business decisions. This margin may also

[42] *Id.*

[43] *Id.*

[44] *Id.*

decrease due to the significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems. Accordingly, the Exchange believes its total projected revenue for the providing the market data services associated with the proposed fees will not result in excessive pricing or supra-competitive profit.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the market data services associated with the proposed fees because the Exchange performed a line-by-line item analysis of nearly every expense of the Exchange, and has determined the expenses that directly relate to providing market data services to the Exchange. Further, the Exchange notes that, without the specific third-party and internal expense items listed above, the Exchange would not be able to provide the market data services associated with the proposed fees to its Members, non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing market data services. The proposed fees are intended to recover the costs of providing cToM data. Accordingly, the Exchange believes that the proposed fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the proposed fees.

No market participant is required by any rule or regulation to utilize the Exchange's Complex Order functionality or subscribe to the cToM data feed. Further, unlike orders on the Exchange's Simple Order Book, Complex Orders are not protected and will never trade through Priority Customer[45] orders, thus protecting the priority that is established in the Simple Order Book.[46] Additionally, unlike the continuous quoting requirements of Market Makers in the simple order market, there are no continuous quoting requirements respecting Complex Orders. It is a business decision whether market participants utilize Complex Order strategies on the Exchange and whether to purchase cToM data to help effect those strategies.

The Proposed Fees are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, the Exchange believes the other exchange's market data fees are a useful example of alternative approaches to providing and charging for market data. To that end, the Exchange believes the proposed pricing is reasonable because the proposed rates are similar to or less than the fees charged by other options exchanges for similar data products.[47]

Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.[48] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange initially established the cToM data product in 2016, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past five years.[49] Since 2016, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[50] The cToM data product allows market participants to better utilize the Exchange's Complex Order functionality by providing insights into the Exchange's Complex Order flow. The Exchange currently has 16 subscribers (14 Members and 2 non-Members) for its cToM data product. Each one of these subscribers have not paid any cToM data fees (other than the five months in which the First, Second and Third Proposed Rule Changes were in effect) but have received the benefit of the Exchange building out its Complex Order functionality to better compete with other exchanges complex functionality. The Exchange notes that one market participant ceased subscribing to the cToM feed since July 1, 2021, the date on which the fees became effective when established in the First Proposed Rule Change.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX Emerald), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the

[45] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[46] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 100 [sic].

[47] *See supra* notes 18, 19 and 20.

[48] *See supra* notes 35.

[49] *See supra* note 13.

[50] *See* Securities Exchange Act Release Nos. 79405 (November 28, 2016), 81 FR 87086 (December 2, 2016) (SR–MIAX–2016–44) (amendment to clarify the manner in which the System allocates contracts at the end of a Complex Auction); 80089 (February 22, 2017), 82 FR 12153 (February 28, 2017) (SR–MIAX–2017–06) (adopting the Complex MIAX Options Price Collar, an additional price protection feature); 81229 (July 27, 2017), 82 FR 36023 (August 2, 2017) (SR–MIAX–2017–34) (amendment to ensure price and trade protections apply to Complex Orders); 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR–MIAX–2020–16) (adopting new order type, Complex Attributable Order).

''Exchange Data Agreement'').[51] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[52] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[53] and may charge their own fees for the distribution of such market data. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data products as External Distributors have greater usage rights to commercialize such market data. The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscribers is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants deem the proposed fees to be unfair or inequitable, firms can discontinue their use of the cToM data.

Further, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchange on a uniform basis. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product.

The Exchange believes the proposed change to delete certain text from Section (6)(a) 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 is a non-substantive edit to the Fee Schedule to remove unnecessary text. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing cToM to market participants. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008[54] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange initially established the cToM data product in 2016, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past five years.[55] Since 2016, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[56] The Exchange now seeks to recoup its costs for providing cToM to market participants and believes the proposed fees will not result in excessive pricing or supracompetitive profit.

Inter-Market Competition

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange does not believe that the proposed rule change to make a minor, non-substantive edit to Section (6)(a) of the Fee Schedule by deleting unnecessary text will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not being made for competitive reasons, but rather is designed to remedy a minor non-substantive issue and will provide added clarity to the Fee Schedule. The Exchange believes that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

[51] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[52] *See id.*

[53] *See id.*

[54] *See supra* notes 35.

[55] *See supra* note 13.

[56] *See supra* note 50.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[57] and Rule 19b–4(f)(2)[58] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–62 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–2021–62. 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 (*https://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–2021–62, and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27813 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[57] 15 U.S.C. 78s(b)(3)(A)(ii).

[58] 17 CFR 240.19b–4(f)(2).

[59] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93826; File No. SR–NASDAQ–2021–100]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118 of the Fee Schedule

December 17, 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 December 10, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''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 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 proposes to amend the Exchange's pricing schedule at Equity 7, Section 118(a), as described further below.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118. Specifically, the Exchange proposes to add a new supplemental credit in Tapes A, B and C for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

The Exchange currently provides supplemental credits to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders). The Exchange is proposing to add a supplemental credit of $0.0001 per share executed to Tapes A, B and C. The credit will be available to a member that, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume during the month relative to the month of October 2021 and (ii) has shares of liquidity provided of least 15 million average daily volume during the month. The credit will be in addition to other credits otherwise available to members for adding displayed liquidity to the Exchange (other than Supplemental Orders or Designated Retail Orders). The Exchange hopes that by proposing the

new credit it will incentivize members to increase their liquidity providing activity on the Exchange, which will improve market quality.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [5]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that it is reasonable to establish a new $0.0001 per share executed transaction credit, at Equity 7, Section 118(a), for a member that, through one or more of its Nasdaq Market Center MPIDs, (i) increases its shares of liquidity provided in all securities by at least 30% as a percentage of Consolidated Volume during the month relative to the month of October 2021 and (ii) has shares of liquidity provided of least 15 million average daily volume during the month. The new credit will encourage substantial activity on the Exchange, which will improve the overall market quality to the benefit of all market participants. The Exchange believes that if the new credit is effective, then liquidity adding activity on the Exchange will increase and market quality will improve for the benefit of all participants.

The Exchange notes that those market participants that are dissatisfied with the proposal are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its charges and credits fairly among its market participants.

The Exchange believes that it is an equitable allocation to establish a new transaction credit because the proposal will encourage members to increase the extent to which they add liquidity to the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

The Exchange believes that its proposal to adopt a new credit is not unfairly discriminatory because the credit is available to all members. Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposals to add a new transaction credit is intended to have market-improving effects, to the benefit of all members.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the credits are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The proposed new credit is reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[7] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–100 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–2021–100. 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–NASDAQ–2021–100 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27810 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93816; File No. SR–CboeEDGA–2021–026]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Juneteenth National Independence Day a Holiday of the Exchange

December 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 6, 2021, Cboe EDGA Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend its rules to make Juneteenth National Independence Day a holiday of the Exchange. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.1 (Hours of Trading and Trading Days) to make Juneteenth National Independence Day a holiday of the Exchange. On June 17, 2021, Juneteenth National Independence Day was designated a legal public holiday.[3] Consistent with broad industry sentiment [4] and the approach recommended by the Securities Industry and Financial Markets Association (''SIFMA''),[5] the Exchange proposes to add ''Juneteenth National Independence Day'' to the existing list of holidays set forth in Rule 11.1(b). As a result, the Exchange will not be open for business on Juneteenth National Independence Day, which falls on June 19 of each year. In accordance with Rule 11.1(b), when a holiday falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and when it falls on a Sunday, the Exchange will not be open for business on the succeeding Monday, unless otherwise indicated by the Exchange.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed amended rule would clearly state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 fell on a Saturday or Sunday. The change would thereby promote clarity and transparency in the Exchange rules by updating the list of holidays of the Exchange. The proposed rule change is also based on recent proposals by other exchanges.[10] Therefore, the proposed change does not raise any new or novel issues.

For these 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,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to conform to industry practice with respect to holidays.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] 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 take effect upon filing. The Exchange believes that waiver of operative delay would be consistent with the protection of investors and the public interest because the proposed

[3] Public Law 117–17.

[4] See, *e.g., https://www.bloomberg.com/news/articles/2021-06-18/bofa-makesjuneteenth-a-holiday-joining-jpmorgan-wells-fargo?sref=Hhue1scO.*

[5] SIFMA recommends a full market close in observance of Juneteenth National Independence Day. See *https://www.sifma.org/resources/general/holidayschedule/.* See also *https://www.sifma.org/resources/news/sifma-revises-2022-fixed-income-market-close-recommendations-in-the-u-s-to-include-full-close-for-juneteenth-national-independence-day/.*

[6] See EDGA Exchange Rule 11.1(b).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5)

[9] 15 U.S.C. 78f(b)(1).

[10] See *e.g.,* Securities Exchange Act Release No. 93186 (September 30, 2021), 86 FR 55068 (October 5, 2021) (SR–NYSE–2021–56). *See also* Securities Exchange Act Release No. 93461 (October 28, 2021), 86 FR 60670 (November 3, 2021) (SR–MIAX–2021–55).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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 satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

rule change would state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 falls on a Saturday or Sunday. The Exchange also notes that a waiver would allow the Exchange to update the schedule on its website more quickly. Further, the Exchange states that the proposed rule change was based on recent proposals by other exchanges.[16] 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 does not raise any new or novel issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal 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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGA–2021–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2021–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2021–026 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27820 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[16] *See supra* note 10.

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93813; File No. SR–CboeEDGX–2021–051]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Juneteenth National Independence Day a Holiday of the Exchange

December 17, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 6, 2021, Cboe EDGX Exchange, Inc. 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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its rules to make Juneteenth National Independence Day a holiday of the Exchange. 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/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.1 (Hours of Trading and Trading Days) and Rule 21.2 (Days and Hours of Business) to make Juneteenth National Independence Day a holiday of the Exchange. On June 17, 2021, Juneteenth National Independence Day was designated a legal public holiday.[3] Consistent with broad industry sentiment [4] and the approach recommended by the Securities Industry and Financial Markets Association (''SIFMA''),[5] the Exchange proposes to

[3] Public Law 117–17.

[4] See *e.g., https://www.bloomberg.com/news/articles/2021-06-18/bofa-makesjuneteenth-a-holiday-joining-jpmorgan-wells-fargo?sref=Hhue1scO.*

[5] SIFMA recommends a full market close in observance of Juneteenth National Independence Day. See *https://www.sifma.org/resources/general/holidayschedule/*. See also *https://www.sifma.org/*

add ''Juneteenth National Independence Day'' to the existing list of holidays set forth in Rules 11.1(b) and 21.2(d). As a result, the Exchange will not be open for business on Juneteenth National Independence Day, which falls on June 19 of each year. In accordance with Rule 11.1(b) and Rule 21.2(d), when a holiday falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and when it falls on a Sunday, the Exchange will not be open for business on the succeeding Monday.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed amended rule would clearly state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 fell on a Saturday or Sunday. The change would thereby promote clarity and transparency in the Exchange rules by updating the list of holidays of the Exchange. The proposed rule change is also based on recent proposals by other exchanges.[10] Therefore, the proposed change does not raise any new or novel issues.

For these 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,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to conform to industry practice with respect to holidays.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] 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 take effect upon filing. The Exchange believes that waiver of operative delay would be consistent with the protection of investors and the public interest because the proposed rule change would state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 falls on a Saturday or Sunday. The Exchange also notes that a waiver would allow the Exchange to update the schedule on its website more quickly. Further, the Exchange states proposed rule change was based on recent proposals by other exchanges.[16] 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 does not raise any new or novel issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal 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 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.

resources/news/sifma-revises-2022-fixed-income-market-close-recommendations-in-the-u-s-to-include-full-close-for-juneteenth-national-independence-day/.

[6] See EDGX Exchange Rule 11.1(b) and EDGX Exchange Rule 21.2(d). There is an exception to the practice if unusual business conditions exist.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1).

[10] See *e.g.,* Securities Exchange Act Release No. 93186 (September 30, 2021), 86 FR 55068 (October 5, 2021) (SR–NYSE–2021–56). *See also* Securities Exchange Act Release No. 93461 (October 28, 2021), 86 FR 60670 (November 3, 2021) (SR–MIAX–2021–55).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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 satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 10.

[17] 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).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2021–051 on the subject line.

Paper Comments

- *Send paper comments in triplicate to:* Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2021–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2021–051 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27817 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93810; File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, SR–NYSENAT–2021–23]

Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Offer Wireless Connectivity to CME Group Data and Establish Associated Fees

December 17, 2021.

I. Introduction

On November 3, 2021, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend their respective fee schedules to offer wireless connectivity to CME Group, Inc. (''CME Group'') market data (''CME Group Data'') and establish associated fees. Each proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule changes were published for comment in the **Federal Register** on November 18, 2021.[4] The Commission received no comment letters on the proposals. Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) Temporarily suspending File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, and SR–NYSENAT–2021–23; and (2) instituting proceedings to determine whether to approve or disapprove File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, and SR–NYSENAT–2021–23.

II. Description of the Proposed Rule Changes

The Exchanges propose to amend their respective fee schedules regarding colocation services and fees to offer Users [6] wireless connectivity to CME Group Data for associated fees.[7] The proposed wireless connection would enable a User to receive CME Group Data [8] in the colocation center in the Mahwah, New Jersey data center (''Mahwah Data Center'').[9]

The Exchanges state that the available CME Group Data would not include all possible CME Group data feeds.[10] Rather, the proposed wireless service would only provide connectivity to a selection of CME Group market data for which IDS determines there is User demand.[11] A User would then determine the symbols for which it would receive data, which could include data regarding some or all of the symbols for which IDS provides connectivity.[12]

The Exchanges state that they currently provide Users with wireless connections to eight market data feeds

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release Nos. 93563 (November 12, 2021), 86 FR 64561 (November 18, 2021) (SR–NYSE–2021–67) (''Notice''); 93561 (November 12, 2021), 86 FR 64580 (November 18, 2021) (SR–NYSEAMER–2021–43); 93564 (November 12, 2021), 86 FR 64570 (November 18, 2021) (SR–NYSEArca–2021–97); 93565 (November 12, 2021), 86 FR 64556 (November 18, 2021) (SR–NYSECHX–2021–17); and 93567 (November 12, 2021), 86 FR 64576 (November 18, 2021) (SR–NYSENAT–2021–23). For ease of reference, citations to the Notice(s) are to the Notice for SR–NYSE–2021–67.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] For purposes of the Exchanges' colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchanges. *See* Notice, *supra* note 4, at 64561 n.4 (citing Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40)).

[7] The Exchanges state that they expect the proposed rule change would become operative no later than March 31, 2022, and that they will announce the date that the wireless connectivity to CME Group Data will be available through a customer notice. *See id.* at 645621.

[8] The User would pay an unaffiliated third party separately for the data content. *See id.* at 64562.

[9] *See id.* The Exchanges state that Intercontinental Exchange, Inc. (''ICE'') operates the Mahwah Data Center through its ICE Data Services (''IDS'') business. The Exchanges themselves are indirect subsidiaries of ICE. According to the Exchanges, the proposed service would be provided by IDS pursuant to an agreement with a non-ICE entity, and IDS does not own the wireless network that would be used to provide the service. *See id.* at 64561 n.8.

[10] According to the Exchanges, there is limited bandwidth available on the wireless network to colocation and currently dozens of CME Group data feeds, so providing connectivity to all of these feeds would use a large amount of bandwidth. *See id.* at 64562.

[11] The Exchanges state that IDS similarly provides connectivity to a selection of data, rather than entire feeds, over a wireless connection to the Markham, Canada third party data center. *See id.* The Exchanges also state that they understand that the third parties providing wireless connectivity to CME Group market data to the Mahwah Data Center and other data centers in New Jersey follow a substantially similar model, offering connectivity to a selection of market data rather than entire feeds. *See id.* at 64562 n.10.

[12] The Exchanges state that they would not have visibility into which portion of the CME Group Data a given User receives. *See id.* at 64562.

or combinations of feeds from third party markets (''Existing Third Party Data''), as well as wired connections to 43 market data feeds.[13] As with Existing Third Party Data, if a User purchased two wireless connections to CME Group data, it would pay two non-recurring initial charges.[14] Each of these wireless connections would include the use of one port for connectivity to CME Group Data.[15] If a User also connects to Existing Third Party Data, it would not be able to use the same port that it uses for connectivity to CME Group Data to connect to such Existing Third Party Data,[16] and would receive the use of one port for connectivity to Existing Third Party Data.[17]

For each wireless connection to CME Group Data, the Exchanges propose to charge a User a $5,000 non-recurring initial charge and a monthly recurring charge of $6,000.[18]

III. Suspension of the Proposed Rule Changes

Pursuant to Section 19(b)(3)(C) of the Act,[19] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[20] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder.

In support of the proposed fees, the Exchanges generally argue that they are reasonable, equitable, and not unfairly discriminatory because use of the proposed services is completely voluntary and alternatives to them are available.[21] The Exchanges maintain that they operate in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users [22]) offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations.[23] The Exchanges maintain that fees charged for co-location services are constrained by active competition for the order flow of, and other business from, such market participants.[24] The Exchanges argue that Users that do not opt to use the Exchange's proposed wireless connection would still be able to obtain CME Group market data using other methods; namely, from another User, a third party wireless connection, or through an IDS or third party fiber connection.[25]

Regarding third party wireless connections, the Exchanges assert that, based on the information available to them, at least one market participant provides wireless connectivity to CME Group market data in the Mahwah Data Center, and does so at the same or similar speed as the proposed connection to CME Group Data and at the same or similar cost.[26] According to the Exchanges, before entering the Mahwah Data Center, the proposed wireless connection would lead to a pole that is owned by a third party and is not on the grounds on the Mahwah Data Center, from where a fiber connection would then lead into the Mahwah Data Center.[27] Upon entering the grounds of the Mahwah Data Center, the proposed connection to CME Group Data and the existing third party wireless connection to CME Group Data would follow the same route within the Mahwah Data Center: Both would enter through a meet me room, connect to equipment in colocation, and then connect to any Users that are customers.[28] The Exchanges state that therefore they do not believe that IDS has an advantage over the third party in providing the proposed connectivity.[29]

In addition, the Exchanges state that IDS already offers fiber connections to CME Group market data to Users, and believe that at least two third party market participants also offer such fiber connections to CME Group market data.[30] The Exchanges moreover state that a User may create a proprietary wireless connection or connect through another User in order to connect to CME Group market data, and believe that at least two market participants already provide wireless connectivity to CME Group market data to other data centers in New Jersey.[31]

The Exchanges also argue that the proposed pricing is reasonable because it would allow the Exchanges to defray or cover the costs associated with offering Users a wireless connection to CME Group Data, while providing Users the benefit of receiving CME Group Data within colocation and with a lower latency over fiber optic options.[32] In this regard, the Exchanges further claim that in order to offer the proposed wireless connection to CME Group Data, they must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure.[33]

The Exchanges argue that the proposals provide for an equitable allocation of fees and are not unfairly discriminatory, again contending that the proposed services are voluntary and that alternatives to them are available.[34] The Exchanges also argue that proposed services would be available to all Users on an equal basis, and that all Users that voluntarily select wireless connections to CME Group Data would be charged the same amount for the same services.[35]

Lastly, the Exchanges argue that the proposed rule changes do not impose an

[13] *See id.*

[14] *See id.*

[15] A User would not pay a fee for the use of such port. *See id.*

[16] *See id.*

[17] *See id.* at 64562 n.11. The Exchanges state that a User that connects to both CME Group Data and Existing Third Party Data would accordingly have at least two ports, and would not be separately charged for such ports. *See id.* at 64562. In addition, a User may purchase additional ports. *See id.* at 64562 n.11.

[18] *See id.* at 64562. As specified in the Exchanges' respective fee schedules, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the other Exchanges. *See id.* at 64561 n.4

[19] 15 U.S.C. 78s(b)(3)(C).

[20] 15 U.S.C. 78s(b)(1).

[21] *See* Notice, *supra* note 4, at 64563–65.

[22] ''Hosting'' is a service offered by a User to another entity in the User's space within the Mahwah Data Center. The Exchanges allow Users to act as Hosting Users for a monthly fee. *See, e.g.,* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[23] *See* Notice, *supra* note 4, at 64563.

[24] *See id.* at 64565.

[25] *See id.* at 64563.

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.* According to the Exchanges, market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. *See id.* The Exchanges state that wireless messages have lower latency than messages travelling through fiber optics. The Exchanges also state that, as a general rule, wireless networks have less uptime than fiber networks. *See id.* at 64562. In this regard, the Exchanges claim that fiber network connections may be more attractive to some market participants, as they are more reliable and less susceptible to weather conditions. *See id.* at 64563.

[31] *See id.*

[32] *See id.* at 64563–64. With respect to the proposed non-recurring charge when a User initially purchases a wireless connection to CME Group Data, the Exchanges also state that the costs associated with installing wireless connections are incrementally higher than those associated with installing fiber optics-based solutions. *See id.* at 64564.

[33] *See id.*

[34] *See id.* at 64564–65.

[35] *See id.*

unnecessary or inappropriate burden on competition, likewise contending that the proposed services are voluntary and that alternatives to them are available.[36] The Exchanges reiterate their argument that they operate in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations.[37] According to the Exchanges, the proposals do not affect competition among national securities exchanges or among members of the Exchanges, but rather between IDS and its commercial competitors.[38]

When exchanges file their proposed rule changes with the Commission, including fee filings, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[39] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [40]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [41] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [42] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[43]

In temporarily suspending the Exchanges' proposed rule changes, the Commission intends to further consider whether the proposed fees for wireless connectivity to CME Group Data are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule changes satisfy the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[44]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.[45]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposals, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [46] and 19(b)(2)(B) of the Act [47] to determine whether the Exchanges' proposed rule changes should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule changes to inform the Commission's analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,[48] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchanges have demonstrated how their proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [49]
- Whether the Exchanges have demonstrated how their proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [50] and
- Whether the Exchanges have demonstrated how their proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [51]

As discussed in Section III above, the Exchanges made various arguments in support of their proposals. The Commission believes that there are questions as to whether the Exchanges have provided sufficient information to demonstrate that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [52] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[53] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[54]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members,

[36] *See id.* at 64565.

[37] *See id.*

[38] *See id.*

[39] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[40] *See id.*

[41] 15 U.S.C. 78f(b)(4).

[42] 15 U.S.C. 78f(b)(5).

[43] 15 U.S.C. 78f(b)(8).

[44] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[45] For purposes of temporarily suspending the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[46] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[47] 15 U.S.C. 78s(b)(2)(B).

[48] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[49] 15 U.S.C. 78f(b)(4).

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78f(b)(8).

[52] 17 CFR 201.700(b)(3).

[53] *See id.*

[54] *See id.*

issuers, and other persons using its facilities' are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act; as well as any other provision of the Act, or the rules and regulations thereunder.[55]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by January 13, 2022. Rebuttal comments should be submitted by January 27, 2022. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[56]

The Commission asks that commenters address the sufficiency and merit of the Exchanges' statements in support of the proposals, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, SR–NYSENAT–2021–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, and SR–NYSENAT–2021–23. The 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, and SR–NYSENAT–2021–23 and should be submitted on or before January 13, 2022. Rebuttal comments should be submitted by January 27, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[57] that File Nos. SR–NYSE–2021–67, SR–NYSEAMER–2021–43, SR–NYSEArca–2021–97, SR–NYSECHX–2021–17, and SR–NYSENAT–2021–23, be and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27815 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[55] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[56] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[57] 15 U.S.C. 78s(b)(3)(C).

[58] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93815; File No. SR–CboeEDGX–2021–052]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines

December 17, 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 December 6, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan (''MRVP''), in connection with certain minor rule violations and applicable fines. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its MRVP in Rule 25.3 in connection with certain minor rule violations and applicable fines. Rule 25.3 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding.[3] Current Rule 25.3(a)–(g) sets forth a list of specific Exchange Rules under which an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. Specifically, the proposed rule change amends Rule 25.3 by: (1) Eliminating the violation of Rule 22.6(a) in Rule 25.3(c), which currently imposes fines for violations of Rules 22.6(a) through (c) (Market Maker Quotations); (2) relocating violations of Rule 22.6(b) (regarding Market Maker initial quote volume requirements) and Rule 22.6(c) (regarding Market Maker two-sided quote requirements) to Rule 25.3(d),[4] which currently imposes fines for violations of Rule 22.6(d) (regarding Market Maker continuous quoting obligations) so that a single MRVP provision governs violations of a Market Maker's quoting obligations; and (3) updating the fine schedule applicable to minor rule violations related to a Market Maker Quoting Obligations (*i.e.,* Rules 22.6(b)–(d), as proposed) in Rule 25.3(d).

First, the proposed rule change eliminates the violation of 22.6(a) currently in Rule 25.3(c) of the MRVP. Specifically, Rule 22.6(a) requires a Market Maker to submit bids and offers that are firm for all orders. The Exchange no longer believes violations of Rule 22.6(a) to be minor in nature and therefore proposes to remove it from the list of rules in Rule 25.3 eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of Rule 22.6(a) may directly impact trading on the Exchange, the maintenance of a fair and orderly market and customer protections because honoring firm quotations is vital in promoting efficient functioning of intermarket price priority and trading in general. Pursuant to Rule 25.3, the Exchange is not required to proceed under said Rules as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under Chapter VIII (Discipline) rules as to any such violation. The Exchange notes that the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), which recently filed a proposal, approved by the Commission,[5] to no longer include such violations as eligible for a minor rule disposition on Cboe Options for the same reason—it no longer believed violations of the firm quote requirement to be minor in nature.

The proposed rule change next relocates violations of Rules 22.6(b) and (c), currently in Rule 25.3(c) of the MRVP, to Rule 25.3(d) (Rule 25.3(c), as amended)[6] of the MRVP. The Exchange notes that Rule 22.6 governs Market Maker quoting obligations on the Exchange and, more specifically, Rule 22.6(b) requires a Market Maker to submit initial quotes that contain certain volume and Rule 22.6(c) requires a Market Maker to submit two-sided quotes. As stated above, Rule 25.3(d) currently imposes certain fines for a Market Maker's failure to meet the continuous quoting obligations in Rule 22.6(d). By relocating violations of Rules 22.6(b) and (c) to join violations of Rule 22.6(d) in Rule 25.3(d) of the MRVP, the proposed rule change amends the MRVP to impose the same fine schedule for violations of a Market Maker's quoting obligations. The proposed rule change subsequently renames Rule 25.3(d) as ''Market Maker Quoting Obligations''. The Exchange notes that the proposed rule change is consistent, and intended to harmonize to the extent possible, with the MRVP of the Exchange's affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), which imposes the one fine schedule for a market maker's failure to meet its quoting obligations on Cboe Options, including failure to meet continuous quoting requirements and failure to meet initial quote volume requirements.[7] The Exchange's affiliated options exchanges, Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe C2 Exchange, Inc. (''C2''), also intend to file a proposal to update their MRVPs in connection with the violations of market maker quoting requirements on BZX Options and C2, to the extent possible, in an identical manner.

Additionally, while current Rule 25.3(c) provides that each paragraph of such sections subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations, the corresponding Cboe Options MRVP provision applicable to violations of market maker quoting obligations does not contain this language and Cboe Options may aggregate violations across sections governing market maker quoting obligations. Therefore, in order to harmonize the process for imposing minor rule violation fines for market maker violation of quoting obligations across the Exchange and its affiliated options exchanges,[8] the proposed rule change does not relocate such language currently in 25.3(c) to Rule 25.3(d), and, as a result, the Exchange will likewise be able to choose to aggregate violations across sections governing market maker quoting obligations. Additionally, the Exchange notes that Rule 25.3(d) already permits the Exchange to aggregate violations of a Market Maker's continuous quoting obligations into a single offense. Specifically, Rule 25.3(d) provides that violations occurring during a calendar month are aggregated and sanctioned as a single offense. To accommodate the addition of the Market Maker two-sided quote and initial quote volume requirements to Rule 25.3(d) and harmonize Rule 25.3(d) with that of Cboe Option's corresponding MRVP provision, the proposed rule change updates this language to provide that violations occurring during a calendar

[3] The Exchange may, with respect to any such violation, proceed under Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and impose the fine set forth in Rule 25.3(a)–(g).

[4] As a result of the proposed elimination or relocation of the rule violations listed under Rule 25.3(c), the proposed rule change ultimately eliminates Rule 25.3(c) from the MRVP and subsequently renumbers current Rules 25.3(d), 25.3(e), 25.3(f) and 25.3(g) to Rules 25.3(c), 25.3(d), 25.3(e) and 25.3(f), respectively

[5] *See* Securities Exchange Act Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR–CBOE–2021–045) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 13.15, Which Governs the Exchange's Minor Rule Violation Plan).

[6] *See supra* note 4.

[7] *See* Cboe Options Rule 13.15(g)(9).

[8] As indicated above, BZX Options intends to file a proposal to update its MRVP in connection with violations of market maker quoting requirements on BZX Options in an identical manner.

month may be aggregated and sanctioned as a single offense.[9] The proposed rule change also updates the fine schedule heading in Rule 25.3(d) to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

The proposed rule change next amends the fine schedule in Rule 25.3(d) (Rule 25.3(c), as amended)[10] applicable to Market Makers for violations of their quoting obligations (Rules 22.6(b)–(d), as proposed) in order to harmonize, to the extent possible, this MRVP provision with the corresponding Cboe Options MRVP provision applicable to violations of a market makers quoting obligations on Cboe Options. The current fine schedule in Rule 25.3(d), currently applicable to violations of a Market Maker's continuous quoting obligations, sets forth the following:

For the first violation during any rolling 24-month period (*i.e.,* one period),[11] the fine schedule imposed by Rule 25.3(d) currently permits the Exchange to give a Letter of Caution. For a second violation during the same period, the fine schedule currently permits the Exchange to apply a fine of $1,000. For a third violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $25,000. For a fourth violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $5,000. Finally, for five or more violations in the same period, the fine schedule currently permits the Exchange to proceed with formal disciplinary action.

The proposed rule change updates the fine schedule to provide that, during any rolling 24-month period, the Exchange may continue to give a Letter of Caution for a first offense,[12] may apply a fine of $1,500 for a second offense,[13] may apply a fine of $3,000 for a third offense, and may proceed with formal disciplinary action for subsequent offenses. As described above, and as is the case for all rule violations covered under Rule 25.3, the Exchange may determine that it is appropriate to commence a formal disciplinary proceeding for a violation of Market Maker quoting obligations and may choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP. The Exchange may continue to aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected, .and treat such violations as a single offense.[14]

The Exchange believes it is appropriate to increase the fine amounts for a second and third offense and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense. Particularly, the Exchange believes that applying a higher fine per second and third offenses in connection with a Market Maker's quoting obligations[15] and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders. The Exchange believes this fine structure may serve to more effectively deter repeat-offenders while continuing to provide reasonable warning for a first offense during a rolling 24-month period. The Exchange notes that the proposed fine schedule for violations of a Market Maker's quoting obligations is identical to the fine schedule under the MRVP of Cboe Options for market maker violations of quoting obligations on Cboe Options, including a continuous quoting requirement and initial volume requirement. The Exchange further notes that the proposed change is intended to provide for consistency across the Exchange's MRVP and the MRVPs of its affiliated options exchanges, Cboe Options, BZX Options and Cboe C2 Exchange, Inc. (''C2''), as BZX Options and C2 also intend to file proposals to update their minor rule violation fines for violations of market maker quoting requirements on their exchanges in an identical manner.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to remove the firm quote requirement, which it no longer considers violations of which to be minor in nature, as eligible for a minor rule fine disposition under its MRVP, will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market

[9] The Exchange also notes that the current provision requiring the Exchange to aggregate and sanction violations as a single offense, applicable to violations of a Market Maker's continuous quoting obligations, currently conflicts with Rule 22.6(d) and a Market Maker's continuous quoting obligations. Specifically, pursuant to Rule 22.6(d)(1), the Exchange determines compliance by a Market Maker with the continuous quoting obligation in Rule 22.6(d) on a monthly basis; however, determining compliance with the continuous quoting obligations on a monthly basis does not relieve a Market Maker from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet this obligation each trading day. Therefore, the Exchange believes that, notwithstanding the proposed relocation of Rules 22.6(b) and (c) to Rule 25.3(d), it should have the flexibility to be able to separately charge for violations of a Market Maker's continuous quoting obligations on a monthly basis and a daily basis.

[10] *See supra* note 4.

[11] *See* Rule 25.3, which provides that a subsequent violation is calculated on the basis of a rolling 24-month period (''Period'').

[12] As stated herein, the proposed rule change also updates the fine schedule heading to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

[13] Any fine imposed pursuant to the Exchange's MRVP that does not exceed $2,500 and is not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Act or as may be required by any other regulatory authority. *See* Rule 8.15(a).

[14] *See* Rule 8.15(a).

[15] The proposed fine amounts are also an increase from the fines in Rule 25.3(c) currently imposed for violations of Market Maker initial quote volume and two-sided requirements. The Exchange notes, however, that Rule 25.3(c) currently imposes fines per violation whereas Rule 25.3(d) imposes fines per offense, which may be cumulative violations of Market Maker quoting obligations, as proposed.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that violations of the firm quote requirement may directly impact trading on the Exchange, maintenance of a fair and orderly market, and customer protection. As such, the Exchange does not believe violations of this rule to be minor in nature and, instead, should be handled under its formal disciplinary rules, rather than imposing fines pursuant to its MRVP. Also, and as stated above, the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Options, which, for the same reasons provided herein, no longer includes violations of the firm quote requirement as eligible for a minor rule disposition on Cboe Options.[19]

The Exchange believes that the proposed rule change to apply the same MRVP fine schedule for violations of a Market Makers quoting obligations pursuant to Rule 22.6 (*i.e.,* Rules 22.6(b)–(d)) and the same process for imposing such fines—that is, permitting the Exchange to aggregate violations of such Market Maker obligations into a single offense—will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade by uniformly imposing penalties and procedures for failure to satisfy obligations governed by the same Rule. Additionally, the Exchange believes the proposed rule change will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it is intended to harmonize the Exchange's MRVP in connection with Market Maker quoting obligations with that of Cboe Options, as well as BZX Options,[20] thereby providing consistent structures and procedures across MRVP provisions applicable to market maker obligations on the affiliated options exchanges.

The Exchange also believes that the proposed rule change, in connection with the fine schedule for violations of a Market Maker's quoting obligations in Rule 25.3(d), as proposed, to increase the fine amounts for a second and third offense [21] and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that applying a higher fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders which may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange believes that more effectively deterring repeat-offenders, while continuing to make first instance offenders aware of their quoting obligation violations and the subsequent consequences for continued failure, will, in turn, further motivate Market Makers to continue to uphold their quoting obligations, providing liquid markets to the benefit of all investors. The Exchange again notes that the proposed fine schedule is consistent with the fine schedule under Cboe Options' MRVP applicable to violations of Market Maker quoting requirements on Cboe Options, including a continuous quoting requirement and initial quote volume requirement. As described above, BZX Options and C2 intend to file proposals to update their minor rule violation fines applicable to violations of market maker quoting obligations in the same manner as Cboe Options and as proposed herein. As such, the proposed rule change is also designed to benefit investors by providing from consistent penalties across the MRVPs of the Exchange and its affiliated options exchanges.

The Exchange further believes that the proposed rule changes to Rule 25.3 are consistent with Section 6(b)(6) of the Act,[22] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change removes a Rule listed as eligible for a minor rule fine disposition under the Exchange's MRVP that the Exchange no longer believes violations of which are minor in nature and is more appropriately disciplined through the Exchange's formal disciplinary procedures, amends the MRVP provisions so that the same fine schedule, and process to impose such fines, uniformly applies to violations of a Market Maker's quoting obligations in Rule 22.6, and amends the fine schedule applicable to Market Maker failures to meet their quoting obligations in a manner that appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[23] Rule 25.3, currently and as amended, does not preclude an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending its MRVP in connection with rules eligible for a minor rule fine disposition and with the fine schedule for Market Maker failures to meet their quoting obligations. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

[19] *See supra* note 5.

[20] *See supra* note 8.

[21] *See supra* note 15.

[22] 15 U.S.C. 78f(b)(6).

[23] 15 U.S.C. 78f(b)(7) and 78f(d).

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2021–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2021–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2021–052, and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27819 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93823; File No. SR–Phlx–2021–74]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 3

December 17, 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 December 9, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 7, Section 3 to restate the Exchange's schedule of transaction credits and charges, to eliminate the Qualified Market Maker Program (the ''QMM Program''), and to eliminate the Enhanced Market Quality Program (the ''EMQ Program''), as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 purpose of the proposed rule change is to amend Equity 7, Section 3 to restate the Exchange's schedule of credits and charges, to eliminate the QMM Program, which the Exchange established in 2019 and amended in 2021,[3] and to eliminate the EMQ Program, which the Exchange both established and modified in 2021.[4] The Exchange also proposes to eliminate obsolete text from Equity 7, Section 3(a).

Restatement of Schedule of Credits and Charges

Pursuant to Equity 7, Section 3, and under the heading ''Order Execution and Routing,'' the Exchange presently provides a series of credits to member organizations that enter displayed and non-displayed orders/quotes that execute on the Exchange and impose charges upon member organizations that remove liquidity from the Exchange. To the extent that member organizations satisfy additional volume-based criteria, they may qualify for credits that are higher than or charges that are lower than standard transaction rates. As part of its periodic efforts to invigorate and grow the Exchange by increasing the attractiveness and effectiveness of the incentives it offers to its member organizations, the Exchange proposes to substantially restate its schedule of credits and charges. These changes will provide increased overall rebate opportunities available to members that

[3] *See* Securities Exchange Act Release No. 34–91159 (February 18, 2021), 86 FR 11343 (February 24, 2021) (SR–Phlx–2021–09); Securities Exchange Act Release No. 34–85862 (May 15, 2019), 84 FR 23112 (May 21, 2019) (SR–Phlx–2019–19).

[4] *See* Securities Exchange Act Release No. 34–93406 (October 22, 2021), 86 FR 59767 (October 28, 2021) (SR–Phlx–2021–64); Securities Exchange Act Release No. 34–92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR–Phlx–2021–47).

add liquidity to the Exchange, while imposing a single flat fee for member organizations that remove liquidity from the Exchange.

Presently, member organizations that enter orders that execute on the Exchange pay the following fees: (i) $0.0024 per share executed in securities entered by a member organization that accesses 0.055% or more of Consolidated Volume [5] during the month and adds 0.025% or more of Consolidated Volume during the month; (ii) $0.0025 per share executed in securities entered by a member organization that accesses 0.01% or more of Consolidated Volume during the month and adds 5,000 shares or more to the Exchange during the month; and (iii) $0.0030 per share executed for all other member organizations. The Exchange proposes to eliminate all but the last of these fee tiers, such that going forward, the Exchange will charge all member organizations that remove liquidity from the Exchange a flat fee of $0.0030 per share executed. This change will allow the Exchange to reallocate its limited resources to increase incentives for adding liquidity to the Exchange—an activity it believes is needed to improve the quality of the Exchange's market.

The Exchange presently offers the following credits to member organizations that add displayed liquidity to the Exchange: (i) $0.0026 per share executed for Quotes/Orders entered by a member organization that provides 0.10% or more of total Consolidated Volume during the month; (ii) $0.0024 per share executed for Quotes/Orders entered by a member organization that provides 0.07% or more of total Consolidated Volume during the month; and (iii) $0.0020 per share executed for all other quotes/orders. The Exchange proposes to restate this schedule, as follows, with the overall aims of increasing incentives for member organizations to add substantial volumes of displayed liquidity to the Exchange and providing a new incentive for member organizations to grow the extent of their liquidity adding activity relative to a baseline month.

First, the Exchange proposes modify its top $0.0026 per share executed credit by increasing the amount of that credit to $0.0035 per share executed. It also proposes to modify its $0.0024 per share executed credit by: (i) Increasing the amount of the credit to $0.0034 per share executed; (ii) decreasing the liquidity add volume threshold to qualify for the credit from 0.07% to 0.05% of Consolidated Volume; and (iii) by adding a requirement that the member organization must remove at least 0.02% of total Consolidated Volume during the month.[6] Third, the Exchange proposes to establish a new growth tier that will reward a member organization with a credit of $0.0030 per share executed to the extent that it adds a daily average of at least 1 million shares of liquidity in all securities on the Exchange during the month and increases its average daily volume of quotes/orders added to the Exchange by 100% or more during the month relative to the month of October 2021. Finally, the Exchange notes that it will not change its existing baseline credit of $0.0020 per share executed for the addition of displayed liquidity to the Exchange.

The Exchange presently offers the following credits to member organizations that add non-displayed liquidity to the Exchange: (i) A $0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity; (ii) a $0.0004 per share executed credit for orders entered by a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iii) a $0.0007 per share executed credit for orders entered by a member organization that provides 0.02% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; (iv) a $0.0012 per share executed credit for orders entered by a member organization that provides 0.05% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity; and (v) a $0.0000 per share executed credit for other non-displayed orders that provide liquidity. The Exchange proposes to restate this schedule of credits with the aim of increasing overall incentives to add non-displayed liquidity, while simplifying the credit structure by collapsing the schedule to three non-displayed tiers.

First, the Exchange will continue to provide a $0.0023 per share executed credit for all orders with midpoint pegging that provide liquidity. Second, the Exchange will continue to provide a credit to a member organization that provides 0.01% or more of total Consolidated Volume during the month through non-displayed orders (other than midpoint orders) that provide liquidity, but it will increase the amount of that credit from $0.0004 to $0.0015 per share executed. Third, the Exchange will increase from $0.0000 to $0.0005 the base credit it provides to member organizations that add non-displayed liquidity to the Exchange.

The proposed restatement of the Exchange's schedule of credits will focus the Exchange's limited resources to incenting member organizations to add and increase the extent to which they add liquidity to the Exchange. To the extent that this effort is successful, the Exchange hopes that additional liquidity will improve the quality of the market and help to grow it over time.

Elimination of the QMM Program

As set forth in Equity 7, Section 3, the QMM Program provides supplemental incentives to member organizations that qualify as ''Qualified Market Makers'' or ''QMMs'' [7] by making significant contribution to market quality by providing liquidity at the national best bid and offer (''NBBO'') [8] in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker.

The QMM program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of market-improving liquidity, the Exchange provides a QMM with the following non-cumulative supplemental credits for executions of displayed orders in securities priced at $1 or more

[5] Pursuant to Equity 7, Section 3, the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member organization's trading activity, the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member organization's trading activity.

[6] By tying receipt of this liquidity adding credit to a member organization also achieving a baseline level of liquidity removal activity, the Exchange intends to continue incenting member organizations to remove liquidity even as it focuses more of its resources on adding liquidity to the Exchange.

[7] To be designated as a QMM, a member organization must quote at the NBBO at least 15% of the time during regular market hours in an average of at least 400 securities per day during a month.

[8] For purposes of the QMM Program, a member organization is deemed to quote at the NBBO in a security if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer.

per share that provide liquidity on the Exchange:

1. $0.0001 per share executed with respect to all displayed orders of a QMM in securities priced at $1 or more per share that provide liquidity; or

2. $0.0002 per share executed with respect to all displayed orders of a QMM in securities priced at $1 or more per share that provide liquidity, provided that the QMM quotes the NBBO at least 10% of the time during Market Hours in an average of at least 650 securities per day during a month; or

3. $0.0003 per share executed in Tape A securities and a credit of $0.0002 per share executed in Tape B and Tape C securities with respect to all displayed orders of a QMM in securities priced at $1 or more per share that provide liquidity, provided that the QMM provides 0.12% or more of total Consolidated Volume during the month and quotes the NBBO at least 10% of the time during Market Hours in an average of at least 800 securities per day during a month.

The QMM credits are in addition to any credit that the Exchange provides under Equity 7, Section 3.

Through the use of the QMM Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the QMM Program reflected an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality.

Unfortunately, the QMM Program did not accomplish its objectives, as it did not meaningfully improve market quality on the Exchange. Accordingly, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the QMM Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

Elimination of the Enhanced Market Quality Program

The EMQ Program provides supplemental incentives to member organizations that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards member organizations that make significant contributions to market quality by providing liquidity at the NBBO in a large number of securities for a significant portion of the day.[9]

Specifically, the Exchange makes a lump sum payment at the end of each month (a ''Fixed Payment'') to a member organization to the extent that the member organization, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of qualifying securities per day during the month, as specified below (satisfying the ''NBBO requirement'').

On a daily basis, the Exchange determines the number of securities in which each of a member organization's MPIDs satisfies the NBBO requirement. The Exchange aggregates a member organization's MPIDs to determine the number of securities for purposes of the NBBO requirement.

The Exchange determines the amount of the Fixed Payment that it pays to a qualifying member organization, as follows. First, it determines which of five Tiers a member organization meets by virtue of the average daily number of qualifying securities for which it meets the NBBO requirement during the month (rounded to the nearest whole number) in Tapes A and B. Qualifying securities are limited to the top 1,500 securities in each of these Tapes, as determined by their total value traded during the second month prior to the current month. A member organization meets the NBBO requirement for a qualifying Tape A security on a given day to the extent that it quotes at the NBBO for at least 30% of the time during Market Hours on that day, and for a qualifying Tape B security, a member organization must quote such security at the NBBO for at least 50% of the time during Market Hours on that day.

For each tier of the EMQ Program, the Exchange has three groupings or ''Classes.'' The Exchange establishes the Classes by dividing the qualifying 1,500 securities into three equal groups for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1.

The Exchange assigns Fixed Payment amounts to each of the three Classes in each Tape and in each of five Tiers, with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1–5.

In sum, a member organization that meets the NBBO requirement for a requisite number of qualifying securities during a month to qualify for a particular Tier is entitled to receive the Fixed Payment that corresponds to the combination of: (i) That Tier; and (ii) the Class in which the Exchange has placed the qualifying securities for that month.

A member organization that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, for the each of the applicable Classes, but within each Tape and Class, a member organization may only qualify for one Tier during a month. The Exchange makes the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 3 (a)–(c).

The existing schedules of Tiers, Classes, and Fixed Payments are as follows:

TAPE A SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
1	0–24	$0 per qualified security per month	$0 per qualified security per month	$0 per qualified security per month.
2	25–49	$0 per qualified security per month	$0 per qualified security per month	$200 per qualified security over 24 per month.

[9] For purposes of the Enhanced Market Quality Program, a member organization is deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security.

TAPE A SECURITIES—Continued

Tiers	Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month	Fixed payment for securities in Tape A in Class 1	Fixed payment for securities in Tape A in Class 2	Fixed payment for securities in Tape A in Class 3
3	50–149	$50 per qualified security [sic] per month.	$200 per qualified security over 49 per month.	$5,000 + ($450 per qualified security over 49) per month.
4	150–249	$5,000 + ($100 per qualified security over 149) per month.	$20,000 + ($300 per qualified security over 149) per month.	$50,000 + ($600 per qualified security over 149) per month.
5	250 or greater	$15,000 + ($150 per qualified security over 249) per month.	$50,000 + ($350 per qualified security over 249) per month.	$50,000 + ($600 per qualified security over 149) per month.

TAPE B SECURITIES

Tiers	Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month	Fixed payment for securities in Tape B in Class 1	Fixed payment for securities in Tape B in Class 2	Fixed payment for securities in Tape B in Class 3
1	0–24	$0 per qualified security per month	$0 per qualified security per month	$0 per qualified security per month.
2	25–49	$0 per qualified security per month	$0 per qualified security per month	$100 per qualified security over 24 per month.
3	50–149	$0 per qualified security per month	$25 per qualified security over 49 per month.	$2,500 + ($150 per qualified security over 49) per month.
4	150–249	$50 per qualified security over 149 per month.	$2,500 + ($50 per qualified security over 149) per month.	$17,500 + ($300 per qualified security over 149) per month.
5	250 or greater	$5,000 + ($75 per qualified security over 249) per month.	$7,500 + ($150 per qualified security over 249) per month.	$17,500 + ($300 per qualified security over 149) per month.

A member organization may, but is not required to be, a registered market maker in any security to qualify for the EMQ Program; thus, the EMQ Program does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the EMQ Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

In establishing the EMQ Program, the Exchange hoped to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the EMQ Program reflected an effort by the Exchange to use its financial incentives to encourage a wider variety of member organizations other than market makers to make positive commitments to promote market quality.

Unfortunately, the Exchange's hopes for the EMQ Program have not been realized, notwithstanding refinements made to the EMQ Program earlier this year in an attempt to enhance its effectiveness. Indeed, while the EMQ Program has succeeded in incenting market participants to increase their quoting at the NBBO in qualifying securities, the number of EMQ Program participants has been small, as has been the corresponding impact on the market quality. Because the EMQ Program has not been effective in achieving its intended purposes, and because the Exchange has limited resources to allocate to incentive programs like this one, the Exchange proposes to eliminate the Enhanced Market Quality Program. Going forward, it plans to develop new incentive programs that it hopes will be more impactful.

Deletion of Obsolete Text

Finally, the Exchange proposes to eliminate text from this Rule that has become obsolete as it applied solely to Consolidated Volume calculations during the month of October 2020. The text that the Exchange proposes to delete is as follows:

(For purposes of determining which of the execution charges and credits listed below a member organization qualifies for during the month of October 2020, the Exchange will calculate the member organization's total Consolidated Volume on the Exchange for the full month of October as well as for the month of October excluding the week of October 26–30, 2020. The Exchange will then assess which total Consolidated Volume calculations would qualify the member organization for the most advantageous credits and charges for the month of October and then it will apply those credits and charges to the member organization.)

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member organizations and issuers and other persons using any facility, and is not designed to permit

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [12]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [13] (''NetCoalition'') the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [14]

The Exchange believes that the proposed elimination of the QMM and EMQ Programs is reasonable and is an equitable allocation of Exchange credits because neither program has proven to be effective in meeting its objectives, which include increasing the extent to which member organizations quote securities on the Exchange at the NBBO and improving overall market quality. Insofar as the Exchange has limited resources to devote to its incentive programs, the Exchange believes that it is reasonable and equitable for it to eliminate these two Programs and to reallocate its resources for other, more productive purposes. For similar reasons, the proposal is not unfairly discriminatory. The Exchange does not believe that the benefits enjoyed by the member organizations that participate in the QMM and EMQ Program are sufficient to justify maintaining them, as the resources the Exchange allocates to it could be put to broader and more productive use.

The Exchange also believes that its proposal is reasonable, equitable, and not unfairly discriminatory to restate its schedule of transaction credits and charges. As discussed above, the Exchange assesses a particular need to increase the extent to which its member organizations add liquidity to the Exchange as a means of improving market quality. The proposals serve that purpose by directly increasing credits for adding displayed and non-displayed liquidity, and by reallocating some resources that it currently devotes to providing discounted fees to member organizations which remove liquidity from the Exchange. Although the proposals will benefit net adders of liquidity at the expense of net removers of liquidity, the Exchange believes that this is equitable and not unfairly discriminatory because all market participants stand to benefit to the extent that the proposals are successful in increasing liquidity on the Exchange and improving market quality. The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to simplify its schedule of credits and charges insofar as the Exchange believes that a simpler credit/fee structure may be more comprehensible and administrable and thus, more appealing to, member organizations.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to delete text from the Rule that has become obsolete insofar as it applied only to calculations of Consolidated Volume for the month of October 2020. Deletion of obsolete rule text ensures that the Rulebook remains current and free from extraneous and potentially confusing text.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposals do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, the proposed restatement of the Exchange's schedule of credits and charges will not unduly burden competition, even as it will increase overall incentives to net adders of liquidity to the Exchange and reduce overall incentives to net removers of liquidity from the Exchange. The Exchange believes that its need to refocus its limited resources on increasing liquidity on the Exchange as a means of improving its overall market quality justifies the costs of this proposal to member organizations that are net liquidity removers.

Additionally, given that neither the QMM nor the EMQ Program has been utilized as extensively as the Exchange expected, the proposed elimination of those two Programs will not impact more than a handful of its member organizations. To the extent that elimination of the EMQ and QMM Programs do impact these member organizations, the Exchange notes that it continues to provide other financial incentives for member organizations to participate on the Exchange.

The Exchange does not believe that any competitive impact will ensue from its proposal to eliminate obsolete rule text relating to the calculation of Consolidated Volume in October 2020. Given that the text no longer applies, its deletion will have no effect on member organizations or the Exchange whatsoever.

In sum, the proposals are designed to render the Exchange more efficient in the allocation of its limited resources and more effective in improving the quality of the Exchange's market; however, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–74. 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–Phlx–2021–74 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27808 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93819; File No. SR–CBOE–2021–071]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt a New Trading Session That Will Operate After the Close of the Regular Trading Hours Session

December 17, 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 December 15, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt a new trading session that will operate after the close of the Regular Trading Hours session. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules to allow trading on the Exchange during a new forty-five-minute trading session called the ''Curb Trading Hours'' or ''Curb'' session. The proposed rule change to adopt a third trading session aims to increase the overlap in time that SPX, VIX and Mini-SPX Index (''XSP'') options are open alongside the related futures contracts.[3]

[3] For example, related futures products such as Cboe Volatility Index (VX) Futures are currently available for trading on Cboe Futures Exchange, LLC (''CFE'') during an extended trading hours session from 4:00 p.m. to 5:00 p.m. Eastern Time (ET) Monday through Friday. *See* CFE Rule 1202, which sets forth the trading hours for VX futures (times referenced in CFE Rule 1202 are Central Standard Time (CT)). Related future contracts are also offered on the Chicago Mercantile Exchange (''CME'') during the proposed hours of Curb. *See https://www.cmegroup.com/trading-hours.html#equityIndex* and *https://www.cmegroup.com/markets/equities/sp/e-mini-sandp500.html* which reflects, among other things, that E-mini S&P 500 Futures trade between 6:00 p.m. Sunday through 5:00 p.m. Friday ET (5:00 p.m.–4:00 p.m. CT) with a daily maintenance period from 5:00 p.m.–6:00 p.m. ET (4:00 p.m.–5:00 p.m. CT).

By way of background, the Exchange currently offers two trading sessions.[4] Regular Trading Hours (''RTH'') and Global Trading Hours (''GTH''). Rule 5.1 currently sets forth the trading hours for the Exchange's RTH and GTH trading sessions. Particularly, RTH for transactions in equity options (including options on individual stocks, ETFs, ETNs, and other securities) are the normal business days and hours set forth in the rules of the primary market currently trading the securities underlying the options, except for options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts the Exchange designates to remain open for trading beyond 4:00 p.m.[5] but in no case later than 4:15 p.m.[6] RTH for transactions in index options are from 9:30 a.m. to 4:15 p.m., subject to certain exceptions.[7] The GTH session currently begins at 8:15 p.m. (previous day) and goes until 9:15 a.m. on Monday through Friday.[8] The Exchange's Rules provide that the Exchange may designate as eligible for trading during GTH any exclusively listed index option designated for trading under Chapter 4, Section B. Currently, SPX, VIX and XSP are approved for trading during GTH.[9]

By way of further background, the Exchange originally adopted the GTH trading session due to global demand from investors to trade SPX and VIX options, as alternatives for hedging and other investment purposes, particularly as a complementary investment tool to VIX futures.[10] In response to customer demand for additional options to trade during the GTH trading session for similar purposes, the Exchange later designated XSP options to be eligible for trading during GTH.[11] The current GTH session allows market participants to engage in trading SPX, XSP and VIX options in conjunction with trading VIX futures on CFE during extended hours, as VIX futures are open for trading on CFE nearly 23 hours a day, 5 days a week.[12] The proposed rule change seeks to further maximize the overlap in time that SPX, XSP and VIX options may be open alongside the related futures contracts, as futures markets, including CFE, operate extended trading hours that overlap with the proposed Curb Trading Hours. The proposed rule change to adopt an additional trading session therefore provides market participants with expanded access to trade SPX, XSP and VIX options.

The proposed Curb session will provide an extra forty-five-minute electronic only session for trading between 4:15 p.m. and 5:00 p.m. for designated classes, which will be added Monday through Friday. Unlike the current RTH and GTH trading sessions, there will be no opening auction process that initiates the Curb trading session. Rather, RTH will seamlessly transition to the Curb trading session at 4:15 p.m., which is when RTH for index options products ends. Any unexecuted orders that are eligible to trade during the Curb trading session that remain on the Book at the end of the RTH trading session will remain on the Book and be eligible for execution during Curb. Transactions effected during the Curb session will have the same trade date as the immediately preceding RTH session (*i.e.,* the day on which the transactions were effected). The Curb trading session will however still be a separate trading session from RTH and GTH and while most of the Exchange Rules apply to trading during all three trading sessions, certain differences will apply as further described below.[13] For example, unlike the RTH session, there will be no open outcry trading on the floor during the Curb trading session and only designated index options will be available for trading (similar to GTH). As such, Chapter 4, Sections A, D, E, F and G will not apply as those cover Equity and ETP Options, Corporate Debt Securities Options, Credit Options, Government Security Options, and Interest Rate Options, respectively, which will be not available during Curb. Similarly, Chapter 5, Section G will not apply as such rules pertain to manual order handling and open-outcry trading. The Exchange also notes that all Trading Permit Holders (''TPHs'') may participate in Curb. TPHs will not need to apply or take any additional steps to participate in Curb. Additionally, because the Exchange will use the same servers and hardware during Curb as it uses for RTH and GTH, TPHs may use the same ports and connections to the Exchange for all trading sessions. The Book used during Curb will be the same Book used during RTH and GTH. The Exchange proposes to amend various rules to adopt provisions relating to the proposed Curb session and conform existing rules accordingly, as described more fully below.

Curb Session

As discussed above, Rule 5.1 (Trading Days and Hours) currently sets forth the trading hours for RTH and GTH. The Exchange proposes to adopt Rule 5.1(d),[14] which will set forth the trading hours and rules applicable to trading during the proposed Curb trading session. Specifically, proposed Rule 5.1(d) will provide that except under unusual conditions as may be determined by the Exchange, Curb Trading Hours are from 4:15 p.m. to 5:00 p.m. on Monday through Friday.[15] Proposed Rule 5.1(d)(1) provides that the Exchange may designate as eligible for trading during Curb Trading Hours any exclusively listed option that the Exchange has designated for trading under Chapter 4, Section B. The Exchange proposes to approve SPX, XSP and VIX for trading on the Exchange during Curb session, which are all classes that are currently approved for trading during GTH (*i.e.,* an ''All Sessions Class'' [16]).[17] FLEX Options with the same underlying index will also be deemed eligible for trading during the Curb session.[18]

[4] The term ''trading session'' means the hours during which the Exchange is open for trading for Regular Trading Hours or Global Trading Hours (each of which may referred to as a trading session). Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. *See* Rule 1.1 (Definitions).

[5] All times referenced herein are Eastern Time.

[6] *See* Rule 5.1(b)(1).

[7] *See* Rule 5.1(b)(2).

[8] *See* Rule 5.1(c).

[9] If the Exchange designates a class of index options as eligible for trading during GTH, FLEX Options with the same underlying index are also deemed eligible for trading during GTH. *See* Rule 5.1(c). The Exchange also notes that although eligible, XSP is not currently listed for trading during GTH.

[10] *See* Securities Exchange Act Release No. 34–73017 (September 8, 2014), 79 FR 54758 (September 12, 2014) (SR–CBOE–2014–062).

[11] *See* Securities Exchange Act Release No. 34–914 (September 14, 2015), 80 FR 522 (September 18, 2015) (SR–CBOE–2015–079).

[12] *See* CFE Rule 1202(b).

[13] For example, business conduct rules in Chapter 8 and rules related to doing business with the public in Chapter 9 will apply during the Curb trading session. Additionally, a broker-dealer's due diligence and best execution obligations apply during the Curb trading session.

[14] Current Rule 5.1(d) (Holidays) will be renumbered to Rule 5.1(e). In connection with the proposed numbering change, the Exchange also proposes to update a cross reference to Rule 5.1(d) in Rule 4.22 to reflect the new rule number of Rule 5.1(e).

[15] For example, the Exchange may modify its business days and trading hours to not be open for business or to have shortened trading hours due to unusual circumstances or in connection with terrorism, acts of war, loss or interruption of facilities utilized by the Exchange, or a period of mourning. The Exchange notes there will also be no Curb Trading Hours where the RTH session closes early due to a holiday (*e.g.,* on Christmas Eve).

[16] *See* Proposed Rule 1.1 (All Sessions Class) which means an options class the Exchange lists for trading during all trading sessions.

[17] Although the Exchange is proposing to approve XSP as eligible to trade during Curb, it does not intend to initially list XSP during Curb, as it is also approved, but not currently listed, during GTH. The Exchange however anticipates listing XSP during Curb and GTH at some point in the future.

[18] Delta-Adjusted at Close (''DAC'') will not be available during the Curb trading session (nor are they available currently during GTH) as the

Continued

Proposed Rule 5.1(d)(2) will provide that the Exchange may list for trading during the Curb trading session any series in eligible classes that it may list pursuant to Rule 4.13.[19] Any series in eligible classes that were open for trading during RTH are expected to be open for trading during the Curb trading session on that same trading day (subject to Rule 5.31).[20] The Exchange notes however that it will not list any p.m.-settled series during Curb on a series' expiration date as such series would continue to expire prior to the start of the Curb trading session at 4:00 p.m. on such date.[21] A.M.-settled options will cease trading at the conclusion of the Curb session the business day preceding the last day of trading in the underlying securities prior to expiration.[22]

Proposed Rule 5.1(d)(3) will provide that the Exchange will not report a value of an index underlying an index option trading during Curb because the value of the underlying index will not be recalculated during or at the close of Curb. Pursuant to Rules 4.10(f) and (g), to list options on a broad-based index (currently, the only options that are proposed to trade during Curb), current indexes values must be widely disseminated at least once every 15 seconds. Because index reporting authorities do not currently plan to disseminate updated values during the proposed Curb Trading Hours, the Exchange proposes to address the lack of dissemination of index values during Curb under proposed Rule 5.1(d)(3), which will supersede the requirements under Rules 4.10(f) and (g). The Exchange notes authority to decide when and how frequently to calculate and disseminate index values lies solely with a reporting authority. The reporting authority for the S&P 500 Index, S&P Dow Jones Indices LLC (''S&P''), does not intend to calculate or disseminate current values of the S&P 500 Index during the proposed Curb trading session. Similarly, Cboe Global Indices, LLC (''CGI''), the reporting authority for the Cboe Volatility Index (the ''VIX Index'') [23] does not intend to calculate or disseminate current values of the VIX Index during the proposed Curb trading session. Particularly, VIX is intended to represent the market's expectation of S&P 500 volatility over the next 30 days. The accuracy of the calculation for VIX indicative (or spot) values depends on the quality of bid and offer quotes for constituent SPX options series. As the proposed additional Curb trading session has yet to be implemented, CGI cannot currently know that the SPX option quotes displayed during those hours will be sufficient to calculate accurate and meaningful VIX indicative values in the same manner it does during RTH or the GTH session.[24] Indeed, the Exchange expects that initially there will be overall lower levels of trading during the proposed Curb session as compared to both RTH and the GTH session (between 3:00 a.m. and 9:15 a.m.). Therefore, CGI has determined to not calculate VIX spot values during the proposed Curb Trading Hours. Moreover, the Exchange notes that the proposed Curb Trading Hours is a significantly shorter trading session than RTH or GTH (only 45 minutes versus several hours) and the Exchange does not believe it is as meaningful or beneficial to disseminate the index for the session given the short length of the session. However, after the launch of the Curb Trading Hours, to the extent CGI as index calculator determines that SPX quotes during such session will support accurate VIX indicative values, CGI will reconsider whether to calculate and disseminate these values during Curb (and the Exchange would submit rule filings to amend the rules, as necessary). The Exchange notes that it similarly did not report a value of an index underlying an index option trading during GTH when the GTH session was first adopted.[25] Moreover, the Exchange recently extended the GTH session and amended its rules to provide that it will not report a value of an index underlying an index option trading during those new additional hours.[26] Additionally, as discussed further below, the Exchange proposes to amend Rule 9.20, to make clear that any TPH that accepts orders for customers for execution during Curb must disclose to those customers various risks related to trading during that trading session, including the risk that an updated underlying index or portfolio value or intraday indicative value may not be calculated or publicly disseminated during Curb.[27] Further, the closing value of the index from the immediately preceding RTH session will still be available for TPHs that trade during Curb. Proposed Rule 5.1(d)(3) (*i.e.,* the lack of dissemination of index values during Curb) will also have no impact on trading during Curb.

Lastly proposed Rule 5.1(d)(4) provides trading during Curb Trading Hours is electronic only on the System. There will be no open outcry trading on the floor during Curb Trading Hours. If in accordance with the Rules and User's instructions an order would route to PAR, the System will return the order to the TPH during Curb Trading Hours. The Exchange notes that the provisions of proposed Rule 5.1(d) are substantively similar to the corresponding rules for GTH.

adjustment calculation for DAC orders is linked to the RTH market close for the underlying securities and indexes. *See* Current Rule 5.6.(c) (''Delta-Adjusted at Close or DAC'' Definition), which provides a User may not designate a DAC order as All Sessions. *See also* proposed Rule 5.6(c) which will similarly provide a User may also not designate a DAC order as RTH and Curb.

[19] FLEX Options (that are not Cliquet-settled) with an exercise price that is a percentage of the closing value of the underlying index on the trade date will not be available during Curb (nor are they available currently during GTH), as the exercise price is linked to the RTH market close for the underlying index.

[20] Rule 5.31 describes the opening auction process. Although the Exchange does not intend to conduct an opening rotation under the normal course of business, an opening rotation may be utilized under certain circumstances as described further below and in such instances, the availability of a series being available for trading during Curb will be subject to Rule 5.31.

[21] *See* Rule 5.1(b)(2)(C).

[22] *See* Rule 4.13(a)(4) and 4.13(a)(5)(C). Pursuant to Rules 4.13(a)(4) and 4.13(a)(5)(C), the last day of trading for A.M.-settled index options (such as standard SPX and VIX, respectively) shall be the business day preceding the last day of trading in the underlying securities prior to expiration. Accordingly, for example, A.M.-settled SPX options that expire on a Friday will continue to cease trading at the close of the business day on the preceding Thursday (albeit now at 5:00 p.m. instead of 4:15 p.m. since the business day as proposed ends at the conclusion of Curb). Similarly, VIX options (which are A.M.-settled) that expire on a Wednesday will normally continue to cease trading at the close of the business day on the preceding Tuesday (albeit now at 5:00 p.m. instead of 4:15 p.m. since, as noted above, the business day as proposed ends at the conclusion of Curb).

[23] CGI is an affiliate of the Exchange.

[24] The Exchange only disseminates VIX indicative values during GTH between 3:00 a.m.–9:15 a.m. The Exchange will not report a value of VIX during GTH from 8:15 p.m. (previous day) to 3:00 a.m., because the value of the underlying index will not be recalculated during this time. *See* Rule 5.1(c)(3).

[25] *See* Securities Exchange Act Release No. 34–73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (order granting accelerated approval of proposed rule change, as modified by Amendments Nos 1 and 2, to adopt Extended Trading Hours for SPX and VIX). Particularly, the Exchange proposed to adopt Rule 6.1A(k), which provided ''[t]he Exchange will not report a value of an index underlying an index option trading during Extended Trading Hours, because the value of the underlying index will not be recalculated during or at the close of Extended Trading Hours.''

[26] *See* Securities Exchange Act Release No. 34–93403 (October 22, 2021), 86 FR 59824 (October 28, 2021) (SR–CBOE–2021–061).

[27] The Exchange proposes to make a clarifying update to Rule 9.20 to make clear that the underlying index or portfolio value and Intraday Indicative Value ''may not'' be (as opposed to ''will not'' be) calculated or widely disseminated during GTH or Curb. The Exchange believes the proposed change will reduce potential confusion given current values of VIX are in fact widely disseminated during GTH at least once 15 seconds for a portion of the GTH session (*i.e.,* between 3:00 a.m. to 9:15 a.m.). *See* Rule 5.1(c)(3).

Definitions

The Exchange proposes to adopt and amend various definitions under Rule 1.1 (Definitions) in connection with the proposed Curb trading session as follows:

• ''All Sessions Class.'' An ''All Sessions'' class is a class that is currently eligible to trade during both GTH and RTH. The Exchange proposes to amend the definition so that such term applies to an options class the Exchange lists for trading during all three trading sessions (*i.e.,* RTH, GTH and Curb).[28]

• ''Book and Simple Book.'' As noted above, the Book used during Curb will be the same Book used during RTH and GTH. The Exchange therefore proposes to amend this definition so that such terms mean the electronic book of simple orders and quotes maintained by the System, which single book will be used during all three trading sessions, including Curb.

• ''Business Day and Trading Day.'' The Exchange proposes to reflect that a business day or trading day includes all trading sessions on that day (which includes GTH, RTH and Curb). Further, the Exchange will clarify that if the Exchange is not open for RTH on a day, then it will not be open for either GTH or Curb trading sessions on that day.

• ''Curb Trading Hours and Curb.'' The Exchange proposes to adopt a new term and definition for the new trading session and specifically proposes to provide the terms ''Curb Trading Hours'' and ''Curb'' mean the trading session consisting of the hours outside of RTH and GTH during which transactions in options may be effected on the Exchange and are set forth in Rule 5.1. Having a separate definition for each trading session allows the Exchange Rules to reflect these differences and the separation of the trading sessions.

• ''Global Trading Hours and GTH.'' The Exchange also proposes to update the definition to add a reference to the new Curb Trading Hours.

• ''Trading Session.'' The Exchange lastly proposes add a reference to Curb Trading Hours in this definition to provide that trading sessions will refer to the hours during which the Exchange is open for trading for RTH, GTH or Curb.

Exchange Determinations

Generally, trading during the Curb trading session will occur in the same manner as it occurs during the RTH trading session. However, because the Curb market may have different characteristics than the RTH market (such as all electronic trading, lower trading levels, reduced liquidity, and fewer participants), the Exchange may deem it appropriate to make different determinations for trading rules for each trading session. For similar reasons as it relates to GTH, Rule 1.5(b) currently states to the extent the Rules allow the Exchange to make a determination, including on a class-by-class or series-by-series basis or a group basis, if the Exchange determines to list SPX or VIX on a group basis pursuant to Rule 4.13,[29] the Exchange may make a determination for GTH that differs from the determination it makes for RTH. The Exchange proposes to amend Rule 1.5(b) to similarly allow the Exchange to make a determination for Curb that differs from the determination it makes for RTH or GTH (*i.e.,* the Exchange will be allowed to make a determination on a trading session-by-trading session basis). The Exchange maintains flexibility with respect to certain rules so that it may apply different settings and parameters to address the specific characteristics of that class and its market.[30] The Exchange represents that it will have appropriate personnel available during Curb to make any determinations that Rules provide the Exchange or Exchange personnel will make (such as trading halts, opening series, and obvious errors).

Exchange Order Types, Order Instructions and Times-in-Force

The Exchange next proposes to amend various exchange rules relating to available order types, order instructions and times-in-force the Exchange may make available during Curb. First, the Exchange proposes to amend Rule 5.6 (Order Types, Order Instructions and Times-in-Force) to make clear that all order types, order instructions, and times-in-force the Exchange makes available in an All Sessions class for RTH electronic trading are available in that class for Curb electronic trading (just as it is for GTH electronic trading), except as otherwise specified in the Rules.[31] The Exchange notes that it may not permit certain order types or order instructions to be applied to orders during Curb that it does permit during RTH and/or GTH (*i.e.,* the Exchange has the discretion to not make available certain order types or Order Instructions otherwise listed under Rules 5.30(a) and (b) and proposed Rule 5.30(c)).

Order Types

The Exchange proposes to amend Rule 5.6(b) to provide that Users may not designate a market order as RTH and Curb.[32] Currently, market orders are not eligible for trading during GTH and as such, any order designated as ''All Sessions'' cannot be designated a market order. Similar to GTH, the Exchange notes there may be reduced liquidity, higher volatility, and wider spreads during Curb. Therefore, the Exchange believes it is appropriate to not allow these orders to participate in Curb trading in order to protect customers should wide price fluctuations occur due to the potential illiquid and volatile nature of the market or other factors that could impact market activity.

Order Instructions

The Exchange first proposes to update the ''All Sessions'' order description under Rules 5.6(c) and 5.33(b)(5) to make clear that orders designated as ''All Sessions'' (simple and complex, respectively) are eligible to trade in all

[28] At this time, SPX, XSP and VIX are the only classes that will be designated as eligible for trading during Curb. Because these classes are also eligible to trade during RTH and GTH, they will be considered ''All Sessions classes''.

[29] The Exchange may list SPX or VIX on a group basis. *See* Rule 4.13(f). When determining whether to list a class on a group basis, the Exchange intends to generally select series with common expirations or classifications (*e.g.,* end-of-week series or end-of-month series, short-term option series, long-term option series, or series that expire on a particular expiration date) and trade them under individual listing symbols. For example, the Exchange currently lists SPX options in two groups. Particularly, the Exchange lists SPX options with A.M.-settled standard third-Friday expirations under symbol ''SPX'' and lists options on the S&P 500 Index with P.M-settled standard third-Friday expirations and nonstandard expirations with all other expirations under symbol ''SPXW.'' If the Exchange lists SPX or VIX on a group basis, the Exchange may apply different trading parameters (including different allocation algorithms) to each group. The Exchange may also determine the eligible categories of Market-Maker participants for each group (Designated Primary Market-Makers (''DPMs''), Lead Market-Makers (''LMMs''), or Market-Makers).

[30] For example, Rule 5.32(a) allows the Exchange to determine electronic allocation algorithms on a class-by-class basis; Rule 5.52(e)(2) allows the Exchange to determine bid/ask differential requirements on a class-by-class basis; Rules 5.34(a)(2), 5.34(a)(4)(C), 5.34(a)(5), 5.34(b)(6), and Rules 5.34(c)(1) and (10) allow the Exchange to set certain price reasonability checks on a class-by-class basis; and Rules 5.37(a)(1), 5.38(a)(1), 5.39(a)(1), and 5.40(a)(1), allow the Exchange to activate various auctions on a class-by-class basis. Because trading during Curb will be electronic only, and because trading during Curb may be different than RTH (such as lower trading levels, reduced liquidity and fewer participants), the Exchange believes it is appropriate to extend this flexibility to each trading session.

[31] For example, market orders, stop, and stop-limit orders will not be eligible for trading during Curb, just as they are not eligible for trading during GTH. *See* Rules 5.6(b) and (c).

[32] The Exchange also proposes to correct an inadvertent marking error that resulted in an incorrect rule reference to Rule 6.8(c) instead of Rule 5.5(c) in the definition of ''Market Order'' under Rule 5.6(b). *See* Securities Exchange Act Release No. 34–87320 (October 16, 2019), 84 FR 56501 (October 22, 2019) (SR–CBOE–2019–033).

trading sessions (*i.e.,* RTH, GTH and Curb). The Exchange also proposes to update the ''All Sessions'' description under Rules 5.6(c) and 5.33(b)(5) to further clarify what happens to unexecuted All Sessions orders at the end of the RTH and Curb trading sessions. Currently, Rule 5.6(c) specifies that an unexecuted All Sessions order on the GTH Book [33] at the end of a GTH session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on that same trading day (subject to a User's instructions). The Exchange proposes to further amend Rule 5.6(c) to clarify that (i) an unexecuted All Sessions order on the Book at the end of the RTH trading session remains on the Book and becomes eligible for execution during the Curb trading session on that same trading day, subject to a User's instructions and (ii) an unexecuted All Sessions order on the Book at the end of the Curb trading session enters the GTH Queuing Book and becomes eligible for execution during the GTH opening rotation and trading session on the next day, subject to a User's instructions.[34] The Exchange proposes to also add for clarity language providing that All Sessions ''Day'' orders on the Book at the conclusion of the Curb session will be canceled. Similar to Rule 5.6(c), Rule 5.33(b)(5) provides that an unexecuted All Sessions complex order resting in the Complex Order Book (''COB'') at the end of a GTH trading session remains in the COB and becomes eligible for execution during the RTH COB Opening Process or trading session on that same trading day, subject to a User's instructions. Similar to the proposed changes to Rule 5.6(c), the Exchange proposes to update the ''All Sessions'' description under Rule 5.33(b)(5) to make clear that (i) an unexecuted All Sessions complex order resting in the COB at the end of the RTH trading session remains in the COB and becomes eligible for execution during the Curb trading session on that same trading day, subject to a User's instructions and (ii) an unexecuted All Sessions complex order resting in the COB at the end of a Curb trading session remains in the COB and becomes eligible for execution during the GTH COB Opening Process or trading session on the next trading day, subject to a User's instructions.[35] The Exchange also proposes to add for clarity language providing that All Sessions ''Day'' complex orders resting in the COB at the conclusion of the Curb session will be canceled.

The Exchange also proposes to amend certain other order descriptions under Rules 5.6(c). and Rule 5.33(b)(5) (Complex Orders). Particularly, the Exchange proposes to amend the descriptions of ''All-or-None or AON'' under Rule 5.6(c), ''Delta-Adjusted at Close or DAC'' under Rules 5.6(c) and 5.33(b)(5), and ''Stop (Stop-Loss)'' and ''Stop-Limit'' under Rule 5.6(b) to provide that Users may not designate the foregoing orders as RTH and Curb. Users similarly cannot designate such orders as All Sessions (*i.e.,* they are not currently eligible for GTH). The Exchange also proposes to amend the description of ''RTH Only'' orders under Rules 5.6(c) and 5.33(b)(5) to clarify that such orders are those that a User designates as eligible to trade only during RTH, or that are not designated as All Sessions or RTH and Curb. Additionally, the Exchange proposes to clarify that unexecuted RTH Only orders with a Time-in-Force of GTC or GTD on the Book (or COB) at the end of an RTH trading session are not eligible for execution during the Curb trading session on the same trading day (in addition to the current reference to not being eligible for the GTH trading session on the following trading day).[36]

To provide investors with the flexibility to have their orders and quotes execute during (i) RTH, (ii) RTH, GTH and Curb or only (iii) RTH and Curb, the proposed rule change adds a ''RTH and Curb'' order to the rules. More specifically, the Exchange proposes to adopt a description of ''RTH and Curb'' orders under both Rule 5.6(c) and Rule 5.33(b)(5) which will describe orders that are designated to trade only during RTH and Curb trading sessions. Particularly, an RTH and Curb Order will be an order (including a bulk message) a User designates as eligible to trade only during RTH and Curb or not designated as All Sessions or RTH Only. An unexecuted RTH and Curb order with a Time-in-Force of GTC or GTD on the Book (or COB) at the end of an RTH trading session remains in the Book (or COB) and becomes eligible for execution during the Curb trading session on the same trading day (but not during the GTH trading session on the following trading day), subject to a User's instructions. An unexecuted RTH and Curb order with a Time-in-Force of GTC or GTD on the Book (or COB) at the end of a Curb trading session enters the RTH Queuing Book (or COB) and becomes eligible for execution during the RTH opening rotation (or COB Opening Process) and trading session on the following trading day (but not during the GTH trading session on the following trading day), subject to a User's instructions. Additionally, all RTH and Curb Day orders resting on the Book (or COB) at the conclusion of the Curb trading session will be canceled.

Times-in-Force

The Exchange proposes to update the time times-in-force description of a ''Day'' order or quote under Rule 5.6(c) to make clear that any order or quote so designated, if not executed, will expire at the RTH market close for RTH Only orders (as such orders are not eligible for Curb or GTH) and expire at Curb market close for all All Sessions and RTH and Curb orders (as Curb is the last trading session of a given trading day).

The Exchange lastly proposes to update the Limit-on-Close (''LOC'') definition to provide that a User may not designate an LOC order as All Sessions or RTH and Curb, as the execution of LOC orders is linked to the RTH market close.

Availability of Orders and Quotes for Electronic Processing

The Exchange next proposes to amend Rule 5.30 (Availability of Orders and Quotes for Electronic Processing) to adopt new subparagraph (c), which will specify which order types, order instructions and times-in-force the Exchange may choose to make available during the Curb session. Specifically, the Exchange proposes to provide the Exchange may make the following available during Curb (the Exchange notes it also currently may make all these (other than RTH and Curb) available during GTH):

[33] Since the term ''Book'' refers to a single book that is used during all trading sessions, the Exchange proposes to eliminate references to ''GTH'' or ''RTH'' preceding the term Book to avoid potential confusion.

[34] An unexecuted RTH Only simple order would not persist into the Curb or GTH sessions at the end of the RTH trading session as such orders are not eligible to trade during either of those sessions. Similarly, an unexecuted RTH and Curb simple order would not persist into the GTH session at the end of the Curb trading session as such orders will not be eligible to trade during GTH.

[35] An unexecuted RTH Only complex order on the COB would not persist into the Curb or GTH sessions at the end of the RTH trading session as such orders are also not eligible to trade during either of those sessions. Similarly, an unexecuted RTH and Curb complex order would not persist into the GTH session at the end of the Curb trading session as such orders will not be eligible to trade during GTH.

[36] The Exchange also proposes to make a clarifying change to the description of ''RTH Only'' orders under Rule 5.33(b)(5) to explicitly reference the ''COB Opening Process'' in order to make clear that any unexecuted RTH Only order with a Time-in-Force of GTC or GTD on the COB at the end of a RTH trading session remains on the COB and becomes eligible for execution during the RTH COB Opening Process, which is what happens today. The language is consistent with the definition of ''RTH Only'' for simple orders under Rule 5.6(c).

(1) *Order Types:* Limit order.

(2) *Order Instructions:* Attributable, Book Only, All Sessions, Cancel Back, Compression/PCC, Electronic Only, Match Trade Prevention (''MTP'') Modifier, Minimum Quantity, Non-Attributable, Post Only, Price Adjust, Reserve Order, and RTH and Curb.

(3) *Times-in-Force:* Day, Fill-or-Kill (''FOK''), Good-til-Cancelled (''GTC''), Good-til-Date (''GTD''), Immediate-or-Cancel (''IOC''), At the Open (''OPG'').[37]

(4) *Complex Orders:* Complex orders (see Rule 5.33 for types of complex orders) with a ratio greater than or equal to one-to-three (.333) and less than or equal to three-to-one (3.00) (except for Index Combo orders).

The Exchange also proposes to amend Rule 5.70, which sets forth order types, order instructions and times-in-force available for FLEX options, to add ''RTH and Curb'' to the list of available order instructions.

Entry of Orders and Quotes

The Exchange proposes to amend Rule 5.7 (Entry of Orders and Quotes) to clarify that Users can enter orders and quotes into the system or cancel previously entered orders and quotes from 8:00 p.m. until Curb market close (instead of RTH market close). Further, the Exchange proposes to update the time under Rule 5.7(e) that Users may cancel orders and quotes with Time-in-Force of GTC or GTD that remain on the book from 4:45 p.m. to 5:15 p.m. The Exchange notes that the proposed rule change would allow Users to cancel any GTC and GTD orders until 5:15 p.m., not just orders in All Sessions classes. The Exchange believes the proposed rule change provides Users with additional flexibility to manage their orders in all classes that remain in the Book following the Curb market close. In particular, the proposed rule change will provide Users with All Sessions and RTH and Curb GTC and GTD orders with the same time period following the end of Curb to cancel orders and provide Users with RTH Only GTC and GTD orders with additional time to cancel orders. The Exchange notes that cancelling a RTH Only GTC or GTD order at 5:15 p.m. has the same effect as cancelling that order at 4:45 p.m.—ultimately it accommodates the User's goal of cancelling an order prior to it potentially executing during the RTH Opening Process the following morning (*i.e.,* it merely provides 30 additional minutes to cancel a RTH Only GTC or GTH order).

Trading Halts

The Exchange next proposes to amend Rule 5.20 (Trading Halts). By way of background, Rule 5.20(a) provides that any two Floor Officials, in consultation with a designated senior executive officer of the Exchange, may halt trading in any security in the interests of a fair and orderly market and to protect investors and sets forth several different factors that may be considered in making the foregoing determination. Rule 5.20(b) provides that trading in a security that has been the subject of a halt under paragraph (a) above may be resumed (as described in Rule 5.31(g)[38]) upon a determination by two Floor Officials, in consultation with a designated senior executive officer of the Exchange, that the interests of a fair and orderly market are best served by a resumption of trading. It also states that among the factors to be considered in making this determination are whether the conditions which led to the halt are no longer present. Rule 5.20(d) sets forth exceptions relating to trading halts and resumptions in index options. In particular, Rule 5.20(d) provides that when the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of the Exchange, and during Global Trading Hours, Rule 5.22 (which describes market-wide trading halts due to extraordinary market volatility) and subparagraphs (a)(3) and (5) (the factors applicable to index options) and subparagraph (b) of Rule 5.20 do not apply, except for subparagraph (a)(6).[39] By way of further background, Rule 5.20(a)(3) provides that in the case of an index option, the Exchange may consider: (A) The extent to which trading is not occurring in the stocks or options underlying the index; (B) the current calculation of the index derived from the current market prices of the stocks is not available; or (C) the ''current index level,'' which is the implied forward level based on volatility index (security) futures prices, for a volatility index is not available or the cash (spot) value for a volatility index is not available. Rule 5.20(a)(5) provides that the Exchange may consider the extent to which the opening process pursuant to Rule 5.31 has been completed or other factors regarding the status of the opening process.

Generally, in connection with Rule 5.20, the Exchange considers halting trading only in response to unusual conditions or circumstances, as it wants to interrupt trading as infrequently as possible and only if necessary, to maintain a fair and orderly market. The proposed rule change amends Rule 5.20(d) to indicate that subparagraph (a)(3) of Rule 5.20 also does not apply to Curb (just as it does not apply during GTH). In particular at least one of the primary listing markets is not open during the proposed Curb session.[40] Additionally, as discussed above, the index values (including the spot value for VIX) will not be calculated during Curb.[41] Thus, the Exchange believes it is appropriate to exclude Curb from the application of Rule 5.20(a)(3) because the factors in that provision will always be true during Curb, whereas during RTH, it would be unusual, for example, for stocks or options underlying an index to not be trading or the current calculation of the index to not be available. Exclusion of Curb from this provision will allow trading during Curb to occur despite the existence of those conditions (if the Exchange considered the existence of those conditions during Curb, trading during Curb could be halted every day). It is appropriate for the Exchange to consider any unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market during Curb, which may, for example, include whether the underlying primary securities market was halted at the close of the preceding RTH session (in which case the Exchange will evaluate whether the condition that led to the halt has been resolved or would not impact trading

[37] Orders designated as OPG for the Curb session will generally be rejected unless circumstances require an opening rotation to occur in which case, they will be accepted. As discussed more fully below, the Curb session does not normally have an opening rotation, however an opening rotation may occur if the Exchange determines to start Curb after 4:15 p.m. or after any trading halt during the Curb session.

[38] Rule 5.31(g) describes the opening auction process that takes place upon the resumption of trading following a trading halt and is applicable to all trading sessions.

[39] The Exchange proposes to eliminate the reference to Rule 5.20(a)(6) in Rule 5.20(d). Pursuant to Rule 5.20(a)(6) the Exchange may consider whether other unusual conditions or circumstances are present, including the activation of price limits on futures exchanges or the halt of trading in related futures with respect to index options. The Exchange notes that Rule 5.20(a)(6) will continue to apply during GTH (and Curb) notwithstanding the proposed rule change. The Exchange believes the applicability of Rule 5.20(a)(6) is implied and otherwise clear and that it is not necessary to explicitly reference this provision under subparagraph (d) of Rule 5.20.

[40] For example, the New York Stock Exchange, LLC (''NYSE'') does not offer trading hours during the proposed hours of the Curb session. *See* NYSE Rules 1.1 and 7.34. Specifically, NYSE Rule 1.1 defines ''Core Trading Hours'' as the hours between 9:30 a.m. through 4:00 p.m. ET and NYSE Rule 7.34 provides the Exchange has two trading sessions each day: (1) The ''Early Trading Session'' which begins at 7:00 a.m. and concludes at the commencement of the Core Trading Session and (2) the Core Trading Session, which as defined in NYSE Rule 1.1, begins at 9:30 a.m. and concludes at 4:00 p.m. ET.

[41] *See* proposed Rule 5.1(d)(3).

during Curb) or significant events that occur during Curb.

While the Exchange proposes to exclude application of Rule 5.20(a)(3) from the Curb session, the Exchange does not believe there are any distinguishing factors between Curb (or GTH) and RTH that warrants subparagraph (a)(5) (the provision that allows the Exchange to consider the extent to which the opening process has been completed) or Rule 5.20(b) (*i.e.,* the provision that allows the Exchange to resume trading) to not apply. Indeed, the Exchange sees no reason why it should not consider the extent to which the opening process has been completed or other factors regarding the status of the opening process during either GTH or Curb. Although there will be no opening process to initiate the Curb session, there may still be an opening process pursuant to Rule 5.31(g) that may occur should a trading halt be declared during Curb. As such, the Exchange believes it's appropriate to not preclude this factor from being considered during either GTH or Curb. The Exchange also sees no reason why it should not allow the resumption of a halted security during GTH or Curb if a determination is made by two Floor Officials, in consultation with a designated senior executive officer of the Exchange, that the interests of a fair and orderly market are best served by a resumption of trading.

The Exchange next proposes to amend Rule 5.20(d) with respect to a reference to Rule 5.22. Under Rule 5.22 (Market-wide Trading Halts due to Extraordinary Market Volatility), the Exchange will halt trading in all classes whenever a market-wide trading halt (commonly known as a circuit breaker) is initiated in response to extraordinary market conditions. Rule 5.22(b)(1) states that the Exchange will halt trading for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m. (or 12:25 p.m. for an early scheduled close). Additionally, the Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 3:25 p.m. (or 12:25 p.m., if applicable). Rule 5.22(b)(2) states that the Exchange will halt trading until the next trading day if a Level 3 Market Decline occurs. As referenced under Rule 5.20(d), Rule 5.22 does not currently apply during the GTH session. Particularly, Rule 5.22(b)(1) does not apply, as the beginning of GTH occurs past the 15-minute halt window for a Level 1 or Level 2 Market Decline. Rule 5.22(b)(2) also does not apply during GTH, as the GTH session is considered the next trading day and Rule 5.22(b)(2) requires the Exchange to halt trading until the ''next'' trading day if a Level 3 Market Decline occurs at any time during the trading day. Unlike GTH however, the Curb session is considered the same trading day as the preceding RTH session, and therefore, unlike GTH, Rule 5.22(b)(2) can and should apply. Accordingly, the Exchange proposes to amend Rule 5.20(d) to make clear that the only applicable trading halt provisions that do not apply during GTH and Curb are Rules 5.22 and 5.20(a)(3), with the exception of Rule 5.22(b)(2) which will apply during Curb.

Opening Auction Process

As discussed above, the Exchange does not intend to adopt an opening auction process for either simple or complex orders to commence the Curb trading session as the proposed start time of Curb immediately follows the close of RTH. As such, there will be no Curb-specific queuing period or opening rotation trigger to initiate the Curb session. Instead, at 4:15 p.m., the RTH trading session will seamlessly transition directly into the Curb trading session, and any All Sessions orders resting on the Book will remain on the book and become eligible for execution during Curb subject to a User's instructions. In connection with the proposal, the Exchange proposes to amend Rules 5.31 and 5.33 to make clear that under normal circumstances there will be no opening rotation at the start of Curb. Particularly, the Exchange proposes to amend Rule 5.31(d), which sets forth various triggers upon which the System will initiate an opening rotation for the series in a class, by adopting new subparagraph (3) to explicitly provide that the System will not initiate an opening rotation at the start of the Curb Trading Hours. The Exchange also proposes to address what happens in the event Curb does not start immediately at 4:15 p.m. As noted above, proposed Rule 5.1(d) will provide that Curb will operate from 4:15 p.m. to 5:00 p.m., except under unusual conditions as may be determined by the Exchange. If such conditions result in a determination to start Curb sometime after 4:15 p.m., the Exchange will need to initiate an opening rotation to start the Curb session as there would then be a ''gap'' between RTH and Curb and the transition would no longer be seamless. As such, the Exchange proposes to also add language to proposed Rule 5.31(d)(3) which would provide that should the Exchange determine to start Curb after 4:15 p.m. due to unusual conditions as may be determined by the Exchange, the Exchange will utilize an opening rotation to initiate the session at a time to be announced by the Exchange. Proposed Rule 5.31(d)(3) would also clarify that the queuing period for any such opening rotation would begin at 4:15 p.m. The Exchange also proposes to make clear in Rule 5.31(d)(3) that the Exchange will follow the opening auction process described in Rule 5.31(g) to resume trading following the declaration of a trading halt during Curb Trading Hours.

Similarly, the Exchange proposes to amend Rule 5.33(c), which describes the COB Opening Process, to clarify that the System will not initiate the COB Opening Process at the start of Curb. More specifically, Rule 5.33(c) currently provides that the COB Opening Process occurs at the beginning of each trading session and after a trading halt. The Exchange proposes to update Rule 5.33(c) to make clear that the COB Opening Process occurs only at the beginning of RTH and GTH (instead of ''each'' trading session). The Exchange notes that should a trading halt be declared during Curb, the Exchange will utilize the COB Opening Process described under Rule 5.33(c) upon a resumption of trading. Similar to proposed Rule 5.31(d)(3), the Exchange proposes to adopt new Rule 5.33(c)(3) to explicitly provide that there will be no COB Opening Process at the start of the Curb Trading Hours. Proposed Rule 5.33(c)(3) will also address what happens in the event Curb does not start immediately at 4:15 p.m. That is, if such conditions result in a determination to start Curb sometime after 4:15 p.m., the Exchange will initiate the COB Opening Process at a time to be announced by the Exchange. Proposed Rule 5.33(c)(3) would also clarify that the System will accept complex orders for inclusion in the COB Opening Process beginning at 4:15 p.m. The Exchange will also make clear in proposed Rule 5.33(c)(3) that the Exchange will follow the COB Opening Process described in Rule 5.33(c) to resume trading following the declaration of a trading halt during Curb Trading Hours. The Exchange believes the proposed rule changes relating to the opening processes for simple and complex orders (or lack thereof) provides transparency as to how the Exchange will initiate the Curb session under normal circumstances, as well as in the event unusual conditions result in the Curb session starting after 4:15 p.m.

Market-Maker Rules

Current Rule 5.50(a) (Market-Maker Appointments) provides that a Market-Maker's selected class appointment applies to classes during all trading sessions. In other words, if a Market-

Maker selects an appointment in SPX options, for example, that appointment would apply during both GTH, RTH and Curb (and thus, the Market-Maker would have an appointment to make markets in SPX during GTH, RTH and Curb). As a result, the Market-Maker continuous quoting obligations set forth in Rule 5.52(d) applies to the class for an entire trading day (including all three trading sessions). Pursuant to Rule 5.52(d), a Market-Maker must enter continuous bids and offers in 60% of the series of the Market-Maker's appointed classes, excluding any adjusted series, any intra-day add-on series on the day during which such series are added for trading, any Quarterly Option series, and any series with an expiration of greater than 270 days.[42] The Exchange calculates this requirement by taking the total number of seconds the Market-Maker disseminates quotes in each appointed class (excluding the series noted above) and dividing that time by the eligible total number of seconds each appointed class is open for trading that day. The Exchange also notes however, that pursuant to Rule 5.52(d)(2)(E), the obligations apply only when the Market-Maker is quoting in a particular class during a given trading day and the obligations are not applicable to an appointed class if a Market-Maker is not quoting in that appointed class. Accordingly, if a Market-Maker does not wish to quote during the proposed new Curb trading session, but does quote the current RTH hours, then so long as the Market-Maker doesn't log in and quote starting at 4:15 p.m., the time between 4:15 p.m. and 5:00 p.m. (the Curb session) won't be considered when determining a Market-Maker's compliance with the quoting obligations. Accordingly, the Exchange believes the addition of the proposed Curb Trading Hours session will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply.[43] Moreover, selecting an appointment in SPX or VIX options will be optional and within the discretion of a Market-Maker. Additionally, Market-Makers have the opportunity to quote during Curb (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. Given this ease of access to the Curb trading session, the Exchange believes Market-Makers may be encouraged to quote during the trading session. The Exchange believes Market-Makers will continue to have an incentive to quote during Curb given the significance of the SPX and VIX within the financial markets, the expected demand, and given that the related futures also trading during those hours (which may permit execution of certain hedging strategies). The Exchange believes continuing to extend a Market-Maker's appointment to Curb notwithstanding the proposed extension of the trading session will enhance liquidity during that trading session, which benefits all investors during those hours. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

With respect to Lead-Market-Makers (''LMMs''), the Exchange plans to utilize the same LMM structure it uses today during GTH. More specifically, Rule 3.55 (LMMS) currently provides that the Exchange may approve one or more Market-Makers to act as LMMs in each class during GTH. Further, subparagraph (b) of Rule 5.55 (LMMs) provides that if a LMM is approved to act as an LMM during GTH, then the LMM must comply with the continuous quoting obligation and other obligations of Market-Makers set forth in Rule 5.52(d)(2) but does not have to comply with the obligations under Rule 5.55(a). Additionally, subparagraph (a)(2)(B)(iv) of Rule 5.32 (Order and Quote Book Processing, Display, Priority and Execution) provides that the DPM/LMM/PMM participation entitlement does not apply during GTH. Similar to GTH, the Exchange expects lower trading liquidity and trading levels during Curb as compared to RTH, and thus fewer opportunities for an LMM to receive a participation entitlement. As such, the Exchange does not expect that the RTH obligation/benefit structure would provide a similar incentive during Curb. More specifically, without the possibility of receiving a participation entitlement on a sufficient volume of trades, the Exchange believes there would be insufficient incentive for LMMs to undertake an obligation to quote at heightened levels, which could result in even lower levels of liquidity. The Exchange therefore proposes to amend Rules 3.55, 5.55 and 5.32 to add references to Curb such that the same LMM rules that are used during GTH will also apply during Curb.[44] Accordingly, LMMs appointed in the Curb session will not be obligated to satisfy heightened continuous quoting and opening quoting standards during Curb, nor will they receive a benefit in exchange for satisfying an obligation (*i.e.,* LMMs will not receive a participation entitlement during Curb).[45]

The Exchange notes that to the extent the Exchange appoints a Designated Primary Market-Maker (''DPM'') or Preferred Market-Maker (''PMM'') to a class for the Curb trading session, the Exchange would similarly not use the obligation/benefit structure. As such, the Exchange also proposes to amend subparagraph (a)(2)(B)(iv) of Rule 5.32 (Order and Quote Book Processing, Display, Priority and Execution) to provide that the DPM/LMM/PMM participation entitlement does not apply during GTH or Curb.

FLEX

Subparagraph (b) of Rule 5.71 (Opening of FLEX Trading) currently sets forth the times that FLEX traders may begin submitting FLEX Orders into an electronic FLEX Auction, a FLEX AIM, or a FLEX SAM or initiate an open outcry FLEX Auction on the trading floor for the RTH and GTH sessions. The Exchange proposes to add the time FLEX traders may submit such orders during Curb, which is after 4:15 p.m. (which is the start time of the Curb trading session).

Catastrophic Errors

The Exchange next proposes to amend Rule 6.5 (Nullification and Adjustment of Option Transactions Including Obvious) to specify the time deadline relating to catastrophic error[46] notifications in subparagraph (d)(2) for Curb. First, Rule 6.5(d) provides that a party that believes that it participated in a transaction that was the result of a Catastrophic Error must notify the Exchange's Trade Desk. The Exchange proposes to update Rule 6.5(d) to clarify that like transactions occurring during

[42] *See* Rule 5.52(d)(2).

[43] *See* Proposed Rule 5.5(d)(2)(E).

[44] The Exchange notes that it may appoint LMMs in both GTH and Curb, neither GTH nor Curb or only GTH or Curb. The Exchange also notes that to the extent it determines to appoint LMMs in both GTH and Curb, such LMM may, but is not required to be, the same LMM for each trading session.

[45] The Exchange may determine in the future to adopt via a separate rule filing an incentive program that would provide appointed LMMs a rebate if they meet certain heightened continuous quoting standards during the proposed additional hours, if the Exchange believes it is necessary to encourage LMMs to provide significant liquidity during this time.

[46] A catastrophic error is deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amounts set forth under Rule 6.5(d)(1).

RTH,[47] notification relating to trades executed during Curb must be received by the Exchange's Trade Desk by 8:30 a.m. on the first trading day following the execution. The Exchange also proposes to clarify in Rule 6.5(d)(2) the cutoff time for transactions in an expiring options series that take place on an expiration day. Currently Rule 6.5(d)(2) provides that for transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Trade Desk within 45 minutes after the close of ''trading that same day''. In order to avoid confusion as to whether or not the close of trading refers to the close of the RTH session or the proposed Curb session, the Exchange proposes to clarify that such notification must be submitted by the close of the ''RTH session''. As discussed above, P.M.-settled options will continue to expire at 4:00 p.m. on the date of expiration. As such, the Exchange believes it's appropriate to continue to provide the same amount of time for notification as it does today.

Disclosure

Current Rule 9.20 currently requires TPHs to make certain disclosures to customers regarding material trading risks that exist during GTH. The Exchange proposes to similarly require that TPHs make similar disclosures to customers regarding material trading risks that also exist during Curb. Similar to GTH, the Exchange expects overall lower levels of trading during Curb compared to RTH. While trading processes during Curb will be substantially similar to trading processes during RTH (as noted above), the Exchange believes it is important for investors, particularly public customers, to be aware of any differences and risks that may result from lower trading levels and thus requires these disclosures. Accordingly, Rule 9.20 will be amended to require the same customer disclosures during Curb as are required during GTH. Specifically, no Trading Permit Holder may accept an order from a customer for execution during Curb without disclosing to that customer that trading during Curb involves material trading risks, including the possibility of lower liquidity (including fewer Market-Makers quoting), higher volatility, changing prices, an exaggerated effect from news announcements, wider spreads, the absence of an updated underlying index or portfolio value or intraday indicative value and lack of regular trading in the securities underlying the index or portfolio and any other relevant risk. Rule 9.20 currently provides an example of these disclosures, which the Exchange proposes to amend to add references to Curb Trading Hours in addition to Global Trading Hours references. The Exchange believes that requiring TPHs to disclose these risks to non-TPH customers will facilitate informed participation in Curb.

The Exchange also intends to distribute to TPHs and make available on its website a Regulatory Circular regarding Curb that discloses, among other things, (1) that the current underlying index value may not be updated during Curb, (2) that lower liquidity during Curb may impact pricing, (3) that higher volatility during Curb may occur, (4) that wider spreads may occur during Curb, (5) the circumstances that may trigger trading halts during Curb, (6) required customer disclosures (as described above), and (7) suitability requirements. The Exchange believes that, with this disclosure, Curb Trading Hours are appropriate and beneficial to market participants that choose to participate in the session, notwithstanding the absence of a disseminated updated index value during those hours.

Discussion

As set forth above, the differences in the Rules between the trading process during Curb and RTH is that, similar to GTH, certain order types and instructions will not be available during Curb, values for indexes underlying index options will not be disseminated during Curb, and TPHs that accept orders from customers during Curb will be required to make certain disclosures to those customers. Additionally, as discussed, unlike either RTH or GTH, the Exchange will not use an opening auction process at the start of the Curb session. Other rules however, will apply in the same manner, but the Exchange may make different determinations between RTH and Curb, just as the Exchange may do between RTH and GTH. The Exchange believes these differences are consistent with the differences between the characteristics of each trading session. The Exchange also notes the following:

- All TPHs may, but will not be required to, participate during Curb.[48] As noted above, while a Market-Maker's appointment to an All Sessions class will apply to that class whether it quotes in series in that class or not during Curb, the Exchange believes the proposed Curb trading session will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Additionally, even if a Market-Maker elects to not quote during all or part of Curb, its ability to satisfy its continuous quoting obligation will not be substantially impacted given the short length of Curb as well as the few classes that will be listed for trading during Curb.
- The Exchange will use the same connection lines, message formats, and feeds during RTH, GTH and Curb.[49] TPHs may use the same ports and EFIDs [50] for each trading session.[51]
- Order processing will operate in the same manner during Curb as it does during RTH or GTH. There will be no changes to the ranking, display, or allocation algorithms rules.
- There will be no changes to the processes for clearing, settlement, exercise, and expiration.[52]
- The Exchange will report Exchange quotation and last sale information to the Options Price Reporting Authority (''OPRA'') pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan'') during the proposed Curb Trading Hours in the same manner it currently reports this information to OPRA during RTH and GTH today.[53]

[47] For consistency in the Rulebook, the Exchange proposes to capitalize the reference to ''regular trading hours'' in Rule 6.5(d)(2).

[48] Unlike GTH, Clearing TPHs do not need to be authorized by the Options Clearing Corporation (''OCC'') to operate during the Curb session. As such, TPHs do not need separate letters of guarantee (*i.e.,* in addition to any letters of guarantee on file for RTH) to also operate during the Curb trading session.

[49] The same telecommunications lines used by TPHs during RTH and/or GTH may be used during Curb, and these lines will be connected to the same application server at the Exchange during all three trading sessions.

[50] The term ''EFID'' means an Executing Firm ID. The Exchange assigns an EFID to a TPH, which the System uses to identify the TPH and the clearing number for the execution of orders and quotes submitted to the System with that EFID.

[51] A TPH may elect to have separate ports or EFIDs for each trading session, but the Exchange will not require that.

[52] The Exchange has held discussions with the Options Clearing Corporation, which is responsible for clearance and settlement of all listed options transactions and has informed the Exchange that it will be able to clear and settle all transactions that occur on the Exchange and handle exercises of options during Curb.

[53] The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are trading on the participant exchanges. The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The full text of the OPRA Plan is available at *http://www.opraplan.com.* All operating U.S. options exchanges participate in the OPRA Plan. The Exchange will report its best bid

Therefore, all TPHs that elect to trade during the proposed Curb session will have access to quote and last sale information during that trading session. Exchange proprietary data feeds will also be disseminated during Curb using the same formats and delivery mechanisms with which the Exchange disseminates them during RTH and GTH today. Use of these proprietary data feeds during Curb will be optional (as they are today during RTH and GTH).[54]

• The same TPHs that are required to maintain connectivity to a backup trading facility during RTH and GTH will be required to do so during Curb.[55] Because the same connections and servers will be used for both trading sessions, a TPH will not be required to take any additional action to comply with this requirement, regardless of whether the TPH chooses to trade during Curb.

• The Exchange will process all clearly erroneous trade breaks during Curb in the same manner it does during RTH and GTH and will have Exchange officials available to do so.

• The Exchange will perform all necessary surveillance coverage during Curb.

• The Exchange may halt and resume trading during Curb pursuant to Rule 5.20(a) and (b), respectively, in the interests of a fair and orderly market in the same manner it may during RTH and GTH. The proposed rule change amends Rule 5.20(d) to provide that the factors set forth under Rule 5.20(a)(3) will not apply during Curb just as they do not apply during GTH. Among the factors that may be considered in making the foregoing determinations are whether there has been an activation of price limits on futures exchanges or the halt of trading in related futures with respect to index options.[56] Further, the proposed rule change will amend Rule 5.20(d) such that when determining whether to halt trading during Curb or GTH, the Exchange will also be able to consider the extent to which the opening process pursuant to Rule 5.31 has been completed or other factors regarding the status of the opening process, just as it is able to do for the RTH session.

• Under Rule 5.22 (Market-wide Trading Halts due to Extraordinary Market Volatility), the Exchange will halt trading in all classes whenever a market-wide trading halt (commonly known as a circuit breaker) is initiated in response to extraordinary market conditions. Rule 5.22(b)(1) states that the Exchange will halt trading for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m. (or 12:25 p.m. for an early scheduled close). Additionally, the Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 3:25 p.m. (or 12:25 p.m., if applicable). Rule 5.22(b)(2) states that the Exchange will halt trading until the next trading day if a Level 3 Market Decline occurs. The Exchange notes that Rule 5.22(b)(1) will not apply during the Curb session, just as it does not apply during GTH, as the beginning of Curb occurs past the 15-minute halt window for a Level 1 or Level 2 Market Decline. Rule 5.22(b)(2) however will apply to the Curb session, as the Curb session is considered the same trading day as the RTH session. As such, if a Level 3 Market Decline occurs at any time during RTH or Curb, the Exchange will halt trading in SPX and VIX until the next trading day.

The Exchange understands that systems and other issues may arise and is committed to resolving those issues as quickly as possible, including during the new Curb trading hours. Thus, the Exchange will have appropriate staff on-site and otherwise available as necessary during Curb to handle any technical and support issues that may arise during those hours. Additionally, the Exchange will have personnel available to address any trading issues that may arise during the additional Curb trading hours. The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Curb, and will have appropriately trained, qualified regulatory staff in place during Curb to the extent it deems necessary to satisfy those obligations. The Exchange's surveillance procedures will be revised as necessary to incorporate transactions that occur, and orders and quotations that are submitted, during Curb. The Exchange believes its surveillance procedures are adequate to properly monitor trading during Curb.

Implementation Date

The Exchange will announce the implementation date of the proposed rule change in accordance with Rule 1.5. The Exchange also notes that it first announced its proposal to adopt the proposed Curb Trading Hours session to market-participants via a Trade Desk notice back in January 2021.[57] Since then, the Exchange has issued numerous updated notices, FAQs and detailed technical specifications.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[58] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[59] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[60] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to adopt Curb Trading Hours will remove impediments to and perfect the mechanism of a free and open market and a national market system. Particularly, Curb is a competitive initiative designed to improve the Exchange's marketplace for the benefit of investors, and the proposed rule change will allow the Exchange to provide a competitive marketplace for market participants to trade certain products in an additional 45-minute trading session. More specifically, the adoption of the Curb trading session is designed to increase the overlap in time

and offer and executed trades to OPRA during the proposed Curb Trading Hours in the same manner that they are reported during RTH and GTH today. The operator of OPRA has also informed the Exchange that it intends to add a modifier to the disseminated information during Curb. Specifically, OPRA will use Message Type = 'v' between 4:15 p.m. ET and 5:00 p.m. ET.

[54] Any fees related to receipt of the OPRA data feed during Curb will be included on the OPRA fee schedule. Any fees related to receipt of the Exchange's proprietary data feeds during Curb will be included on the Exchange's fee schedule (and will be included in a separate rule filing) or the Exchange's market data website, as applicable.

[55] *See* Rule 5.24.

[56] *See* Rule 5.20(a)(6). As discussed above, futures markets operate an extended trading hours session that follows the regular trading hours session, with hours similar to what the Exchange is proposing. As such, should a halt of trading in related futures occur during Curb, then the Exchange may consider whether to halt during that session, just as it may do during regular GTH and RTH sessions.

[57] *See* Exchange Notice C2021012501 ''Cboe Options Exchange to Extended Global Trading Hours in Q4 2021''.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(5).

[60] *Id.*

that SPX, XSP and VIX options are open alongside the related futures contracts. Moreover, adopting an additional trading session during which market participants can trade SPX, XSP and VIX options is designed to better help meet growing investor demand for the ability to manage risk more efficiently, react to global macroeconomic events as they are happening and adjust SPX, XSP and VIX options positions outside of RTH. The Exchange believes that the proposed rule change is reasonably designed to provide an appropriate mechanism for trading outside of RTH and GTH while providing for appropriate Exchange oversight pursuant to the Act, trade reporting, and surveillance.

The Exchange also notes that it, along with some of its affiliated options exchanges, already allow for trading outside of the hours of RTH (*i.e.,* during the GTH trading session).[61] Furthermore, the Commission has authorized stock exchanges to be open for trading outside of regular trading hours.[62] Thus, the proposed rule change to adopt a trading session in addition to, and outside of, regular trading hours is not novel or unique. Additionally, as noted above, futures exchanges also operate outside of those hours and during the proposed Curb session, including the Exchange's affiliate, CFE, which has an extended trading hours session that overlaps with Exchange proposed Curb Trading Hours.[63]

As described in detail above, the vast majority of the Exchange's trading rules will apply during Curb in the same manner as during the Exchange's two other trading sessions (RTH and GTH), which rules have all be previously filed with the Commission as being consistent with the goals of the Act. Rules that will apply equally during Curb Trading Hours include rules that protect public customers, impose best execution requirements on TPHs, and prohibit acts and practices that are inconsistent with just and equitable principles of trade as well as fraudulent and manipulative practices. The proposed rule change also provides opportunities for price improvement during Curb and applies the same allocation and priority rules that are available to the Exchange during RTH and GTH. The Exchange believes, therefore, that the rules that will apply during Curb will continue to promote just and equitable principles of trade and prevent fraudulent and manipulative acts.

The proposed rule change clearly identifies the ways in which trading during Curb will be different from trading during RTH and/or GTH (such as identifying order types and instructions that will not be available during Curb, clarifying that under the normal course of business there will be no opening auction process at the start of Curb, and the proposed absence of a disseminated updated index value during Curb). This ensures that investors are aware of any differences among trading sessions. The Exchange believes the differences are consistent with the expected differences in duration and timing of the trading session, liquidity, participation, and trading activity between RTH and Curb and GTH and Curb. For example, the Exchange believes it is reasonable to not adopt an opening auction process for Curb as the Curb session, unlike RTH and GTH, is proposed to start immediately following the trading session preceding it, and as such, the Exchange is able to seamlessly transition into Curb without a queuing period or opening rotation. The flexibility provided to the Exchange to make determinations for each trading session will allow the Exchange to apply settings and parameters to address the different market conditions that may be present during each trading session. Additionally, to further protect investors from any additional risks related to trading during Curb, the proposed rule change requires that disclosures be made to customers describing these potential risks, similar to the current requirement for such disclosures related to trading during GTH. The All Sessions order and RTH Only order, along with the proposed RTH and Curb order, will continue to protect investors by permitting investors who wish only to trade during RTH from having orders or quotes execute outside of the RTH session, including during the proposed Curb trading session. The RTH and Curb Order will provide investors with additional execution flexibility by providing them with an order that may execute during either daytime trading session but not carryover (if unexecuted) in the following overnight session. Consistent with the goal of investor protection, the Exchange will not allow market orders during Curb due to the expected increased volatility and decreased liquidity during these hours, just as it does not currently allow such orders during GTH for the same reasons. The proposed rule change also only authorizes the Exchange to list for trading two classes during Curb. As the proposed rule change is a new Exchange initiative, the Exchange believes it is reasonable to trade a limited number of classes upon implementation for which demand is believed to be the highest during Curb.

Additionally, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as the Exchange will ensure that adequate staffing is available during Curb to provide appropriate trading support during those hours, as well as Exchange officials to make any necessary determinations under the rules during Curb (such as trading halts and trade nullification for obvious errors). The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Curb. The Exchange's surveillance procedures will also be revised to incorporate transactions that occur and orders and quotations that are submitted during Curb Trading Hours. The Exchange believes its surveillance procedures are adequate to properly monitor trading during Curb. Clearing and settlement processes will be the same for Curb as they are for RTH or GTH transactions.

The proposed rule change further removes impediments to a free and open market and does not unfairly discriminate among market participants, as all TPHs with access to the Exchange may trade during Curb using the same connection lines, message formats data feeds, and EFIDs they use during RTH and GTH, minimizing any preparation efforts necessary to participate during Curb. TPHs will not be required to trade during Curb.

Additionally, as discussed above, while the proposed rule change increases the total time during which a Market-Maker with an appointment has the ability to quote in a selected class, the Exchange believes this increase has a de minimis, if any, impact on Market-Makers given that a Market-Maker's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the

[61] *See* Cboe Options Rule 5.1, Cboe C2 Exchange, Inc, Rule 5.1 and Cboe EDGX Exchange, Inc. Rule 21.2.

[62] *See e.g.,* Cboe BZX Exchange, Inc. Rule 1.5, which provides for an After Hours Trading Session which is a trading session from 4:00 p.m.–8:00 p.m. and follows the Regular Trading Hours session which takes place between 9:30 a.m. and 4:00 p.m. *See also* Exchange Act Release No. 59963 (May 21, 2009), 74 FR 25787 (May 29, 2009) (SR–BATS–2009–012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules to Offer an After Hours Trading Session).

[63] *See, e.g.,* CFE Rule 1202, which outlines the trading schedule for futures on the Cboe Volatility Index and includes an extended trading session that operates from 4:00 p.m. to 5:00 p.m.

aggregate and based only when a Market-Maker is quoting it its appointed classes. Indeed, as noted above, if a Market-Maker who quotes during the RTH and/or GTH session today does not wish to quote during the proposed Curb Trading Hours, then so long as such Market-Maker does not log into the system and quote during that session (or whatever other time it wishes to begin quoting), there will be no impact with respect to the Market-Maker's ability to satisfy its continuous quoting obligations. Selecting an appointment in SPX and/or VIX options will continue to be optional and within the discretion of a Market-Maker. Additionally, Market-Makers continue to have the opportunity to quote during Curb (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. The Exchange believes Market-Makers will have an incentive to quote in SPX and VIX during the proposed Curb session given the significance of these products within the financial markets, the expected demand, and given that the related futures are also trading during those hours (which may permit execution of certain hedging strategies). The Exchange believes extending a Market-Maker's appointment to the Curb session will enhance liquidity during that trading session, which benefits all investors during those hours. The Exchange believes that any slight additional burden of extending the continuous quoting obligation to the proposed Curb trading session in the eligible classes would be outweighed by the Exchange's efforts to add liquidity during the Curb trading session in All Sessions classes, the minimal preparation a Market-Maker may require to participate in the Curb trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

While LMMs will only be required to meet the same obligations as Market-Makers during Curb, the Exchange believes it may be unduly burdensome to impose a heightened standard during Curb given the expected lower participation and trading volume and higher liquidity. The Exchange believes LMMs should have the flexibility to determine whether satisfying any heightened quoting standard and opening quoting standard is appropriate for its business given the then-current market conditions during Curb. Because there are no additional obligations imposed on LMMs during Curb, they receive no additional benefits (*i.e.,* no participation entitlement) during Curb. Without the possibility of receiving a participation entitlement on a sufficient volume of trades, the Exchange does not expect that the current RTH obligation/benefit structure for LMMs would provide a similar incentive during Curb and therefore does not proposes to implement it during Curb, just as it has not done so for GTH for similar reasons. As noted above, should the Exchange find it necessary in the future, it will submit a separate rule filing to adopt a rebate incentive program for Curb LMMs to encourage increased quoting to add liquidity during that session. LMMs that satisfy any proposed heightened continuous quoting standard under such an incentive program would receive a rebate pursuant to the Fees Schedule. Such a program would parallel the obligation/benefit structure that exists for LMMs during RTH (that is, LMMs that meet heightened quoting obligations during RTH receive a participation entitlement, which is merely a different form of financial benefit).

The proposed rule change is also consistent with Section 11A of the Act and Regulation NMS thereunder, because it provides for the dissemination of transaction and quotation information during Curb through OPRA, pursuant to the OPRA Plan, which the Commission approved and indicated to be consistent with the Act. While Section 11A and Regulation NMS contemplate an integrated system for trading securities, they also envision competition between markets, and innovation that provides marketplace benefits to attract order flow to an exchange does not result in unfair competition if other markets are free to compete in the same manner.[64]

As discussed, the Exchange, as well as other options exchanges, already offer trading sessions outside of regular trading hours.[65] While there are some differences among the proposed Curb Trading Hours session and the Exchange's current GTH session, such as the length and time of the session and the absence of an opening auction process, the Exchange believes the proposed Curb trading session and proposed rules are still substantially similar to the current GTH trading session its corresponding rules, thereby providing consistency across all trading sessions with similar characteristics outside of RTH.

The Exchange also believes the proposed rule change to extend the time Users have to cancel all GTC and GTD orders, and not just those participating in Curb, is reasonable. In particular, it provides Users with RTH Only GTC and GTD orders with additional time to cancel orders. Further, the Exchange notes that cancelling a RTH Only GTC or GTD order at the proposed time of 5:15 p.m. has the same effect as cancelling that order at the current cutoff time of 4:45 p.m.—ultimately it accommodates the User's goal of cancelling an order prior to it potentially executing during the RTH Opening Process the following morning (*i.e.,* it merely provides 30 additional minutes to cancel a RTH Only GTC or GTH order). As such, the Exchange believes the proposed rule change provides Users with additional flexibility to manage their orders in all classes that remain in the Book following the Curb market close, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Finally, the Exchange believes the proposed changes to Rule 5.20(d) eliminate unnecessary distinctions between RTH and GTH//Curb as it relates to trading halt exceptions for index options. Particularly, the Exchange sees no reason why it should not allow the resumption of a halted security during GTH or Curb if a determination is made by two Floor Officials, in consultation with a designated senior executive officer of the Exchange, that the interests of a fair and orderly market are best served by a resumption of trading. Similarly, the Exchange does not believe there are distinguishing factors between (i) GTH and Curb and (ii) RTH that warrants precluding the Exchange from considering the factors under Rule 5.20(a)(5) (relating to whether the opening process has been completed or

[64] *See* Exchange Act Release Nos. 73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (approval of proposed rule change for Cboe Options to extend its trading hours outside of Regular Trading Hours); and 29237 (May 24, 1991), 46 FR 24853 (May 31, 1991) (SR–NYSE–1990–052 and SR–NYSE–1990–053) (approval of proposed rule change for NYSE to extend its trading hours outside of Regular Trading Hours). The Exchange also notes that no other U.S. options exchange provides for trading SPX or VIX options outside of RTH, so there is currently no need for intermarket linkage during GTH. If another Cboe Affiliated Exchange lists any options authorized to trade during GTH outside of RTH, trading of such options on the Exchange would comply with linkage rules.

[65] *See, e.g.,* Cboe Options Rule 5.1, C2 Rule 5.1 and Cboe EDGX. Rule 21.2.

the status of the opening process) in making a determination whether declaring a trading halt is appropriate. As is the case today, the Exchange is not required to take into consideration any of the factors listed under Rule 5.20(a), including subparagraph (5), when making a determination whether to halt trading. Moreover, the Exchange will continue to consider halting trading only in response to unusual conditions or circumstances, as it wants to interrupt trading as infrequently as possible and only if necessary, to maintain a fair and orderly market. Indeed, notwithstanding the proposed changes to Rule 5.20(d), the Exchange will continue to have the authority to manually halt trading during any trading session if it's determined to be in the interests of a fair and orderly market and to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change to adopt Curb Trading Hours will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all TPHs will be able, but not be required, to participate during Curb, and will be able to do so using the same connectivity as they use during RTH and GTH. As discussed, participation in Curb will be voluntary and within the discretion of TPHs. While the proposed rule change increases the total time during which a Market-Maker with either a SPX and/or VIX appointment may be able quote, the Exchange believes the proposal will have a de minimis, if any, impact on a Market-Maker's continuous quoting obligations, as they may continue to choose when to actively quote and have their obligations to their appointed classes apply. Furthermore, selecting an appointment in these options classes will be optional and within the discretion of a Market-Maker. Additionally, Market-Makers continue to have the opportunity to quote during Curb (and receive the benefits of acting as a Market-Maker with respect to transactions it effects during that time) without obtaining an additional Trading Permit or creating additional connections to the Exchange. The Exchange believes that extending the continuous quoting obligation to the Curb trading session in two classes is also outweighed by the Exchange's efforts to add liquidity during Curb in All Sessions classes, the minimal preparation a Market-Maker may require to participate in the Curb trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit and continues to maintain a balance of Market-Maker benefits and obligations.

The Exchange does not believe that the proposed rule change to adopt Curb Trading Hours will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change is a competitive initiative that will benefit the marketplace and investors. The Exchange believes the proposed rule change will enhance competition by providing a new service to investors that is not currently otherwise available for options. The Exchange further believes that the same level of competition among options exchanges will continue during RTH. Because the Exchange proposes to make only exclusively listed products available for trading during Curb, and because any All Sessions orders that do not trade during Curb will be eligible to trade during the RTH trading sessions in the same manner as all other orders during RTH, the proposed rule change will have no effect on the national best prices or trading during RTH.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–CBOE–2021–071 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–CBOE–2021–071. 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–CBOE–2021–071 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27822 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[66] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93811; File No. SR–EMERALD–2021–44]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the cToM Market Data Product

December 17, 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 December 10, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange's Fee Schedule (''Fee Schedule'') to establish fees for the market data product known as MIAX Emerald Complex Top of Market (''cToM'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

The Exchange proposes to amend Section (6)(a) of the Fee Schedule to establish fees for the cToM data product. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees to be effective beginning July 1, 2021 (''First Proposed Rule Change'').[3] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[4] Although the Commission did not receive any comment letters on the First Proposed Rule Change, on August 27, 2021, the Commission issued its Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Establish Fees for the Exchanges' cToM Market Data Products (relating to the First Proposed Rule Change and a similar filing by the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''), to also adopt cToM fees).[5] The Exchange withdrew the First Proposed Rule Change on September 30, 2021 [6] and re-submitted the proposal, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[7] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed comments provided by the Commission Staff. On October 14, 2021, the Exchange withdrew the Second Proposed Rule Change and submitted its proposal to adopt cToM fees to again provide additional justification for the proposed fee changes and address comments provided by the Commission Staff (''Third Proposed Rule Change'').[8] The Third Proposed Rule Change was published for comment in the **Federal Register** on November 1, 2021.[9] Although the Commission did not again receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed Rule Change on December 10, 2021 and now submits this proposal for immediate effectiveness (''Fourth Proposed Rule Change''). This Fourth Proposed Rule Change meaningfully attempts to provide additional justification and explanation for the proposed fee changes in response to a telephone conversation with Commission Staff on December 7, 2021 relating to the Third Proposed Rule Change.

Background

The Exchange previously adopted rules governing the trading of Complex Orders [10] on the Emerald System [11] in 2018,[12] ahead of the Exchange's planned launch, which took place on March 1, 2019. Shortly thereafter, the Exchange also adopted the market data product cToM and expressly waived fees for cToM to provide an incentive to prospective market participants to subscribe to that market data feed.[13] The Exchange has not charged fees to cToM subscribers in the nearly three years since it was first available for subscription.

In summary, cToM provides subscribers with the same information as the MIAX Emerald Top of Market (''ToM'') data product as it relates to the Strategy Book,[14] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is a distinct market data product from ToM. ToM subscribers are not required to subscribe

[3] *See* Securities Exchange Act Release No. 92358 (July 9, 2021), 86 FR 37361 (July 15, 2021) (SR–EMERALD–2021–21).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (the ''Suspension Order'').

[6] *See* Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

[7] *See* SR–EMERALD–2021–32.

[8] Securities Exchange Act Release No. 93427 (October 26, 2021), 86 FR 60310 (November 1, 2021) (SR–EMERALD–2021–34).

[9] *Id.*

[10] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[11] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[12] *See* Securities Exchange Act Release Nos. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (In the Matter of the Application of MIAX EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission); *and* 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders).

[13] *See* Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR–EMERALD–2019–09) (providing a complete description of the cToM data feed).

[14] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

to cToM, and cToM subscribers are not required to subscribe to ToM.[15]

Proposal

The Exchange now proposes to amend Section (6)(a) of the Fee Schedule to charge monthly fees to Distributors [16] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[17] The Exchange notes that the proposed monthly cToM fees for Internal and External Distributor are the same prices that the Exchange charges for its ToM data product and are identical to the prices the Exchange's affiliate, MIAX, proposes to charge for its cToM product.

Like it does today for ToM, the Exchange proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, like the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees in the table in Section (6)(a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes that other exchange's fees for complex market data are useful examples and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar data. As shown by the below table, the Exchange's proposed fees similar to or less than fees charged for similar data products provided by other options exchanges.

Exchange	Monthly fee
MIAX Emerald (as proposed)	$1,250—Internal Distributor. $1,750—External Distributor.
NYSE American, LLC (''Amex'') [18]	$1,500 Access Fee. $1,000 Redistribution Fee.
NYSE Arca, Inc. (''Arca'') [19]	$1,500 Access Fee. $1,000 Redistribution Fee.
NASDAQ PHLX LLC (''PHLX'') [20]	$3,000—Internal Distributor. $3,500—External Distributor.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section (6)(a) of the Fee Schedule to make a minor, non-substantive corrective edit. In particular, the Exchange proposes to delete the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is also not the exclusive source for Complex Order information from the Exchange and market participants may choose to subscribe to the Exchange's other data products to receive such information. It is a business decision of market participants whether to subscribe to the cToM data product or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information provided in the cToM feed from other Exchange sources, including, for example, the MIAX Emerald Order Feed (''MOR'').[21] The following cToM information is provided to subscribers of MOR: The Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to the cToM information contained in MOR, complex strategy last sale information can be derived from the Exchange's ToM feed. Specifically, market participants may deduce that last sale information for multiple trades in related options series that are disseminated via the ToM feed with the same timestamp are likely part of a Complex Order transaction and last sale.

Implementation

The proposed rule change is immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(4) of the Act [23] 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 in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the

[15] *See supra* note 13.

[16] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. *See* Section (6)(a) of the Fee Schedule.

[17] The Exchange also proposes to make a minor related change to remove the phrase ''(as applicable)'' from the explanatory paragraph in Section (6)(a).

[18] *See* NYSE American Options Priprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Proprietary_Data_Fee_Schedule.pdf.*

[19] *See* NYSE Area Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[20] *See* PHLX Price List—U.S. Deriatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[21] *See* MIAX website, Market Data & Offerings, at *https://www.miaxoptions.com/market-data-offerings* (last visited December 10, 2021). In general, MOR provides real-time ulta-low [sic] latency updates on the following information: New Simple Orders added to the MIAX Emerald Order Book; updates to Simple Orders resting on the MIAX Emerald Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX Emerald listed series updates; MIAX Emerald Complex Strategy definitions; the state of the MIAX Emerald System; and MIAX Emerald's underlying trading state.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(4) and (5).

mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange sets certain non-transaction fees, including market data fees. The Exchange believes that it is important to demonstrate that these fees are based on its costs to provide these products and reasonable business needs.

In its Guidance, the Commission Staff stated that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [24] The Commission Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [25] In its Guidance, the Commission staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.'' [26] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [27] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [28] The Exchange provides this analysis below.

Based on this analysis, the Exchange believes the proposed fees are reasonable and do not result in a ''supra-competitive'' [29] profit. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs. The Exchange believes the proposed fees will allow the Exchange to offset expenses the Exchange has and will incur, and that the Exchange provides sufficient transparency (described below) into the costs and revenue underlying the proposed fees. Accordingly, the Exchange provides an analysis of its revenues, costs, and profitability associated with the proposed fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the proposed fees. As a result of this analysis, the Exchange believes the proposed fees are fair and reasonable as a form of cost recovery plus present the possibility of a reasonable return for the Exchange's aggregate costs of offering cToM data, which has been offered for free for nearly three years.

The proposed fees are based on a cost-plus model. In determining the appropriate fees to charge, the Exchange considered its costs to provide cToM data, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly related to the provision and maintenance of cToM data) to estimate such costs,[30] as well as the relative costs of providing and maintaining cToM data feeds, and set fees that are designed to cover its costs with a limited return in excess of such costs. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining cToM data feeds because of the uncertainty of forecasting subscriber decision making with respect to firms' needs for cToM data and the likely potential for increased costs to procure the third-party services described below.

To determine the Exchange's costs to provide cToM data associated with the proposed fees, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the proposed fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the cToM data product associated with the proposed fees.

The Exchange also provides detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the services associated with the proposed fees. The Exchange conducted a thorough internal analysis to determine the portion (or percentage) of each expense to allocate to the support of services associated with the proposed fees. This analysis included discussions with each Exchange department head to determine the expenses that support services associated with the proposed fees. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing services for the proposed fees. The sum of all such portions of expenses represents the total cost to the Exchange to provide services associated with the proposed fees. For the avoidance of doubt, no expense amount was allocated twice.

To determine the Exchange's projected revenue associated with the proposed fees, the Exchange analyzed the number of Members and non-Members currently subscribing to the cToM data feeds and used a recent monthly billing cycle representative of 2021 monthly revenue. The Exchange also provided its baseline by analyzing June 2021, the monthly billing cycle prior to the proposed fees going into effect, and compared it to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these

[24] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] For example, the Exchange only included the costs associated with providing and supporting cToM data feeds and excluded from its cost calculations any cost not directly associated with providing and maintaining such cToM data feeds. Thus, the Exchange notes that this methodology underestimates the total costs of providing and maintaining cToM data feeds.

calculations, given the uncertainty of such projections due to the continually changing market data needs of market participants and potential increase in internal and third party expenses. The Exchange is presenting its revenue and expense associated with the proposed fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the proposed fees were not in place in 2020 or for the first six months of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not representative of its current total annualized revenue and costs associated with the proposed fees. Accordingly, the Exchange believes it is more appropriate to analyze the proposed fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the proposed fees are reasonable because they will allow the Exchange to recover its costs associated with providing services related to the proposed fees and not result in excessive pricing or supra-competitive profit. Since 2019, when the Exchange launched operations with Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[31] The cToM data product allows market participants to better utilize the Exchange's Complex Order functionality by providing insights into the Exchange's Complex Order flow. The Exchange notes that no market participant ceased subscribing to the cToM feed since July 1, 2021, the date on which the fees became effective when proposed in the First Proposed Rule Change.

As outlined in more detail below, the Exchange projects that its annualized expense for 2021 to provide cToM data to be approximately $202,657 per annum or an average of $16,888 per month. The Exchange implemented the proposed fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the proposed fees, Exchange Members and non-Members subscribed to a total of 14 cToM data feeds for which the Exchange charged $0, as it has for the past three years. This resulted in a loss of approximately $16,888 for that month. For the month of November 2021, which includes the proposed fees, Exchange Members and non-Members purchased 14 cToM data feeds, for which the Exchange charged approximately $17,500 for that month. This resulted in a profit of $612 for that month (a margin of approximately 3.5%). The Exchange cautions that this margin may fluctuate from month to month based on the uncertainty of predicting how many cToM data feeds may be purchased from month to month as Members and non-Members are able to add and drop subscriptions at any time based on their own business decisions. This margin may also decrease due to the significant inflationary pressure on capital items that the Exchange needs to purchase to maintain the Exchange's technology and systems.[32] The Exchange has been subject to price increases upwards of 30% on network equipment due to supply chain shortages. This, in turn, results in higher overall costs for ongoing system maintenance, but also to purchase the items necessary to ensure ongoing system resiliency, performance, and determinism. These costs are expected to continue to go up as the U.S. economy continues to struggle with supply chain and inflation related issues.

Further, the Exchange chose to provide cToM data for free for the past three years to attract order flow and encourage market participants to experience the determinism and resiliency of the Exchange's trading systems and market data products. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees. The Exchange could have sought to charge some fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a free exchange product to the options industry, which resulted in no initial revenues, going on three years. The Exchange now proposes to amend its fee structure to enable it to continue to maintain and improve its overall market and systems while also providing a highly reliable and deterministic trading system to the marketplace, complete with robust market data products, including cToM.

As mentioned above, the Exchange projects that its annualized expense for 2021 to provide cToM data to be approximately $202,657 per annum or an average of $16,888 per month and that these costs are expected to increase not only due to anticipated significant inflationary pressure, but also periodic fee increases by third parties.[33] The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange and various Exchange products. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases the cost to the Exchange to provide services associated with the proposed fees. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide services and

[31] *See* Securities Exchange Act Release Nos. 79405 (November 28, 2016), 81 FR 87086 (December 2, 2016) (SR–MIAX–2016–44) (amendment to clarify the manner in which the System allocates contracts at the end of a Complex Auction); 80089 (February 22, 2017), 82 FR 12153 (February 28, 2017) (SR–MIAX–2017–06) (adopting the Complex MIAX Options Price Collar, an additional price protection feature); 81229 (July 27, 2017), 82 FR 36023 (August 2, 2017) (SR–MIAX–2017–34) (amendment to ensure price and trade protections apply to Complex Orders); 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR–MIAX–2020–16) (adopting new order type, Complex Attributable Order).

[32] See ''Supply chain chaos is already hitting global growth. And it's about to get worse'', by Holly Ellyatt, CNBC, available at *https://www.cnbc.com/2021/10/18/supply-chain-chaos-is-hitting-global-growth-and-could-get-worse.html* (October 18, 2021); and ''There will be things that people can't get, at Christmas, White House warns'' by Jarrett Renshaw and Trevor Hunnicutt, Reuters, available at *https://www.reuters.com/world/us/americans-may-not-get-some-christmas-treats-white-house-officials-warn-2021-10-12/* (October 12, 2021).

[33] For example, on October 20, 2021, ICE Data Services announced a 3.5% price increase effective January 1, 2022 for most services. The price increase by ICE Data Services includes their Secure Financial Transaction Infrastructure (''SFTI'') network, which is relied on by a majority of market participants, including the Exchange. *See* email from ICE Data Services to the Exchange, dated October 20, 2021. The Exchange further notes that on October 22, 2019, the Exchange was notified by ICE Data Services that it was raising its fees charged to the Exchange by approximately 11% for the SFTI network.

products to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of the costs to the Exchange associated with providing certain Exchange products.

The Exchange only has four primary sources of revenue and cost recovery mechanisms: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms. Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[34] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and market data products or provide them at a very marginal cost, which has not been profitable to the Exchange, but beneficial to the overall options industry. This resulted in the Exchange forgoing revenue it could have generated from assessing any amount of fees.

The Exchange believes that the proposed fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the proposed fees. As mentioned above, for 2021,[35] the total annual expense for providing the services associated with the proposed fees is projected to be approximately $202,657, or approximately $16,888 per month. This projected total annual expense is comprised of the following, all of which are directly related to the services associated with the proposed fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the proposed fees.[36] As noted above, the Exchange believes it is more appropriate to analyze the proposed fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[37] The $202,657 projected total annual expense is directly related to the services associated with the proposed fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice.

As discussed above, the Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the proposed fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the proposed fees.

External Expense Allocations

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the services associated with the proposed fees, is projected to be $4,160. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; and (3) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.). For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the services associated with the proposed fees.

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the market data product associated with the proposed fees. Further, the Exchange notes that, with respect to the expenses included herein, those expenses only cover the MIAX market; expenses associated with MIAX PEARL, LLC (''MIAX Pearl'') for its options and equities markets and MIAX, are accounted for separately and are not included within the scope of this filing. As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which, in turn, resulted in a revised percentage allocations in this filing.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the proposed fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these

[34] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28 [sic], 2021, *available at https://sec.report/Document/9999999997-21-004557/*.

[35] The Exchange has not yet finalized its 2021 year end results.

[36] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[37] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

services from Equinix, the Exchange would not be able to operate and support the network and provide the cToM product associated with the proposed fees to its Members, non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the cToM product associated with the proposed fees, only that portion which the Exchange identified as being specifically mapped to providing the cToM product associated with the proposed fees, approximately 0.20% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM product associated with the proposed fees, and not any other service, as supported by its cost review.[38]

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX Pearl and MIAX, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the cToM data associated with the proposed fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the cToM data associated with the proposed fees, only the portion which the Exchange identified as being specifically mapped to providing the cToM data associated with the proposed fees, approximately 0.20% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data associated with the proposed fees, and not any other service, as supported by its cost review.[39]

The Exchange did not allocate any expense associated with the proposed fees towards SFTI and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) because the MIAX Emerald architecture takes advantage of an advance in design to eliminate the need for a market data distribution gateway layer. The computation and dissemination via an API is done solely within the match engine environment and is then delivered via the member and non-member connectivity infrastructure. This architecture delivers a market data system that is more efficient both in cost and performance. Accordingly, the Exchange determined not to allocate any expense associated with SFTI and various other service providers.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide cToM data to its Members, non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the cToM data associated with the proposed fees, only the portions which the Exchange identified as being specifically mapped to providing the cToM data associated with the proposed fees, approximately 0.20% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data associated with the proposed fees.[40]

Internal Expense Allocations

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the cToM data associated with the proposed fees, is projected to be $198,497. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the cToM data associated with the proposed fees, including staff in network operations, trading operations, development, system operations, and business that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide the cToM data associated with the proposed fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the cToM data associated with the proposed fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the cToM data associated with the proposed fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the cToM data associated with the proposed fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the cToM data associated with the proposed fees is projected to be approximately $185,002, which is only a portion of the $9.74 million total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features, products and enhancements), and Trade Operations. As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by nearly every employee on matters relating to cToM. Without these employees, the Exchange would not be able to provide the cToM product to its Members, non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the cToM product, only the portion which the Exchange identified as being specifically mapped to providing the cToM product associated with the proposed fees, approximately 2.0% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data associated with the proposed fees, and not any other service, as supported by its cost review.[41]

The Exchange's depreciation and amortization expense relating to providing the cToM data associated

[38] As noted above, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates. Again, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations which, in turn, resulted in a revised percentage allocations in this filing.

[39] *Id.*

[40] *Id.*

[41] *Id.*

with the proposed fees is projected to be $3,635, which is only a portion of the $1.9 million total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the cToM product. Without this equipment, the Exchange would not be able to operate the network and provide the cToM product to its Members, non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the cToM product, only the portion which the Exchange identified as being specifically mapped to providing the cToM product, approximately 0.20% of the total applicable depreciation and amortization expense, as this product would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM product associated with the proposed fees, and not any other service, as supported by its cost review.[42]

The Exchange's occupancy expense relating to providing the cToM product associated with the proposed fees is projected to be $9,860, which is only a portion of the $0.60 million total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the cToM product. This amount consists primarily of rent for the Exchange's Princeton, New Jersey office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network and Exchange products. The Exchange currently has approximately 200 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with the proposed fees. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the market data services associated with the proposed fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the market data services associated with the proposed fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 2.0% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the market data services associated with the proposed fees, and not any other service, as supported by its cost review.[43]

Based on the above, the Exchange believes that its provision of market data services associated with the proposed fees will not result in excessive pricing or supra-competitive profit. As discussed above, the Exchange projects that its annualized expense for 2021 to provide the cToM data associated with the proposed fees is projected to be approximately $202,657, or approximately $16,888 per month on average. The Exchange implemented the proposed fees on July 1, 2021 in the First Proposed Rule Change. For June 2021, prior to the proposed fees, Members and non-Members subscribed to a total of 14 cToM data feeds, for which the Exchange charged $0, for the past three years. This resulted in a month over month loss of $16,888. For the month of November 2021, which includes the proposed fees, Members and non-Members subscribed to 14 cToM data feeds, for which the Exchange charged approximately $17,500 for that month. This resulted in a profit of $612 for that month (a margin of approximately 3.5%). The Exchange believes this margin will allow it to begin to recoup its expenses and continue to invest in its technology infrastructure. Therefore, the Exchange also believes that this proposed margin is reasonable because it represents a reasonable rate of return.

Again, the Exchange cautions that this margin may fluctuate from month to month based in the uncertainty of predicting how many market data feeds may be purchased from month to month as Members and non-Members are free to add and drop subscriptions at any time based on their own business decisions. This margin may also decrease due to the significant inflationary pressure on capital items that it needs to purchase to maintain the Exchange's technology and systems. Accordingly, the Exchange believes its total projected revenue for the providing the market data services associated with the proposed fees will not result in excessive pricing or supra-competitive profit.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the market data services associated with the proposed fees because the Exchange performed a line-by-line item analysis of nearly every expense of the Exchange, and has determined the expenses that directly relate to providing market data services to the Exchange. Further, the Exchange notes that, without the specific third-party and internal expense items listed above, the Exchange would not be able to provide the market data services associated with the proposed fees to its Members, non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing market data services. The proposed fees are intended to recover the costs of providing cToM data. Accordingly, the Exchange believes that the proposed fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the proposed fees.

No market participant is required by any rule or regulation to utilize the Exchange's Complex Order functionality or subscribe to the cToM data feed. Further, unlike orders on the Exchange's Simple Order Book, Complex Orders are not protected and will never trade through Priority Customer[44] orders,

[42] *Id.*

[43] *Id.*

[44] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The term ''Priority Customer Order'' means an order

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thus protecting the priority that is established in the Simple Order Book.[45] Additionally, unlike the continuous quoting requirements of Market Makers in the simple order market, there are no continuous quoting requirements respecting Complex Orders. It is a business decision whether market participants utilize Complex Order strategies on the Exchange and whether to purchase cToM data to help effect those strategies.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, the Exchange believes the other exchange's market data fees are a useful examples [sic] of alternative approaches to providing and charging for market data. To that end, the Exchange believes the proposed pricing is reasonable because the proposed rates are similar to or less than the fees charged by other options exchanges for similar data products.[46]

Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[47] This is a result of providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services or Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since, the Exchange initially established the cToM data product when it launched trading operations on March 1, 2019, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past three years.[48] Since 2019, when the Exchange launched operations with Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[49] The cToM data product allows market participants to better utilize the Exchange's Complex Order functionality by providing insights into the Exchange's Complex Order flow. The Exchange currently has 14 subscribers (12 Members and 2 non-Members) for its cToM data product. Each one of these subscribers have not paid any cToM data fees (other than the five months in which the First, Second and Third Proposed Rule Changes were in effect) but have received the benefit of the Exchange building out its Complex Order functionality to better compete with other exchanges complex functionality. The Exchange notes that no market participant ceased subscribing to the cToM feed since July 1, 2021, the date on which the fees became effective when proposed in the First Proposed Rule Change.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[50] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[51] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[52] and may charge their own fees for the distribution of such market data. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data products as External Distributors have greater usage rights to commercialize such market data. The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscribers is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants deem the proposed fees to be unfair or inequitable, firms can discontinue their use of the cToM data.

Further, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchange on a uniform basis. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the

for the account of a Priority Customer. *See* Exchange Rule 100.

[45] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(5) [sic].

[46] *See supra* notes 18, 19 and 20.

[47] *See supra* note 34.

[48] *See supra* note 13.

[49] *See* Securities Exchange Act Release Nos. 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (adopting complex stock-option order functionality); 85346 (March 18, 2019), 84 FR 10854 (March 22, 2019) (SR–EMERALD–2019–14) (adopting additional price protection during a Complex Auction and the Complex Liquidity Exposure Process to provide additional price discovery).

[50] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[51] *See id.*

[52] *See id.*

Exchange charges for its ToM data product.

The Exchange believes the proposed change to delete certain text from Section (6)(a) 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 is a non-substantive edit to the Fee Schedule to remove unnecessary text. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing cToM to market participants. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019[53] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange initially launched operations with the cToM data product in 2019, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past three years.[54] Since 2019, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[55] The Exchange now seeks to recoup its costs for providing cToM to market participants and believes the proposed fees will not result in excessive pricing or supracompetitive profit.

Inter-Market Competition

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange does not believe that the proposed rule change to make a minor, non-substantive edit to Section (6)(a) of the Fee Schedule by deleting unnecessary text will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not being made for competitive reasons, but rather is designed to remedy a minor non-substantive issue and will provide added clarity to the Fee Schedule. The Exchange believes that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[56] and Rule 19b–4(f)(2)[57] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–44 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–2021–44. 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

[53] *See supra* note 34.

[54] *See supra* note 13.

[55] *See supra* note 49.

[56] 15 U.S.C. 78s(b)(3)(A)(ii).

[57] 17 CFR 240.19b–4(f)(2).

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–2021–44, and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27816 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93809; File No. SR–NYSE–2021–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend NYSE Rules 7.31, 7.35, 7.35B, 7.35C, 98, and 104 Relating to the Closing Auction

December 17, 2021.

I. Introduction

On September 3, 2021, New York Stock Exchange LLC (''NYSE'' or ''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 Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction. The proposed rule change was published for comment in the **Federal Register** on September 22, 2021.[3] The Commission has received one comment letter on the proposal.[4]

On November 1, 2021, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 21, 2021.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.

II. Description of the Proposal[6]

The Exchange has proposed to amend NYSE Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction.[7]

Proposed Amendments to NYSE Rules 7.31, 7.35, 7.35B, and 7.35C

The Exchange proposes to amend NYSE Rules 7.31, 7.35, and 7.35B to revise the DMM-facilitated Closing Auction process. According to the Exchange, the proposed changes would modify how the Closing Auction Price would be determined and how DMMs would be able to participate in the Closing Auction, but would not change DMMs' NYSE Rule 104 obligation to facilitate the Closing Auction, including to supply liquidity as needed. The Exchange asserts that the proposed changes would make the Closing Auction more transparent and deterministic, while still retaining the DMMs' unique obligation to facilitate the Closing Auction.[8]

The Exchange also proposes to make conforming changes to NYSE Rule 7.35C to revise the orders eligible to participate in Exchange-facilitated Closing Auctions.[9]

Proposed Changes to Closing Auction Price. The Exchange proposes to amend NYSE Rule 7.35B(g) to add explicit price parameters to the Closing Auction Price. Under current Exchange rules, the DMM is responsible for determining a Closing Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. This requirement would not change. The Exchange proposes to add that the Closing Auction Price determined by the DMM must also be at a price that is at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price. The Exchange asserts that adding this proposed Closing Auction Price parameter is consistent with how the Closing Auction Price has been determined for the vast majority of Closing Auctions and that, in the period January 1, 2021 to July 23, 2021, 96.5% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price, and, during this same period, 94.9% of closing auction volume priced within these parameters.[10] The Exchange further asserts that this proposed change would eliminate any potential for a Closing Auction Price to be lower (higher) than the last-published Imbalance Reference Price in the case of a Buy (Sell) Imbalance. The Exchange further asserts that this proposed change would also promote transparency and determinism with respect to the Closing Auction because the Closing Auction Price would be required to be within a pre-determined range of prices that have been disseminated via the Closing Auction Imbalance Information and that cannot be changed after the end of Core Trading Hours.[11]

Proposed Changes to How DMMs Would Participate in the Closing Auction. The Exchange proposes to change how DMMs would be able to enter buy and sell interest to participate in the Closing Auction by limiting the circumstances of when a DMM could enter or cancel interest after the end of Core Trading Hours.[12]

Currently, NYSE Rule 7.35B(a)(2) provides that a DMM may enter or

[58] 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. 93037 (Sept. 16, 2021), 86 FR 52719 (Sept. 22, 2021) (SR–NYSE–2021–44) (''Notice'').

[4] *See* Anonymous Letter (Sept. 27, 2021).

[5] *See* Securities Exchange Act Release No. 93488 (Nov. 1, 2021), 86 FR 61352 (Nov. 5, 2021).

[6] For further details about the proposal, see the Notice, *supra* note 3.

[7] Capitalized terms used in connection with Auctions on the Exchange are defined in NYSE Rule 7.35(a). *See* Notice, *supra* note 3, 86 FR 52719 n.4.

[8] *See id.* at 52720.

[9] *See id.*

[10] *See id.* at 52720.

[11] According to the Exchange, the only circumstance in which the Continuous Book Clearing Price could change after the end of Core Trading Hours would be if NYSE Rule 7.35B(j)(2)(A), described below, were invoked and the requirement to enter all order instructions by the end of Core Trading Hours were temporarily suspended for a security. *See id.* at 52721.

[12] *See id.*

cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. The Exchange states that, consistent with this current NYSE Rule, it does not block a DMM from entering or canceling DMM Interest after the end of Core Trading Hours. Instead, according to the Exchange, the DMM's determination of whether to enter or cancel DMM Interest after the end or Core Trading Hours is subject to the DMM's obligation to maintain a fair and orderly market, as specified in Rule 104.[13]

The Exchange proposes to amend NYSE Rule 7.35B(a)(2) to provide that after the end of Core Trading Hours, a DMM may enter only DMM Auction Liquidity and only if such interest would offset any Unpaired Quantity at the Closing Auction Price. With this change, the Exchange states, DMMs would be systematically restricted with respect to the side, price, and quantity of the DMM Auction Liquidity that they may enter after the end of Core Trading Hours. According to the Exchange, because DMM Auction Liquidity would have priority over at-priced Yielding Orders (described in more detail below), the Exchange further proposes that offsetting at-priced Yielding Orders would not be included in the calculation of the Unpaired Quantity that a DMM may offset with DMM Auction Liquidity. With these proposed changes, the Exchange states, a DMM could enter DMM Auction Liquidity after the end of Core Trading Hours only to close a security at a price that is at or closer to the Imbalance Reference Price than the published Continuous Book Clearing Price.[14] The Exchange proposes to systematically enforce this new requirement and block any DMM buy and sell interest that does not meet these new requirements.[15]

The Exchange states that it proposes to cancel DMM Orders (*i.e.,* DMM buy and sell orders resting on the Exchange Book) at the end of Core Trading Hours because it also proposes that DMM Orders would not be eligible to participate in the Closing Auction.[16] Therefore, according to the Exchange, DMM Orders would not be included in the Auction Imbalance Information for the Closing Auction. The Exchange also proposes to eliminate the ability of a DMM to cancel any DMM Interest after the end of Core Trading Hours.[17]

The Exchange states that with this proposed change to NYSE Rule 7.35B(a)(2), DMMs would have fewer tools available to manage the risk of the DMM leading into the Closing Auction, particularly since their DMM Orders would automatically be canceled before the Closing Auction and they would be systematically restricted with respect to the side, price, and quantity of DMM Auction Liquidity that they may enter after the end of Core Trading Hours. The Exchange also states that, as required by their obligations in Rule 104, in connection with the Closing Auction, DMMs would still be required to contribute their own capital to supply liquidity as needed to assist in the maintenance of a fair and orderly market. In addition, according to the Exchange DMMs would continue to have an obligation with respect to determining a Closing Auction Price that satisfies all better-priced orders on the Side of the Imbalance.[18]

The Exchange states that, in recognition of both the continued obligations of DMMs with respect to the Closing Auction and their ongoing need to manage the risk of the DMM leading into the Closing Auction, it proposes to provide DMMs with different tools to participate in the Closing Auction. Specifically, the Exchange proposes to make the existing Closing D Order type available to DMMs. Currently, according to the Exchange, only Floor brokers may enter Closing D Orders. The Exchange states that, to enable DMMs to enter Closing D Orders, it proposes to amend NYSE Rule 7.31(c)(2)(C)(i) to provide that a Closing D Order may be entered only by a Floor broker or DMM. The Exchange proposes that Closing D Orders would function for DMMs in a similar manner as they currently function for Floor brokers, with the following differences:

First, the Exchange would not offer the Yielding Modifier to DMMs, and therefore a Closing D Order entered by the DMM could not include a Yielding Modifier.[19] The Exchange proposes to amend NYSE Rule 7.31(c)(2)(C)(iii) to add the clause ''entered by a Floor broker'' to make clear that adding a Yielding Modifier to a Closing D Order would be available only to Floor brokers.[20]

Second, the Exchange proposes that, unlike Closing D Orders in NYSE-listed securities entered by a Floor broker, Closing D Orders entered by a DMM in NYSE-listed securities would not be able to participate in a Core Open Auction or Trading Halt Auction.[21] The Exchange states that, as currently set forth in NYSE Rule 7.31(c)(2)(C)(ii), on arrival, a Closing D Order is processed as a Limit Order and may trade or route prior to the Closing Auction, which, according to the Exchange, means that such orders are eligible to trade both in continuous trading and in Auctions prior to the Closing Auction. The Exchange states that, because the purpose of providing Closing D Orders to DMMs is to provide them with a tool to participate in Closing Auctions, the Exchange does not believe that Closing D Orders entered by DMMs in NYSE-listed securities would need to participate in a Core Open Auction or Trading Halt Auction on the Exchange.[22]

The Exchange states that the reason it would accept, or not cancel, a Closing D Order entered by a DMM in the last ten minutes of trading is that, as provided for in NYSE Rule 7.35(d), the Exchange will not open or reopen a security that has not yet opened or is halted or paused and will not transition to continuous trading if such opening or reopening would be in the last ten minutes of trading before the end of Core Trading Hours. The Exchange states that it will remain unopened, halted, or paused and will close the security as provided for in the NYSE Rule 7.35 Series. Because in these circumstances, the Exchange would

[13] *See id.*

[14] The Exchange has provided the following example. If there is an Imbalance to buy, the Imbalance Reference Price is $10.00, and the Continuous Book Clearing Price is $10.10, the DMM could enter DMM Auction Liquidity to sell only at prices ranging from $10.10 to $10.00 and only if there is Unpaired Quantity at such prices. If the DMM determines to close that security at $10.03 and there is Unpaired Quantity to buy of 1,000 shares at that price (excluding at-priced offsetting Yielding Orders to sell), the DMM could enter DMM Auction Liquidity to sell up to only 1,000 shares. *See id.*

[15] *See id.*

[16] The Exchange also proposes to amend NYSE Rule 7.35B(j)(2)(A)(iii) to provide that DMM Orders would be rejected if entered after the end of Core Trading Hours (*i.e.,* during the ''Solicitation Period'') to offset an extreme order imbalance at or near the close. *See id.*

[17] *See id.*

[18] *See id.*

[19] According to the Exchange, the Yielding Modifier is not necessary for DMMs because their transactions on the Exchange are as a dealer acting in the capacity as a market maker, and they are therefore not subject to the trading prohibitions specified in Section 11(a) of the Act. 15 U.S.C. 78k(a)(1) and 15 U.S.C. 78k(a)(1)(i). *See id.*

[20] *See id.*

[21] The Exchange states that it does not propose this difference for Closing D Orders entered by DMMs in UTP Securities as such orders would be routed for participation in an opening or reopening auction on the primary listing market and DMMs would not have a unique role in those auctions. The Exchange states that, by contrast, because DMMs have a parity allocation in Core Open Auctions and Trading Halt Auctions, the Exchange believes it would simplify Exchange rules to provide that such orders would not participate in Exchange Core Open and Trading Halt Auctions. *See id.* at 52722.

[22] *See id.*

proceed to a Closing Auction, the Exchange proposes to accept (or not cancel) Closing D Orders entered by DMMs in NYSE-listed securities during this ten-minute period, even if the security is in a halt state during that period.[23]

According to the Exchange, except for these differences, Closing D Orders entered by DMMs would function the same as they do for Floor brokers, including that:

- Entry of such orders can begin at 6:30 a.m. (NYSE Rule 7.34(a)(1)).
- Such orders can be entered in any securities trading on the Exchange, including a UTP Security,[24] and the DMM can provide instruction of whether a Closing D Order in a UTP Security would be routed to the primary listing market as either a MOC or LOC Order (NYSE Rule 7.31(c)(2)(iv)).
- Such orders would be included in the Closing Auction Imbalance Information at their undisplayed discretionary price beginning five minutes before the end of Core Trading Hours (NYSE Rule 7.35(b)(1)(C)(ii)).
- Beginning 10 seconds before the scheduled close of trading, a request to enter a Closing D Order in any security or to cancel, cancel and replace, or modify such order in an Auction-Eligible Security would be rejected (NYSE Rule 7.35B(f)(3)).[25]

The Exchange further proposes to exclude Closing D Orders entered by a DMM from the definition of ''DMM Orders'' in NYSE Rule 7.35(a)(9)(B). The Exchange states that, with this change, the proposed reference to DMM Orders in the amendment to NYSE Rule 7.35B(a)(2) would not include Closing D Orders, and therefore, Closing D Orders entered by a DMM would not be canceled at the end of Core Trading Hours. The Exchange also proposes a clarifying change to NYSE Rule 7.35(a)(9)(C) to provide that DMM After-Auction Orders means ''DMM Orders,'' and not just ''orders.'' With this change, according to the Exchange, the definition of DMM After-Auction Orders would similarly not include Closing D Orders entered by a DMM. The Exchange also proposes to delete the phrase ''as defined under Rule 7.31'' in NYSE Rule 7.35(a)(9)(C) as unnecessary because the defined term ''DMM Orders'' already references NYSE Rule 7.31.[26]

The Exchange asserts that providing DMMs with the ability to enter Closing D Orders in their assigned securities would provide them with a replacement mechanism both to supply liquidity as needed for the Closing Auction, as required by Rule 104(a)(3), and to manage the risk of the DMM leading into the Closing Auction, in a manner that is more transparent and deterministic than the current process. The Exchange proposes that Closing D Orders entered by a DMM would be included in the Closing Auction Imbalance Information at their undisplayed discretionary price beginning five minutes before the end of Core Trading Hours, which is when Closing D Orders entered by Floor brokers are included in the Closing Auction Imbalance Information.[27] With this change, according to the Exchange, Closing D Orders entered by DMMs would be reflected in the Closing Auction Imbalance Information, which is not the case for DMM Interest currently entered or canceled after the end of Core Trading Hours. The Exchange states that market participants would be able to respond to any changes in the Closing Auction Imbalance Information that may result from Closing D Orders entered by DMMs by entering interest into the continuous order book or retaining the services of a Floor broker to enter Closing D Orders on their behalf.[28]

According to the Exchange, because Closing D Orders entered by DMMs would function similarly to Closing D Orders entered by Floor brokers, and would not be permitted to be entered or canceled in the last ten seconds of trading, the manner by which the Continuous Book Clearing Price would be determined would be the same as today and would not change in the last ten seconds due to the entry of a Closing D Order. The Exchange also states that, because DMMs could not enter or cancel any new interest after the end of Core Trading Hours (other than offsetting interest), the potential range of Closing Auction Prices would no longer be able to be changed by a DMM after the end of Core Trading Hours.[29]

The Exchange further asserts that providing DMMs with the ability to enter Closing D Orders in all securities that trade on the Exchange, including UTP Securities, would generally support the maintenance of a fair and orderly market in securities traded on the Exchange by providing for a mechanism for DMMs to enter such orders directly. Currently, according to the Exchange, a DMM may choose to use a Floor broker to enter Closing D Orders in securities that have not been assigned to that DMM. The Exchange asserts that allowing DMMs to enter Closing D Orders directly would reduce operational complexity and cost for DMMs, thereby creating an incentive for additional firms to register as a DMM. The Exchange asserts that this proposed change would also make it easier for regulatory staff to monitor DMM trading activity on the Exchange.[30]

The Exchange also asserts that providing DMMs with the ability to enter Closing D Orders in all securities that trade on the Exchange would serve as an incentive for additional broker-dealers to register as a DMM on the Exchange. The Exchange states that, currently, there are numerous costs associated with becoming a DMM. For example, according to the Exchange, before being approved to operate as a DMM, among other things, a firm must develop and implement DMM-specific technology designed to interface with Exchange systems consistent with the obligations under NYSE Rule 104 (*e.g.,* to maintain depth and continuity in assigned securities and to facilitate Auctions both manually and electronically); hire, train, and maintain staff on the Trading Floor; and develop and implement policies and procedures and surveillances designed to comply with DMM-specific rules (*e.g.,* NYSE Rules 36, 98, and 104).[31] The Exchange states that it understands that in the past, to justify incurring such upfront costs, firms would not register as a DMM firm unless they had certainty that once they started operations as a DMM, they would have had a roster of listed securities allocated to the firm. The Exchange states that, in the past, this has been achieved by a new entrant acquiring an existing DMM firm, with the new firm being allocated the listed securities previously allocated to the acquired firm. The Exchange asserts that, the absence of such opportunities, which would arise only if an existing firm seeks to exit the DMM business,

[23] *See id.*

[24] The term ''UTP Security'' is defined in NYSE Rule 1.1 to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.* (citing NYSE Rule 7.35(b)(1)(C)(ii)).

[28] The Exchange states that, as today, the Closing Auction Imbalance Information would not identify the source of orders included in the Continuous Book Clearing Price, including whether an order is entered by a DMM, Floor broker, or other member organization. *See id.*

[29] *See id.*

[30] *See id.*

[31] Pursuant to NYSE Rule 98(c)(1), to operate a DMM unit, a member organization must obtain approval from the Exchange. To obtain approval, among other things, the DMM unit must maintain and enforce written policies and procedures consistent with NYSE Rule 98 requirements relating both to protecting material non-public information generally, and more specifically to protecting against the misuse of Floor-based non-public order information.

providing potential new DMM entrants with additional opportunities to provide liquidity across all securities that trade on the Exchange may serve as an incentive for new entrants to undertake the costs to register as a DMM unit without a significant roster of allocated securities. The Exchange asserts that additional DMMs would promote diversity of DMMs on the Exchange, providing greater choice to issuers when selecting the DMM that would be assigned to their securities.[32]

DMM Interest Allocation in the Closing Auction. The Exchange states that, because of the changes to what type of DMM interest would be eligible to participate in a Closing Auction, it proposes to change how much such DMM Interest would be allocated in a Closing Auction, as described in NYSE Rule 7.35B(h), as follows:

First, the Exchange proposes to amend NYSE Rule 7.35B(h)(1) to provide that better-priced Closing D Orders—whether entered by a Floor broker or a DMM—would be guaranteed to participate in the Closing Auction (subject to DMM allocation self-trade prevention, described below). The Exchange asserts that because DMMs would be entering Closing D Orders before the end of Core Trading Hours and such interest would be included in the Closing Auction Imbalance Information, if they are better-priced orders, they should be included in the Closing Auction in the same manner that all other better-priced orders entered by other member organizations are allocated in the Closing Auction. The Exchange states that it does not consider this a benefit for DMMs because all better-priced interest is guaranteed to participate in the Closing Auction.[33] Therefore, according to the Exchange, DMMs would not receive a different allocation opportunity from other participants for such better-priced Closing D Orders.

Second, the Exchange proposes to amend NYSE Rule 7.35B(h)(2)(A) to provide that at-priced Closing D Orders entered by a DMM in securities that are assigned to that DMM would be included in the DMM Participant [34] for purposes of a parity allocation. NYSE Rule 7.35B(h)(2) currently provides that at-priced orders and DMM Interest of any price are not guaranteed to participate in the Closing Auction. The Exchange proposes that at-priced Closing D Orders would also not be guaranteed to participate in the Closing Auction. In addition, current NYSE Rule 7.35B(h)(2)(A) further provides that orders ranked Priority 2—Display Orders, which include DMM Interest, are ranked on parity by Participant pursuant to NYSE Rule 7.37(b)(2)–(7). Accordingly, currently, at-priced DMM Interest is allocated on parity by DMM Participant in the Closing Auction. The Exchange states that it therefore believes that ranking at-priced Closing D Orders entered by a DMM in its assigned securities on parity by DMM Participant would not be novel. The Exchange states that the distinction from current rules, however, would be that Closing D Orders would be required to be entered before the end of Core Trading Hours. The Exchange states that by contrast, under the current rules, DMMs could receive a parity allocation of at-priced DMM Interest entered after the end of Core Trading Hours.[35]

In addition, proposed NYSE Rule 7.35B(h)(2)(A) would provide that at-priced Closing D Orders entered by a DMM in securities not assigned to that DMM would be included in the Book Participant. The Exchange states that this allocation methodology would be new because, currently, a member organization acting in its capacity as a DMM is not permitted to enter orders in securities that are not assigned to it. The Exchange states that, because a member organization entering orders in NYSE-listed securities not assigned to it in its capacity as a DMM would not be functioning as a DMM, the Exchange proposes that such at-priced Closing D Orders be included in the Book Participant [36] for purposes of parity allocations in the Closing Auction.[37]

Third, the Exchange proposes to amend Rule 7.35B(h)(2) to add new subparagraph (E) providing that DMM Auction Liquidity, *i.e.,* the offsetting interest that a DMM would be permitted to enter after the end of Core Trading Hours in connection with facilitating the Closing Auction and that would always be at-priced interest, would be allocated after both LOC Orders and Closing IO Orders.[38] The Exchange states that this would be new because currently, all at-priced DMM Interest, including that entered after the end of Core Trading Hours, would be allocated before at-priced LOC Orders and Closing IO Orders. As described above, the Exchange proposes that only at-priced interest entered by a DMM *before* the end of Core Trading Hours, *i.e.,* Closing D Orders, would be allocated before LOC Orders and Closing IO Orders. According to the Exchange, that would not be a unique benefit because currently, all displayed and non-displayed orders, including Closing D Orders entered by Floor brokers, are allocated before LOC Orders and Closing IO Orders. The Exchange states that, accordingly, DMMs would not receive a unique benefit with this allocation sequence.[39]

As proposed, DMM Auction Liquidity, which can be entered only after the end of Core Trading Hours, would be allocated *after* the following at-priced orders have any opportunity to participate in the Closing Auction: Orders ranked Priority 2—Displayed Orders and Closing D Orders; orders ranked Priority 3—Non-Display Orders; LOC Orders; and Closing IO Orders. As further proposed, among at-priced orders, DMM Auction Liquidity would receive an allocation opportunity before orders ranked Priority 4—Yielding Orders and Closing D Orders with a Yielding Modifier. The Exchange asserts that this allocation would be consistent with a fair and orderly market because orders with a Yielding Modifier are, by their terms, conditional, intended to yield to other available interest, and not guaranteed an execution in the Closing Auction.[40]

The Exchange states that, because DMM Auction Liquidity would be allocated ahead of Yielding Orders, the Exchange would not include offsetting at-priced Yielding Orders in the calculation of the Unpaired Quantity that would be provided to DMMs to let them know the full quantity of DMM Auction Liquidity that they would be eligible to trade at a price point. The Exchange further states that, because it proposes to change how DMM Auction Liquidity would be ranked and allocated in a Closing Auction, it proposes to amend the second sentence of NYSE Rule 7.35(a)(9)(A) [41] to specify that the ranking and allocation of DMM Auction Liquidity, as described in that Rule, would be applicable only for a

[32] *See id.* at 52723.

[33] *See id.*

[34] Under NYSE Rule 7.36(a)(5), the term ''DMM Participant'' means the DMM assigned to the security. Accordingly, a DMM is eligible for a DMM Participant parity allocation only in securities assigned to that DMM. *See id.*

[35] *See id.*

[36] Under NYSE Rule 7.36(a)(5), the term ''Book Participant'' means orders collectively represented in the Exchange Book that have not been entered by a Floor broker or DMM. Pursuant to NYSE Rule 7.37(b)(5), an allocation to the Book Participant will be allocated to orders that comprise the Book Participant by working time. *See id.*

[37] *See id.*

[38] The Exchange proposes a non-substantive amendment to re-number current NYSE Rules 7.35B(h)(2)(E) and (F) as proposed NYSE Rules 7.35B(h)(2)(F) and (G). *See id.*

[39] *See id.*

[40] *See id.* at 52723–24.

[41] The second sentence of NYSE Rule 7.35(a)(9)(A) currently provides that ''[f]or purposes of ranking and allocation in an Auction, DMM Auction Liquidity is ranked Priority 2—Display Orders.'' *See id.* at 52724.

Core Open Auction or Trading Halt Auction.[42]

Finally, the Exchange proposes to amend NYSE Rule 7.35B(h)(3)(A) relating to DMM Participant allocation. The current rule addresses how DMM Orders would be allocated within the DMM Participant.[43] The Exchange states that, because DMM Orders would no longer participate in the Closing Auction, it proposes to delete the current rule text. The Exchange proposes that Rule 7.35B(h)(3)(A) would instead address how the Exchange would apply self-trade prevention within the DMM Participant Allocation.[44]

The Exchange states that a DMM would not be able to enter or cancel Closing D Orders in the last ten seconds of Core Trading Hours. In addition, according to the Exchange DMMs would be permitted to enter DMM Auction Liquidity only after the end of Core Trading Hours, and only to offset Unpaired Quantity at the Closing Auction Price. Accordingly, the Exchange states, it could be possible that a DMM has a Closing D Order to buy (sell) that is eligible to participate in the Closing Auction when there is a buy (sell) Unpaired Quantity, and therefore the DMM may be entering offsetting DMM Auction Liquidity to sell (buy). If the prices of two such contra-side orders either lock or cross, the Exchange proposes to apply STP Decrement and Cancel (''STPD''), as described in NYSE Rule 7.31(i)(2)(C)(i), to such locking/crossing interest.[45] The Exchange asserts that by applying STPD, the Exchange would systematically ensure that DMM Auction Liquidity would not trade in a Closing Auction where there are also contra-side Closing D Orders entered by the DMM.[46] According to the Exchange, this would also ensure that only the equivalent size of the two orders would be canceled. Therefore, the Exchange asserts, such cancellation would have minimal impact on how the Closing Auction Price would be determined. The Exchange further proposes that if there is more than one Closing D order to sell (buy) to be canceled, such orders would be canceled in price/time sequence, from lowest (highest) price first, and then at each price, from oldest to newest.[47]

Exchange-Facilitated Auctions. NYSE Rule 7.35C(a)(1) currently provides that if the Exchange facilitates an Auction, DMM Interest will not be eligible to participate if such Auction results in a trade and will be eligible to participate if such Auction results in a quote. The Exchange proposes that because, as described above, Closing D Orders entered by DMMs would be processed similarly to Floor broker Closing D Orders, including that they would be included in Closing Auction Imbalance Information, Closing D Orders entered by a DMM be processed similarly to Closing D Orders entered by Floor brokers in an Exchange-facilitated Auction. The Exchange states that it accordingly proposes to amend Rule 7.35C(a)(1) to provide that Closing D Orders entered by a DMM would be eligible to participate in an Exchange-facilitated Closing Auction.[48]

Proposed Amendments to Rules 104 and 98

Prohibited Transactions. The Exchange states that, in connection with the above-described changes to the process for DMM-facilitated Closing Auctions, it proposes to amend Rule 104 to eliminate the current restriction on DMMs engaging in ''Prohibited Transactions'' during the last ten minutes of trading prior to the scheduled close of trading. The Exchange asserts that the proposed changes to the Closing Auction process obviate the need for this current restriction and the Exchange proposes to delete the text currently set forth in Rule 104(g)(1)(B) and subparagraph (i) thereto in its entirety.[49]

NYSE Rule 104(g)(1)(A) currently defines an ''Aggressing Transaction'' as a DMM unit transaction that: ''(i) is a purchase (sale) that reaches across the market to trade as the contra-side to the Exchange published offer (bid); and (ii) is priced above (below) the last differently-priced trade on the Exchange and above (below) the last differently-priced published offer (bid) on the Exchange.'' NYSE Rule 104(g)(1)(B) further provides that:

> Aggressing Transactions during the last ten minutes prior to the scheduled close of trading that would result in a new high (low) price for a security on the Exchange for the day at the time of the DMM's transaction are prohibited, unless such transaction would match another market's better bid or offer price, bring the price of that security into parity with an underlying or related security or asset, or would liquidate or decrease the position of the DMM unit.[50]

These are referred to as ''Prohibited Transactions.'' [51]

The Exchange states that, since 2017, it has implemented changes relating to trading functions on the Exchange leading into the Closing Auction that have altered the balance of DMM obligations against the benefits provided to DMMs. The Exchange states that, first, in 2019, in connection with the transition to the Pillar trading platform, it amended its rules to provide that Floor Broker Interest (*i.e.,* interest verbalized in the trading crowd by a Floor Broker) would be included in Closing Auction Imbalance Information.[52] The Exchange states that, accordingly, from August 2019, when Pillar was implemented, until March 2020, when the Trading Floor was temporarily closed as a precaution to prevent the spread of COVID–19, the information available to DMMs regarding Floor Broker Interest became available to subscribers of the Closing Auction Imbalance Feed.

Second, according to the Exchange, beginning in 2020, it temporarily suspended the availability of Floor Broker Interest to be eligible to participate in the Closing Auction.[53]

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[42] *See id.*

[43] Current NYSE Rule 7.35B(h)(3)(A) provides: ''At-priced DMM Orders will be placed on the allocation wheel for the Closing Auction based on the time of entry and any other orders or interest from such DMM will join that position on the allocation wheel. If the only DMM Interest available to participate in a Closing Auction is DMM Auction Liquidity or better priced DMM Orders or both, such DMM Interest will be placed last on the allocation wheel.'' *See id.*

[44] *See id.*

[45] Under NYSE Rule 7.31(i)(2)(C)(i), STPD works as follows: ''if both orders are equivalent in size, both orders will be cancelled back to the originating member organization. If the orders are not equivalent in size, the equivalent size will be cancelled back to the originating Client ID and the larger order will be decremented by the size of the smaller order with the balance remaining on the Exchange Book.'' *See id.*

[46] According to the Exchange, the STPD functionality would be implemented for DMMs as a tool to help enable them to meet their obligations to facilitate the Closing Auction in a fair and orderly manner while systematically preventing the DMM from engaging in certain trading activity such as ''wash sales.'' The Exchange states that it does not propose to implement self-trade prevention for all market participants in the Closing Auction, rather only for the limited case of DMM Auction Liquidity entered after the end of Core Trading Hours. According to the Exchange, because the Closing Auction is a single transaction involving many different participants at a single clearing price, it would be difficult to implement this functionality from a technological and operational perspective across multiple parties and all other types of auction interest because it would require the Exchange to continually provisionally cancel and recalculate the prospective auction. *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] NYSE Rule 104(g)(1)(B) defines the ''position of the DMM unit'' for purposes of NYSE Rule 104(g)(1)(B) as ''the DMM unit's inventory of securities exclusive of pending, unexecuted orders and has the same meaning as 'net position information in DMM securities' in Rule 98(c)(5).'' *See id.*

[51] *See id.*

[52] *See id.* at 52725 (citing NYSE Rule 7.35B(a)(1)(B)).

[53] *See* Securities Exchange Act Release No. 89086 (June 17, 2020), (SR–NYSE–202–52) (Commentary

The Exchange recently amended its rules to permanently exclude Floor Broker Interest from the Closing Auction.[54] Because of the absence of Floor Broker Interest in the Closing Auction, any remaining information advantage that DMMs might have had with respect to orders from Floor brokers—even after such interest was included in the Closing Auction Imbalance Information—has since been eliminated. The Exchange asserts that, accordingly, one of the information advantages of DMMs that the Commission cited to in the Disapproval Order no longer exists.[55]

The Exchange asserts that this proposed rule change further alters the balance of DMM obligations compared to the benefits provided to DMMs with respect to the Closing Auction. The Exchange further asserts that in the aggregate, these changes (including the elimination of Floor Broker Interest) result in a shift that decreases the benefits available to DMMs without a commensurate decrease in obligations. Specifically, according to the Exchange, with this proposed rule change:

• DMMs must still meet their NYSE Rule 104 obligation to facilitate the Closing Auction and supply liquidity as needed. They must also select an Auction Price that satisfies all better-priced orders on the Side of the Imbalance. However, they would now be systematically restricted as to the price range at which the Closing Auction Price could be determined. As proposed, if the Side of the Imbalance is to buy (sell), the Auction Price must be at or above (below) the last-published Imbalance Reference Price and not above (below) the last-published non-zero Continuous Book Clearing Price. Accordingly, with this proposed change, DMMs will be subject to a further limitation on how they may select the Closing Auction Price. By contrast, under current rules, there is no express requirement for a DMM to close a stock within the Continuous Book Clearing Price, although DMMs are obligated to, among other things, supply liquidity as needed to facilitate the Closing Auction in a fair and orderly manner. This proposed change promotes transparency and determinism of the Closing Auction Price and systematically constrains how a DMM selects a Closing Auction Price. The Exchange therefore believes that this proposed change decreases the unique benefits granted to the DMMs without decreasing the obligations on the DMMs with respect to the Closing Auction.[56]

• The only interest that a DMM may enter after the end of Core Trading Hours to participate in the Closing Auction would be DMM Auction Liquidity, and such interest could be entered only to offset Unpaired Quantity at the Auction Price. Such interest is thus restricted by side, price, and quantity. By contrast, under current rules, DMMs have no systematic restrictions on entering or canceling DMM Interest after the end of Core Trading Hours. This change ensures that DMM Auction Liquidity could be used only to dampen significant price movements at the close. The Exchange believes this proposed change significantly decreases unique benefits to the DMMs because they would still be required to supply liquidity as needed to support a fair and orderly Closing Auction, but would have limited tools to enter any such interest after the end of Core Trading Hours. The Exchange proposes to make the Closing D Order available to DMMs in part to offset this reduction of unique benefits with respect to entering or canceling DMM Interest after the end of Core Trading Hours. However, unlike how DMMs currently may enter and cancel DMM Interest, DMMs would not receive any unique treatment with respect to the availability of this order type. To the contrary, Closing D Orders for DMMs would function similarly to Closing D Orders available to Floor brokers, including that they may not be entered or canceled in the last ten seconds of trading and the interest would be included in the Closing Auction Imbalance Information. Accordingly, the Exchange is not providing a bespoke tool for DMMs to supply liquidity for the Closing Auction. In addition, the Exchange proposes to make Closing D Orders available for a wholly independent reason to provide an incentive for more broker-dealers to seek to register as a DMM, which would increase DMM diversity on the Exchange to increase issuer choice.[57]

• DMM Auction Liquidity entered in connection with facilitating the Closing Auction would, by its terms, be at-priced interest and would be allocated *after* at-priced displayed orders, non-displayed orders, LOC Orders, and Closing IO Orders. Accordingly, unlike at-priced DMM Interest under current Rules, it would not have priority over LOC Orders and Closing IO Orders. While such DMM Auction Liquidity would have priority over orders with a Yielding Modifier, the Exchange notes that such orders are, by their terms, conditional in nature and designed to yield to other orders. Accordingly, DMMs would have a reduced benefit in connection with Closing Auction allocations for their at-priced DMM Auction Liquidity. The Exchange notes that the proposed allocation of Closing D Orders entered by the DMM would not provide them with a unique benefit because they would function similarly to Closing D Orders entered by Floor brokers. Accordingly, if a Closing D Order is better-priced, it would be guaranteed to participate in the Closing Auction (subject to DMM-specific self-trade prevention), just as any other better-priced interest would be guaranteed an allocation. In addition, that information would be transparent because such Closing D Orders would be included in Closing Auction Imbalance Information. DMMs would therefore not be receiving a unique benefit in this allocation. The Exchange further believes it is appropriate that at-priced DMM-entered Closing D Orders in their assigned securities would be allocated on parity as part of the DMM Participant because DMMs would continue to have a significant obligation with respect to the Closing Auction, and the benefit associated with a parity allocation for such orders is designed to offset that obligation, in part. The Exchange would not propose the same benefit for Closing D Orders entered by a DMM in securities that are not assigned to the DMM; in such case, such orders would be included in the Book Participant, and therefore would not receive any allocation priority over other market participants.[58]

According to the Exchange, DMMs would continue to have benefits in connection with their unique role. For example, states the Exchange, at the point of sale, DMMs have access to aggregated buying and selling interest that is eligible to participate in the Closing Auction.[59] The Exchange states that, however, pursuant to current Rule 104(h)(ii), a DMM may not use any

.03 to Rule 7.35B was in effect on a temporary basis from June 17, 2020 until July 23, 2021, when the Commission approved proposed changes to Rule 7.35B that provide that Floor Broker Interest is no longer eligible to participate in the Closing Auction. The term ''Floor Broker Interest'' is defined in Rule 7.35(a)(10) to mean orders represented orally by a Floor broker at the point of sale. *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR–NYSE–2020–95) (''Floor Broker Interest Approval Order''). *See also* Notice, *supra* note 3, 86 FR 52725.

[54] *See* Floor Broker Interest Approval Order, *supra* note 55.

[55] *See* Notice, *supra* note 3, 86 FR 52725.

[56] *See id.*

[57] *See id.*

[58] *See id.* at 52725–26.

[59] The Exchange states that DMM unit algorithms are not provided aggregated buying and selling interest for the Closing Auction until after the end of Core Trading Hours. *See id.* at 52726.

information provided by Exchange systems in a manner that would violate Exchange rules or federal securities laws or regulations. In addition, according to the Exchange, pursuant to current Rule 104(h)(iii), Floor brokers may request that a DMM provide them with the information that is available to the DMM at the post, including such aggregated buying and selling interest for the Closing Auction. The Exchange states that it continues to believe that it benefits the trading community as a whole to continue to make such information available to DMMs because Floor brokers who request such market looks can use that information to provide their customers with information necessary for them to make trading decisions leading into the close.[60]

The Exchange asserts that providing Closing D Orders to DMMs would also provide them with a benefit, but that this benefit would not be unique to DMMs, as this order type is also available to Floor brokers. According to the Exchange, because all Floor brokers operate on an agency-only basis, any market participant can avail themselves of Floor broker services and use Closing D Orders. The Exchange also asserts that providing Closing D Orders to DMMs is designed to offset the current significant barriers to entry for new DMM firms on the Exchange, which is an obligation independent of the obligations related to the Closing Auction.[61]

The Exchange asserts that, in the aggregate, the above-described changes have altered the balance of benefits and obligations for DMMs and the resulting scope of obligations would no longer be commensurate with DMM benefits. For example, according to the Exchange, DMMs no longer have an informational advantage relating to Floor broker verbal interest at the close and their at-priced DMM Auction Liquidity would no longer have priority over LOC or Closing IO Orders.[62]

The Exchange asserts that as a result of these significant alterations to DMM obligations and benefits, any current need for Prohibited Transactions as a DMM obligation has been obviated. The Exchange asserts that Prohibited Transactions make sense when a DMM has discretion over the Closing Auction Price and when a DMM can enter and cancel interest after the end of Core Trading Hours, but that, with the proposed changes described in this filing, DMM discretion is explicitly limited; the Closing Auction Price must be within a defined and transparent parameter that cannot be changed after the end of Core Trading Hours and DMMs would be limited in what offsetting interest they can enter after the end of Core Trading Hours. The Exchange asserts that while the DMM would still have an obligation to facilitate the Closing Auction and supply liquidity as needed, DMMs would no longer have the same discretion in how they fulfill this obligation. As a result, according to the Exchange, any trading activity that a DMM would engage in the last ten minutes of trading would be no different than how other market participants trade leading into the close.[63]

Because the Exchange proposes to eliminate Prohibited Transactions, the Exchange proposes to make a conforming amendment to NYSE Rule 98 to delete subparagraphs (c)(5) and (c)(5)(A) and renumber subparagraphs (c)(6) and (c)(7) as (c)(5) and (c)(6). The Exchange states that it added NYSE Rule 98(c)(5) for the sole purpose of requiring DMMs to provide net position information in connection with monitoring their compliance with Prohibited Transactions.[64] Accordingly, the Exchange asserts, if Prohibited Transactions are eliminated, that reporting requirement becomes obsolete.[65]

Proposed Non-Substantive Amendments to NYSE Rule 104. In addition to eliminating prohibited transactions, the Exchange proposes to amend NYSE Rule 104 to eliminate rule text it describes as obsolete, to update rule references, and to make other conforming changes, as follows:

• The Exchange proposes to amend NYSE Rule 104(a)(2) to update the cross reference from NYSE Rule 123D to NYSE Rule 7.35A and to use the Pillar terms of ''Core Open Auctions and Trading Halt Auctions'' instead of referring to ''openings.'' The Exchange also proposes to delete the reference to NYSE Rule 13 and Reserve Order interest procedures at the opening as obsolete. Finally, the Exchange proposes to delete the reference to Supplementary Material .05 to NYSE Rule 104 with respect to odd-lot order information to the DMM unit algorithm, stating that this is also obsolete now that the Exchange trades on Pillar.[66]

• The Exchange proposes to amend NYSE Rule 104(a)(3) to update the cross reference from NYSE Rule 123C to NYSE Rule 7.35B and to use the Pillar term of ''Closing Auctions'' instead of ''closes.'' The Exchange also proposes to delete the reference to NYSE Rule 13 and Reserve Order interest procedures at the close as obsolete.[67]

• The Exchange proposes to amend NYSE Rule 104(b) by deleting subparagraphs (2) and (6) and replacing the text for NYSE Rule 104(b)(2) with the following: ''Unless otherwise specified in Rule 7.31, DMM unit algorithms may use the orders and modifiers set forth in Rule 7.31.''NYSE Rule 104(b)(2) currently provides that ''Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.'' The Exchange states that, since it transitioned to Pillar, it no longer enforces self-trade prevention on behalf of DMMs. Instead, according to the Exchange, DMMs may use one of the Self-Trade Prevention Modifiers (''STP'') described in NYSE Rule 7.31(i)(2).[68] NYSE Rule 104(b)(6) currently provides that ''DMM Units may not enter the following orders and modifiers: Market Orders, MOO Orders, CO Orders, MOC Orders, LOC Orders, or Buy Minus Zero Plus Instructions.'' In the Pillar rules, NYSE Rule 7.31 sets forth which orders and modifiers are not available to DMMs, and the Exchange states that therefore NYSE Rule 104(b)(6) is obsolete. The Exchange asserts that the proposed new text for NYSE Rule 104(b)(2) would provide transparency and that NYSE Rule 7.31 would describe which orders and modifiers would be available to DMMs, including STP modifiers.

▪ The Exchange states that it proposes to amend NYSE Rule 104(b)(3) to delete references to ''Floor broker agency interest files or reserve interest'' as such references are now obsolete. The Exchange states that it no longer uses ''Floor broker agency interest files'' and no longer provides Floor brokers with reserve interest functionality that differs from the Reserve Orders available to all

[60] *See id.*

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See id. See also* Securities Exchange Act Release No. 86131 (June 18, 2019), 84 FR 29565 (June 23, 2019) (SR–NYSE–2019–25) (Notice of filing and immediate effectiveness of proposed rule change).

[65] *See* Notice, *supra* note 3, 86 FR 52726.

[66] *See id.*

[67] *See id.*

[68] *See id.* at 52726–27.

member organizations, as described in NYSE Rule 7.31.[69]

▪ The Exchange proposes to amend NYSE Rule 104(b) by deleting subparagraph (4), which provides that ''[t]he DMM unit's algorithm may place within Exchange systems trading interest to be known as a ''Capital Commitment Schedule.'' (See Rule 1000 concerning the operation of the Capital Commitment Schedule).'' With the transition to Pillar, the Exchange states that it has replaced the ''Capital Commitment Schedule'' with Capital Commitment Orders, as described in NYSE Rule 7.31(d)(5), and has deleted NYSE Rule 1000. Accordingly, the Exchange states, this current rule is obsolete. The Exchange proposes a non-substantive amendment to renumber Rule 104(b)(5) as Rule 104(b)(4).[70]

▪ The Exchange proposes to delete the text accompanying current NYSE Rules 104(c), (d), and (e) as obsolete now that the Exchange trades on Pillar.

NYSE Rule 104(c) currently provides: ''A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.'' The Exchange states that NYSE Rule 7.31 now describes how Reserve Orders function.[71]

NYSE Rule 104(d) currently provides: ''A DMM unit may provide algorithmically-generated price improvement to all or part of an incoming order that can be executed at or within the Exchange BBO through the use of Capital Commitment Schedule interest (see Rule 1000). Any orders eligible for execution in Exchange systems at the price of the DMM unit's interest will trade on parity with such interest, as will any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit's interest.'' The Exchange states that, with Pillar, the Exchange has deleted Rule 1000 and no longer offers the Capital Commitment Schedule to DMMs.[72]

NYSE Rule 104(e) currently provides: ''DMM units shall provide contra side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening and closing transactions but remain unpaired after the DMM has paired all other eligible round lot sized interest.'' According to the Exchange, this requirement is obsolete.[73]

With these proposed deletions, the Exchange proposes non-substantive amendments to renumber NYSE Rules 104(f), (g), (h), (i), and (j) as Rules 104(c), (d), (e), (f), and (g) and to update cross-references in proposed NYSE Rule 104(e)(iii) from subparagraph (h)(ii) and (iii) to (e)(ii) and (iii).[74]

▪ The Exchange proposes to amend current NYSE Rule 104(h)(ii) (proposed NYSE Rule 104(e)(ii)) to delete reference to information that is no longer available to a DMM at the post. Specifically, the Exchange states, it no longer provides DMMs at the post with the following information: ''the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display shall exclude any order or portion thereof that a market participant has elected not to display to a DMM.'' Accordingly, the Exchange proposes to amend Rule 104(e)(ii) to delete that rule text.[75]

III. Comments Received

The commenter generally agrees with the proposal.[76] The commenter supports efforts to address what the commenter describes as the ability of DMMs to manipulate ''with impunity,'' arguing that DMMs are allowed to alter closing prices and utilize aggressing transactions ''solely for their own benefit,'' which, according to the commenter, not only destabilizes the market, but also harms retail traders, pension funds, and small companies alike.[77]

The commenter, however, believes that the proposal contains a loophole, which is the Exchange's proposal to accept and not cancel Closing D Orders entered by DMMs beginning ten minutes before the scheduled end of Core Trading Hours even if the security remains halted or pause or never opened, arguing that, if the objective is to reduce the power of DMM's and eliminate the possibilities for fraud and manipulation, such a blatant opportunity should not be left in place.[78]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2021–44 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[79] to determine whether the proposal should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission encourages interested persons to provide additional comment on the proposal.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[80] which requires that the rules of an exchange be designed, among other things, 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, Section 6(b)(5) of the Act prohibits the rules of an exchange from being designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, Section 6(b)(9) of the Act requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate under the Act.[81]

The Exchange proposes, among other things, to: (1) Require that the Closing Auction Price selected by a DMM when facilitating an auction must be between the Imbalance Reference Price and the Continuous Book Clearing Price; (2) allow DMMs to use Closing D Orders in assigned as well as non-assigned securities; (3) change various types of DMM trading interest would participate in the Closing Auction in assigned securities; and (4) eliminate the current NYSE rule provision that forbids DMMs from engaging in ''Prohibited Transactions'' during the last ten minutes of trading prior to the scheduled close of trading. Accordingly, the Commission seeks additional public comment on the following topics:

1. The Exchange argues that the proposed Closing Auction Price constraints would promote transparency and determinism with respect to the Closing Auction because the Closing Auction Price would be required to be

[69] *See id.* at 52727.

[70] *See id.*

[71] *See id.*

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *See id.*

[76] *See* Anonymous Letter, *supra* note 4.

[77] *Id.*

[78] *See id.*

[79] 15 U.S.C. 78s(b)(2)(B).

[80] 15 U.S.C. 78f(b)(5).

[81] 15 U.S.C. 78f(b)(8).

within a pre-determined range of prices that have been disseminated via the Closing Auction Imbalance Information. The Exchange also represents that, from January 1, 2021, to July 23, 2021, 96.5% of all Closing Auctions, and 94.9% of all Closing Auction volume, occurred within the proposed parameters for the Closing Auction Price.[82] Considering these statements by the Exchange, what are commenters' views on whether this proposal represents a significant constraint on how the Closing Auction Price is currently determined? Do commenters believe that an efficient Closing Auction Price is more likely to be identified through the use of the proposed Closing Auction Price constraints, and that the Exchange has sufficiently demonstrated this to be the case? Do commenters believe that the proposal might under some market conditions impede the efficient determination of an appropriate Closing Auction Price? What are commenters' views on whether the proposed Closing Auction Price constraints would support a fair and orderly market in securities listed on the Exchange? Do commenters believe that the statistics offered by the Exchange reflect a representative sample period?

2. Do commenters believe that any other aspect of the proposal represents a meaningful change from how Closing Auction Prices are currently determined by the DMM? Do commenters agree with the Exchange's assertion that the proposed mechanism for determining the Closing Auction Price ''systematically constrains how a DMM selects a Closing Auction Price and thereby decreases the unique benefits granted to the DMMs,'' as the Exchange argues? Do commenters believe that the proposed Closing Auction Price parameters would impose an obligation on DMMs that is material? Do commenters believe that the proposed Closing Auction Price parameters would materially affect the balance of benefits and obligations of DMMs on the Exchange?

3. What are commenters' views on the proposal to permit DMMs to use the Closing D Order type, which is currently available exclusively to NYSE Floor brokers, who trade as agent on behalf of their customers? Do commenters believe that permitting DMMs to use Closing D Orders in their assigned securities represents a material change to the balance of benefits and obligations of DMMs? What are commenters' views of the arguments the Exchange has advanced in favor of extending the use of Closing D Orders to DMMs in their assigned securities? Do commenters believe that permitting DMMs to use Closing D Orders in their assigned securities is necessary in order for DMMs to be able to manage their risk while fulfilling their obligations under Exchange rules to facilitate the Closing Auction in their assigned securities? Do commenters believe that permitting DMMs to use Closing D Orders in their assigned securities is necessary in order for DMMs to be able to facilitate the Closing Auction within the proposed Closing Auction Price parameters? To what extent, if any, do commenters think that permitting DMMs to use Closing D Orders in assigned securities would give DMMs a competitive advantage over other market participants?

4. Do commenters believe that permitting DMMs to use Closing D Orders in NYSE listed securities other than their assigned securities and in UTP securities represents a material change to the balance of benefits and obligations of DMMs? To what extent, if any, do commenters think that permitting DMMs to use Closing D Orders in securities they have not been assigned would give DMMs a competitive advantage over other market participants? To what extent do DMMs currently make indirect use of Closing D Orders by routing those orders through NYSE Floor brokers? Would permitting DMMs to directly enter Closing D Orders in non-assigned securities meaningfully change the access that DMMs have to Closing D Orders or the cost to DMMs of using Closing D Orders? Would it have other effects on Exchange surveillance or on other Exchange participants? Do commenters believe that extending the use of Closing D Orders to DMMs outside their assigned securities would create a meaningful incentive for market participants to seek to become DMMs, and, if so, do commenters believe that this incentive would create any competitive effects that are not necessary or appropriate?

5. What are commenters' views on the proposed changes to the ways in which DMM trading interest would participate in the Closing Auction? Specifically, what are commenters' views on the proposed rule that all DMM interest, except for Closing D Orders, would no longer participate in the Closing Auction? What are commenters' view on the proposed rule that DMMs would be able to enter additional trading interest, in the form of DMM Auction Liquidity, after the end of Core Trading Hours only to offset unpaired interest at the Closing Auction Price? What are commenters' views on the way in which Closing D Orders entered by DMMs would be allocated executions in assigned securities and in other securities? Do commenters believe that this proposed rule would impose an obligation on DMMs that is material?

6. What are commenters' views on the proposed changes to the interest that will be reflected in the Exchange's disseminated Auction Imbalance Information? What are commenters' views on the way in which DMM Closing D Orders would be reflected in the Auction Imbalance Information, which would be different at different times leading into the Closing Auction?

7. What are commenters' views regarding the Exchange's proposal to eliminate the Prohibited Transactions provision of Rule 104? Do commenters believe that the current prohibition is necessary to maintain fair and orderly trading on the Exchange? Do commenters believe that the current prohibition impedes fair and orderly trading on the Exchange? Do commenters believe that past developments in the equities markets or changes to NYSE rules—or the other changes that the Exchange now proposes to make (for example, placing a constraint on the Closing Auction Price, or changing how DMM interest can participate in the Closing Auction)—are sufficient to address any concerns arising from permitting a DMM to trade aggressively in its assigned securities and set a new high or low for the day on the Exchange in the last ten minutes of the Core Trading Session?[83] To what extent, if any, do commenters believe that the DMM's current re-entry obligations represent a meaningful constraint on DMMs that engage in Aggressing Transactions, as part of their obligation to maintain a fair and orderly market? Do commenters agree with the statement by the Exchange that, if Prohibited Transactions were eliminated as proposed, the DMM's re-entry obligations would suffice to effectively dampen any potential destabilizing impact of Aggressing Transactions made by DMMs during the last ten minutes of the trading day?

8. To what extent, if any, do commenters agree with the Exchange's statements that various changes that the Exchange has implemented since 2017, such as the public dissemination of floor broker interest from 2019 through 2020 and the exclusion of Floor broker

[82] *See* Notice, *supra* note 3, 86 FR 52720.

[83] *See, e.g.,* Securities Exchange Act Release No. 81150 (July 1, 2017), 82 FR 33534, 33536–37 (July 20, 2017) (SR–NYSE–2016–71, SR–NYSEMKT–2016–99) (order disapproving proposal to remove Prohibited Transactions provisions of NYSE Rule 104).

interest from the Closing Auction beginning in 2020, have altered the balance of DMM obligations compared to the benefits provided to DMMs? To what extent do commenters agree with the Exchange's statement that, in the aggregate, this proposed rule change further alters the balance of DMM obligations compared to the benefits provided to DMMs with respect to the Closing Auction?

9. What effect, if any, do commenters believe the proposed rule changes, individually or collectively, might have on the ability or the motive of any market participants, including DMMs, to engage in manipulative behavior, either individually or in concert with other parties? What effect, if any, do commenters believe the proposed rule changes, individually or collectively, might have on the ability of the Exchange to detect and deter manipulative activity?

10. What are commenters' views on whether any aspect of the proposal would permit unfair discrimination between customers, issuers, brokers, or dealers? What are commenters' views on whether any aspect of the proposal would impose any burden on competition that is not necessary or appropriate under the Act?

11. The Exchange states it proposes to make Closing D Orders available to DMMs to, among other things, provide an incentive for more broker-dealers to seek to register as a DMM. To what extent, if any, do commenters believe that increasing the number of new DMM entrants will be beneficial for execution quality or market quality?

12. Do commenters have any views on other aspects of the proposal?

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [84] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[85] any request for an opportunity to make an oral presentation.[86]

Interested persons are invited to submit written data, views and arguments regarding whether the proposal should be disapproved by January 13, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 27, 2022.

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–NYSE–2021–44 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 Numbers SR–NYSE–2021–44. The 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 proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2021–44 and should be submitted on or before January 13, 2022. Rebuttal comments should be submitted by January 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27814 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[84] 15 U.S.C. 78f(b)(5).

[85] 17 CFR 240.19b-4.

[86] Rule 700(c)(2) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(2).

[87] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93828; File No. SR–CboeBYX–2021–029]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Juneteenth National Independence Day a Holiday of the Exchange

December 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2021, Cboe BYX Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend its rules to make Juneteenth National Independence Day a holiday of the Exchange. 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/byx/*), 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.1 (Hours of Trading and Trading Days) to make Juneteenth National Independence Day a holiday of the Exchange. On June 17, 2021, Juneteenth National Independence Day was designated a legal public holiday.[3] Consistent with broad industry sentiment [4] and the approach recommended by the Securities Industry and Financial Markets Association (''SIFMA''),[5] the Exchange proposes to add ''Juneteenth National Independence Day'' to the existing list of holidays set forth in Rule 11.1(b). As a result, the Exchange will not be open for business on Juneteenth National Independence Day, which falls on June 19 of each year. In accordance with Rule 11.1(b), when a holiday falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and when it falls on a Sunday, the Exchange will not be open for business on the succeeding Monday, unless otherwise indicated by the Exchange.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed amended rule would clearly state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 fell on a Saturday or Sunday. The change would thereby promote clarity and transparency in the Exchange rules by updating the list of holidays of the Exchange. The proposed rule change is also based on recent proposals by other exchanges.[10] Therefore, the proposed change does not raise any new or novel issues.

For these 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,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to conform to industry practice with respect to holidays.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Exchange believes that waiver of operative delay would be consistent with the protection of investors and the public interest because the proposed rule change would state that the Exchange will not be open for business on Juneteenth National Independence Day, which is a federal holiday, and would address what day would be taken off if June 19 falls on a Saturday or Sunday. The Exchange also notes that a waiver would allow the Exchange to update the schedule on its website more quickly. Further, the Exchange states that the proposed rule change was based on recent proposals by other exchanges.[17] The Commission believes

[3] Public Law 117–17.

[4] See *e.g., https://www.bloomberg.com/news/articles/2021-06-18/bofa-makesjuneteenth-a-holiday-joining-jpmorgan-wells-fargo?sref=Hhue1scO.*

[5] SIFMA recommends a full market close in observance of Juneteenth National Independence Day. See *https://www.sifma.org/resources/general/holidayschedule/.* See also *https://www.sifma.org/resources/news/sifma-revises-2022-fixed-income-market-close-recommendations-in-the-u-s-to-include-full-close-for-juneteenth-national-independence-day/.*

[6] See BYX Exchange Rule 11.1(b).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1).

[10] See *e.g.,* Securities Exchange Act Release No. 93186 (September 30, 2021), 86 FR 55068 (October 5, 2021)(SR–NYSE–2021–56). *See also* Securities Exchange Act Release No. 93461 (October 28, 2021), 86 FR 60670 (November 3, 2021)(SR–MIAX–2021–55).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 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 satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 10.

that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[18]

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–CboeBYX–2021–029 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–CboeBYX–2021–029. 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–CboeBYX–2021–029 and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–27921 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93830; File No. SR–NASDAQ–2021–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing Primary Offering

December 20, 2021.

On June 11, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to modify certain pricing limitations for companies listing in connection with a direct listing primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 30, 2021.[4] On August 12, 2021, pursuant to Section 19(b(2) of the Exchange Act,[5] the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On September 24, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on June 30, 2021.[10] The 180th day after publication of the Notice is December 27, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change along with the comments on the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates February 25, 2022, as the date by which the Commission should either approve or disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 92256 (June 24, 2021), 86 FR 34815 (June 30, 2021) (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-045/srnasdaq2021045.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 92649 (August 12, 2021), 86 FR 46295. The Commission designated September 28, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 93119 (September 24, 2021), 86 FR 54262 (September 30, 2021) (SR–NASDAQ–2021–045) (''OIP'').

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 92256 (June 24, 2021), 86 FR 34815 (June 30, 2021) (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-045/srnasdaq2021045.htm.*

[11] 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR–NASDAQ–2021–045).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–27923 Filed 12–22–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93834; File No. SR–CboeBZX–2021–083]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines

December 20, 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 December 6, 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 Options'') proposes to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan (''MRVP''), in connection with certain minor rule violations and applicable fines. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its MRVP in Rule 25.3 in connection with certain minor rule violations and applicable fines. Rule 25.3 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding.[3] Current Rule 25.3(a)–(g) sets forth a list of specific Exchange Rules under which an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. Specifically, the proposed rule change amends Rule 25.3 by: (1) Eliminating the violation of Rule 22.6(a) in Rule 25.3(c), which currently imposes fines for violations of Rules 22.6(a) through (c) (Market Maker Quotations); (2) relocating violations of Rule 22.6(b) (regarding Market Maker initial quote volume requirements) and Rule 22.6(c) (regarding Market Maker two-sided quote requirements) to Rule 25.3(d),[4] which currently imposes fines for violations of Rule 22.6(d) (regarding Market Maker continuous quoting obligations) so that a single MRVP provision governs violations of a Market Maker's quoting obligations; and (3) updating the fine schedule applicable to minor rule violations related to a Market Maker Quoting Obligations (*i.e.,* Rules 22.6(b)–(d), as proposed) in Rule 25.3(d).

First, the proposed rule change eliminates the violation of 22.6(a) currently in Rule 25.3(c) of the MRVP. Specifically, Rule 22.6(a) requires a Market Maker to submit bids and offers that are firm for all orders. The Exchange no longer believes violations of Rule 22.6(a) to be minor in nature and therefore proposes to remove it from the list of rules in Rule 25.3 eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of Rule 22.6(a) may directly impact trading on the Exchange, the maintenance of a fair and orderly market and customer protections because honoring firm quotations is vital in promoting efficient functioning of intermarket price priority and trading in general. Pursuant to Rule 25.3, the Exchange is not required to proceed under said Rules as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under Chapter VIII (Discipline) rules as to any such violation. The Exchange notes that the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), which recently filed a proposal, approved by the Commission,[5] to no longer include such violations as eligible for a minor rule disposition on Cboe Options for the same reason—it no longer believed violations of the firm quote requirement to be minor in nature.

The proposed rule change next relocates violations of Rules 22.6(b) and (c), currently in Rule 25.3(c) of the MRVP, to Rule 25.3(d) (Rule 25.3(c), as amended) [6] of the MRVP. The Exchange notes that Rule 22.6 governs Market Maker quoting obligations on the Exchange and, more specifically, Rule 22.6(b) requires a Market Maker to submit initial quotes that contain certain volume and Rule 22.6(c) requires a Market Maker to submit two-sided quotes. As stated above, Rule 25.3(d) currently imposes certain fines for a Market Maker's failure to meet the continuous quoting obligations in Rule 22.6(d). By relocating violations of Rules 22.6(b) and (c) to join violations of Rule 22.6(d) in Rule 25.3(d) of the MRVP, the proposed rule change amends the MRVP to impose the same fine schedule for violations of a Market Maker's quoting obligations. The proposed rule change

[12] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange may, with respect to any such violation, proceed under Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and impose the fine set forth in Rule 25.3(a)–(g).

[4] As a result of the proposed elimination or relocation of the rule violations listed under Rule 25.3(c), the proposed rule change ultimately eliminates Rule 25.3(c) from the MRVP and subsequently renumbers current Rules 25.3(d), 25.3(e), 25.3(f) and 25.3(g) to Rules 25.3(c), 25.3(d), 25.3(e) and 25.3(f), respectively.

[5] *See* Securities Exchange Act Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR–CBOE–2021–045) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 13.15, Which Governs the Exchange's Minor Rule Violation Plan).

[6] *See supra* note 4.

subsequently renames Rule 25.3(d) as ''Market Maker Quoting Obligations''. The Exchange notes that the proposed rule change is consistent, and intended to harmonize to the extent possible, with the MRVP of the Exchange's affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), which imposes the one fine schedule for a market maker's failure to meet its quoting obligations on Cboe Options, including failure to meet continuous quoting requirements and failure to meet initial quote volume requirements.[7] The Exchange's affiliated options exchanges, Cboe EDGX Exchange, Inc. (''EDGX Options'') and Cboe C2 Exchange, Inc. (''C2''), also intend to file a proposal to update their MRVPs in connection with the violations of market maker quoting requirements on EDGX Options and C2, to the extent possible, in an identical manner.

Additionally, while current Rule 25.3(c) provides that each paragraph of such sections subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations, the corresponding Cboe Options MRVP provision applicable to violations of market maker quoting obligations does not contain this language and Cboe Options may aggregate violations across sections governing market maker quoting obligations. Therefore, in order to harmonize the process for imposing minor rule violation fines for market maker violation of quoting obligations across the Exchange and its affiliated options exchanges,[8] the proposed rule change does not relocate such language currently in 25.3(c) to Rule 25.3(d), and, as a result, the Exchange will likewise be able to choose to aggregate violations across sections governing market maker quoting obligations. Additionally, the Exchange notes that Rule 25.3(d) already permits the Exchange to aggregate violations of a Market Maker's continuous quoting obligations into a single offense. Specifically, Rule 25.3(d) provides that violations occurring during a calendar month are aggregated and sanctioned as a single offense. To accommodate the addition of the Market Maker two-sided quote and initial quote volume requirements to Rule 25.3(d) and harmonize Rule 25.3(d) with that of Cboe Option's corresponding MRVP provision, the proposed rule change updates this language to provide that violations occurring during a calendar month may be aggregated and sanctioned as a single offense.[9] The proposed rule change also updates the fine schedule heading in Rule 25.3(d) to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

The proposed rule change next amends the fine schedule in Rule 25.3(d) (Rule 25.3(c), as amended)[10] applicable to Market Makers for violations of their quoting obligations (Rules 22.6(b)–(d), as proposed) in order to harmonize, to the extent possible, this MRVP provision with the corresponding Cboe Options MRVP provision applicable to violations of a market makers quoting obligations on Cboe Options. The current fine schedule in Rule 25.3(d), currently applicable to violations of a Market Maker's continuous quoting obligations, sets forth the following:

For the first violation during any rolling 24-month period (*i.e.,* one period),[11] the fine schedule imposed by Rule 25.3(d) currently permits the Exchange to give a Letter of Caution. For a second violation during the same period, the fine schedule currently permits the Exchange to apply a fine of $1,000. For a third violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $25,000. For a fourth violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $5,000. Finally, for five or more violations in the same period, the fine schedule currently permits the Exchange to proceed with formal disciplinary action.

The proposed rule change updates the fine schedule to provide that, during any rolling 24-month period, the Exchange may continue to give a Letter of Caution for a first offense,[12] may apply a fine of $1,500 for a second offense,[13] may apply a fine of $3,000 for a third offense, and may proceed with formal disciplinary action for subsequent offenses. As described above, and as is the case for all rule violations covered under Rule 25.3, the Exchange may determine that it is appropriate to commence a formal disciplinary proceeding for a violation of Market Maker quoting obligations and may choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP. The Exchange may continue to aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected, and treat such violations as a single offense.[14]

The Exchange believes it is appropriate to increase the fine amounts for a second and third offense and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense. Particularly, the Exchange believes that applying a higher fine per second and third offenses in connection with a Market Maker's quoting obligations[15] and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders. The Exchange believes this fine structure may serve to more effectively deter repeat-offenders

[7] *See* Cboe Options Rule 13.15(g)(9).

[8] As indicated above, EDGX Options intends to file a proposal to update its MRVP in connection with violations of market maker quoting requirements on EDGX Options in an identical manner.

[9] The Exchange also notes that the current provision requiring the Exchange to aggregate and sanction violations as a single offense, applicable to violations of a Market Maker's continuous quoting obligations, currently conflicts with Rule 22.6(d) and a Market Maker's continuous quoting obligations. Specifically, pursuant to Rule 22.6(d)(1), the Exchange determines compliance by a Market Maker with the continuous quoting obligation in Rule 22.6(d) on a monthly basis; however, determining compliance with the continuous quoting obligations on a monthly basis does not relieve a Market Maker from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet this obligation each trading day. Therefore, the Exchange believes that, notwithstanding the proposed relocation of Rules 22.6(b) and (c) to Rule 25.3(d), it should have the flexibility to be able to separately charge for violations of a Market Maker's continuous quoting obligations on a monthly basis and a daily basis.

[10] *See supra* note 4.

[11] *See* Rule 25.3, which provides that a subsequent violation is calculated on the basis of a rolling 24-month period (''Period'').

[12] As stated herein, the proposed rule change also updates the fine schedule heading to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

[13] Any fine imposed pursuant to the Exchange's MRVP that does not exceed $2,500 and is not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Act or as may be required by any other regulatory authority. *See* Rule 8.15(a).

[14] *See* Rule 8.15(a).

[15] The proposed fine amounts are also an increase from the fines in Rule 25.3(c) currently imposed for violations of Market Maker initial quote volume and two-sided requirements. The Exchange notes, however, that Rule 25.3(c) currently imposes fines per violation whereas Rule 25.3(d) imposes fines per offense, which may be cumulative violations of Market Maker quoting obligations, as proposed.

while continuing to provide reasonable warning for a first offense during a rolling 24-month period. The Exchange notes that the proposed fine schedule for violations of a Market Maker's quoting obligations is identical to the fine schedule under the MRVP of Cboe Options for market maker violations of quoting obligations on Cboe Options, including a continuous quoting requirement and initial volume requirement. The Exchange further notes that the proposed change is intended to provide for consistency across the Exchange's MRVP and the MRVPs of its affiliated options exchanges, Cboe Options, EDGX Options and Cboe C2 Exchange, Inc. (''C2''), as EDGX Options and C2 also intend to file proposals to update their minor rule violation fines for violations of market maker quoting requirements on their exchanges in an identical manner.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to remove the firm quote requirement, which it no longer considers violations of which to be minor in nature, as eligible for a minor rule fine disposition under its MRVP, will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that violations of the firm quote requirement may directly impact trading on the Exchange, maintenance of a fair and orderly market, and customer protection. As such, the Exchange does not believe violations of this rule to be minor in nature and, instead, should be handled under its formal disciplinary rules, rather than imposing fines pursuant to its MRVP. Also, and as stated above, the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Options, which, for the same reasons provided herein, no longer includes violations of the firm quote requirement as eligible for a minor rule disposition on Cboe Options.[19]

The Exchange believes that the proposed rule change to apply the same MRVP fine schedule for violations of a Market Makers quoting obligations pursuant to Rule 22.6 (*i.e.,* Rules 22.6(b)–(d)) and the same process for imposing such fines—that is, permitting the Exchange to aggregate violations of such Market Maker obligations into a single offense—will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade by uniformly imposing penalties and procedures for failure to satisfy obligations governed by the same Rule. Additionally, the Exchange believes the proposed rule change will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it is intended to harmonize the Exchange's MRVP in connection with Market Maker quoting obligations with that of Cboe Options, as well as EDGX Options,[20] thereby providing consistent structures and procedures across MRVP provisions applicable to market maker obligations on the affiliated options exchanges.

The Exchange also believes that the proposed rule change, in connection with the fine schedule for violations of a Market Maker's quoting obligations in Rule 25.3(d), as proposed, to increase the fine amounts for a second and third offense [21] and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that applying a higher fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders which may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange believes that more effectively deterring repeat-offenders, while continuing to make first instance offenders aware of their quoting obligation violations and the subsequent consequences for continued failure, will, in turn, further motivate Market Makers to continue to uphold their quoting obligations, providing liquid markets to the benefit of all investors. The Exchange again notes that the proposed fine schedule is consistent with the fine schedule under Cboe Options' MRVP applicable to violations of Market Maker quoting requirements on Cboe Options, including a continuous quoting requirement and initial quote volume requirement. As described above, EDGX Options and C2 intend to file proposals to update their minor rule violation fines applicable to violations of market maker quoting obligations in the same manner as Cboe Options and as proposed herein. As such, the proposed rule change is also designed to benefit investors by providing from consistent penalties across the MRVPs of the Exchange and its affiliated options exchanges.

The Exchange further believes that the proposed rule changes to Rule 25.3 are consistent with Section 6(b)(6) of the Act,[22] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See supra* note 5.

[20] *See supra* note 8.

[21] *See supra* note 15.

[22] 15 U.S.C. 78f(b)(6).

rule change removes a Rule listed as eligible for a minor rule fine disposition under the Exchange's MRVP that the Exchange no longer believes violations of which are minor in nature and is more appropriately disciplined through the Exchange's formal disciplinary procedures, amends the MRVP provisions so that the same fine schedule, and process to impose such fines, uniformly applies to violations of a Market Maker's quoting obligations in Rule 22.6, and amends the fine schedule applicable to Market Maker failures to meet their quoting obligations in a manner that appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[23] Rule 25.3, currently and as amended, does not preclude an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending its MRVP in connection with rules eligible for a minor rule fine disposition and with the fine schedule for Market Maker failures to meet their quoting obligations. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–083 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–2021–083. 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–2021–083, and should be submitted on or before January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–27926 Filed 12–22–21; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78f(b)(7) and 78f(d).

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11608]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: Effective dates for proposed export licenses as shown on each of the 24 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc public* and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (*22 U.S.C. 2776*) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner. The following comprise recent such notifications and are published to give notice to the public.

September 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense

services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Germany to support the replication of the Have Quick I/II and SATURN Electronic Counter-Counter Measure (ECCM) for integration into Radio Communications equipment.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–025.

July 29, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Mexico to support the manufacture and inspection of ceramic cores used in the manufacture of turbine blades and vanes for military jet engines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–060.

August 26, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including hardware, technical data and defense services, to the UK for post design support services related to Target Acquisition Designation Sights/Pilot Night Vision Sensors (TADS/PNVS) and ARROWHEAD Modernized TADS/PNVS systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–067.

July 29, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm automatic rifles and suppressors to Mexico.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–072.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UK to support the design, compatibility, technical support, engineering, installation, integration, analysis, surveillance, safety, refurbishment, repair, rework, intermediate level maintenance, logistics, operation, sustainment, qualification, certification, testing, training life fire support, and performance of AIM 120C–5 and AIM 120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–074.

September 2, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified defense articles, including hardware, technical data and defense services, to Qatar, Germany, Italy, Spain and the UK to support the integration of the SNIPER Advanced Targeting Pod onto the Eurofighter Typhoon aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–078.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Republic of Korea for the manufacture of FA–50, T–50, and TA–50 Light Attack Aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–080.

September 28, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of 5.56mm automatic carbine rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–082.

July 29, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 7.62mm machineguns and associated parts to Mexico.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–087.

September 28, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia, the UK, and the UAE to support the marketing, sale, and on-going support of Unmanned Aerial Systems and support for future Intelligence, Surveillance and Reconnaissance (ISR) requirements.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–090.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data, hardware, and defense services to Spain and France for the integration of components of the Aegis Baseline 9 Aegis Weapon System (AWS) and integrating radar components into the F–110 combat management system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–003.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Japan to support the F–15J Super Interceptor aircraft upgrade program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–008.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Canada to support the manufacture of Joint Strike Fighter (JSF) Digital Electronic Warfare System (DEWS) embedded computing products.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–009.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Israel of M4 5.56mm automatic rifle barrels.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–015.

September 28, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including hardware technical data and defense services, to the UK to support the design, development, modification, integration, installation, operation, system demonstration, qualification, testing, rework, and training and support required to operate and maintain the Javelin Anti-Tank Weapon System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–018.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UK to support the design, development, repair, improvement and integration of engine electronic controls, fuel pump metering units and support equipment for the AE1107C, AE 1107F, AE 3007H/H1 and AE 3007N gas turbine engines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–019.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, manufacturing know-how and defense articles to Denmark and the UK to support the manufacture of non-Significant Military Equipment for Horizontal Tails, Vertical Tail Components and Related Sub-Assemblies for the F–35 Lightning II Aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–022.

August 26, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, defense services to Australia to support the manufacture of machined parts and for the F–35 aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–023.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, defense services, and technical data to Italy to support the sale, operation, and maintenance of Shadow 200 UAVs.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–025.

August 5, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to France of M–134D 7.62mm automatic machine gun and components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–027.

September 2, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data and defense services, to Australia for the manufacture of 20mm, 25mm, and 30mm ammunition.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–032.

August 26, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license

amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia to support the integration of the Joint Direct Attack Munition (JDAM) onto Royal Australian Air Force (RAAF) aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–034.

September 28, 2021
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Germany of major parts and components of the M–134D 7.62mm automatic machine gun.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–049.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2021–27569 Filed 12–22–21; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11613]

Notice of Public Meeting in Preparation for International Maritime Organization SDC 8 Meeting

The Department of State will conduct a public meeting at 1:00 p.m. on Thursday, January 13, 2022, by way of teleconference. Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants. To RSVP, participants should contact the meeting coordinator, LCDR Dimitrios Wiener, by email at *Dimitrios.N.Wiener@uscg.mil.* To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 87723987#.

The primary purpose of the meeting is to prepare for the eighth session of the International Maritime Organization's (IMO) Sub-Committee on Ship Design and Construction (SDC 8) to be held remotely from Monday, January 17, 2022 to Friday, January 21, 2022.

The agenda items to be considered at the public meeting mirror those to be considered at SDC 8, and include:

—Adoption of the agenda.
—Decisions of other IMO bodies.
—Safety measures for non-SOLAS ships operating in polar waters.
—Mandatory instrument and/or provisions addressing safety standards for the carriage of more than 12 industrial personnel on board vessels engaged on international voyages.
—Development of Explanatory Notes to the *Interim guidelines on second generation intact stability criteria.*
—Amendments to the 2011 ESP Code.
—Mandatory application of the Performance standard for protective coatings for void spaces on bulk carriers and oil tankers.
—Performance standard for protective coatings for void spaces on all types of ships.
—Safety objectives and functional requirements of the Guidelines on alternative design and arrangements for SOLAS chapters II–1 and III.
—Unified interpretation to provisions of IMO safety, security, and environment-related conventions.
—Revisions of the 1979, 1989 and 2009 MODU Codes and associated MSC circulars to prohibit the use of materials containing asbestos, including control of the storage of such materials on board.
—Development of amendments to SOLAS regulation II–1/3–4 to apply requirements for emergency towing equipment for tankers to other types of ships.
—Revision of the Performance standards for water level detectors on bulk carriers and single hold cargo ships other than bulk carriers (resolution MSC.188(79)).
—Review of the Guidelines for the reduction of underwater noise (MEPC.1/Circ.833) and identification of the next steps.
—Biennial status report and provisional agenda for SDC 9.
—Any other business.
—Election of the Chair and Vice-Chair for 2022 and 2023.
—Report to the Maritime Safety Committee.

Please note: The IMO may, on short notice, adjust the SDC 8 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP and those in attendance at the meeting.

Those who plan to participate may contact the meeting coordinator, LCDR Dimitrios Wiener, by email at *Dimitrios.N.Wiener@uscg.mil,* or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509. Members of the public needing reasonable accommodation should advise LCDR Dimitrios Wiener not later than January 10, 2022. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2021–27848 Filed 12–22–21; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the North Central Wisconsin Regional Planning Commission (WB21–91—12/2/21) for permission to use select data from the Board's 2018–2019 masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB21–91.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–27914 Filed 12–22–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket Nos. FD 36503; FD 36504; FD 36505; and FD 36506]

Grand Elk Railroad, Inc.—Acquisition Exemption—Lines of Wisconsin Central Ltd. in the State of Michigan; Fox Valley & Lake Superior Rail System, L.L.C.—Acquisition and Operation Exemption—Lines of Wisconsin Central Ltd. in the State of Wisconsin; Watco Holdings, Inc.—Exemption for Intra-Corporate Family Transaction—Fox Valley & Lake Superior Rail System, L.L.C. and Wisconsin & Southern Railroad, L.L.C.; Watco Holdings, Inc.—Continuance in Control Exemption—Fox Valley & Lake Superior Rail System, L.L.C.

Watco Holdings, Inc. (Watco Holdings), a noncarrier holding company, Grand Elk Railroad, Inc. (Grand Elk), a Class III carrier and Watco Holdings subsidiary, and Watco Holdings' newly created noncarrier subsidiary Fox Valley & Lake Superior Rail System, L.L.C. (Fox System) (collectively, Applicants), filed for a series of exemptions in furtherance of the acquisition of rail lines in Wisconsin and Michigan from Wisconsin Central Ltd. (WCL). In particular, Grand Elk filed a verified notice of exemption to acquire lines in Michigan, Fox System filed a verified notice of exemption to acquire and operate lines in Wisconsin, Watco Holdings filed both a verified notice of exemption for an intra-corporate family transaction to transfer some of the acquired assets between its subsidiaries and a petition for exemption to continue in control of Fox System once Fox System becomes a carrier.

The Board received numerous comments supporting the overall transaction and numerous comments opposing it, including requests for revocation or stay of the acquisition exemptions. To permit the Board time to consider the issues raised, the effectiveness of the notices of exemption was postponed pending further order of the of the Board. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. in the State of Mich.* (*April Order*), FD 36503 et al. (STB served Apr. 27, 2021). That decision noted that the proposed acquisitions by Grand Elk and Fox System involve the transfer of some lines as to which the Board previously had authorized discontinuance of service and that Grand Elk and Fox System intended to keep those lines in their ''discontinued state.'' *See id.* at 3. The decision directed Applicants to file a supplement explaining how transfer of those lines would be an appropriate use of the acquisition exemption and responding to the requests for revocation or stay. *See id.* at 3–4. The Board received a joint reply from Applicants responding to the *April Order* and further comments from stakeholders.

As discussed below, the Board finds that the issues raised do not demonstrate regulation is necessary to carry out the rail transportation policy (RTP) and that it is appropriate to allow Applicants to proceed with the exemption process. The Board therefore will allow the exemptions sought by the verified notices to become effective and publish notice of these exemptions in the **Federal Register**. The Board will also grant the petition for exemption sought by Watco Holdings and publish notice of that exemption in the **Federal Register**.

Background

On April 5, 2021, Applicants separately filed for their various exemptions in furtherance of the overall transaction to acquire lines from WCL, which is controlled by Canadian National Railway Company (CN). Specifically, in Docket No. FD 36503, Grand Elk filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 142.64 miles of rail line owned by WCL in Michigan, consisting of 95.38 miles of active line and 47.26 miles of line over which discontinuance of service previously had been authorized. (Grand Elk Verified Notice 1.) In Docket No. FD 36504, Fox System filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 509.27 miles of rail line in Wisconsin, including 328.52 miles of active rail line and 180.75 miles of line over which discontinuance of service previously had been authorized. (Fox System Verified Notice 1, 3–5.) [1] Under the proposed transaction, Fox System would become a Class III carrier. (*Id.* at 1.) Accordingly, Watco Holdings filed in Docket No. FD 36506 a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–24 to continue in control of Fox System upon Fox System's becoming a Class III carrier. (Watco Holdings Pet. 1.) Finally, in Docket No. FD 36505, Watco Holdings filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(3) for an intra-corporate transfer of the Eden Spur, the West Bend Subdivision, and the Saukville Subdivision (collectively, the Southern Cluster), totaling approximately 42 miles, of the Wisconsin lines at issue in Docket No. FD 36504 from Fox System to Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II subsidiary of Watco Holdings. (Watco Holdings Verified Notice 2–3; *id.* at Ex. 1.)

Several submissions were filed raising various issues concerning the proposed exemptions and the resulting acquisitions. On April 8 and April 9, 2021, U.S. Representative Tom Tiffany, Western Upper Peninsula Planning & Development Regional Commission (Upper Peninsula Commission), the Northwoods Rail Transit Commission (Northwoods Commission), and the Timber Professionals Cooperative separately filed comments seeking revocation or stay of the exemptions sought in Docket Nos. FD 36503 and FD 36504. These comments each point out that Watco Holdings already controls some 600 miles of rail lines in Wisconsin through WSOR and that, after consummation of the proposed transaction, Watco Holdings would control more than 1,250 miles of rail line in Wisconsin and Michigan. The comments also express concern regarding whether shippers on the acquired lines would continue to have the benefit of the conditions the Board imposed when approving CN's acquisition of control of WCL. *See Canadian Nat'l Ry.—Control—Wis. Cent. Transp. Corp.* (*CN/WCL*), 5 S.T.B. 890 (2001). The commenters assert that the proposed transaction should be designated as ''significant'' under 49 CFR part 1180 and question whether Applicants should be permitted to acquire the lines through the Board's exemption procedures, including the class exemptions at 49 CFR 1150.31 and 1150.41.

The Wisconsin Department of Transportation (WisDOT) commented on April 12, 2021, noting that it has been concerned about rates and reliability of service for shippers on the affected lines and that it supports the sale because of its understanding that this transaction would address these issues. (WisDOT Comment 1, FD 36504.) WisDOT also asks the Board to consider the shippers' concerns, including whether the shippers would continue to benefit from the conditions imposed in *CN/WCL.* (*Id.*)

On April 14, 2021, Branch Line Railroad, LLC (Branch Line), filed a comment stating that Northwoods Distribution Services, Inc. (Northwoods Distribution), and Branch Line (collectively, N&B) object to the transfer of trackage in northern Wisconsin

[1] Detailed descriptions of the lines that Grand Elk and Fox System seek to acquire are provided in the verified notices of exemption filed in Docket Nos. FD 36503 and FD 36504, respectively.

absent public hearings. (Branch Line Comment 1, Apr. 14, 2021, FD 36503.) N&B later filed a comment on April 21, 2021, requesting that the Board revoke or stay the exemptions sought in Docket Nos. FD 36503 and FD 36504. (N&B Comment 4, Apr. 21, 2021, FD 36503 & FD 36504.) On April 22, 2021, Northwoods Distribution and Dahlquist Trucking, Inc. (collectively, N&D), jointly filed a submission urging the Board to revoke or stay the exemptions.

Applicants jointly filed on April 15 and 21, 2021, various letters supporting Docket Nos. FD 36503, FD 36504, and FD 36506 and praising Watco-provided rail service. In Docket No. FD 36504, the Wisconsin Paper Council and the Wisconsin Office of the Commissioner of Railroads filed letters of support on April 16, 2021, and April 22, 2021, respectively. Wisconsin Central Group and Lake States Shippers Association have also indicated their support for the acquisitions. (Wis. Cent. Group & Lake States Shippers 1, Apr. 23, 2021, FD 36503 & FD 36504.) And, on April 22, 2021, WCL submitted a letter it previously sent to WisDOT claiming that nothing in the proposed sale to Fox System would affect the conditions imposed in *CN/WCL* or change whether or how those conditions apply for shippers on the lines. (WCL Reply, Letter 1, Apr. 22, 2021, FD 36504.)

As noted above, the *April Order* postponed the effectiveness of the exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 and directed Applicants to submit a supplemental filing explaining how the transfer of lines as to which a discontinuance of service had been authorized would be an appropriate use of the acquisition exemption and responding to the commenters seeking revocation or stay.

Applicants filed their joint response to the *April Order* on May 7, 2021. At the outset, Applicants note that numerous shippers and other stakeholders, including WisDOT, support the overall transaction. (Applicants Reply 2, May 7, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.) [2] Applicants also note that among the supporters are several entities that had initially sought greater regulatory scrutiny. (*Id.* at 3.) Applicants assert that the remaining parties with objections have expressed only general concerns about the exemption process. (*Id.*) They further argue that those expressing concern provide no legitimate basis for departing from the established Board class exemption procedures applicable to these proposed rail line acquisitions and identify no lessening of competition or other competitive harm from the proposed transaction. (*Id.* at 4.) Applicants add that, although styled as petitions for stay and to revoke the exemptions, the objecting commenters make no effort to satisfy the Board's standards for stay or revocation. (*Id.*) As to the acquisition of lines over which discontinuance had been granted, Applicants assert that their intent and goal is to restore rail service on these lines in due course and that acquisition of the lines is consistent with Board precedent and sound policy. (*Id.*)

WCL also responded to the *April Order* on May 7, 2021. Among other things, it reiterates that nothing in the proposed sale of WCL rail lines to Applicants would affect the conditions imposed in *CN/WCL* or change whether or how those conditions apply for customers on the lines. (WCL Reply 4, May 7, 2021, FD 36503 & FD 36504.) It adds that, upon closing of the proposed line sales, Grand Elk and Fox System would serve as ''handling carriers'' for WCL, and WCL would continue to quote and invoice linehaul freight rates to customers on those lines, which rates would include the Grand Elk/Fox System transportation charge. (*Id.*) WCL states that customers would retain a direct commercial relationship with it and would have the same routing access to WCL gateways and rate-making interface with WCL that they do today. (*Id.*) WCL adds that its representation also applies to the lines in Michigan. (*Id.*) Finally, WCL asserts that permitting the sale of the lines where discontinuance would continue is appropriate. (*Id.* at 6–7.)

Also on May 7, 2021, Upper Peninsula Commission filed a comment withdrawing its April 9, 2021 request for revocation or stay of the exemption sought in Docket No. FD 36503. (Upper Peninsula Comm'n Comment 1, May 7, 2021, FD 36503.) It states that it has met with numerous stakeholders, including ''Watco management and staff,'' to address its concerns and that, based on those meetings, it is optimistic about the future of the rail lines at issue. Upper Peninsula Commission also, however, notes WCL's representation to WisDOT that nothing in the proposed sale of the WCL lines to Fox System would affect the *CN/WCL* conditions or change whether or how those conditions apply for shippers on the line and asks the Board to hold WCL to a similar representation with respect to the Grand Elk lines in upper Michigan and any inactive rail lines that are brought back into service. (*Id.* at 2.)

Northwoods Commission similarly filed on May 7, 2021, withdrawing its request for revocation and stay filed on April 9, 2021, for similar reasons. (Northwoods Comm'n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504.) Northwoods Commission, however, encourages the Board to review the outcome of this transaction at its one- and two-year anniversaries. (*Id.*) Like Upper Peninsula Commission, Northwoods Commission also asks the Board to hold WCL to its representation to WisDOT and confirm that it applies to the Grand Elk lines in upper Michigan as well as any rail lines brought back into service. (*Id.*)

On May 11, 2021, the Great Lakes Timber Professionals Association (Timber Association) filed a comment also asking for review of the transaction at the one- and two-year anniversaries of the acquisitions by Grand Elk and Fox System. (Timber Ass'n Comment 1, FD 36503 & FD 36504.) The Lake States Lumber Association also filed on May 11, requesting that the Board delay the sales pending an agreement that the purchases include the right to connect to a Class I railroad. (Lake States Lumber Ass'n 1, FD 36503 & FD 36504.)

N&B also provided further comment on May 11, 2021. Primarily, N&B assert that, although the sales would benefit shippers in southern and central Wisconsin, the sales would not benefit shippers located further north in Wisconsin and Michigan in an area N&B term the Northwoods. (N&B Comment 2, 3–4, May 11, 2021, FD 36503 & FD 36504.) N&B claim that Northwoods shippers currently must use CN to access markets and the proposed sales provide no access to other Class I railroad connections. (*Id.* at 4.) They contend that CN does not reach as many U.S. markets as other carriers and complain of CN's alleged predatory practices, monopoly position, and continual disinvestment in the Northwoods region. (*Id.*) N&B ask the Board to bifurcate the sale and not approve the acquisition of track located along the ''Route 8 Corridor'' and associated feeder lines. (*Id.* at 5–6.) N&B instead ask the Board to order CN to sell track in the corridor on a stand-alone basis, preferably to a locally owned company with local management and local employees, whose sole interest, purpose, and commitment is to serve the Northwoods shippers. (*Id.* at 6–7.) Per N&B's proposal, CN would be required to sell branch lines and two segments that are not part of Fox

[2] On May 3, 2021, Applicants submitted letters from two shippers supporting the acquisitions and the use of the class exemption for the transfers. The National Industrial Transportation League and Packaging Corporation of America submitted similar letters on May 6, 2021. Wisconsin Central Group and Lake States Shippers Association jointly filed supporting comments on May 10, 2021.

System's proposed acquisition, which N&B claim would provide Northwood shippers with access to other carriers. (*Id.* at 4–5, 6–7.)

By decision served on July 1, 2021, a proceeding under 49 U.S.C. 10502(b) was instituted in Docket No. FD 36506. N&B submitted a filing on August 3, 2021, essentially reiterating their earlier requests for relief for the Northwoods shippers. They also suggest that CN had ''broken promises'' concerning *CN/WCL* and ask that the Board appoint a hearing officer to conduct discovery. (N&B Comment 1–2, 4, Aug. 3, 2021, FD 36506.) Additionally, N&B request the Board consider WCL's proposed sale under the current major merger rules adopted in *Major Rail Consolidation Procedures,* 5 S.T.B. 1 (2001). (N&B Comment 5, Aug. 3, 2021, FD 36506.)

On September 7, 2021, U.S. Representative Tom Tiffany submitted an additional filing that, among other things, raises concerns that the current sale would not provide price competition and dependable service for shippers in the Northwoods. (U.S. Representative Tiffany Comment 1, Sept. 7, 2021, FD 36503 & FD 36504.) On September 17, 2021, Northwoods Distribution filed a comment expressing frustration with CN's service. (Northwoods Distrib. Comment 1, Sept. 17, 2021, FD 36503 & FD 36504.) WCL filed a response to Representative Tiffany's September 7, 2021 filing on September 27, 2021, and a response to Northwoods Distribution on October 7, 2021.

Representative Tiffany filed an additional comment on October 29, 2021, expressing his hope that the transaction would accomplish the goals outlined for it and offering additional suggestions, including ensuring access over two additional rail segments and providing a ''look back provision'' to ensure rate and service promises are kept. (U.S. Representative Tiffany Comment 1, Oct. 29, 2021, FD 36503 & FD 36504.) On November 2, 2021, Northwoods Distribution filed a further comment, claiming that the Northwoods would be disadvantaged by the transaction because Watco Holdings and its subsidiaries would not have the ability to lower rates that WCL currently has on the lines in the area. (Northwoods Distrib. Comment 3, Nov. 2, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.) [3]

[3] Although a reply to a reply is not permitted under 49 CFR 1104.13(c), the Board will accept it and other filings in the interest of a complete record. *See City of Alexandria, Va.—Pet. for Declaratory Ord.,* FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply ''[i]n the interest of compiling a full record'').

Discussion and Conclusions

As discussed below, the Board finds that those challenging the exemptions sought in Docket Nos. FD 36503, FD 36504, and FD 36505 have failed to meet their burden of demonstrating that regulation is necessary to carry out the RTP. The Board therefore will allow those exemptions to become effective and publish notice of them in the **Federal Register**. The Board also finds that the transfer of the lines over which discontinuance authority had been granted is an appropriate use of the acquisition exemption here. And, in Docket No. FD 36506, the Board will grant Watco Holdings' petition for exemption and publish notice of that exemption in the **Federal Register**.

Revocation Requests. A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the RTP of 49 U.S.C. 10101. *See Oakland Glob. Rail Enters.—Acquis. Exemption—Line in Alameda Cnty., Cal.,* FD 36301 et al., slip op. at 3 (STB served Oct. 28, 2019). Here, those seeking revocation in Docket Nos. FD 36503, FD 36504, and FD 36505 have failed to meet their burden.

The Board's predecessor, the Interstate Commerce Commission (ICC), adopted the class exemption at section 1150.31 for the acquisition and operation of rail lines by noncarriers because the consideration of individual petitions for exemption from 49 U.S.C. 10901 had become a ''burdensome and unnecessary expenditure of resources'' on the agency and the individual petitioners. *See SF&L Ry.—Acquis. & Operation Exemption—Toledo, Peoria & W. Ry. Between La Harpe & Peoria, Ill.,* 6 S.T.B. 408, 418 (2002) (citing *Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901* (*Section 10901 Class Exemption*), 1 I.C.C.2d 810, 811 (1985)). The ICC noted that the transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service and allows the selling railroad to eliminate lines it cannot operate economically. *Section 10901 Class Exemption,* 1 I.C.C.2d at 813.

The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, created the Board and enacted a new provision, at 49 U.S.C. 10902, for acquisition or operation of rail lines by Class II and Class III rail carriers. The Board adopted a new class exemption at 49 CFR 1150.41, similar to that for noncarriers at 49 CFR 1150.31, to apply to transactions in which Class III rail carriers seek to acquire additional rail properties. *Class Exemption for Acquis. or Operation of Rail Lines by Class III Rail Carriers—Under 49 U.S.C. 10902* (*Section 10902 Class Exemption*), 1 S.T.B. 95 (1996). The Board noted that a class exemption from the requirements of section 10902 would facilitate the acquisition of rail lines by Class III rail carriers and ensure the continuation of rail service on lines that may otherwise be abandoned if not for the sale. *See Section 10902 Class Exemption,* 1 S.T.B. at 103.

Here, the acquisitions proposed by Grand Elk and Fox System qualify for the class exemption under 49 CFR 1150.41 and 49 CFR 1150.31, respectively.[4] Both sales involve the transfer of rail property for continued use. (Applicants Reply 7, May 7, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.) The amount of track being transferred in the acquisitions does not preclude use of the class exemption process or warrant greater scrutiny in this case. As an initial matter, the class exemption regulations at 49 CFR 1150.41 and 49 CFR 1150.31 do not include a mileage limit for rail line acquisitions. As Applicants note, acquisitions involving similar or greater track mileage have proceeded through the class exemption process. *See e.g., Rapid City, Pierre, & E. R.R.—Acquis. & Operation Exemption—Dakota, Minn., & E. R.R.,* FD 35799 et al. (STB served May 14, 2015) (utilizing class exemption for acquisition of approximately 670 miles of rail lines and approximately 219 miles of incidental trackage rights); *Iowa, Chi. & E. R.R.—Acquis. & Operation Exemption—Lines of I&M Rail Link, LLC,* FD 34177 (STB served July 22, 2002) (allowing class exemption for acquisition of 1,125 miles of rail line and 275 miles of incidental trackage rights). In fact, WCL previously acquired approximately 1,800 route miles, including lines involved here, through a class exemption. *See Wis. Cent. Ltd.—Exemption Acquis. & Operation—Certain Lines of Soo Line R.R.,* FD 31102 (ICC served Sept. 16, 1987).

As noted above, some commenters argue that greater scrutiny is necessary based on competition concerns because, after the transaction, Watco Holdings will control more than 1,250 miles of rail line in Wisconsin and Michigan. The commenters assert that the

[4] And, as discussed below, the acquisition of the lines where the Board had granted discontinuance of service is appropriate here. Both Grand Elk and Fox System represent that they intend to try to restore service on those lines and have detailed plans supporting their goals.

proposed transaction should be designated as ''significant'' under 49 CFR part 1180 due to that fact. (N&D Pet. 1, FD 36503 & FD 36504; Timber Pros. Coop. Comment 1, FD 36503 & FD 36504; U.S. Representative Tom Tiffany Comment 1, Apr. 8, 2021, FD 36503 & FD 36504.) N&B add that the transaction would make Watco Holdings and its investors the largest owner of track in Wisconsin by a significant margin. (N&B Comment 3, Apr. 21, 2021, FD 36503 & FD 36504.) Even though Watco Holdings would own substantial rail holdings in Wisconsin and Michigan, nothing on the record demonstrates any clear, anticompetitive effects. As WCL notes, the shippers on the lines at issue would have the same competitive options as they do now—customers would retain a direct commercial relationship with WCL and would have the same routing access to WCL gateways and rate-making interface with WCL as before the transaction. Moreover, numerous shippers, as well as WisDOT, have indicated their support for the proposed transaction and Watco-provided rail service. Both the Upper Peninsula Commission and the Northwoods Commission have withdrawn their requests for revocation and stay and have expressed optimism about future rail service.

Furthermore, requests that the sale of assets by WCL be classified as a ''significant'' transaction under 49 CFR part 1180 or that the Board consider the sale under the current major merger rules are misplaced. Those requests are proper in certain merger proceedings filed under 49 U.S.C. 11323. As discussed above, the acquisition of lines by Grand Elk and Fox System are properly filed as exemptions from 49 U.S.C. 10902 and 10901, respectively, different sections of the Board's governing statute.

And although Docket Nos. FD 36505 and FD 36506 deal with the intra-corporate component and the control component of the overall transaction and are governed by 49 U.S.C. 11323, each component satisfies the criteria applicable for exemption and thus neither need be analyzed under the more stringent classifications found at 49 CFR 1180.2(a)–(c). The intra-corporate family transaction in Docket No. FD 36505, where the rail assets are being transferred from one Watco Holdings' subsidiary, Fox System, to another, WSOR, qualifies for a class exemption because that transaction does not ''result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.'' 49 CFR 1180.2(d)(3); *see, e.g., Fortress Inv. Grp. LLC—Exemption for Intra-Corp. Fam. Transaction—Ohio River Partners S'holder LLC,* FD 36402, (STB served May 15, 2020). And, as discussed in detail below, the Board is granting the petition for exemption in Docket No. FD 36506 after considering the exemption criteria in section 10502.[5]

Requests for Ordered Sale and Conditioning. N&B argue that CN's acquisition of WCL in 2001 made CN the only Class I carrier to serve the Northwoods and that it put CN in the position to exercise monopoly power. (N&B Comment 2, May 11, 2021, FD 36503 & FD 36504.) N&B claim that, because the current sales do not include a segment between Pembine, Wis., and Goodman, Wis., which they allege would permit access to the Escanaba & Lake Superior Railroad (E&LS), and a segment between Tony, Wis., and Ladysmith, Wis., which they allege would permit access to Union Pacific Railroad Company (UP), Northwoods shippers would continue not to have access to other carriers. (*Id.* at 4–5.) To rectify the situation, N&B ask that the Board order the sale of those segments as well as the rest of what it terms the Route 8 Corridor (Wausau north from milepost 91) and branch lines from the corridor. (*Id.* at 5–6.)[6] N&B argue that their proposal would create an economic unit that would serve Northwoods shippers and provide interchange. (*Id.* at 6; *see also* U.S. Representative Tiffany Comment 1, Oct. 29, 2021, FD 36503 & FD 36504.)

In addition, both Timber Association and Northwoods Commission ask that the Board review the transaction proposed by Watco Holdings and its subsidiaries at its one- and two-year anniversaries. (Timber Ass'n Comment 1, FD 36503 & FD 36504; Northwoods Comm'n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504.) If conditions on these lines in the Northwoods have not improved, Northwoods Commission asks the Board to consider reopening *CN/WCL* and take action to ease pricing impacts, and Timber Association asks the Board to reopen the terms of the current sales. (Northwoods Comm'n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504; Timber Ass'n Comment 1, FD 36503 & FD 36504.) Northwoods Commission, as well as Upper Peninsula Commission, also ask that the Board hold WCL to its representation to WisDOT that nothing would change concerning the *CN/WCL* conditions due to the sales to Grand Elk and Fox System. (Northwoods Comm'n Amended Pet. 1, May 7, 2021, FD 36503 & FD 36504; Upper Peninsula Comm'n Comment 1–2, May 7, 2021, FD 36503.)

The Board will not impose the conditions related to the Northwoods area. As discussed above, the record does not demonstrate that the proposed transaction would result in any clear, anticompetitive effects. Indeed, these concerns seem to stem from CN's acquiring control over WCL in 2001, and not from the presently proposed acquisitions by Grand Elk and Fox System. Board approval of the transaction at issue would have no effect on the conditions imposed in *CN/WCL,* including the conditions requiring WCL to adhere to its ''open gateways pledge'' and its ''bottleneck-waiver pledge,'' which remain in effect. Thus, there is no need for the Board to again hold WCL to its representation to WisDOT regarding the *CN/WCL* conditions.

N&B's request to order a sale of the corridor and related track to a local entity is also misplaced. There is no basis here to condition approval of the transaction on a requirement that assets be divested given the absence, discussed above, of transaction-related competitive concerns. Regardless, the requested relief would not provide shippers in the Northwoods area with increased access to a Class I carrier other than CN. In response to N&B's concerns about how the sale was structured, WCL notes that, while the segment between Pembine and Goodman does lead to E&LS, E&LS only has connections with WCL. (WCL Reply 2, Sept. 27, 2021, FD 36503 & FD 36504.) Similarly, as to the segment between Tony and Ladysmith, WCL notes that UP cannot access customers or interchange traffic at Ladysmith. (*Id.*) UP only conducts train operations through Ladysmith on WCL's north-south mainline pursuant to overhead trackage rights obtained by a predecessor in a series of related transactions from the early 1990s. *See Chi. & N. W. Transp. Co.—Joint Relocation Project Exemption,* FD 32043 (ICC served May 27, 1992); *Chi. & N. W. Transp. Co.—Trackage Rts.*

[5] Some commenters, in their revocation requests, ask the Board to stay the transaction, but these commenters do not address or meet the stay criteria. *See, e.g., Wash. Metro. Area Transit Comm'n* v. *Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C. Cir. 1977).

[6] Specifically, the segments include: (1) 148.6 miles of rail line extending between (a) Pembine and Goodman, (b) Prentice, Wis., and Rhinelander, Wis., (c) Prentice and Park Falls, Wis., (d) Bradley, Wis., and Wausau, Wis., (e) and Tony and Ladysmith; (2) and 224 miles of line over which the Board had permitted discontinuance of service, between (a) Ashland, Wis., and Park Falls, (b) Goodman and Rhinelander, (c) Prentice and Tony, and (d) Marengo Junction, Wis., and White Pine, Mich. (N&B Comment 6, May 11, 2021, FD 36503 & FD 36504.)

Exemption—over Wis. Cent. Ltd., FD 31882 (ICC served June 6, 1991).

Although the Board will not grant the relief described above, it takes seriously concerns raised about service in the Northwoods and emphasizes WCL's, Grand Elk's, and Fox System's responsibility to provide rail service consistent with their common carrier obligations.

Transfer of Lines Over Which Discontinuance of Service Had Been Granted. As discussed above, Grand Elk and Fox System seek to acquire certain lines over which the Board had granted authority for discontinuance of service, and the intended purchasers did not indicate an intent to operate those lines. *See Apr. Ord.,* FD 36503 et al., slip op. at 3–4. Applicants and WCL filed replies addressing the issue. Upon review, the Board will allow the transfer of those lines through the exemptions sought in Docket Nos. FD 36503 and FD 36504.

The class exemption allowing noncarriers (such as Fox System) to acquire or operate a rail line was adopted to serve shippers and community interests by facilitating continued rail service, and the Board has stated that an acquisition exemption is meant to support the continued operation of rail lines. *See Apr. Ord.,* FD 36503 et al., slip op. at 3 (citations omitted).

Here, Grand Elk and Fox System explain in their reply to the *April Order* that they are each acquiring the rail lines where discontinuance authority had been granted with the goal and intent of restoring rail service on those lines. (Applicants Reply 16, May 7, 2021, FD 36503, FD 36504, FD 36505, & FD 36506.) They note, however, that the lines have been out of service for several years and that Watco Holdings has not yet fully assessed the condition of the tracks, bridges, and other facilities and the costs of restoring the lines to safe operating condition. (*Id.*) In addition, potential rail shippers located on the lines would need to be persuaded to use rail and new business would need to be developed. (*Id.*) Accordingly, restoring rail service would require both an investment in the physical infrastructure and rail customers to warrant the investment. (*Id.*) Grand Elk and Fox System assert that they are already engaged in efforts to develop rail customers and hope to work with state economic development officials and other interested stakeholders to develop rail business and to identify funding opportunities, as Watco Holdings companies previously have done in Wisconsin, Michigan, and elsewhere. (*Id.*) Watco Holdings adds that it intends to pursue re-investment in these lines using the various options available to short line railroads, such as federal and state grant programs coupled with private capital to restore service, if market conditions allow, and notes these efforts would take time. (*Id.*) Other stakeholders have filed in support of reactivating service. (*See, e.g.,* Northwoods Comm'n Amended Pet. 2, May 7, 2021, FD 36503 & FD 36504.)

Based on this record, the Board concludes that the transfer of the lines in question would be consistent with the rationale underpinning the Board's class exemption procedures and that it is appropriate to allow the transfers to proceed. *See also Ventura Cnty. Transp. Comm'n—Acquis. Exemption—S. Pac. Transp. Co.,* FD 32794 (ICC served Dec. 29, 1995); *Golden Gate Bridge, Highway & Transp. Dist.—Acquis. Exemption—NW Pac. R.R.,* FD 31689 (July 3, 1990).[7]

Petition for Exemption. In Docket No. FD 36506, Watco Holdings filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–24 to continue in control of Fox System once Fox System becomes a rail carrier. (Pet. for Exemption 1.) Watco Holdings notes that granting its petition would also permit the consummation in Docket No. FD 36505, in which Fox System would transfer the Southern Cluster to WSOR for WSOR to operate as part of its system. (*Id.* at 5.)

Watco Holdings asserts it is unlikely that its continued control of Fox System would result in any anticompetitive effects. (*Id.* at 8.) With the exceptions of the West Bend and Saukville Subdivisions, none of Fox System's rail lines connect to those of any other rail carrier owned or controlled by Watco Holdings or its affiliates. (*Id.*)

With respect to the West Bend Subdivision and the Saukville Subdivision, Watco Holdings asserts that no loss of competition is likely. (*Id.*) Although those lines are branch lines currently solely served by WCL, they are ''islands'' disconnected from the rest of the WCL system. (*Id.* at 8–9.) To serve those lines, WSOR currently handles WCL traffic to and from each line in haulage service for WCL over WSOR's own lines. (*Id.* at 9.) After consummation of the overall transaction, traffic on the West Bend Subdivision and the Saukville Subdivision would continue to be handled by WSOR in WCL's account to and from interchange with WCL pursuant to a contractual handling carrier agreement between the parties. (*Id.*) In addition, shippers on the two segments would also be able to ship via WSOR and its interline connections. (*Id.*) Watco Holdings adds that there are no dually served shippers at the points where the West Bend and Saukville Subdivisions connect with WSOR's rail lines, and no shipper would go from two-railroad access to one. (*Id.*)

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board under 49 U.S.C. 11323(a)(5). Under 49 U.S.C. 10502(a), however, the Board must exempt a transaction from regulation if it finds that: (1) Regulation is not necessary to carry out the RTP of 49 U.S.C. 10101; and (2) either (a) the transaction is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of a full application concerning the proposed continuance in control is not required here to carry out the transportation policy of section 10101. The grant of an exemption will minimize the need for federal regulatory control over the rail transportation system. 49 U.S.C. 10101(2). An exemption also will enable Watco Holdings, a company experienced in the development of short line railroads, to bring its experience, knowledge, and resources to bear in helping Fox System maintain, operate, and develop the lines it is acquiring from WCL. Thus, the grant of an exemption will promote a safe and efficient rail transportation system (49 U.S.C. 10101(3)), ensure the development of a sound rail transportation system (49 U.S.C. 10101(4)), foster sound economic conditions in transportation (49 U.S.C. 10101(5)), and encourage efficient management of railroads (49 U.S.C. 10101(9)). Granting an exemption will reduce the regulatory barriers to entry into and exit from the industry (49 U.S.C. 10101(7)) and provide for expeditious handling and resolution of all proceedings (49 U.S.C. 10101(15)). Moreover, the grant of the exemption would not adversely affect any of the other aspects of the RTP.

Additionally, regulation is not needed to protect shippers from the abuse of market power. As noted above, it is unlikely that Watco Holdings' continued control of Fox System would result in any anticompetitive effects. (Pet. for Exemption 8.) After the transaction, with the exception of two

[7] The Board notes that none of the line sales at issue in Docket Nos. FD 36503 and FD 36504 are subject to interchange commitments limiting future interchange with a third-party connecting carrier. (Grand Elk Verified Notice 4; Fox Sys. Verified Notice 5.) If interchange commitments are imposed at a later date, however, the Board expects to be notified about such a development.

short branch lines, none of the Fox System lines will connect to any other railroad owned or controlled by Watco Holdings. (*Id.* at 10.) Most of Fox System's lines are branch lines that connect to the WCL system and, with the exception of certain lines located in northern Wisconsin, do not connect to each other. (*Id.*)

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves one Class II and one or more Class III rail carriers, the exemption will be made subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

The continuance in control portion of the transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(1)(i) because it would not result in any significant change in carrier operations. Similarly, the continuance in control component of the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it would not substantially change the level of maintenance of railroad properties.

The continuance in control exemption in Docket No. FD 36506 will be effective on December 31, 2021, and petitions to stay will be due by December 27, 2021. Petitions to reopen also will be due by December 27, 2021.

Conclusions. For the reasons discussed above, the Board will allow the exemptions to become effective and the sales to Grand Elk and Fox System to proceed.

It is ordered:

1. All filings to date are accepted into the record.

2. The requests for revocation or stay in Docket Nos. FD 36503 and FD 36504 are denied.

3. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 the continued control of Fox System by Watco Holdings once Fox System becomes a rail carrier. The exemption is subject to the employee protective conditions in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

4. Notice of the exemptions in Docket Nos. FD 36503, FD 36504, FD 36505, and FD 36506 will be published in the **Federal Register**.

5. The exemptions in Docket Nos. FD 36503, FD 36504, FD 36505, and FD 36506 will become effective on December 31, 2021. Petitions for stay must be filed by December 27, 2021. Petitions to reopen also must be filed by December 27, 2021.

6. This decision is effective on its service date.

Decided: December 17, 2021.

By the Board, Board Members Fuchs, Oberman, Primus, and Schultz.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–27903 Filed 12–22–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36503]

Grand Elk Railroad, Inc.—Acquisition Exemption—Lines of Wisconsin Central Ltd. in the State of Michigan

Grand Elk Railroad, Inc. (Grand Elk),[1] a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire 142.64 miles of rail lines owned by Wisconsin Central Ltd. (WCL) in Michigan, consisting of 95.38 miles of active line and 47.26 miles of line over which WCL previously discontinued service (the Lines). Specifically, the Lines consist of (1) the Newberry Subdivision between Trout Lake, Mich., at milepost 27.5 and Munising Jct., Mich., at milepost 117.0, and between Munising Jct. at milepost 5.88 and Munising, Mich., at milepost 0.0, a total of 95.38 active route miles, and (2) the portion of the White Pine Subdivision located in Michigan between White Pine, Mich., at milepost 254.6 and the Michigan/Wisconsin border at milepost 302.36, a total of 47.26 miles that have been inactive since 2015.[2]

Grand Elk's acquisition is part of a larger transaction pursuant to which, in addition to Grand Elk's acquisition, (1) Fox Valley & Lake Superior Rail System, L.L.C. (Fox System), a newly created noncarrier subsidiary of Watco Holdings, would acquire from WCL approximately 328.52 miles of active rail lines and 180.75 miles of rail line over which WCL had discontinued service, all in the State of Wisconsin; [3] and (2) Fox System would transfer three segments of those lines, totaling approximately 42 miles, to Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II subsidiary of Watco Holdings.[4]

The effective date of the exemptions sought in Docket Nos. FD 36503, FD 36504, and FD 36505 was tolled to consider questions raised and solicit additional information. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Mich.,* FD 36503 et al. (STB served Apr. 27, 2021). In a decision served on December 20, 2021, the Board held that the exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 could proceed and granted the petition for exemption sought in Docket No. FD 36506. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Mich.,* FD 36503 et al. (STB served Dec. 20, 2021).

Grand Elk certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. Pursuant to 49 CFR 1150.42(e), which applies ''[i]f the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million,'' Grand Elk certified on April 1, 2021, that notice of the transaction was posted at the workplaces of current WCL employees on the Lines and was being served on the national offices of the labor unions for those employees.

Grand Elk further certifies that the proposed transaction does not involve, and the purchase agreement does not include, any provision or agreement that would limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after December 31, 2021, the effective date of the exemption.

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 to stay must be filed no later than December 27, 2021.

All pleadings, referring to Docket No. FD 36503, should be filed with the Surface Transportation Board via e-filing on the Board's website. In

[1] Grand Elk is an indirectly controlled subsidiary of Watco Holdings, Inc. (Watco Holdings), a noncarrier Delaware limited liability holding company.

[2] In 2015, WCL discontinued service over the White Pine Subdivision, including the portion extending into Wisconsin. *See Wis. Cent. Ltd.—Discontinuance of Serv. Exemption—in Ashland & Iron Cntys., Wis., & Gogebic & Ontonagon Cntys., Mich.,* AB 303 (Sub-No. 45X) (STB served Dec. 3, 2014) and notice of consummation filed on January 9, 2015.

[3] *See Fox Valley & Lake Superior Rail Sys., L.L.C.—Acquis. & Operation Exemption—Lines of Wis. Cent. Ltd. in the State of Wis.,* Docket No. FD 36504. Additionally, to continue in control of Fox System once it becomes a carrier, Watco Holdings filed a petition for exemption in *Watco Holdings, Inc.—Continuance in Control Exemption—Fox Valley & Lake Superior Rail System, L.L.C.,* Docket No. FD 36506.

[4] *See Watco Holdings, Inc.—Exemption for Intra-Corp. Family Transaction—Fox Valley & Lake Superior Rail Sys., L.L.C.,* Docket No. FD 36505.

addition, a copy of each pleading must be served on Grand Elk's representative: David F. Rifkind, Stinson, LLP, 1775 Pennsylvania Avenue NW, Suite 800, Washington, DC 20006–4605.

According to Grand Elk, this action is categorically excluded from environmental review under 49 CCFR 1105.6(c) and historic preservation reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–27909 Filed 12–22–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36505]

Watco Holdings, Inc.—Exemption for Intra-Corporate Family Transaction—Fox Valley & Lake Superior Rail System, L.L.C. and Wisconsin & Southern Railroad, L.L.C.

Watco Holdings, Inc. (Watco Holdings), has filed a verified notice of exemption for an intra-corporate family transaction under 49 CFR 1180.2(d)(3) for the benefit of Fox Valley & Lake Superior Rail System, L.L.C. (Fox System), a Watco Holdings affiliate that is currently a noncarrier, and Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II carrier also controlled by Watco Holdings. Through this exemption, Fox System would transfer the following rail lines to WSOR for WSOR to operate as part of its system: (1) The Eden Spur from Eden, Wis. (milepost 138.7) to Fond du Lac, Wis. (milepost 146.04), a distance of approximately 7.34 miles; (2) the West Bend Subdivision from Granville, Wis. (milepost 99.5) to West Bend, Wis. (milepost 114.42), a distance of approximately 14.92 miles; and (3) the Saukville Subdivision from Mill (North Milwaukee), Wis. (milepost 95.18) to Saukville, Wis. (milepost 114.8), a distance of approximately 19.62 miles.

This intra-corporate family transaction is part of a larger transaction involving Watco Holdings, Fox System, and Grand Elk Railroad, Inc. (Grand Elk), a Class III carrier also controlled by Watco Holdings, in which Fox System and Grand Elk would acquire several hundred miles of rail lines in Wisconsin and Michigan, respectively, from Wisconsin Central Ltd. (WCL).[1] The verified notice states that once Fox System consummates its acquisition of WCL lines contemplated in Docket No. FD 36504 (which lines include the Eden Spur, West Bend Subdivision, and Saukville Subdivision) and Watco Holdings obtains the authority to continue in control of Fox System pursuant to the exemption sought in Docket No. FD 36506, Fox System and WSOR expect to enter into an agreement for the transfer of the Eden Spur, West Bend Subdivision, and Saukville Subdivision from Fox System to WSOR.

The effective date of the exemptions sought in Docket Nos. FD 36503, FD 36504, and FD 36505 was tolled to consider questions raised and solicit additional information. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd in the State of Mich.,* FD 36503 et al. (STB served Apr. 27, 2021). In a decision served on December 20, 2021, the Board held that the exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 could proceed and granted the petition for exemption sought in Docket No. FD 36506. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd in the State of Mich.,* FD 36503 et al. (STB served Dec. 20, 2021).

The verified notice states that the proposed transaction does not impose or involve any interchange commitment by or affecting the parties, nor are any of the transferred rail lines subject to any agreement that imposes an interchange commitment.

Unless stayed, the exemption will be effective on December 31, 2021.

The verified notice states that the proposed transaction is within Watco Holdings' corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves one Class II rail carrier and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 27, 2021.

All pleadings, referring to Docket No. FD 36505, 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 Watco Holdings' representative: David F. Rifkind, Stinson, LLP, 1775 Pennsylvania Avenue NW, Suite 800, Washington, DC 20006–4605.

According to Watco Holdings, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic preservation reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2021–27989 Filed 12–22–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36565]

LVR Railroad LLC—Acquisition and Operation Exemption—Landisville Railroad, LLC

LVR Railroad LLC (LVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Landisville Railroad, LLC (Landisville), and operate a rail line located between approximately milepost 30.77, at the connection with Norfolk Southern Railway Company on the Harrisburg Line, owned by National Railroad Passenger Corporation (Amtrak), and approximately milepost 32.69, at the end of the track, north of Stony Battery Road, in West Hempfield, Lancaster County, Pa. (the Line).

The verified notice states that LVR and Landisville will shortly execute a purchase agreement under which LVR will purchase the Line from Landisville. LVR states that it intends to provide common carrier service over the Line upon consummation of the proposed transaction.

[1] *See Fox Valley & Lake Superior Rail Sys., L.L.C.—Acquis. & Operation Exemption—Lines of Wis. Cent. Ltd. in the State of Wis.,* Docket No. FD 36504; *Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Mich.,* Docket No. FD 36503. To continue in control of Fox System once Fox System becomes a carrier, Watco Holdings filed a petition for exemption in *Watco Holdings, Inc.—Continuance in Control Exemption—Fox Valley & Lake Superior Rail System, L.L.C.,* Docket No. FD 36506.

LVR certifies that its projected annual revenues as a result of this transaction will not exceed the maximum revenue of a Class III rail carrier and will not exceed $5 million. LVR also certifies that the subject agreements do not contain any provisions that would limit LVR's future interchange of traffic on the Line with a third-party connecting carrier.

The earliest this transaction may be consummated is January 7, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 30, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36565, 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 LVR's representative, Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to LVR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–27850 Filed 12–22–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36504]

Fox Valley & Lake Superior Rail System, L.L.C.—Acquisition and Operation Exemption—Lines of Wisconsin Central Ltd. in the State of Wisconsin

Fox Valley & Lake Superior Rail System, L.L.C. (Fox System),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 328.52 miles of active rail lines and 180.75 miles of rail line over which discontinuance of service previously had been authorized, totaling approximately 509.27 miles (the Lines) owned by Wisconsin Central Ltd. (WCL). The Lines include the Southern Cluster (41.88 miles), the Green Bay Cluster (32.33 miles), the Appleton Cluster (82.32 miles), and the Northern Cluster (352.74 miles), all in the State of Wisconsin.

The Southern Cluster consists of (1) the Eden Spur extending from Eden, Wis., at milepost 138.7, to Fond du Lac, Wis., at milepost 146.04, a distance of approximately 7.34 miles; (2) the West Bend Subdivision extending from Granville, Wis., at milepost 99.5, to West Bend, Wis., at milepost 114.42, a distance of approximately 14.92 miles; and (3) the Saukville Subdivision extending from Mill (North Milwaukee), Wis., at milepost 95.18, to Saukville, Wis., at milepost 114.8, a distance of approximately 19.62 miles.

The Green Bay Cluster consists of (1) the Denmark Spur extending from Denmark, Wis., at milepost 97.75, to Green Bay, Wis., at milepost 113.28, a distance of approximately 15.53 miles; and (2) the Luxemburg Spur extending from Green Bay at milepost 2.1, to Luxemburg, Wis., at milepost 18.9, a distance of approximately 16.8 miles.

The Appleton Cluster consists of (1) the Shawano Subdivision extending from Appleton, Wis., at milepost 358.18, to Shawano, Wis., at milepost 314.08, a distance of approximately 44.1 miles; (2) the New London Spur extending from Appleton at milepost 121.6, to New London, Wis., at milepost 141.0 and from New London at milepost 38.98, to Manawa, Wis., at milepost 50.3, a total distance of approximately 30.72 miles;[2] (3) the Kimberly Spur extending from Appleton at milepost 121.5, to Kaukauna, Wis., at milepost 114.0, a distance of approximately 7.5 miles.[3]

The Northern Cluster consists of (1) a portion of the Valley Subdivision extending from Rothschild, Wis., at milepost 85.0, to Tomahawk, Wis., at milepost 133.09, and from Tomahawk at milepost 133.49, to Bradley, Wis., at milepost 138.42, a distance of approximately 53.02 miles, as well as trackage rights by assignment over Tomahawk Railway, Limited Partnership, between milepost 133.09 and milepost 133.49 at Tomahawk;[4] (2) the ''Wausau Pocket'' trackage at Wausau, Wis., from Kelly, Wis., at milepost 17.4, to Wausau at milepost 27.4, and from Kelly at milepost 0.0, to Schofield, Wis., at milepost 1.9, a total distance of approximately 11.9 miles;[5] (3) an undivided one-half interest (with WCL) in the portion of the Valley Subdivision extending from Mosinee, Wis., at milepost 77.0, to Rothschild at milepost 85.0, a distance of approximately 8.0 miles;[6] (4) a portion of the Bradley and Pembine Subdivisions extending from Tony, Wis., at milepost 138.0, to Goodman, Wis., at milepost 269.0, a distance of approximately 131.0 miles;[7] (5) the Ashland Subdivision extending from Prentice, Wis., at milepost 343.3, to Ashland, Wis., at milepost 434.49, a distance of approximately 91.19 miles;[8] (6) the White Pine Subdivision extending from Marengo Jct., Wis., at milepost 332.39, to the Michigan/Wisconsin border at milepost 302.36, a distance of approximately 30.03 miles;[9] and (7) the Medford Subdivision extending from Spencer, Wis., at milepost 289.80, to Medford, Wis., at milepost 317.4, a distance of approximately 27.6 miles.

[1] Fox System is an indirectly controlled subsidiary of Watco Holdings, Inc. (Watco Holdings), a noncarrier Delaware limited liability holding company.

[2] In 2017, WCL discontinued service over the line from New London to Manawa. *See Wis. Cent. Ltd.—Discontinuance of Serv. Exemption—in Waupaca Cnty., Wis.,* AB 303 (Sub-No. 48X) (STB served Aug. 31, 2017).

[3] Fox System will also acquire 0.1 miles of incidental trackage rights extending between milepost 212.9 and milepost 213.0 on WCL's Fox River Subdivision to access the Kimberly Spur.

[4] *See Wis. Cent. Ltd.—Trackage Rights Exemption—Tomahawk Ry.,* FD 33359 (STB served Mar. 25, 1997).

[5] *See Wis. Cent. Ltd.—Acquis. Exemption—Union Pac. R.R.,* 2 S.T.B. 218 (1997), *rev'd in part sub nom. Ass'n of Am. R.Rs.* v. *STB,* 162 F.3d 101 (D.C. Cir. 1998).

[6] According to the verified notice, Soo Line Railroad Company (Soo Line) has trackage rights on this segment and will remain WCL's tenant. *See Wis. Cent. Ltd.—Exempt. Acquis. & Operation—Certain Lines of Soo Line R.R.,* FD 31102, slip op. at 5 (ICC served July 28, 1988). As part of the current proposed transaction, WCL will retain limited overhead trackage rights (with Soo Line as its tenant) over Fox System from milepost 85.0 at Rothschild to milepost 89.5 at Wausau Yard for the purpose of turning and servicing locomotives.

[7] In 2017, WCL discontinued service over the line from Rhinelander to Goodman. *See Wis. Cent. Ltd.—Discontinuance of Serv. Exemption—in Oneida & Marinette Cntys., Wis.,* AB 303 (Sub-No. 49X) (STB served Nov. 15, 2017). In 2020, it discontinued service over the line from Tony to Prentice. *See Wis. Cent. Ltd.—Discontinuance of Serv. Exemption—in Rusk & Price Cntys., Wis.,* AB 303 (Sub-No. 54X) (STB served Jan. 10, 2020).

[8] In 2018, WCL discontinued service over the line from Ashland to Park Falls, Wis. *See Wis. Cent. Ltd.—Discontinuance of Serv. Exemption—in Ashland & Price Cntys., Wis.,* AB 303 (Sub-No. 50X) (STB served Oct. 18, 2018).

[9] In 2015, WCL discontinued service over the White Pine Subdivision, including the portion extending into Michigan. *See Wis. Cent. Ltd.—Discontinuance of Serv. Exemption—in Ashland & Iron Cntys., Wis., & Gogebic & Ontonagon Cntys., Mich.,* AB 303 (Sub-No. 45X) (STB served Dec. 3, 2014).

Fox System's acquisition is part of a larger transaction pursuant to which, in addition to Fox System's acquisition, (1) Grand Elk Railroad, Inc. (Grand Elk), a Class III carrier and Watco Holdings subsidiary, would acquire 142.64 miles of rail lines in Michigan owned by WCL,[10] and (2) after Fox System acquires the Lines, Fox System would transfer the Eden Spur, the West Bend Subdivision, and the Saukville Subdivision to Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II subsidiary of Watco Holdings, for WSOR to operate as part of its system.[11]

The effective date of the exemptions sought in Docket Nos. FD 36503, FD 36504, and FD 36505 was tolled to consider questions raised and solicit additional information. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Mich.,* FD 36503 et al. (STB served Apr. 27, 2021). In a decision served on December 20, 2021, the Board held that the exemptions in Docket Nos. FD 36503, FD 36504, and FD 36505 could proceed and granted the petition for exemption sought in Docket No. FD 36506. *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Mich.,* FD 36503 et al. (STB served Dec. 20, 2021).

Fox System certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. Pursuant to 49 CFR 1150.32(e), which applies ''[i]f the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds $5 million,'' Fox System certified on April 1, 2021, that notice of the transaction was posted at the workplaces of current WCL employees on the Lines and was being served on the national offices of the labor unions for those employees.

Fox System further certifies that the proposed transaction does not involve, and the purchase agreement does not include, any provision or agreement that would limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after December 31, 2021, the effective date of the exemption.

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 to stay must be filed no later than December 27, 2021.

All pleadings, referring to Docket No. FD 36504, 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 Fox System's representative: David F. Rifkind, Stinson, LLP, 1775 Pennsylvania Avenue NW, Suite 800, Washington, DC 20006–4605.

According to Fox System, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic preservation reporting under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–27907 Filed 12–22–21; 8:45 am]

BILLING CODE 4915–01–P

[10] *See Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Michigan,* Docket No. FD 36503.

[11] *See Watco Holdings, Inc.—Exemption for Intra-Corp. Fam. Transaction—Fox Valley & Lake Superior Rail Sys., L.L.C.,* Docket No. FD 36505. Additionally, to continue in control of Fox System once it becomes a carrier, Watco Holdings filed a petition for exemption in *Watco Holdings, Inc.—Continuance in Control Exemption—Fox Valley & Lake Superior Rail Sys., L.L.C.,* Docket No. FD 36506.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Gerald R. Ford International Airport, Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change approximately 16 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property located at Gerald R. Ford International Airport, Grand Rapids, Michigan. The aforementioned land is not needed for aeronautical use. The property is located to the northeast of the Patterson Avenue and Oostema Boulevard intersection. This intersection is the primary access to the airport. The property is currently vacant and not used for aeronautical purposes. The airport is proposing to lease this land for non-aeronautical development. Proposed uses include, restaurant, hotel, car wash, retail, and/or gas station.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Robert Tykoski, Community Planner, 11677 S Wayne Road, Ste. 107, Romulus, MI Telephone: (734) 229–2900/Fax: (734) 229–2950 and Casey Ries, Engineering and Planning Director, Gerald R. Ford International Airport Authority, 5500 44th Street SE, Grand Rapids, MI Telephone: (616) 233–6040/Fax (616) 233–6025).

Written comments on the Sponsor's request must be delivered or mailed to: Robert Tykoski, Community Planner, Federal Aviation Administration, Detroit Airports District Office, 11677 S Wayne Road, Ste. 107, Romulus, MI 48187, Telephone Number: (737) 229–2900/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Robert Tykoski, Community Planner, Federal Aviation Administration, Detroit Airports District Office, 11677 S Wayne Road, Ste. 107, Romulus, MI 48187. Telephone Number: (734) 229–2900/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The property is vacant and designated on the ALP as future non-aeronautical development. There are three parcels identified for this non-aeronautical use. They received Federal reimbursement through AIP grant #3–26–0039–2010. The sponsor proposes to allow non-aeronautical development, such as a hotel, gas station, retail, restaurant, and/or a car wash. The sponsor will receive fair market value for the lease of this property.

The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Gerald R. Ford International Airport, Grand Rapids, MI from its obligations to be maintained for aeronautical purposes. Approval does not constitute a commitment by the FAA to financially assist in the change in use of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Legal Description

PART OF THE SOUTH ½ OF THE SOUTHWEST ¼ OF SECTION 19,

TOWN 6 NORTH, RANGE, 10 WEST, CASCADE TOWNSHIP, KENT COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 19, THEN N01°34′46″ W 108.94 FEET ALONG THE WEST SECTION LINE, THENCE N88°41′18″ E 75.00 FEET TO THE POINT OF BEGINNING; THENCE N01°34′46″ W 594.58 FEET PARALLEL TO THE WEST SECTION LINE, THENCE N89°30′25″ E 61.25 FEET; THENCE 166.27 FEET ALONG A 308 FOOT RADIUS CURVE TO THE RIGHT WHOSE LONG CHORD BEARS S75°01′40″ E 164.26 FEET; THENCE N89°30′25″ E 985.74 FEET; THENCE S01°18′46″ E 585.73 FEET TO THE NORTH RIGHT-OF-WAY FOR JOHN J. OOSTEMA BOULEVARD (44TH STREET); THENCE S89°30′25″ W 1164.93 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE; THENCE N00°29′35″ W 35.53 FEET; THENCE S88°41′18″ W 37.49 FEET TO THE POINT OF BEGINNING.

THE DESCRIPTION ABOVE ENCOMPASSES 16.3 ACRES MORE OR LESS.

Issued in Romulus, Michigan, on December 17, 2021.

Stephanie Swann,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2021–27769 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0110]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 31, 2021, New York & Lake Erie Railroad (NYLE) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance [1] from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses. FRA assigned the petition Docket Number FRA–2021–0110.

Specifically, NYLE requested relief from the glazing requirements of 49 CFR 223.11, *Requirements for existing locomotives,* for locomotives NYLE 85 and NYLE 308. NYLE 85 is operated in freight and tourist service on the Oil Creek and Titusville Line in Titusville, Pennsylvania, and NYLE 308 is operated in occasional freight and tourist service in Gowanda, New York. NYLE stated the cost of glazing for both locomotives is prohibitively expensive.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov*.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *https://www.regulations.gov*. Follow the online instructions for submitting comments.

Communications received by February 7, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

Carolyn Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2021–27793 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–06–P

[1] These locomotives were previously granted relief under dockets FRA–2000–8267 and FRA–2004–19950, but that relief has expired. In Docket FRA–2000–8267, locomotive NYLE 85 was referred to as OCTL 85.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0018]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on December 15, 2021, Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) to extend a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. UP also requests to extend an exemption from the requirements of title 49, United States Code (U.S.C.), section 20303, which mandate that a rail vehicle with defective or insecure equipment may be moved to make repairs only to the nearest available place at which the repairs can be made. The relevant FRA Docket Number is FRA–2016–0018.

Specifically, UP requests to extend its relief from 49 CFR 232.213, *Extended haul trains;* 232.15, *Movement of defective equipment;* and 232.103(f), *General requirements for all train brake systems,* to continue using wheel temperature detectors (WTD) on a segment of UP track to measure potential safety improvements and cost reductions on brake testing and maintenance. UP states that operations of trains under the waiver have demonstrated a significantly positive effect on the safety of train operations. Further, UP continues to collect data through the test component of the waiver and work with the test waiver oversight committee. UP also seeks clarification on condition 12 of the February 23, 2017, decision letter.[1]

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the

[1] *https://www.regulations.gov/document/FRA-2016-0018-0013.*

comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by February 7, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Carolyn Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2021–27791 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0018]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on December 8, 2021, the Fort Wayne Railroad Historical Society Inc. (FWRHS) petitioned the Federal Railroad Administration (FRA) to extend a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 240.201, *Implementation.* The relevant FRA Docket Number is FRA–2017–0018.

Specifically, FWRHS requests to extend relief from § 240.201(d), which requires that only certified persons operate locomotives and trains. The relief would allow noncertified persons to pay a fee and operate a locomotive as part of FWRHS's ''hand-on-the-throttle'' program. FWRHS reports that no incidents occurred during the previous 5 years of operation under this waiver and that the program was a significant fundraising aid to the organization.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by February 7, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Carolyn Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2021–27792 Filed 12–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for nominations.

SUMMARY: FinCEN is inviting the public to nominate financial institutions, trade groups, and non-federal regulators or law enforcement agencies for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

DATES: Nominations must be received by January 24, 2022.

ADDRESSES: Nominations must be emailed to *BSAAG@fincen.gov.*

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION: Section 1654 of the Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal agencies, and other interested persons and financial institutions subject to the regulatory requirements of the Bank Secrecy Act, found at 31 CFR Chapter X. The BSAAG is the means by which the Treasury receives advice on the reporting requirements of the Bank Secrecy Act, and informs private sector representatives on how the information they provide is used. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

BSAAG membership is open to financial institutions, trade groups, and federal and non-federal regulators and law enforcement agencies that are located within the United States. Each member selected will serve a three-year term and must designate one individual to represent that member at plenary meetings. While BSAAG membership is granted to organizations, not to individuals, the designated representative for each selected organization should be knowledgeable about Bank Secrecy Act requirements and be willing and able to devote the necessary time and effort on behalf of the representative's organization. Members are expected to actively share anecdotal perspectives, quantifiable

insights on BSA requirements, and industry trends in BSAAG discussions. The organization's representative must be able to attend biannual plenary meetings, generally held in Washington, DC, over one or two days in May and October. Additional BSAAG meetings may be held by phone, videoconference, or in person and the organization's representative is expected to actively engage in the BSAAG's work through participation in meetings of various BSAAG Subcommittees and/or working groups, including Subcommittees established pursuant to requirements of the Anti-Money Laundering Act of 2020 (AML Act).[1] Members will not be paid for their time, services, or travel.

Nominations for individuals who are not representing an organization will not be considered, but organizations may nominate themselves. Please provide complete answers to the following items, as nominations will be evaluated based on the information provided in response to this notice and request for nominations. There is no required format; interested organizations may submit their nominations via email or email attachment. Nominations should consist of:

- Name of the organization requesting membership
- Point of contact, title, address, email address, and phone number
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act.
- Reasons why the organization's participation on the BSAAG will bring value to the group
- Trade groups must submit a full list of their members along with their nomination. Trade groups must also confirm that, if selected, they will only share BSAAG information with their members that are located within the United States.

In making the selections, FinCEN will seek to complement current BSAAG members and obtain comprehensive representation in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and will not limit consideration to institutions nominated by the public when making selections.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2021–27906 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–02–P

[1] The AML Act was enacted as Division F, §§ 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (2021). The AML Act, among other provisions, mandated the creation of a BSAAG Subcommittee on Innovation and Technology (Section 6207) and a BSAG Subcommittee on Information Security and Confidentiality (Section 6302).

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit.

DATES: Written comments should be received on or before February 22, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit.

OMB Number: 1530–0002.

Form Number: FS Form 150.1 and FS Form 150.2.

Abstract: These forms are used to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The forms are designed to help the financial organization locate any problems and to keep the customer (beneficiary) informed of any action taken.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 203,719.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 27,162.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 20, 2021.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2021–27877 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On December 9, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals:

1. JOHNSON, Prince Yormie (a.k.a. JOHNSON, Prince; a.k.a. JOHNSON, Prince Y.), Nimba County, Liberia; DOB 06 Jul 1952; POB Gomaplay, Liberia; nationality Liberia; Gender Male (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

2. RECINOS DE BERNAL, Martha Carolina (a.k.a. RECINOS, Carolina), El Salvador; DOB 25 Jan 1964; nationality El Salvador; Gender Female (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

3. MARTINEZ OLIVET, Manuel Victor, Guatemala; DOB 03 Oct 1980; nationality Guatemala; Gender Male; Passport 179006614 (Guatemala) expires 29 Jun 2020; National ID No. 1790066140101 (Guatemala) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

4. FRAGOSO DO NASCIMENTO, Leopoldino (a.k.a. "DINO"), Luanda, Angola; DOB 05 Jun 1963; POB Luanda, Angola; nationality Angola; Gender Male; Passport N1999980 (Angola) expires 08 Apr 2036 (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private

assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

5. PORTNOV, Andriy Volodymyrovych (Cyrillic: ПОРТНОВ, Андрій Володимирович) (a.k.a. PORTNOV, Andrij Volodymyrovych; a.k.a. PORTNOV, Andriy), Ukraine; DOB 27 Oct 1973; POB Luhansk, Ukraine; nationality Ukraine; Gender Male; Passport PU262444 (Ukraine); National ID No. CO168696 (Ukraine) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

6. GIOVETTY, Luisa de Fatima (a.k.a. GEOVETTY, Luisa de Fatima), Avenida 4 de Fevereiro, No. 32, 5 Esquerdo, Bairro Marginal, Municipio de Ingombata, Luanda, Luanda, Angola; DOB 14 Jul 1962; POB Sambinzanga, Angola; alt. POB Luanda, Angola; nationality Angola; Gender Female (individual) [GLOMAG] (Linked To: BAIA CONSULTING LIMITED).

   Designated pursuant to section 1(a)(iii)(A)(2) of E.O. 13818 for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, BAIA CONSULTING LIMITED a person whose property and interests in property are blocked pursuant to this order.

7. VIEIRA DIAS, Manuel Helder (a.k.a. VIEIRA DIAS JUNIOR, Manuel Helder; a.k.a. "KOPELIPA"), Rua de Coimbra, No 3, Luanda, Luanda, Angola; DOB 04 Oct 1953; POB Luanda, Angola; nationality Angola; Gender Male; Passport N2360712 (Angola) expires 07 Aug 2028 (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

Entities:

1. COCHAN HOLDINGS LLC, Marshall Islands; Organization Established Date 23 Jul 2010; Enterprise Number 961733 (Marshall Islands) [GLOMAG] (Linked To: FRAGOSO DO NASCIMENTO, Leopoldino).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Leopoldino Fragoso do Nascimento, a person whose property and interests in property are blocked pursuant to this order.

2. COCHAN S.A. (a.k.a. COCHAN ANGOLA; a.k.a. COCHAN GROUP; a.k.a. GRUPO COCHAN; a.k.a. "COCHAN"), Av. 1 Congresso Do Mpla, Edificio CIF 17 Andar,

Luanda, Angola; Organization Established Date 06 May 2009; Registration Number 1001537110 (Angola) [GLOMAG] (Linked To: FRAGOSO DO NASCIMENTO, Leopoldino).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Leopoldino Fragoso do Nascimento, a person whose property and interests in property are blocked pursuant to this order.

3. GENI NOVAS TECNOLOGIAS S.A. (a.k.a. GENI NOVAS TECNOLOGIAS), Luanda, Angola; Organization Established Date 24 Jun 2003; Organization Type: Other information technology and computer service activities [GLOMAG] (Linked To: FRAGOSO DO NASCIMENTO, Leopoldino).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Leopoldino Fragoso do Nascimento, a person whose property and interests in property are blocked pursuant to this order.

4. GENI SARL (a.k.a. GENI GROUP; a.k.a. GENI S.A.; a.k.a. "GENI"), Rua Marechal Bros Tito No 13, Ingombotas Predio Do Kinaxixi, Luanda, Angola; Cabinda, Angola; Organization Established Date 01 Jan 1996; Organization Type: Wholesale of other household goods [GLOMAG] (Linked To: FRAGOSO DO NASCIMENTO, Leopoldino).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Leopoldino Fragoso do Nascimento, a person whose property and interests in property are blocked pursuant to this order.

5. ANDRIY PORTNOV FUND (Cyrillic: ФОНД АНДРІЯ ПОРТНОВА) (a.k.a. CHARITABLE ORGANIZATION ANDRIY PORTNOV FUND (Cyrillic: БЛАГОДІЙНА ОРГАНІЗАЦІЯ ФОНД АНДРІЯ ПОРТНОВА)), Yevhena Konoval′tsya Street, Building 36-B, Apartment 50, Kyiv 01133, Ukraine (Cyrillic: ВУЛИЦЯ ЄВГЕНА КОНОВАЛЬЦЯ, будинок 36-В, квартира 50, Київ 01133, Ukraine); Target Type Charity or Nonprofit Organization; Company Number 43465723 (Ukraine) [GLOMAG] (Linked To: PORTNOV, Andriy Volodymyrovych).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Andriy Portnov Volodymyrovych, a person whose property and interests in property are blocked pursuant to this order.

6. BAIA CONSULTING LIMITED (a.k.a. CONSULTADORIA BAIA LIMITADA), 7th Floor, Lun Pong Building, No. 763 Avenida da Praia Grande, Macau; Avenidada Praia Grande, No. 763, Edificio Lun Pong, 7 Andara, Macau; Organization Established Date 26 Jan 2016; Registration Number 60367 SO (Macau) [GLOMAG] (Linked To: VIEIRA DIAS, Manuel Helder).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Manuel

Helder Vieira Dias Junior, a person whose property and interests in property are blocked pursuant to this order.

7. ARC RESOURCES CORPORATION LTD (a.k.a. AFRICA RESOURCE CORPORATION - ARC; a.k.a. AFRICAN RESOURCE COMPANY; a.k.a. AFRICAN RESOURCE CORPORATION; a.k.a. AFRICAN RESOURCE CORPORATION LIMITED; a.k.a. ARC CONSTRUCTION COMPANY LIMITED; a.k.a. ARC LIMITED GROUP), 7300-7398 Juba Rd, Juba, South Sudan; ARC Head Office, Kakora Road, Nimra-Talata, Juba, South Sudan; Organization Established Date 17 Jan 2019; Registration Number 31137 (South Sudan) [GLOMAG] (Linked To: BOL MEL, Benjamin).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Benjamin Bol Mel, a person whose property and interests in property are blocked pursuant to this order.

8. WINNERS CONSTRUCTION COMPANY LIMITED (a.k.a. "WINNERS CONSTRUCTION"), South Sudan; Organization Established Date 06 Sep 2019; Organization Type: Construction of roads and railways; Registration Number 32696 (South Sudan) [GLOMAG] (Linked To: BOL MEL, Benjamin).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Benjamin Bol Mel, a person whose property and interests in property are blocked pursuant to this order.

Additionally, on December 9, 2021, OFAC updated the SDN List for the following person, whose property and interests in property continue to be blocked under the relevant sanctions authority listed below.

1. AL–CARDINAL, Ashraf Seed Ahmed (a.k.a. HUSSEIN, Ashraf Said Ahmed; a.k.a. HUSSEIN, Ashraf Seed Ahmed; a.k.a. SEED AHMED, Asharaf; a.k.a. SEED AHMED, Ashraff; a.k.a. SEEDAHMED, Ashiraf; a.k.a. ''ALI, Ashraf Sayed''; a.k.a. ''HUSSEIN ALI, Ashraf''), 1 College Yard, Winchester Avenue, London, England NW6 7UA, United Kingdom; 207 Jersey Road, Osterley, London TW7 4RE, United Kingdom; DOB 01 Jan 1957 to 31 Jan 1957; nationality Sudan; Gender Male (individual) [GLOMAG].

The listing for these previously designated persons now appears as follows:

1. AL–CARDINAL, Ashraf Seed Ahmed (a.k.a. ALI, Ashraf Seedahmed Hussein; a.k.a. HUSSEIN, Ashraf Said Ahmed; a.k.a. HUSSEIN, Ashraf Seed Ahmed; a.k.a. SEED AHMED, Asharaf; a.k.a. SEED AHMED, Ashraff; a.k.a. SEEDAHMED, Ashiraf; a.k.a. ''ALI, Ashraf Sayed''; a.k.a. ''HUSSEIN ALI, Ashraf''), 1 College Yard, Winchester Avenue, London, England NW6 7UA, United Kingdom; 207 Jersey Road, Osterley, London TW7 4RE, United Kingdom; Dubai, United Arab Emirates; DOB 01 Jan 1957 to 31 Jan 1957; POB Sudan; nationality Sudan; Gender Male; Passport B00018325 (Sudan) expires 16 Feb 2023; National ID No. 11945710905 (Sudan); alt. National ID No. 784195754986941 (United Arab Emirates) (individual) [GLOMAG].

Authority: E.O. 13818, 82 FR 60839, 3 CFR, 2018 Comp., p. 399.

Dated: December 20, 2021.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–27856 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On December 17, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked pursuant to the relevant sanctions authority listed below.

Individual

1. DARASSA, Ali (a.k.a. DARAS, Ali; a.k.a. DARASSA, Ali Mahamat; a.k.a. DARRASSA, Ali; a.k.a. MAHAMANT, Ali Darassa; a.k.a. MAHAMAT, Ali Darassa), Alindao, Central African Republic; DOB 22 Sep 1978; POB Kabo, Ouham prefecture, Central African Republic; alt. POB Bousso, Chad; nationality Central African Republic; citizen Niger; alt. citizen Chad; Gender Male (individual) [CAR].

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13667 (E.O. 13667) of May 12, 2014, ''Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic,'' for being a leader of an entity, including any armed group, that has, or whose members have, engaged in the targeting of women, children, or any civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law.

Dated: December 17, 2021.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–27842 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of a person who has been removed from the list of Specially Designated Nationals and Blocked Persons (SDN List). Their property and interests in property are no longer blocked pursuant to Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (''E.O. 13818''), and U.S. persons are no longer generally prohibited from engaging in transactions with them.

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

OFAC previously determined on December 8, 2021 that the individuals listed below met one or more of the criteria under Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' (the ''Order''). On December 20, 2021, OFAC removed from the SDN List the person listed below, whose property and interests in property were blocked pursuant to E.O. 13818. On December 20, 2021, the Director of OFAC, in consultation with the Secretary of State and the Attorney General, determined that circumstances no longer warrant the inclusion of the following person on the SDN List under this authority. This person is no longer subject to the blocking provisions of Section 1(a) of E.O. 13818.

Entity:

1. NAUTIKACENTAR D.O.O. (a.k.a. NAUTIKACENTAR DRUSTVO S OGRANICENOM ODGOVORNOSCU ZA DJELATNOST MARINA, TRGOVINU I USLUGE), Zdravka Kucica 43, Rijeka 51000, Croatia; Organization Established Date 01 Jan 2000; V.A.T. Number HR12533377925 (Croatia) [GLOMAG] (Linked To: VESELINOVIC, Zharko Jovan).

Authority: E.O. 13818, 82 FR 60839, 3 CFR, 2018 Comp., p. 399.

On December 20, 2021, OFAC published revised information for the following persons on OFAC's SDN List.

BILLING CODE 4810–AL–P

Individual:

1. AZAMI, Seyed Reza Mousavi (Arabic: سید رضا موسوی اعظمی) (a.k.a. AZAMI, Reza Mousavi), Iran; DOB 05 May 1971; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport Y53914437 (Iran) (individual) [IRAN-HR] (Linked To: SPECIAL UNITS OF IRAN'S LAW ENFORCEMENT FORCES).

   Designated on December 7, 2021 pursuant to Executive Order 13553 of September 28, 2010, "Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions" (E.O. 13553), 75 FR 60567, for having acted or purported to act for or on behalf of, directly or indirectly, the SPECIAL UNITS OF IRAN'S LAW ENFORCEMENT FORCES, an entity whose property and interest in property are blocked pursuant to E.O. 13553.

Entity:

1. BRAVERY MARITIME CORPORATION (a.k.a. BRAVERY MARITIME CORP), Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Identification Number IMO 6161246 [SDGT] (Linked To: AL HABSI, Mahmood Rashid Amur).

   Designated on August 13, 2021 pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended) for being owned, controlled, or directed by, directly or indirectly, by MAHMOOD RASHID AMUR AL HABSI, a person whose property and interest in property are blocked pursuant to E.O. 13224, as amended.

Dated: December 20, 2021.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–27857 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On December 8, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. RADOJCIC, Milan Rajko (a.k.a. ''RADOICIC, Milan''; a.k.a. ''RADOJICIC, Milan''), Serbia; Lola Ribar Street, number 58/7, Mitrovica, Kosovo; DOB 21 Feb 1978; POB Djakovica, Kosovo; nationality Kosovo; Gender Male; Driver's License No. 20177871 (Kosovo); Identification Number 1174669941 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, corruption,

including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery, relating to the leader's or official's tenure.

2. VESELINOVIC, Zharko Jovan (a.k.a. ''VESELINOVIC, Zarko''), Kralj Peter St., Mitrovica, Kosovo; DOB 23 Feb 1985; POB Dolane Village, Zvecan, Kosovo; nationality Serbia; alt. nationality Kosovo; Gender Male; Driver's License No. 2806 (Serbia); Identification Number 1502145386 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery, relating to the leader's or official's tenure.

3. LUNA MEZA, Osiris (a.k.a. LUNA, Osiris), San Salvador, El Salvador; DOB 08 Feb 1989; POB San Salvador, El Salvador; nationality El Salvador; Gender Male; Passport A04056212 (El Salvador) expires 11 Aug 2020; National ID No. 040562123 (El Salvador) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

4. MARROQUIN CHICA, Carlos Amilcar, Mejicanos, El Salvador; DOB May 1986; POB San Salvador, El Salvador; nationality El Salvador; Gender Male; Passport B03539817 (El Salvador) expires 19 Sep 2024; National ID No. 035398179 (El Salvador) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

5. MEZA OLIVARES, Alma Yanira, San Salvador, El Salvador; DOB 15 Jul 1963; POB San Salvador, El Salvador; nationality El Salvador; Gender Female; Passport A01497316 (El Salvador) expires 10 Dec 2019; National ID No. 014973168 (El Salvador) (individual) [GLOMAG] (Linked To: LUNA MEZA, Osiris).

Designated pursuant to section 1(a)(iii)(A)(1) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Osiris LUNA MEZA, a person whose property and interests in property are blocked pursuant to E.O. 13818.

6. VESELINOVIC, Zvonko, Kralj Peter St., Mitrovica, Kosovo; DOB 30 Dec 1980; POB Dolane Village, Zvecan, Kosovo; nationality Kosovo; alt. nationality Serbia; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery, relating to the leader's or official's tenure.

7. BOJIC, Andrija Zheljko, Kosovo; DOB 02 Mar 1993; Gender Male (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

8. BOJIC, Zeljko (a.k.a. BOJIC, Zeljko Radoslav), Lole Ribar Street, Number L3/10/2, Mitrovica North, Kosovo; DOB 16 Jul 1969; POB Mitrovica, Kosovo; nationality Kosovo; Gender Male; Passport P00608659 (Kosovo) expires 19 Mar 2025 (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(A)(1) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

9. MIHAJLOVIC, Milan, Susica Village, Kosovo; DOB 27 Apr 1983; POB Nis, Republic of Serbia; nationality Serbia; Gender Male; Identification Number 2704983730021 (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

10. NEDELJKOVIC, Sinisa (a.k.a. ''METAL, Senisa''; a.k.a. ''NEDELJKOVIC, Sinis''; a.k.a. ''NEDELJKOVIC, Sinisa Stevan''), Kral Petar Street, Zvecan, Kosovo; DOB 26 Mar 1970; POB Zvecan, Kosovo; nationality Kosovo; alt. nationality Serbia; Gender Male; Identification Number 1501722452 (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

11. RADIC, Radovan, Kosovo; DOB 19 Oct 1981; nationality Serbia; Gender Male; Identification Number 005221713 (Serbia) expires 25 Mar 2024 (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

12. RADISAVLJEVIC, Miljojko (a.k.a. ''RADISAVLJEVIC, Milojko''), Donji Jasenovik, Zubin Potok, Kosovo; DOB 23 Apr 1978; POB Village Babudovici, Zubin Potok, Kosovo; nationality Serbia; Gender Male (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

13. RADISAVLJEVIC, Miljan, Donji Jasenovik, Zubin Potok, Kosovo; DOB 10 Dec 1972; POB Village Babudovici, Zubin Potok, Kosovo; nationality Serbia; Gender Male; Identification Number 1502104612 (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

14. ROSIC, Marko, Kosovo; DOB 28 Jun 1993; POB Mitrovica, Kosovo; Gender Male (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

15. STEVIC, Radule (a.k.a. ''STEVIC, Rade''), Kral Petar Street, Zvecan, Kosovo; DOB 02 Jun 1970; POB Leposavic, Kosovo; nationality Serbia; Gender Male; Identification Number 1501796081 (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

16. VULOVIC, Srdjan Milivoje, Kosovo; DOB 03 Dec 1975; POB Ostrace, Leposavic Municipality, Kosovo; nationality Kosovo; Gender Male (individual) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

Entities

1. BETONJERKA DOO ALEKSINAC (a.k.a. PRIVREDNO DRUSTVO ZA PROIZVODNJU BETONSKIH STUBOVA, TRAFO–STANICA I PRATECIH ELEMENATA ZA IZGRADNJU I ODRZAVANJE ELEKTROENERGETSKIH OBJEKATA BETONJERKA DOO ALEKSINAC), Autoput Bb, Aleksinac 18220, Serbia; Organization Established Date 28 Feb 1992; Organization Type: Manufacture of articles of concrete, cement and plaster; V.A.T. Number 100302988 (Serbia) [GLOMAG] (Linked To: INKOP DOO CUPRIJA).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INKOP DOO CUPRIJA, a person whose property and interests in property are blocked pursuant to E.O. 13818.

2. CIVIJA KOMERC (a.k.a. SAMOSTALNA TRGOVINSKA RADNJA CIVIJA KOMERC ZVONKO VESELINOVIC PREDUZETNIK SABAC), Macvanska 65, Sabac 15000, Serbia; Organization Established Date 22 Mar 2000; Organization Type: Sale of motor vehicle parts and accessories; V.A.T. Number 100081430 (Serbia) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

3. DOLLY BELL DOO BEOGRAD–NOVI BEOGRAD (a.k.a. ''DOLLY BELL''), Partizanske Avijacije 4/III, Belgrade 11000, Serbia; Organization Established Date 12 May 2015; V.A.T. Number 108981819 (Serbia) [GLOMAG] (Linked To: INKOP DOO CUPRIJA).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INKOP DOO CUPRIJA, a person whose property and interests in property are blocked pursuant to E.O. 13818.

4. DOO BABUDOVAC BRNJAK (a.k.a. DOO BABUDOVAC PREDUZECE ZA PROIZVODNJU, TRGOVINU I USLUGE, BRNJAK), Brnjak Bb, Srpska Crnja, Serbia; Organization Established Date 22 Dec 2005; V.A.T. Number 104219987 (Serbia) [GLOMAG] (Linked To: RADISAVLJEVIC, Miljojko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Miljojko RADISAVLJEVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

5. DOO MM KOM INTER BLUE DONJI JASENOVIK (a.k.a. PREDUZECE ZA PROIZVODNJU PROMET TRGOVINU I USLUGE MM KOM INTER BLUE DOO DONJI JASENOVIK), Donji Jasenovik 38228, Serbia; Organization Established Date 08 Mar 2013; Organization Type: Wholesale of other machinery and equipment; V.A.T. Number 107969124 (Serbia) [GLOMAG] (Linked To: RADISAVLJEVIC, Miljan).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Miljan RADISAVLJEVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

6. DOO RAD 028 ZVECAN (a.k.a. DRUSTVO SA OGRANICENOM ODGOVORNOSCU RAD 028 ZVECAN), Prote Stojana ½, Zvecan, Serbia; Organization Established Date 20 Jan 2014; Organization Type: Construction of other civil engineering projects; V.A.T. Number 108374390 (Serbia) [GLOMAG] (Linked To: STEVIC, Radule)

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Radule STEVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

7. FARMA IZVORI B.I., Izvore, Kosovo; Organization Established Date 29 May 2015; Organization Type: Growing of pome fruits and stone fruits; Registration Number 71168433 (Kosovo) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

8. FERARI PREDUZEEE ZA USLUGE I PROMET POLOVNIM VOZILIMA SH.A., 40000 Mitrovice, Kosovo; Organization Established Date 20 Aug 2002; Organization Type: Wholesale of other machinery and equipment; Registration Number 80673094 (Kosovo) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

9. GARAC INZENJERING OOD, Tsar Osvoboditel, 168, Kyustendil 2500, Bulgaria; Organization Established Date 04 Dec 2014; V.A.T. Number BG203318394 (Bulgaria) [GLOMAG] (Linked To: RADOJCIC, Milan Rajko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Milan Rajko RADOJCIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

10. INKOP DOO CUPRIJA (a.k.a. GRADJEVINSKO PREDUZECE INKOP DOO CUPRIJA; a.k.a. ''INKOP''), Karadordeva 6, Cuprija 35230, Serbia; Organization Established Date 12 May 1992; Organization Type: Construction of roads and railways; V.A.T. Number 100245351 (Serbia) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

11. MARKOM METAL COMMERCE DOO ZVECAN (a.k.a. MARKOM METAL COMMERCE DRUSTVO SA OGRANICENOM ODGOVORNOSCU, GRABOVAC), Grabovac 37240, Serbia; Organization Established Date 23 Jun 2008; V.A.T. Number 105767318 (Serbia) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

12. METAL–ROBNA KUCA (a.k.a. METAL–ROBNA KUCA ZVECAN), Kosovskih Junaka Bb, Zvecan 38227, Serbia; Organization Established Date 2005; Organization Type: Wholesale of construction materials, hardware, plumbing and heating equipment and supplies; Registration Number 20110708 (Serbia) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

13. NAUTIKACENTAR D.O.O. (a.k.a. NAUTIKACENTAR DRUSTVO S OGRANICENOM ODGOVORNOSCU ZA DJELATNOST MARINA, TRGOVINU I USLUGE), Zdravka Kucica 43, Rijeka 51000, Croatia; Organization Established Date 01 Jan 2000; V.A.T. Number HR12533377925 (Croatia) [GLOMAG] (Linked To: VESELINOVIC, Zharko Jovan).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zharko Jovan VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

14. NOVI PAZAR–PUT D.O.O. NOVI PAZAR (a.k.a. DRUSTVO SA OGRANICENOM ODGOVORNOSCU NOVI PAZAR–PUT NOVI PAZAR), Sabana Koce 67, Novi Pazar 36300, Serbia; Organization Established Date 20 Apr 2004; Organization Type: Construction of roads and railways; V.A.T. Number 100744723 (Serbia) [GLOMAG] (Linked To: INKOP DOO CUPRIJA).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, INKOP DOO CUPRIJA, a person whose property and interests in property are blocked pursuant to E.O. 13818.

15. P.P. BABUDOVAC B.I. (a.k.a. P.P. BABUDOVAC), 40650 Jasenovik I Poshtem, Kosovo; Organization Established Date 05 Feb 2004; Organization Type: Wholesale of food, beverages and tobacco; V.A.T. Number 600570825 (Kosovo) [GLOMAG] (Linked To: RADISAVLJEVIC, Miljan).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled

by, or having acted or purported to act for or on behalf of, directly or indirectly, Miljan RADISAVLJEVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

16. P.P.ROBNA KUCA METAL B.I., Kralja Petra I 90, Zvecan, Kosovo; Organization Established Date 29 Aug 2013; Organization Type: Wholesale of other machinery and equipment; Registration Number 70985691 (Kosovo) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

17. RAD D.O.O., Kralja Petra I B.B., Zveqan 43000, Kosovo; Organization Established Date 01 Feb 2018; Organization Type: Construction of buildings; Registration Number 810091687 (Kosovo) [GLOMAG] (Linked To: STEVIC, Radule).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Radule STEVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

18. RADOVAN RADIC B.I., P.P. EU RR GRADNJA, Zupc 40650, Kosovo; Organization Established Date 13 Feb 2014; Organization Type: Construction of other civil engineering projects; V.A.T. Number 601071814 (Kosovo) [GLOMAG] (Linked To: RADIC, Radovan).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Radovan RADIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

19. RADULE STEVIC B.I., P.T.P. RAD, Prote Sfojaha, Zveqan 38227, Kosovo; Organization Established Date 04 Apr 2013; Organization Type: Construction of buildings; Tax ID No. 600953708 (Kosovo) [GLOMAG] (Linked To: STEVIC, Radule).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Radule STEVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

20. ROBNA KUCA METAL D.O.O., Kralja Petra I 90, Zveqan 38227, Kosovo; Organization Established Date 21 Aug 2017; Organization Type: Wholesale of other machinery and equipment; Registration Number 810051061 (Kosovo) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

21. S.Z.T.R. PRIZMA B.I. (a.k.a. SAMOSTALNA ZANATSKA TRGOVINSKA RADNJA PRIZMA), 40000 Mitrovice, Kosovo; Organization Established Date 10 Dec 2001; Organization Type: Construction of other civil engineering projects; Registration Number 80581564 (Kosovo) [GLOMAG] (Linked To: VESELINOVIC, Zvonko).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zvonko VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

22. SINISA NEDELJKOVIC B.I., P.T.P. METAL, 90, Kralja Petra I, Zveqan 38227, Kosovo; Organization Established Date 09 Aug 2001; Organization Type: Wholesale of other machinery and equipment; V.A.T. Number 600351845 (Kosovo) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

23. SINISA NEDELJKOVIC I.B., Glavna Bb, Shterpce 73000, Kosovo; Organization Established Date 03 Sep 2015; Organization Type: Restaurants and mobile food service activities; V.A.T. Number 601337753 (Kosovo) [GLOMAG] (Linked To: NEDELJKOVIC, Sinisa).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Sinisa NEDELJKOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

24. ZARKO VESELINOVIC B.I., S.T.R. KRISTAL (a.k.a. ZARKO VESELINOVIC B.I.), Kralja Petra I, Mitrovice 40000, Kosovo; Organization Established Date 21 Feb 2005; Registration Number 70234903 (Kosovo) [GLOMAG] (Linked To: VESELINOVIC, Zharko Jovan).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Zharko Jovan VESELINOVIC, a person whose property and interests in property are blocked pursuant to E.O. 13818.

Authority: E.O. 13818, 82 FR 60839, 3 CFR, 2018 Comp., p. 399.

Dated: December 20, 2021.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–27855 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

RIN 1505–AC62

IMARA Calculation for Calendar Year 2022 Under the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (Treasury) is providing notice to the public of the insurance marketplace aggregate retention amount (IMARA) for calendar year 2022 for purposes of the Terrorism Risk Insurance Program (TRIP or the Program) under the Terrorism Risk Insurance Act, as amended (TRIA or the Act). As explained below, Treasury has determined that the IMARA for calendar year 2022 is $42,690,205,453.

DATES: The IMARA for calendar year 2022 is effective January 1, 2022 through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922 or Sherry Rowlett, Program Analyst, Federal Insurance Office, 202–622–1890.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA—which established TRIP—was signed into law on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events.[1] TRIA requires insurers to ''make available'' terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism, and provides for shared public and private compensation for such insured losses. The Program has been reauthorized four times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2019.[2] The Secretary of the Treasury (Secretary) administers the Program, with assistance from the Federal Insurance Office (FIO).[3]

TRIA provides for an ''industry marketplace aggregate retention

[1] Public Law 107–297, sec. 101(b), 116 Stat. 2322, codified at 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note instead of particular sections of the U.S. Code, the provisions of TRIA are identified by the sections of the law.

[2] See Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3 (2015 Reauthorization Act); Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116–94, 133 Stat. 2534.

[3] 31 U.S.C. 313(c)(1)(D).

amount'' or ''IMARA'' to be used for determining whether Treasury must recoup any payments it makes under the Program. Under the Act, if total annual payments by all participating insurers are below the IMARA, then Treasury must recoup all amounts expended by it up to the IMARA threshold. If total annual payments by all participating insurers are above the IMARA, then Treasury has the discretionary authority (but not the obligation) to recoup all of the expended amounts that are above the IMARA threshold.[4]

TRIA provides for a schedule of defined IMARA values from calendar year 2015 through calendar year 2019.[5] For calendar year 2020 and beyond, TRIA states that the IMARA ''shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years,'' as such sum is determined pursuant to final rules issued by the Secretary.[6]

On November 15, 2019, Treasury issued a final rule for calculation of the IMARA.[7] This rule, which is codified at 31 CFR 50.4(m)(2), provides that the IMARA will be calculated by averaging the annual industry aggregate deductibles over the prior three calendar years, based upon the direct earned premiums (DEP) reported to Treasury by insurers in Treasury's annual data calls. Insurer deductibles under the Program are based upon the DEP of individual insurers reported to Treasury in the prior year (*e.g.,* 2020 DEP for 2021 calendar year).

Accordingly, for purposes of determining the IMARA for calendar 2022, Treasury has averaged the aggregate insurer deductibles for calendar years 2021, 2020, and 2019 (as reported to Treasury in each of these years), which are based on the reported DEP for calendar years 2020, 2019, and 2018, respectively.

For purposes of the 2022 IMARA calculation, those figures are as follows:

TRIP-ELIGIBLE DEP BY INSURER CATEGORY[8]

	2019 TRIP data call		2020 TRIP data call		2021 TRIP data call	
	2018 DEP in TRIP-eligible lines	% of total	2019 DEP in TRIP-eligible lines	% of total	2020 DEP in TRIP-eligible lines	% of total
Alien Surplus Lines Ins	$7,618,548,358	4	$11,149,972,542	5	$11,043,111,847	5
Captive Insurers	8,937,119,082	4	9,083,384,310	4	10,534,614,720	5
Non-Small Insurers	166,188,192,378	81	172,970,757,331	80	175,272,463,804	80
Small Insurers	22,516,178,612	11	22,882,139,290	11	22,156,599,520	10
Total	205,260,038,430	100	216,086,253,473	100	219,006,789,891	100

Source: 2019–2021 TRIP Data Calls.

Treasury has used these reported premiums to calculate the IMARA for calendar year 2022. The average annual DEP figure for the combined period of 2018, 2019, and 2020 is $213,451,027,265 [($205,260,038,430 + $216,086,253,473 + $219,006,789,891)/3 = $213,451,027,265]. The average aggregate deductible for the prior three years is 20 percent of $213,451,027,265, which equals $42,690,205,453.[9] Accordingly, the IMARA for purposes of calendar year 2022 is $42,690,205,453.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2021–27795 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Coronavirus Economic Relief for Transportation Services.

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Title: Coronavirus Economic Relief for Transportation Services.

OMB Control Number: 1505–0273.

Type of Review: Extension of a currently approved collection.

Description: On December 27, 2020, the President signed the Consolidated

[4] *See* TRIA, sec. 103(e)(7); see also 31 CFR part 50, subpart J (Recoupment and Surcharge Procedures).

[5] In 2015, the IMARA was $29.5 billion; it increased to $31.5 billion in 2016, $33.5 billion in 2017, $35.5 billion in 2018, and $37.5 billion in 2019. *See* TRIA, sec. 103(e)(6)(B).

[6] TRIA, sec. 103(e)(6)(B)(ii) and (e)(6)(C). An insurer's deductible under the Program for any particular year is 20 percent of its direct earned premium subject to the Program during the preceding year. TRIA, sec. 102(7). For example, an insurer's calendar year 2021 Program deductible is 20 percent of its calendar year 2020 direct earned premium.

[7] *See* 84 FR 62450 (November 15, 2019) (Final Rule).

[8] The figures from the 2020 and 2019 TRIP data calls (some figures may not add up on account of rounding) were previously reported in the IMARA calculation for calendar year 2021. *See* 85 FR 83159 (December 21, 2020). Figures from the 2021 TRIP data call were previously reported in FIO's June 2020 Small Insurer Study, as available at that time and rounded. FIO, Study on the Competitiveness of Small Insurers in the Terrorism Risk Insurance Marketplace (June 2021), 17 (Figure 1), *https://home.treasury.gov/system/files/311/2021TRIPSmallInsurerReportJune2021.pdf.* The figures from the 2021 TRIP data call as originally reported in June 2020 have been updated to include data received by FIO after the reporting deadline.

[9] *See* note 7.

Appropriations Act, 2021 (the ''Act''). Division N, Title IV, Subtitle B, Section 421 of the Act provides $2 billion for the U.S. Department of the Treasury (''Treasury'') to provide grants to eligible providers of transportation services (''Recipients'') under the Coronavirus Economic Relief for Transportation Services (''CERTS'') Program. Recipients include motorcoach companies, school bus companies, passenger vessel companies, and pilotage companies. Under Section 421 of the Act, Recipients must demonstrate significant revenue losses as a result of COVID–19, and must use grant funds for payroll costs and for other eligible operating expenses.

Forms: Compliance Reporting Forms.

Affected Public: Private Sector.

Estimated Number of Respondents: 1,460.

Frequency of Response: Once, Quarterly.

Estimated Total Number of Annual Responses: 5,840.

Estimated Time per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 8,760.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 20, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–27869 Filed 12–22–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

United States Mint

2022 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint announces 2022 revisions to include an increase in price for the commemorative gold proof three-coin set within the Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid.

FOR FURTHER INFORMATION CONTACT: Ann Bailey, Numismatic and Bullion Directorate, United States Mint, 801 9th Street NW, Washington, DC 20220, or call 202–354–7500.

SUPPLEMENTARY INFORMATION:

An excerpt of the grid with a recent price range for the commemorative gold proof three-coin set appears below:

2022 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products

*Does not reflect $5 discount during introductory period

Average Price per Ounce	Size	American Eagle Gold Proof	American Eagle Gold Uncirculated	American Buffalo 24K Gold Proof	American Eagle Platinum Proof	American Eagle Palladium (Numismatic Versions)	American Liberty 24K Gold	First Spouse Gold Proof Coin	First Spouse Gold Uncirculated Coin	Commemorative Gold Proof*	Con
$1750.00 to $1799.99	1 oz	$2,650.00	$2,620.00	$2,690.00	$2,345.00	$2,700.00	$2,715.00				
	1/2 oz	$1,350.00						$1,380.00	$1,360.00		
	1/4 oz	$ 702.50									
	1/10 oz	$ 310.00					$ 335.00				
	4-coin set	$4,962.50									
	2-coin set	$ 635.00									
	commemorative gold									$ 661.75	
	commemorative 3-coin set									$ 775.00	
$1800.00 to $1849.99	1 oz	$2,700.00	$2,670.00	$2,740.00	$2,395.00	$2,750.00	$2,765.00				
	1/2 oz	$1,375.00						$1,405.00	$1,385.00		
	1/4 oz	$ 715.00									
	1/10 oz	$ 315.00					$ 340.00				
	4-coin set	$5,055.00									
	2-coin set	$ 645.00									
	commemorative gold									$ 674.00	
	commemorative 3-coin set									$ 787.25	

The complete 2022 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid will be available at *https://catalog.usmint.gov/on/demandware.static/-/Sites-USM-Library/default/dw5a13bbe3/images/PDFs/2022-Pricing-Grid-v4.pdf.*

Pricing can vary weekly dependent upon the London Bullion Market Association gold, platinum, and palladium prices weekly average. The pricing for all United States Mint numismatic gold, platinum, and palladium products is evaluated every Wednesday and modified as necessary.

Authority: 31 U.S.C. 5111, 5112, & 9701.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2021–27807 Filed 12–22–21; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0679]

Agency Information Collection Activity: Certification of Change or Correction of Name Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0679'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0679'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must

obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Certification of Change or Correction of Name Government Life Insurance—VA Form 29–586.

OMB Control Number: 2900–0679.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured as a certification of change or correction of name. The information on the form is required by law, U.S.C. 1904 and 1942.

Affected Public: Individuals and households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 120.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer (Alt) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–27827 Filed 12–22–21; 8:45 am]

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Federal Register

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Thursday, December 23, 2021

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