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Executive Order 14031 of May 28, 2021

The President

Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) individuals and communities are irrefutable sources of our Nation's strength. These communities have molded the American experience, and the achievements of AA and NHPI communities make the United States stronger and more vibrant. The richness of America's multicultural democracy is strengthened by the diversity of AA and NHPI communities and the many cultures and languages of AA and NHPI individuals in the United States.

Asian American, Native Hawaiian, and Pacific Islander communities together constitute the fastest growing ethnic group in the United States and make rich contributions to our society, our economy, and our culture. Yet for far too long, systemic barriers to equity, justice, and opportunity put the American dream out of reach of many AA and NHPI communities. Many AA and NHPI individuals face persistent disparities in socioeconomic, health, and educational outcomes. Linguistic isolation and lack of access to language-assistance services continue to lock many AA and NHPI individuals out of opportunity. Too often Federal data collection practices fail to measure, reflect, and disaggregate the diversity of AA and NHPI experiences. These practices contribute to often painful and enduring stereotypes about Asian Americans as a "model minority" and obscure disparities within AA and NHPI communities.

Our Nation has also seen again that anti-Asian bias, xenophobia, racism, and nativism have deep roots in our Nation. Tragic acts of anti-Asian violence have increased during the COVID-19 pandemic, casting a shadow of fear and grief over many AA and NHPI communities, in particular East Asian communities. Long before this pandemic, AA and NHPI communities in the United States—including South Asian and Southeast Asian communities—have faced persistent xenophobia, religious discrimination, racism, and violence. The Federal Government must provide the moral leadership, policies, and programs to address and end anti-Asian violence and discrimination, and advance inclusion and belonging for all AA and NHPI communities.

At the same time, many AA and NHPI communities, and in particular Native Hawaiian and Pacific Islander communities, have also been disproportionately burdened by the COVID-19 public health crisis. Evidence suggests that Native Hawaiians and Pacific Islanders are three times more likely to contract COVID-19 compared to white people and nearly twice as likely to die from the disease. On top of these health inequities, many AA and NHPI families and small businesses have faced devastating economic losses during this crisis, which must be addressed.

As I directed in Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), the entire Federal Government must advance equity and racial justice for underserved communities, which include AA and NHPI communities. As I established in the Presidential Memorandum of January 26, 2021 (Condemning and Combating Racism, Xenophobia, and Intolerance

Against Asian Americans and Pacific Islanders in the United States), it is the policy of my Administration to address and confront racism, xenophobia, and intolerance. The purpose of this order is to build on those policies by establishing the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders and the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders. Both will work to advance equity, justice, and opportunity for AA and NHPI communities in the United States.

Sec. 2. *President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders.* (a) There is established in the Department of Health and Human Services the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders (Commission).

(b) The Commission shall be led by two Co-Chairs, one of whom shall be the Secretary of Health and Human Services, the other of whom shall be the head of an executive department or agency (agency) designated by the President. The Commission shall provide advice to the President, in close coordination with the Deputy Assistant to the President and Asian American, Native Hawaiian, and Pacific Islander Senior Liaison, on:

(i) the development, monitoring, and coordination of executive branch efforts to advance equity, justice, and opportunity for AA and NHPI communities in the United States, including efforts to close gaps in health, socioeconomic, employment, and educational outcomes;

(ii) policies to address and end anti-Asian bias, xenophobia, racism, and nativism, and opportunities for the executive branch to advance inclusion, belonging, and public awareness of the diversity and accomplishments of AA and NHPI people, cultures, and histories;

(iii) policies, programs, and initiatives to prevent, report, respond to, and track anti-Asian hate crimes and hate incidents;

(iv) ways in which the Federal Government can build on the capacity and contributions of AA and NHPI communities through equitable Federal funding, grantmaking, and employment opportunities;

(v) policies and practices to improve research and equitable data disaggregation regarding AA and NHPI communities;

(vi) policies and practices to improve language access services to ensure AA and NHPI communities can access Federal programs and services; and

(vii) strategies to increase public- and private-sector collaboration, and community involvement in improving the safety and socioeconomic, health, educational, occupational, and environmental well-being of AA and NHPI communities.

(c) The Commission shall consist of 25 members appointed by the President. The Commission shall include members who:

(i) have a history of advancing equity, justice, and opportunity for AA and NHPI communities;

(ii) represent diverse sectors, including education, commerce, business, health, human services, housing, the environment, the arts, agriculture, labor and employment, transportation, justice, veterans affairs, economic and community development, immigration, law, and national security;

(iii) are from organizations or associations representing one or more of the diverse AA and NHPI communities;

(iv) have personal or professional experience addressing intersectional barriers faced by AA and NHPI communities, such as discrimination or lack of access to opportunity based on country of origin, immigration status, disability, age, or sex, including based on sexual orientation and gender identity; or

(v) have such other experience as the President deems appropriate.

(d) The Secretary of Health and Human Services shall designate an Executive Director of the Commission (Executive Director). The Executive Director shall report to the Secretary of Health and Human Services, in coordination with the other Co-Chair of the Commission and the Deputy Assistant to the President and Asian American, Native Hawaiian, and Pacific Islander Senior Liaison.

(i) The Department of Health and Human Services shall provide funding and administrative support for the Commission to the extent permitted by law and within existing appropriations, and may, as necessary and appropriate under section 1535 of title 31, United States Code, enter into one or more agreements to obtain goods or services from one or more agencies in support of the Commission.

(ii) The heads of other agencies shall assist and provide information to the Commission, consistent with applicable law, as may be necessary to carry out its functions. Each agency shall bear its own expenses of assisting the Commission.

(iii) Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the “Act”), may apply to the administration of the Commission, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary of Health and Human Services, in accordance with the guidelines issued by the Administrator of General Services.

(e) The Commission shall terminate 2 years from the date of this order, unless sooner renewed by the President.

Sec. 3. *White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders.* (a) There is established the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders (Initiative), a Federal interagency working group. The Initiative shall be led by two Co-Chairs, one of whom shall be the Secretary of Health and Human Services, the other of whom shall be the head of an agency designated by the President. The Executive Director of the Commission established in section 2(d) of this order shall also serve as the Executive Director of the Initiative, reporting to the Secretary of Health and Human Services, in coordination with the other Co-Chair of the Initiative and the Deputy Assistant to the President and Asian American, Native Hawaiian, and Pacific Islander Senior Liaison.

(b) The Initiative shall advance equity, justice, and opportunity for AA and NHPI communities by coordinating Federal interagency policymaking and program development efforts to eliminate barriers to equity, justice, and opportunity faced by AA and NHPI communities, including by advancing policies, programs, and initiatives. In developing and implementing such policies, programs, and initiatives, the Co-Chairs of the Initiative and the Executive Director shall coordinate closely with the Deputy Assistant to the President and Asian American, Native Hawaiian, and Pacific Islander Senior Liaison. To support implementation of a whole-of-government approach to equity and racial justice, as established in Executive Order 13985, the Assistant to the President for Domestic Policy and the Director of the Office of Management and Budget shall coordinate closely with the Co-Chairs of the Initiative and the Executive Director to ensure that the needs and voices of AA and NHPI communities are considered in the efforts of my Administration to advance equity and civil rights.

In particular, the Initiative shall advance efforts to:

(i) identify and eliminate any existing institutional policies or barriers within Federal programs and services that may disadvantage or burden AA and NHPI communities;

(ii) improve safety, access to justice, and violence prevention for AA and NHPI communities, including by preventing, reporting, addressing,

and better tracking acts of hate and bias (such as acts of hate and bias at the intersection of gender-based violence);

(iii) promote inclusion and belonging for AA and NHPI communities, including by expanding public education and knowledge of AA and NHPI people and their diverse cultures, languages, and histories;

(iv) expand the collection and use of disaggregated data at the Federal, State and local level on AA and NHPI communities, and facilitate improved research on policy and program outcomes for AA and NHPI communities, in coordination with the Interagency Working Group on Equitable Data established by Executive Order 13985;

(v) end language access and other barriers faced by AA and NHPI communities in accessing government benefits and services;

(vi) improve health outcomes, eliminate health disparities, and expand access to quality, affordable, and culturally competent medical and mental healthcare services for AA and NHPI individuals and communities;

(vii) end disparities in educational outcomes for AA and NHPI youth and students of all ages, and address barriers to learning, including bullying, harassment, and other forms of discrimination at school;

(viii) address the concentration of poverty facing many AA and NHPI communities, including by identifying and addressing disparities in access to safe, affordable housing and homeownership;

(ix) expand economic opportunity for AA and NHPI families, including by advancing opportunities for AA and NHPI entrepreneurs and small businesses, supporting access to jobs and workforce training for AA and NHPI communities, promoting AA and NHPI participation and success in the private sector, ensuring workplaces are free from race and national origin harassment and other forms of employment discrimination, and ensuring AA and NHPI communities can access consumer and finance protections;

(x) increase opportunities for civic engagement, such as electoral participation, within AA and NHPI communities;

(xi) improve the equitable allocation of Federal resources, including through Federal funds, contracts, grants, and awards, to AA and NHPI communities and AA and NHPI-serving organizations;

(xii) support AA and NHPI communities in responding to and recovering from national or regional crises and public health emergencies, including the COVID-19 pandemic and related economic crisis;

(xiii) secure climate and environmental justice for AA and NHPI communities who are particularly impacted by the climate crisis and are overburdened by environmental degradation; and

(xiv) identify ways to foster the recruitment, career and leadership development, retention, advancement, and participation of AA and NHPI public servants at all levels of the Federal workforce.

(c) In addition to the Co-Chairs, the Initiative shall consist of senior officials from the following agencies and offices, designated by the heads thereof:

(i) the Office of the Vice President;

(ii) the Department of State;

(iii) the Department of the Treasury;

(iv) the Department of Defense;

(v) the Department of Justice;

(vi) the Department of the Interior;

(vii) the Department of Agriculture;

(viii) the Department of Commerce;

(ix) the Department of Labor;
(x) the Department of Health and Human Services;
(xi) the Department of Housing and Urban Development;
(xii) the Department of Energy;
(xiii) the Department of Education;
(xiv) the Department of Veterans Affairs;
(xv) the Department of Homeland Security;
(xvi) the Environmental Protection Agency;
(xvii) the Office of Management and Budget;
(xviii) the Office of the United States Trade Representative;
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(xxix) the White House Office of Presidential Personnel;
(xxx) the Social Security Administration;
(xxxi) the General Services Administration;
(xxxii) the United States Agency for International Development;
(xxxiii) the Office of Personnel Management;
(xxxiv) the Equal Employment Opportunity Commission; and
(xxxv) other agencies and offices as the President may, from time to time, designate.

At the direction of the Co-Chairs, the Initiative may establish subgroups consisting exclusively of Initiative members or their designees, as appropriate. To the extent permitted by law, members of the Initiative, or their designees, shall devote the time, skill, and resources necessary and adequate to carry out the functions of the Initiative. Each agency and office shall bear its own expenses for participating in the Initiative.

(d) The Department of Health and Human Services shall provide funding and administrative support for the Initiative to the extent permitted by law and within existing appropriations, and may, as necessary and appropriate under section 1535 of title 31, United States Code, enter into one or more agreements to obtain goods or services from one or more agencies in support of the Initiative.

(e) Each agency in the Initiative shall prepare a plan (agency plan) outlining measurable actions the agency is considering or will take to advance equity, justice, and opportunity for AA and NHPI communities, including plans to implement the policy goals outlined in subsection (b) of this section. Agencies shall report their plans to the Co-Chairs of the Initiative and the Executive Director on a frequency established by the Executive Director. In developing such plans, officials participating in the Initiative shall seek opportunities to engage with employee affinity groups or Federal networks representing AA and NHPI public servants.

(i) Each such agency shall assess and report to the Co-Chairs of the Initiative and the Executive Director on its progress in implementing its

respective agency plan on a regular basis as established by the Co-Chairs of the Initiative and the Executive Director.

(ii) On an annual basis, the Co-Chairs of the Initiative shall develop and submit to the President a report outlining a Government-wide inter-agency plan to advance equity, justice, and opportunity for AA and NHPI communities, and progress made in implementing the policy goals outlined in subsection (b) of this section.

(f) The Initiative shall coordinate with and support the existing regional network of Federal officials who facilitate improved communication, engagement, and coordination between the Federal Government and AA and NHPI communities throughout the United States (Regional Network). Agencies identified as participants in the Initiative shall seek opportunities, consistent with applicable law and available resources, to provide support and resources to the Regional Network through each agency's respective regional offices. The Executive Director shall coordinate the efforts of the Regional Network, and may establish regular reporting and information-sharing activities between the Regional Network and the Initiative.

Sec. 4. General Provisions. (a) This order supersedes Executive Order 13125 of June 7, 1999 (Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs); Executive Order 13339 of May 13, 2004 (Increasing Economic Opportunity and Business Participation of Asian Americans and Pacific Islanders); Executive Order 13515 of October 14, 2009 (Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs); and Executive Order 13872 of May 13, 2019 (Economic Empowerment of Asian Americans and Pacific Islanders).

(b) Nothing in this order shall be construed to impair or otherwise affect:

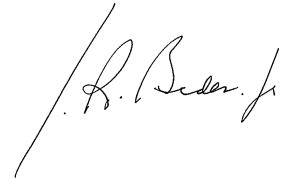
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, references to executive departments and agencies shall not include the agencies described in section 3502(5) of title 44, United States Code. Independent regulatory agencies are strongly encouraged to comply with the provisions of this order.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

THE WHITE HOUSE,
May 28, 2021.

Rules and Regulations

Federal Register

Vol. 86, No. 105

Thursday, June 3, 2021

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0262]

Evidence-Building and Evaluation Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Evidence-Building and Evaluation Policy Statement that describes the general standards that guide the NRC’s “evidence-building” activities, consistent with the Foundations for Evidence-Based Policymaking Act of 2018. The policy statement is intended to provide agency personnel and stakeholders with a clear understanding of the expectations related to the NRC’s standards for evidence-building activities, which includes analyses, research, assessments, and evaluations performed by the agency for programmatic, operational, regulatory, and policy decision making. These standards include rigor, relevance and utility, transparency, collaboration, independence and objectivity, and ethics.

DATES: This policy statement is effective on June 3, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0262 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0262. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to pdr.resource@nrc.gov. The final Evidence-Building and Evaluation Policy Statement, in its entirety, is in the attachment to this document.

- *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at PDR.Resource@nrc.gov or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Matthew Meyer, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6198, email: Matthew.Meyer@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Foundations for Evidence-Based Policymaking Act of 2018 (“Evidence Act”) became law on January 14, 2019 (Pub. L. 115–435), to enhance evidence-building activities, make data more accessible, and strengthen privacy protections.¹ “[T]he Evidence Act creates a new paradigm by calling on agencies to significantly rethink how they currently plan and organize evidence-building, data management, and data access functions to ensure an integrated and direct connection to data and evidence needs.”² The Evidence Act requires each agency to name an Evaluation Officer. At the NRC, the Director of the Office of Nuclear Regulatory Research holds this position and must “establish and implement an agency evaluation policy” to fulfill a

primary function of this position.³ The agency evaluation policy “should guide the agency’s activities throughout the evaluation lifecycle.”⁴ The Office of Management and Budget (OMB) has provided guidance on establishing an agency evaluation policy based on “approaches that Federal agencies have found useful.”⁵ This guidance includes “[e]nsuring that the agency evaluation policy incorporates the evaluation standards” recommended by OMB.⁶ OMB developed these evaluation standards through an interagency council that “reviewed an extensive list of source documents to identify widely accepted standards for evaluation.”⁷ The interagency council identified the following evaluation standards: relevance and utility, rigor, independence and objectivity, transparency, and ethics.⁸

The Evidence Act focuses on the importance of sound evidence-building, which includes evaluation, to make informed evidence-based decisions. The evaluation standards developed by the interagency council, including an additional standard developed by the NRC (collaboration), are applicable to all of the NRC’s evidence-building activities.

Historically, the NRC has relied on high-quality evidence obtained from external entities and through its own capacity. In recent years the agency has begun evidence-building activities to support licensing new or novel nuclear technologies, including advanced, non-light water reactor designs; accident tolerant nuclear fuel; and digital instrumentation and controls.⁹ Additionally, the NRC has increasingly sought to rely on evidence-based metrics to improve internal agency performance including budgeting and financial management.¹⁰ The NRC has developed an evidence-building and evaluation policy statement to enhance its existing evidence-building activities

³ 5 U.S.C. 313(d)(3).

⁴ Office of Management and Budget, M–20–12, “Phase 4 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Program Evaluation Standards and Practices,” Appendix C (March 10, 2020) (M–20–12).

⁵ M–20–12, Appendix C.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.* at 3–5.

⁹ Nuclear Regulatory Commission, NUREG–1350, 2019–2020 Information Digest, at 4 (August 2019).

¹⁰ *Id.* at 7.

¹ Public Law 115–435, 132 Stat 5529 (2019).

² Office of Management and Budget, M–19–23, “Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance,” 2 (July 10, 2019).

through the activities directed in the Evidence Act. The NRC envisions that this approach will strengthen the agency's oversight of existing uses of nuclear technology, enhance the agency's readiness to license and regulate new and novel nuclear technologies, and further the NRC's ongoing efforts to improve its internal processes.

II. Public Comments

The NRC published the Proposed Evaluation Policy Statement in the **Federal Register** for a 30-day comment period on December 8, 2020 (85 FR 79042). The NRC received a total of nine public comments.

These comments were generally supportive of the policy statement and the NRC's commitment to ensuring that its regulatory decisions are supported with evidence and sound technical bases. However, commenters also requested that the NRC clarify the applicability of the policy statement to evidence-building activities other than "evaluation" as that term is defined in the Evidence Act (5 U.S.C. 311(3)), such as licensing, inspection, rulemaking, generic communication, and other regulatory activities (including backfitting analyses, and environmental reviews performed under the National Environmental Policy Act). The NRC agrees and has revised the proposed policy statement to clarify that the general standards articulated in the policy statement apply to all agency "evidence-building" activities. This includes not only "evaluations" conducted to review the effectiveness and efficiency of NRC programs, policies, and organizations, but other types of evidence-building such as regulatory analyses, compliance analyses, and performance assessments. A complete table of the comments received on the proposed policy statement and NRC staff responses to those comments is available in ADAMS under Accession No. ML21070A196.

III. Procedural Requirements

Congressional Review Act

This policy statement is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Paperwork Reduction Act

This Policy Statement does not contain new or amended information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The text of the Evidence-Building and Evaluation Policy statement is attached.

Dated: May 28, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Acting Secretary of the Commission.

Note: The following attachment will not appear in the Code of Federal Regulations:

Attachment—Evidence-Building and Evaluation Policy Statement

The purpose of this Evidence-Building and Evaluation Policy Statement is to describe the general standards that govern the NRC's planning and conduct of evidence-building. Evidence-building includes activities such as analysis, assessment, research, and program evaluation (evaluation).¹¹ The Foundations for Evidence-Based Policymaking Act of 2018 requires an agency evaluation policy to guide the agency's evaluation activities throughout the evaluation lifecycle. The NRC is committed to using evidence and scientific methods when making evidence-based decisions.

The NRC is an evidence-based organization with a culture of continuous learning and improvement. The NRC's evidence-building activities use objective technical analyses and assessments to document decisions with explicitly stated rationale. Furthermore, the NRC commits to implementing the standards of rigor; relevance and utility; transparency; collaboration; independence and objectivity; and ethics in the conduct of its evidence-building activities. This policy statement describes these general standards.

The Commission, as a collegial body, formulates policies, develops regulations governing nuclear reactor and nuclear material safety, issues orders to licensees, and adjudicates legal matters. The collegial decision-making process results in actions reflecting the collective judgment of a group aided by professional and administrative staff and advisory committees, such as the Advisory Committee on Reactor Safeguards. Strict requirements govern the admission and consideration of "evidence" when the Commission acts in its adjudicatory capacity. This policy applies to the NRC's non-adjudicatory functions.¹²

¹¹ The Evidence Act defines "evaluation" as "an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency" (5 U.S.C. 311(3)). "Evaluation can look beyond the program, policy, or organizational level to include assessment of projects or interventions within a program" (OMB M–20–12).

¹² The NRC's rules of practice and procedure in 10 CFR part 2 govern the Commission's adjudicatory process.

The NRC's Principles of Good Regulation, which include independence, efficiency, clarity, reliability, and openness, have guided the agency's regulatory activities and decisions using evidence and scientific methods. The principles focus on meeting the agency's important safety and security mission while appropriately considering the interests of stakeholders, including licensees; State, local, and Tribal governments; nongovernmental organizations; and the public. The agency's openness principle explicitly recognizes that the public must be informed about and have an opportunity to participate in the regulatory process.

Evidence-building is used to inform agency activities and actions, such as licensing, oversight, budgeting, program improvement, accountability, management, rulemaking, guidance development, and policy development. The emphasis on evidence is meant to support innovation, improvement, and learning. Examples of how the NRC carries out evidence-building include (1) identifying, evaluating, and resolving safety issues; (2) ensuring that an independent technical basis exists to review licensee submittals; (3) evaluating operating experience and results of risk assessments for safety implications; (4) supporting the development and use of risk-informed regulatory approaches; (5) conducting research with scientific integrity; and (6) ensuring that licensing and oversight findings are supported by evidence.

Evidence-Building Standards

The NRC uses the following standards when conducting evidence-building activities.

1. **Rigor**—The NRC is committed to using rigorous evidence-building methods by qualified staff with relevant education, skills, and experience to ensure findings are appropriate and feasible within statutory, budgetary, and other constraints.

Rigorous evidence-building requires inferences about cause and effect to be well founded (internal validity); clarity about the populations, settings, or circumstances to which results can be generalized (external validity); and the use of measures that accurately capture the intended information (measurement reliability and validity). The NRC's evidence-building activities are conducted by qualified staff with relevant education, skills, and experience for the methods undertaken. The NRC's evidence-building activities use appropriate designs and methods that adhere to widely accepted scientific principles to answer key questions

while balancing goals, scale, timeline, feasibility, and available resources. Additionally, the NRC's Information Quality Program¹³ ensures that all information relied on by the NRC is subject to rigorous quality standards.

2. **Relevance and Utility**—The NRC ensures that evidence-building activities are relevant and provide useful findings to inform agency activities, actions, and stakeholders.

The NRC performs evidence-building activities to examine questions of importance and serve the information needs of stakeholders. The NRC presents findings that are clear, concise, actionable, and available within a timeline that is appropriate to the questions under consideration. The NRC's evidence-building priorities consider legislative requirements; the NRC's strategic goals, objectives, and strategies; and the interests and views of stakeholders.

3. **Transparency**—The NRC is committed to conducting evidence-building activities in an open and transparent manner, which keeps stakeholders informed.

The NRC's evidence-building activities are conducted openly and the public must be informed about and have an opportunity to participate in the NRC's regulatory process. As a regulator, the NRC listens to, respects, and analyzes different views from its stakeholders. The NRC ensures open channels of communication are maintained between internal and external stakeholders, including Congress, other government agencies, licensees, nongovernmental organizations, individual members of the public, and international and domestic nuclear communities. The NRC takes reasonable measures to make all information, including information about the NRC's evidence-building activities (including their purpose, objectives, design, findings, and methods), broadly available and accessible. The NRC releases public evidence-building findings in a timely manner and archives the data for secondary use by stakeholders, as appropriate.

4. **Collaboration**—The NRC is committed to working collaboratively when conducting evidence-building activities and draws on the expertise of subject matter experts to ensure diversity in perspectives.

The NRC fosters a collaborative work environment that encourages diverse views, alternative approaches, critical

thinking, creative problem solving, unbiased findings, and honest feedback. The NRC emphasizes trust, respect, and open communication to promote a positive work environment that maximizes the potential of all individuals, which improves evidence building and evaluation activities. A collaborative environment leverages expertise from subject matter experts and enables peer reviews to ensure rigorous evidence-building. The NRC conducts research and collaborates with organizations that develop consensus standards to improve data and methods used in risk analysis. The NRC collaborates with national laboratories, Agreement States, other Federal agencies, universities, and international organizations.

5. **Independence and Objectivity**—As an independent Federal agency, the NRC is committed to conducting evidence-building activities that are independent and based on objective assessments and analysis of all relevant information.

The NRC was established as an independent agency to regulate civilian uses of radioactive material. The NRC's evidence-building activities are independent and objective to maintain credibility and integrity. The implementation of evidence-building activities, including the selection and assignment of the staff, should be appropriately insulated from factors that may affect objectivity, impartiality, and professional judgment. Evidence-building is inclusive and the NRC seeks input from a broad range of stakeholders in setting priorities, identifying questions, and assessing the implications of findings. The NRC strives for objectivity in the planning and conduct of evidence-building activities.

6. **Ethics**—The NRC is committed to conducting evidence-building activities that adhere to Government-wide ethics standards to protect the public and maintain public trust.

The NRC's evidence-building activities comply with relevant legal requirements and are conducted in a manner that is free from conflicts of interest, undue influence, the appearance of bias, and safeguards the dignity, rights, safety, and privacy of participants. The NRC complies with Governmentwide ethics standards contained in Federal statutes and regulations, which are intended to ensure that every citizen can have confidence in the integrity of the Federal Government.

[FR Doc. 2021-11637 Filed 6-2-21; 8:45 am]

BILLING CODE 7590-01-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2020-0023]

RIN 3170-AA83

Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z); Correcting Amendments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretations; correcting amendments.

SUMMARY: This document corrects the Official Interpretations (Commentary) to Regulation Z. Specifically, the Bureau of Consumer Financial Protection (Bureau) is adding a comment to its Commentary that it included in a recent higher-priced mortgage loan escrow exemption final rule but that was not incorporated into the Code of Federal Regulations (CFR) due to an omission in an amendatory instruction. The Bureau is also revising a comment that it included in the same recent final rule, but that inadvertently did not appear in a subsequently effective final rule.

DATES: The corrections are effective on June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Joseph Devlin, Senior Counsel, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau is issuing this document to correct two comments in the Bureau's Commentary to Regulation Z, which implements the Truth in Lending Act.¹ In the final rule titled "Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z)" (Escrow Exemption Final Rule), published in the **Federal Register** on February 17, 2021 (86 FR 9840), the Bureau included *Paragraph 35(b)(2)(vi)(B)* in its commentary text for the rule, but omitted the related amendatory instruction to add that specific paragraph to the Commentary. This omission was a scrivener's error. The Bureau is therefore issuing this correction to ensure that *Paragraph 35(b)(2)(vi)(B)* is incorporated into the Commentary published in the CFR.

Additionally, the Bureau is amending the CFR to revise a comment that the Bureau amended in the Escrow Exemption Rule but that inadvertently

¹³ Management Directive 3.17, "Information Quality Program," ensures that peer review is conducted on all influential scientific information and highly influential scientific assessment that the agency intends to disseminate.

¹ 15 U.S.C. 1601 *et seq.*

did not appear in a subsequently effective final rule. In the Escrow Exemption Rule, the Bureau amended preexisting *Paragraph 43(f)(1)(vi)*. This amended comment was incorporated into the CFR on the February 17, 2021 effective date of the Escrow Exemption Rule; however, an unamended version of the preexisting comment was included in the Bureau's final rule titled "Qualified Mortgage Definition Under the Truth in Lending Act (General QM Loan Definition)" (General QM Rule) (85 FR 86308). The General QM Rule was published in the **Federal Register** on December 29, 2020, but it did not take effect until March 1, 2021.² The unamended version of the preexisting comment therefore inadvertently replaced the amended version when the General QM Rule was incorporated into the CFR. The Bureau is therefore issuing this correction to ensure that the CFR contains the intended version of this comment that the Bureau amended in the Escrow Exemption Final Rule.

Regulatory Requirements: The Bureau finds that public comment on this correction is unnecessary because the Bureau is correcting inadvertent, technical errors, about which there is minimal, if any, basis for substantive disagreement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.³ The Bureau has determined that these corrections do 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 OMB approval under the Paperwork Reduction Act.⁴

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 in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

² When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions and related text.

³ 5 U.S.C. 603(a) and 604(a).

⁴ 44 U.S.C. 3501 *et seq.*

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. Amend supplement I to part 1026—Official Interpretations by:

■ a. Adding *Paragraph 35(b)(2)(vi)(B)*; and

■ b. Revising *Paragraph 43(f)(1)(vi)*.

The addition and revision read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow Accounts

* * * * *

35(b)(2) Exemptions

* * * * *

Paragraph 35(b)(2)(vi)(B).

1. The transaction threshold in § 1026.35(b)(2)(vi)(B) differs from the transaction threshold in § 1026.35(b)(2)(iii)(B) in two ways. First, the threshold in § 1026.35(b)(2)(vi)(B) is 1,000 loans secured by first liens on a principal dwelling, while the threshold in § 1026.35(b)(2)(iii)(B) is 2,000 loans secured by first liens on a dwelling. Second, all loans made by the creditor and its affiliates secured by a first lien on a principal dwelling count toward the 1,000-loan threshold in § 1026.35(b)(2)(vi)(B), whether or not such loans are held in portfolio. By contrast, under § 1026.35(b)(2)(iii)(B), only loans secured by first liens on a dwelling that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, are counted toward the 2,000-loan threshold.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(f) Balloon-Payment Qualified Mortgages Made by Certain Creditors

43(f)(1) Exemption

* * * * *

Paragraph 43(f)(1)(vi).

1. **Creditor qualifications.** Under § 1026.43(f)(1)(vi), to make a qualified mortgage that provides for a balloon payment, the creditor must satisfy three

criteria that are also required under § 1026.35(b)(2)(iii)(A), (B) and (C), which require:

i. During the preceding calendar year or during either of the two preceding calendar years if the application for the transaction was received before April 1 of the current calendar year, the creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), on a property that is located in an area that is designated either "rural" or "underserved," as defined in § 1026.35(b)(2)(iv), to satisfy the requirement of § 1026.35(b)(2)(iii)(A) (the rural-or-underserved test). Pursuant to § 1026.35(b)(2)(iv), an area is considered to be rural if it is: A county that is neither in a metropolitan statistical area, nor a micropolitan statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. An area is considered to be underserved during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times.

A. The Bureau determines annually which counties in the United States are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(1) or § 1026.35(b)(2)(iv)(B) and publishes on its public website lists of those counties to assist creditors in determining whether they meet the criterion at § 1026.35(b)(2)(iii)(A). Creditors may also use an automated tool provided on the Bureau's public website to determine whether specific properties are located in areas that qualify as "rural" or "underserved" according to the definitions in § 1026.35(b)(2)(iv) for a particular calendar year. In addition, the U.S. Census Bureau may also provide on its public website an automated address search tool that specifically indicates if a property address is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is located in an area that qualifies as "rural" according to the definitions in § 1026.35(b)(2)(iv) if the search results provided for the property by any such automated address search tool available on the Census Bureau's public website

do not identify the property as being in an urban area.

B. For example, if a creditor extended during 2017 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv), the creditor meets this element of the exception for any transaction consummated during 2018.

C. Alternatively, if the creditor did not extend in 2017 a transaction that meets the definition of rural or underserved test under § 1026.35(b)(2)(iv), the creditor satisfies this criterion for any transaction consummated during 2018 for which it received the application before April 1, 2018, if it extended during 2016 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv).

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

iii. As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that do not exceed the applicable asset threshold established by the Bureau, to satisfy the requirement of § 1026.35(b)(2)(iii)(C). The Bureau publishes notice of the asset threshold each year by amending comment 35(b)(2)(iii)-1.iii.

* * * * *

Dated: May 26, 2021.

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2021-11571 Filed 6-2-21; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2021-0483; Airspace Docket No. 19-ANM-84]

RIN 2120-AA66

Amendment of Restricted Area R-6413; Green River, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action changes the using agency of restricted area R-6413, Green River, UT. The FAA is taking this administrative action in response to the requested change from the United States Air Force to the United States Army as the using agency. There are no changes to the boundaries; designated altitudes; or activities conducted within the affected restricted area.

DATES: Effective date 0901 UTC, August 12, 2021.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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 administratively amends the using agency for restricted area R-6413, Green River, UT.

History

The FAA evaluates utilization of special use airspace annually. For the past several years the utilization of restricted area R-6413 has declined steadily. The FAA in coordination with the United States Air Force and the United States Army, has concluded the restricted area is still needed, and the

using agency should be transferred. Therefore, the using agency has changed from Deputy for Air Force, White Sands Missile Range, NM 88002 to Commanding General, White Sands Missile Range, NM, due to emerging Army requirements and their planned use of the restricted area R-6413.

The Rule

This action amends 14 CFR part 73 by revising the using agency listed for restricted area R-6413, Green River, UT. The using agency for R-6413 is changed from "Deputy for Air Force, White Sands Missile Range, NM 88002" to "Commanding General, White Sands Missile Range, NM". These are administrative changes and do not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of changing the using agency from the US Air Force to the US Army for restricted area R-6413; Green River, UT, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5.d, "Modification of the technical description of special use airspace (SUA) that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors)." This airspace action is an administrative

change which changes the user of restricted area R-6413; Green River, UT. It does not alter the dimensions, altitudes, time of designation, or use of the airspace. Therefore, this airspace action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

- 1. The authority citation for part 73 is amended 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.

§ 73.64 Utah [Amended]

- 2. § 73.64 is amended as follows:

* * * * *

R-6413 Green River, UT [Amended]

By removing the “Using agency. Deputy for Air Force, White Sands Missile Range, NM 88002” and adding in their place “Using agency. Commanding General, White Sands Missile Range, NM.”

* * * * *

Issued in Washington, DC, on May 27, 2021.

George Gonzalez,

Acting Manager, Rules and Regulation Group.

[FR Doc. 2021–11629 Filed 6–2–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31371; Amdt. No. 3958]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 3, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 2021.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division,

Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to

SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on May 14, 2021.

Wade Terrell,

Aviation Safety, Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Title 14 CFR

part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
17-Jun-21	AZ	Phoenix	Phoenix—Mesa Gateway.	1/4059	2/17/21	This NOTAM, published in Docket No. 31369, Amdt No. 3956, TL 21–13, (86 FR 26382; May 14, 2021) is hereby rescinded in its entirety.
17-Jun-21	AZ	Phoenix	Phoenix—Mesa Gateway.	1/4061	2/17/21	This NOTAM, published in Docket No. 31369, Amdt No. 3956, TL 21–13, (86 FR 26382; May 14, 2021) is hereby rescinded in its entirety.
17-Jun-21	AZ	Phoenix	Phoenix—Mesa Gateway.	1/4062	2/17/21	This NOTAM, published in Docket No. 31369, Amdt No. 3956, TL 21–13, (86 FR 26382; May 14, 2021) is hereby rescinded in its entirety.
17-Jun-21	CA	Jackson	Westover Fld Amador County.	1/8591	2/9/21	This NOTAM, published in Docket No. 31369, Amdt No. 3956, TL 21–13, (86 FR 26382; May 14, 2021) is hereby rescinded in its entirety.
17-Jun-21	MN	Hibbing	Range Rgnl	1/9810	2/22/21	This NOTAM, published in Docket No. 31369, Amdt No. 3956, TL 21–13, (86 FR 26382; May 14, 2021) is hereby rescinded in its entirety.
17-Jun-21	MN	Hibbing	Range Rgnl	1/0137	5/4/21	ILS OR LOC RWY 31, Amdt 13.
17-Jun-21	WV	Petersburg	Grant County	1/1961	4/30/21	LDA/DME–B, Amdt 3B.
17-Jun-21	WV	Petersburg	Grant County	1/1962	4/30/21	VOR/DME–A, Amdt 2B.
17-Jun-21	NM	Alamogordo	Alamogordo—White Sands Rgnl.	1/4316	4/29/21	RNAV (GPS) RWY 4, Amdt 2.

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31370; Amdt. No. 3957]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 3, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 2021.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, 8260-15B, when required by an entry on 8260-15A, and 8260-15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff

Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on May 14, 2021.

Wade Terrell,

Aviation Safety Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CRF part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 17 June 2021

Eagle, AK, PAEG, RNAV (GPS)–A, Orig-A
Juneau, AK, PAJN, LDA X RWY 8, Amdt 12C
King Salmon, AK, PAKN, VOR Y OR TACAN
Y RWY 30, Amdt 12
St Mary's, AK, St Mary's, Takeoff Minimums
and Obstacle DP, Amdt 2
Venetie, AK, PAVE, RNAV (GPS) RWY 4,
Amdt 1
Venetie, AK, PAVE, RNAV (GPS) RWY 22,
Amdt 1
White Mountain, AK, PAWM, RNAV (GPS)
RWY 15, Amdt 1
White Mountain, AK, PAWM, RNAV (GPS)
RWY 33, Amdt 1
Lakeland, FL, KLAL, ILS OR LOC RWY 9,
ILS RWY 9 (SA CAT I), ILS RWY 9 (SA
CAT II), Amdt 1A
Lakeland, FL, KLAL, RNAV (GPS) RWY 5,
Orig-G
Lakeland, FL, KLAL, RNAV (GPS) RWY 9,
Amdt 2E
Lakeland, FL, KLAL, RNAV (GPS) RWY 23,
Orig-E
Lakeland, FL, KLAL, RNAV (GPS) RWY 27,
Amdt 2D
Venice, FL, KVNC, RNAV (GPS) RWY 13,
Amdt 2
Venice, FL, KVNC, RNAV (GPS) RWY 31,
Amdt 2
Lawrenceville, GA, KLZU, ILS OR LOC RWY
25, Amdt 3
Lawrenceville, GA, KLZU, RNAV (GPS) RWY
7, Amdt 1
Lawrenceville, GA, KLZU, RNAV (GPS) RWY
25, Amdt 1
Guam, GU, Guam Intl, Takeoff Minimums
and Obstacle DP, Amdt 1A
Perry, IA, KPRO, RNAV (GPS) RWY 32,
Amdt 1B
Gooding, ID, Gooding Muni, RNAV (GPS)
RWY 7, Amdt 1
Gooding, ID, Gooding Muni, RNAV (GPS)
RWY 25, Amdt 1

Chicago/Waukegan, IL, KUGN, RNAV (GPS)
RWY 5, Amdt 1
Gary, IN, KGYG, ILS OR LOC RWY 30, Amdt
7
Gary, IN, KGYG, RNAV (GPS) Y RWY 12,
Amdt 3
Gary, IN, KGYG, RNAV (GPS) Y RWY 30,
Amdt 2
Gary, IN, KGYG, RNAV (RNP) Z RWY 12,
Amdt 2
Gary, IN, KGYG, RNAV (RNP) Z RWY 30,
Amdt 2
Elizabethtown, KY, KEKX, ILS OR LOC RWY
5, Orig
Elizabethtown, KY, KEKX, LOC RWY 5, Orig,
CANCELLED
Elizabethtown, KY, KEKX, RNAV (GPS) RWY
5, Amdt 1
Elizabethtown, KY, KEKX, RNAV (GPS) RWY
23, Orig-B
Westfield/Springfield, MA, KBAF, ILS OR
LOC RWY 20, Amdt 8C
Augusta, ME, Augusta State, RNAV (GPS)
RWY 8, Amdt 2
Eliot, ME, 3B4, RNAV (GPS) RWY 30, Amdt
1
Eliot, ME, 3B4, VOR–A, Amdt 2,
CANCELLED
International Falls, MN, KINL, COPTER ILS
OR LOC RWY 31, Amdt 2
International Falls, MN, KINL, ILS OR LOC
RWY 13, Amdt 2
International Falls, MN, KINL, ILS OR LOC
RWY 31, Amdt 11
International Falls, MN, KINL, RNAV (GPS)
RWY 14, Orig
International Falls, MN, KINL, RNAV (GPS)
RWY 32, Orig
International Falls, MN, Falls Intl–Einarson
Field, Takeoff Minimums and Obstacle DP,
Amdt 4
Minneapolis, MN, KMSP, LOC RWY 22,
Amdt 2
Ennis, MT, KEKS, RNAV (GPS) RWY 16,
Amdt 2
Ennis, MT, KEKS, RNAV (GPS) RWY 34,
Amdt 1
Lebanon, NH, KLEB, ILS OR LOC RWY 18,
Amdt 7
Lebanon, NH, KLEB, VOR RWY 7, Amdt 1E,
CANCELLED
Lebanon, NH, KLEB, VOR RWY 25, Amdt 1C,
CANCELLED
Massena, NY, KMSS, RNAV (GPS) RWY 9,
Amdt 2
Massena, NY, KMSS, RNAV (GPS) RWY 23,
Amdt 2
Massena, NY, KMSS, RNAV (GPS) RWY 27,
Amdt 2
New York, NY, KJFK, RNAV (GPS) Z RWY
13L, Orig-B
Prineville, OR, S39, RNAV (GPS) RWY 11,
Amdt 3
Prineville, OR, S39, RNAV (GPS) RWY 29,
Amdt 3
Prineville, OR, Prineville, Takeoff Minimums
and Obstacle DP, Amdt 2B
Yankton, SD, KYKN, ILS OR LOC RWY 31,
Amdt 5
Yankton, SD, KYKN, RNAV (GPS) RWY 13,
Amdt 1
Yankton, SD, KYKN, RNAV (GPS) RWY 31,
Amdt 1
Yankton, SD, Chan Gurney Muni, Takeoff
Minimums and Obstacle DP, Amdt 3
Yankton, SD, KYKN, VOR RWY 13, Amdt 4

Grand Prairie, TX, KGPM, RNAV (GPS) RWY
36, Orig-B
Grand Prairie, TX, Grand Prairie Muni,
Takeoff Minimums and Obstacle DP, Amdt
5A
Grand Prairie, TX, KGPM, VOR RWY 36,
Amdt 1B
Springfield, VT, KVSF, LOC RWY 5, Amdt 5
Petersburg, WV, W99, COPTER RNAV (GPS)
X RWY 31, Orig-A
Petersburg, WV, W99, RNAV (GPS) Y RWY
31, Orig-B
Petersburg, WV, W99, RNAV (GPS) Z RWY
31, Orig-B

Rescinded: On April 19, 2021 (86 FR
20276), the FAA published an Amendment
in Docket No. 31364 Amdt No. 3951, to Part
97 of the Federal Aviation Regulations under
section 97.37. The following entry for
Fairbanks, AK, effective June 17, 2021, is
hereby rescinded in its entirety:

Fairbanks, AK, Fairbanks Intl, Takeoff
Minimums and Obstacle DP, Amdt 6B

[FR Doc. 2021–11576 Filed 6–2–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0035]

RIN 1625–AA08

Special Local Regulation; East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending an existing special local regulation for certain waters of the East Passage, Narragansett Bay, RI. This action is necessary to provide for the safety of life on these navigable waters near East Passage, Narragansett Bay, RI, during a sail boat race. This regulation would prohibit persons and vessels from entering the special local regulation unless authorized by the Captain of the Port Sector Southeastern New England or a designated representative.

DATES: This rule is effective July 6, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this amended regulation, call or email LT Benjamin Aaronson, Waterways Management Division, U.S. Coast Guard; telephone (401) 435–2355, email *D01-SMB-SectorSENE-Waterways@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector
Southeastern New England

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

II. Background Information and Regulatory History

The Captain of the Port Sector Southeast New England (COTP) is amending an existing special local regulation found in 33 CFR 100.119 for certain waters of the East Passage, Narragansett Bay, RI. This action is necessary to provide for the safety of life on these navigable waters near East Passage, Narragansett Bay, RI, during a sail boat race requiring a limited access area restricting vessel traffic for safety purposes.

On March 9, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; East Passage, Narragansett Bay, RI (85 FR 13595). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended April 8, 2020, two comments were received.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. Based on the nature of this sailboat race, large numbers of participants and spectators, and event locations, the COTP has determined that the potential hazards associated with the event listed in this rule could pose a risk to participants or waterways users if the normal vessel traffic were to interfere with the events. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or mariners traversing through the regulated area. This purpose of this rule is to ensure the safety of all waterway users, including event participants, spectators, and vessels during this scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on the NPRM published March 9, 2020 that were not relevant to this rulemaking. Both of these comments were submitted anonymously and unrelated to this rulemaking. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The last longitudinal coordinate of 072°22'83" W was changed to 071°22'83" W in the first regulated area due to a typing error.

This rule amends a special local regulation found in 33 CFR 100.119 currently reads as follows:

Regulated area. The regulated area includes all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

Latitude	Longitude
41°27'51" N	071°22'14" W
41°27'24" N	071°21'57" W
41°27'09" N	071°22'39" W
41°27'36" N	072°22'55" W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	Longitude
41°26'04" N	071°22'16" W
41°25'36" N	071°21'58" W
41°25'45" N	071°22'40" W
41°25'49" N	071°22'56" W

The amended regulation would be to expand the size of the first regulated area and to adjust the latitude and longitude of the second regulated area to encompass a new potential starting line for the race to accommodate for ideal weather parameters. The special local regulation would cover all navigable waters from an area just south of Rose Island expanding just past Castle Hill, RI, and also an area near Brenton Point. The amended location of the special local regulation is as follows:

Latitude	Longitude
41°29'13" N	071°20'07" W
41°29'41" N	071°20'87" W
41°27'27" N	071°22'00" W
41°27'45" N	071°22'83" W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	Longitude
41°26'06" N	071°22'27" W
41°25'60" N	071°21'97" W
41°25'36" N	071°22'65" W
41°25'82" N	071°22'93" W

The starting line will take place within one of the amended regulated areas and will be decided prior to the race pending current weather conditions. The starting line box will be the restricted part of the waterway within the regulated area and that exact location will be broadcasted prior to the race start. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the

scheduled sail boat race. No vessel or person is permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or by phone at 508-457-3211. Persons and vessels permitted to enter this special local regulation must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule. The regulatory text we are amending appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and time-of-day of the special local regulation. We expect the adverse economic impact to this area to be minimal. Although this regulation may have adverse impact on the impact, the potential impact will be minimized for the following reasons: The special local regulation will be in effect for a maximum of 6 hours during the day of the event; vessels will only be restricted from the area in the East Passage of the Narragansett Bay during those limited periods when the races are actually on going; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by this special local regulation. Moreover, the Coast Guard

would issue a Broadcast Notice to Mariners (BNMs) via VHF–FM marine channel 16 about the area, and the rule would allow vessels to seek permission to enter the area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This amended rule involves a special local regulation lasting approximately 6 hours that would prohibit entry within the regulated area. Such actions are categorically excluded from further review under paragraph L 61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 46 U.S.C. 70041.

■ 2. Revise § 100.119 to read as follows:

§ 100.119 Special Local Regulation; East Passage, Narragansett Bay, RI.

(a) *Regulated area.* (1) The regulated area includes all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

Latitude	Longitude
41°29′13″ N	071°20′07″ W
41°29′41″ N	071°20′87″ W
41°27′27″ N	071°22′00″ W
41°27′45″ N	071°22′83″ W

(2) In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	Longitude
41°26′06″ N	071°22′27″ W
41°25′60″ N	071°21′97″ W
41°25′36″ N	071°22′65″ W
41°25′82″ N	071°22′93″ W

(b) *Effective period.* This special local regulation is in effect biennially on a date and times published in the Local Notice to Mariners.

(c) *Special local regulations.* (1) Entry into this area is prohibited unless authorized by the Captain of the Port Sector Southeastern New England (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Southeastern New England.

(2) Persons or vessels seeking to enter the regulated area must request permission from the COTP or a

designated representative on VHF-FM channel 16 or by telephone at 508-457-3211.

(3) Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through local notice to mariners and Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: April 14, 2021.

C.J. Glander,

Captain, U.S. Coast Guard, Captain of the Port Sector Southeastern New England.

[FR Doc. 2021-11689 Filed 6-2-21; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2019-0626; EPA-HQ-OPP-2020-0082; and EPA-HQ-OPP-2020-0345; FRL-10022-28]

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of difenoconazole in or on olive; olive, with pit; pepper, black; and persimmon, Japanese. Syngenta Crop Protection, LLC, and the American Spice Trade Association, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 3, 2021. Objections and requests for hearings must be received on or before August 2, 2021, 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 dockets for these actions, identified by docket identification (ID) numbers EPA-HQ-OPP-2019-0626, EPA-HQ-OPP-2020-0082, and EPA-HQ-OPP-2020-0345, are available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room

is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

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: RDNotices@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 Government Publishing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), 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-2019-0626, EPA-HQ-OPP-2020-0082, and/or EPA-HQ-OPP-2020-0345 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 August 2, 2021. 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-2019-0626, EPA-HQ-OPP-2020-0082, and/or EPA-HQ-OPP-2020-0345, 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 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>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 10, 2020 (85 FR 7499) (FRL-10004-54) and May 29, 2020 (85 FR 32338) (FRL-10009-84), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 9E8793 and PP 9E8814) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419-8300. In the **Federal Register** of September 10, 2020 (85 FR 55810) (FRL-10013-78), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8834) by the American Spice Trade Association, Inc., 1101 17th St. NW, Suite 700, Washington, DC 20036. The petitions requested that 40 CFR 180.475 be

amended by establishing tolerances for residues of the fungicide difenoconazole, in or on persimmon, Japanese at 0.7 parts per million (ppm) (9E8793); olive (including oil) at 2 ppm (9E8814); and pepper, black at 0.1 ppm (0E8834). Those documents referenced summaries of the petitions prepared by Syngenta Crop Protection, LLC, and the American Spice Trade Association, Inc., the petitioners, which are available in the dockets for these actions, EPA-HQ-OPP-2019-0626, EPA-HQ-OPP-2020-0082, and EPA-HQ-OPP-2020-0345 at <http://www.regulations.gov>. Two comments were received related to the import tolerance on black pepper. EPA's responses to these comments are discussed in Unit IV.B.

FFDCA section 408(d)(4)(A)(i) permits the Agency to finalize a tolerance that varies from that sought by the petition. Based upon review of the data supporting the petition, EPA has corrected the commodity definition of "olive (including oil)" to "olive" and "olive, with pit", and the tolerance level set with "olive" varies from that sought by the petition. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

A. Statutory Background

Section 408(b)(2)(A)(i) of the 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 it 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), 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 difenoconazole and to make a determination on aggregate exposure for difenoconazole, including exposure resulting from the tolerances

established by this action. EPA's assessment of exposures and risks associated with difenoconazole follows.

B. Difenoconazole Aggregate Risk Assessment

Information on aggregate risk from difenoconazole is found in the "Difenoconazole. Human Health Risk Assessment for the Establishment of Tolerances with No U.S. Registrations in/on Japanese Persimmon, Olive, and Black Pepper" in docket ID numbers EPA-HQ-OPP-2019-0626, EPA-HQ-OPP-2020-0082, and EPA-HQ-OPP-2020-0345.

C. 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 liver is the target organ in mice and rats; however, effects occur in mice at lower doses and with higher severity than in rats. Furthermore, difenoconazole is classified as "Suggestive Evidence of Carcinogenic Potential" based on liver tumors (adenomas) in male and female mice. Apart from the liver effects in rodents, chronic exposure in dogs leads to lenticular cataracts.

In dermal studies, no systemic toxicity was detected in rats or male rabbits, while in female rabbits, liver effects occurred at the limit dose. Skin hyperkeratosis was detected in rats at the exposure site after repeated exposure to the limit dose. Slight skin irritation was detected after an acute single dose (Toxicity Category IV). Difenoconazole is not a skin sensitizer.

No quantitative susceptibility in fetus or offspring was seen in the database. Neurotoxicity was detected in an acute neurotoxicity battery study (decreased fore-limb strength in males only), but not in a subchronic neurotoxicity battery study with difenoconazole.

In an immunotoxicity study in mice, decreased mean immunoglobulin M levels were detected at dose levels ≥ 177 mg/kg/day. There is no other indication of immunotoxicity in the difenoconazole database.

Specific information on the studies received and the nature of the adverse effects caused by difenoconazole 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 at <http://>

www.regulations.gov in document "Difenoconazole. Human Health Risk Assessment for the Establishment of Tolerances with No U.S. Registrations in/on Japanese Persimmon, Olive, and Black Pepper." at page 20 in docket ID numbers EPA-HQ-OPP-2019-0626, EPA-HQ-OPP-2020-0082, and EPA-HQ-OPP-2020-0345.

D. 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 no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). 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 <http://www.epa.gov/pesticides/factsheets/riskassess.htm>. A summary of the toxicological endpoints for difenoconazole used for the human health risk assessment is shown in the risk assessment posted to the dockets.

E. Exposure Assessment

EPA's chronic dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from the import tolerances of difenoconazole on olive; olive, with pit; pepper, black; and persimmon, Japanese. The exposure assessment used tolerance-level residues and default processing factors for all processed commodities. The percent crop treated numbers used for the chronic dietary assessment vary from what was used in the previous assessment and are available in the human health risk assessment posted to the dockets.

Drinking water exposures are not impacted by the import tolerances on olive; olive, with pit; pepper, black; and persimmon, Japanese. The estimated drinking water concentrations (EDWCs) of total toxic residues (TTR) of difenoconazole can be found in the human health risk assessment.

Acute dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the acute population adjusted dose (aPAD): They are 53% of the aPAD for all infants less than 1-year old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD): They are 38% of the cPAD for all infants less than 1-year old, the population subgroup with the highest exposure estimate.

For the aggregate risk assessment, exposures to difenoconazole in food and drinking water are combined with residential exposures for the relevant exposure duration period. Because acute, intermediate-term, or long-term residential exposures are not expected, aggregate acute and chronic risk is equivalent to the dietary risks, which are below EPA's level of concern. Moreover, a separate cancer dietary risk assessment was not required since the approach used for chronic dietary exposure assessment was found to be adequately protective of all chronic toxicity, including carcinogenicity, that could result from exposure to difenoconazole. Short-term aggregate risk, which combines chronic dietary exposure with the expected residential handler inhalation exposures from applications to gardens/ornamentals via hose-end sprayer, yields a margin of exposure (MOE) of 5,000, which is not of concern because it exceeds EPA's level of concern (MOEs less than or equal to 100). Previously the residential exposure assessments for difenoconazole included a dermal endpoint; however, that endpoint is no longer relevant because the database does not show systemic effects after exposure via the dermal route at doses that would be relevant to risk assessment.

F. 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."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to difenoconazole and any other substances, although EPA has previously concluded that there are no conclusive data that difenoconazole shares a common mechanism of toxicity with other conazole pesticides. Although the conazole fungicides (triazoles) produce 1,2,4 triazole and its acid-conjugated metabolites (triazolylalanine and triazolylacetic acid), 1,2,4 triazole and its acid-conjugated metabolites do not contribute to the toxicity of the parent conazole fungicides (triazoles). A separate aggregate risk assessment was conducted for 1,2,4 triazole and the conjugated triazole metabolites "Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address the Establishment of a Difenoconazole Tolerances with No U.S. Registration for Imported Olive and Black Pepper and to include updated Estimated Drinking Water Concentrations; DP458929", dated September, 14, 2020 and it can be found at <https://www.regulations.gov> at docket ID numbers EPA-HQ-OPP-2019-0626, EPA-HQ-OPP-2020-0082, and EPA-HQ-OPP-2020-0345. These new tolerances of difenoconazole considered with existing uses of triazole compounds do not result in a risk of concern for 1,2,4-triazole and the conjugated metabolites. Difenoconazole does not appear to produce any other toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that difenoconazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

G. Safety Factor for Infants and Children

There were no changes since the last risk assessment regarding prenatal and postnatal sensitivity. The FQPA Safety Factor (SF) is still reduced to 1X; however, the safety factor reduction rationale section has been modified to:

i. The toxicity database for difenoconazole is sufficient for a full hazard evaluation and is considered adequate to evaluate risks to infants and children.

ii. The only study that showed neurotoxicity is used as the point of departure for risk assessment and the effect is well characterized with a clear NOAEL and LOAEL. There are signs of neurotoxicity in the acute neurotoxicity battery study (decreased fore-limb strength in males), but not in the subchronic neurotoxicity battery study, nor in any other studies in the database. This risk assessment is protective of the observed neurotoxicity effects because they are used to establish the point of departure (POD) for the acute oral assessment.

iii. There is no evidence that difenoconazole results in increased quantitative susceptibility in in utero rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. No fetal effects were detected in rats. Fetal effects in rabbits and pup effects in rats occurred at the same doses as maternal effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance-level residues and 100% CT for the acute assessment while the chronic assessment assumed tolerance-level residues, the available empirical or HED's 2018 Default Processing Factors, and average percent crop treated (PCT) information for some commodities. These assumptions will not underestimate dietary exposure to difenoconazole. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to difenoconazole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These assessments will not underestimate the exposure and risks posed by difenoconazole.

H. Determination of Safety

Therefore, based on the risk assessments and information described above, 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 difenoconazole residues. More detailed information about the Agency's analysis can be found in "Difenoconazole. Human Health Risk Assessment for the Establishment of Tolerances with No U.S. Registrations in/on Japanese Persimmon, Olive, and Black Pepper." dated March 23, 2021 in docket ID numbers EPA-HQ-OPP-2019-0626, EPA-HQ-OPP-2020-0082, and EPA-HQ-OPP-2020-0345.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate tolerance enforcement method, gas chromatography with nitrogen-phosphorus detection (GC/NPD) method AG-575B, is available for the determination of residues of difenoconazole in/on plant commodities. An adequate enforcement method, gas chromatography with mass spectrometry detection (GC/MSD) method AG-676A, is also available for the determination of residues of difenoconazole per se in/on canola and barley commodities. A confirmatory method, GC/MSD method AG-676, is also available.

An adequate tolerance enforcement method, Method REM 147.07b, is available for livestock commodities. The method determines residues of difenoconazole and CGA-205375 in livestock commodities by liquid chromatography with tandem mass spectrometry detection (LC-MS/MS). Adequate confirmatory methods, Method AG-544A and Method REM 147.06, are available for the determination of residues of difenoconazole and CGA-205375, respectively, in livestock commodities.

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).

Codex has established MRLs for residues of difenoconazole in/on olive commodities using the same data submitted in support of the U.S. tolerances with no U.S. registrations. Codex stipulates that residues should be expressed on a whole-fruit basis. The U.S. recommended tolerance level for olive, with pit (2 ppm) is harmonized with the Codex MRL for residues of difenoconazole in/on table olives (2 ppm). In addition, a tolerance is being set at 3 ppm on olive, defined in OCSPP Guideline 860.1000 as fruits after removal of the stems and pits, which is the commodity analyzed for enforcement.

Codex has not established MRLs for residues of difenoconazole in/on pepper, black. MRLs for difenoconazole in/on peppercorn (black, green and white) at 0.3 ppm have been established in the European Union (EU). Discussion on why EPA did not harmonize with that tolerance is covered in the Responses to Comments section in Unit IV.B.

A Codex MRL for difenoconazole has been established at 4 ppm in/on pome fruit for post-harvest use. Codex includes Japanese persimmon in the pome fruit group. The tolerance being set at this time is based on late-season foliar use rather than post-harvest use; therefore, the tolerances are not the same and harmonization is not possible.

C. Responses to Comments

EPA received one comment on the docket for difenoconazole in/on black pepper (EPA-HQ-OPP-2020-0345) opposing pesticide residues in food, although no substantive information was provided for EPA to take into consideration in its safety assessment. The commenter generally expressed concern about the potential for exposure to difenoconazole to be carcinogenic. EPA has evaluated the available data on carcinogenicity and exposure and determined that aggregate exposure to difenoconazole will not cause a cancer risk. In addition, the commenter expressed concern about fluoride in chemicals; however, difenoconazole molecules do not contain any fluoride. The FFDCA authorizes EPA to establish tolerances that permit certain levels of pesticide residues in or on food when the Agency can determine that such residues are safe. EPA has made that determination for the tolerances subject to this action, and the commenter provided no information relevant to that conclusion.

A comment from the government of the People's Republic of China (P.R. China) was received through the World Trade Organization comment process. This comment has been posted to the docket for difenoconazole in/on black pepper (EPA-HQ-OPP-2020-0345). It requests that EPA set the tolerance on pepper, black at 0.3 ppm to match the current EU tolerance. EPA consulted with the registrant regarding the possibility to harmonize the tolerance with the EU limit standards. The registrant, through its consultant, recommended against harmonizing the tolerance with the current EU MRL for residues of difenoconazole in/on black pepper (0.3 ppm) based on the following rationale. According to the registrant, the current EU MRL is not based on supporting data and is of unknown

origin. It is expected that any EU MRL not supported by data, such as in this case, would be evaluated during the Article 12 EU MRL Review Process. If no supporting data are submitted during the review process, the EU MRL would be reduced to 0.01 ppm by 2026. The Agency notes that it is also possible that the same data that support the tolerance with no U.S. registration established in this action (0.1 ppm) could be submitted as supporting data to the EU and/or Codex, in which case future harmonization is possible. In addition, the P.R. China comment requests that EPA share the data and reports supporting the tolerance. More detailed information about the Agency's analysis can be found in the risk assessments posted to docket ID number EPA-HQ-OPP-2020-0345.

D. Revisions to Petitioned-For Tolerances

Although the summary of the petition cited in Unit II of this preamble indicated a request for a tolerance on "olive," the actual petition sought a tolerance for "olive (including oil)." The originally requested tolerance of 2 ppm in/on "olive (including oil)" has been revised to 2 ppm in/on "olive, with pit" and 3 ppm in/on "olive." The commodity definition commonly used in the 40 CFR is "olive," meaning fruits after removal of the pits, and the terminology "olive, with pit" is descriptive of the Codex residue expression. Use of both terms allows harmonization with Codex while also maintaining the way that the commodity is analyzed for enforcement in the United States.

V. Conclusion

Therefore, tolerances are established for residues of difenoconazole, in or on olive at 3 ppm; olive, with pit at 2 ppm; pepper, black at 0.1 ppm; and persimmon, Japanese at 0.7 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: May 20, 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 § 180.475, amend paragraph (a)(1) by adding alphabetically to the table entries for “Olive 1”; “Olive, with pit 1”; “Pepper, black 1” and “Persimmon, Japanese 1” to read as follows:

§ 180.475 Difenconazole; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * *	
Olive 1	3
Olive, with pit 1	2
* * *	
Pepper, black 1	0.1
Persimmon, Japanese 1	0.7
* * *	

¹ There are no U.S. registrations for these commodities.

* * *

[FR Doc. 2021-11636 Filed 6-2-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-TRI-2021-0049; FRL-10022-25]

RIN 2070-AK72

Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning With Reporting Year 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adding three per- and polyfluoroalkyl substances (PFAS) to the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). This action implements the statutory mandate in the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. As this action is being taken to conform the regulations to a Congressional legislative mandate, notice and comment rulemaking is unnecessary.

DATES: This final rule is effective July 6, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-TRI-2021-0049, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Daniel R.

Ruedy, Data Gathering and Analysis Division, Mail Code 7410M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-7974; email address: ruedy.daniel@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: Toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the PFAS listed in this rule. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211130*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715* or 811490*.

*Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in

commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is codifying in the CFR the three PFAS that were added to the EPCRA section 313 list of reportable chemicals (more commonly known as the Toxics Release Inventory (TRI)) pursuant to the FY2020 NDAA.

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

This action is issued under the authority of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) (Pub. L. 116-92, <https://www.congress.gov/public-laws/116th-congress>).

II. Background

On December 20, 2019 the FY2020 NDAA was signed into law. Among other provisions, section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the EPCRA section 313 list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the EPCRA section 313 list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:

(1) Added to the list published under section 8(b)(1) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and designated as an active chemical substance under TSCA section 8(b)(5)(A); or

(2) Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

The FY2020 NDAA defines "covered determination" as a determination made by rule under TSCA section 5(a)(2) that a use of a PFAS or class of PFAS is a significant new use (except such a determination made in connection with a determination described in TSCA sections 5(a)(3)(B) or 5(a)(3)(C)).

EPA has reviewed the above-listed criteria and found three chemicals that meet the requirements of this part of the FY2020 NDAA and whose identity is not confidential business information (CBI).

Chemical name/CAS No.	Triggering action
Perfluorooctyl iodide (507-63-1)	Addition to Existing Significant New Use Rule (see 85 FR 45109, <i>July 27, 2020</i>) (<i>FRL-10010-44</i>).
Potassium perfluorooctanoate (2395-00-8)	Addition to Existing Significant New Use Rule (see 85 FR 45109, <i>July 27, 2020</i>) (<i>FRL-10010-44</i>).
Silver(I) perfluorooctanoate (335-93-3)	Addition to Existing Significant New Use Rule (see 85 FR 45109, <i>July 27, 2020</i>) (<i>FRL-10010-44</i>).

Under FY2020 NDAA section 7321(e), EPA must review CBI claims before adding any PFAS to the list whose identity is subject to a claim of protection from disclosure under 5 U.S.C. 552(a). Under the FY2020 NDAA EPA must:

- Review a claim of protection from disclosure; and
- Require that person to reassert and substantiate or resubstantiate that claim in accordance with TSCA section 14(f) (15 U.S.C. 2613(f)).

In addition, if EPA determines that the chemical identity of a PFAS or class of PFAS qualifies for protection from disclosure, EPA must include the PFAS or class of PFAS on the TRI in a manner that does not disclose the protected information.

Updates regarding this process will be provided via the Addition of Certain PFAS to the TRI by the National Defense Authorization Act web page at <https://www.epa.gov/toxics-release-inventory-tri-program/addition-certain-pfas-tri-national-defense-authorization-act>.

As established by the FY2020 NDAA, the addition of these PFAS is effective January 1 of the calendar year following any of the dates identified in FY2020 NDAA section 7321(c)(1)(A). Accordingly, these three non-CBI PFAS are reportable for the 2021 reporting year (*i.e.*, reports due July 1, 2022). EPA is issuing this final rule to amend the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to include the three non-CBI PFAS identified pursuant to the FY2020 NDAA.

III. Good Cause Exception

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary. This action is being taken to comply with a mandate in an Act of Congress, where Congress identified actions that automatically add these chemicals to the TRI. Thus, EPA has no discretion as to the outcome of this rule, which merely aligns the regulations with the self-effectuating changes provided by the FY2020 NDAA.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection activities that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* As discussed further in this unit, OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0212 and 2050–0078.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2070–0212 (EPA Information Collection Request (ICR) No. 2613) and those related to trade secret designations

under OMB Control 2050–0078 (EPA ICR No. 1428).

As provided in 5 CFR 1320.5(b) and 1320.6(a), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations in 40 CFR are listed in 40 CFR part 9 and displayed on the information collection instruments (*e.g.*, forms, instructions).

C. Regulatory Flexibility Act (RFA)

This rule is not subject to the RFA, 5 U.S.C. 601 *et seq.*, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that is estimated to have a significant economic impact on a substantial number of small entities. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the “good cause” exemption under 5 U.S.C. 553(b) (see Unit III.).

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not impose substantial direct compliance costs on Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory

actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not establish an environmental health or safety standard. This action involves additions to reporting requirements that will not affect the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection,
Community right-to-know, Reporting

and recordkeeping requirements, Toxic chemicals.

Michal Freedhoff,

*Principal Deputy Assistant Administrator,
Office of Chemical Safety and Pollution
Prevention.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR part 372 as follows:

**PART 372—TOXIC CHEMICAL
RELEASE REPORTING: COMMUNITY
RIGHT-TO-KNOW**

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.65, amend table 4 to paragraph (d) by adding in alphabetical order to the table entries for “Perfluorooctyl iodide”; “Potassium perfluorooctanoate” and “Silver(I) perfluorooctanoate” and in table 5 to paragraph (e) by adding in numerical order to the table entries for “335–93–3”; “507–63–1” and “2395–00–8” to read as follows:

**§ 372.65 Chemicals and chemical
categories to which this part applies.**

* * * * *

(d) * * *

TABLE 4 TO PARAGRAPH (D)

Chemical name	CAS No.	Effective date
Perfluorooctyl iodide	507–63–1	1/1/21
Potassium perfluorooctanoate	2395–00–8	1/1/21
Silver(I) perfluorooctanoate	335–93–3	1/1/21

(e) * * *

TABLE 5 TO PARAGRAPH (E)

CAS No.	Chemical name	Effective date
335–93–3	Silver(I) perfluorooctanoate	1/1/21
507–63–1	Perfluorooctyl iodide	1/1/21
2395–00–8	Potassium perfluorooctanoate	1/1/21

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–53; RM–11878; DA 21–596; FR ID 28822]

Television Broadcasting Services St. George, Utah

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by KUTV Licensee, LLC (Licensee), the licensee of KMYU, channel 9 (MyNetwork/CBS), St. George, Utah, requesting the substitution of channel 21 for channel 9 at St. George in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 21 for channel 9 at St. George.

DATES: Effective June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 16313 on March 29, 2021. The Licensee filed comments in support of the petition reaffirming its commitment to apply for channel 21. No other comments were filed. In support, the Licensee asserts that KMYU, as a VHF channel station, has a long history of dealing with severe reception problems, and that substitution of channel 21 for channel 9 will result in enhanced signal levels to a large percentage of the population within KMYU's service area, without any predicted loss of coverage and with a predicted increase of more than 8,000 persons in the KMYU service area. This is a synopsis of the Commission's *Report and Order*, MB Docket No. 21–53; RM–11878; DA 21–596, adopted May 20, 2021, and released May 20, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any

proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

India Malcolm,

Assistant Bureau Chief for Management.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments, under Utah, by revising the entry for St. George to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *				
(i) * * *				
Community				Channel No.
* * * * *				*
UTAH				
* * * * *				*
St. George	.....			18, 21
* * * * *				*

[FR Doc. 2021–11695 Filed 6–2–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–52; RM–11877; DA 21–594; FR ID 28827]

Television Broadcasting Services Amarillo, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by KVII Licensee, LLC (Licensee), the licensee of KVII, channel 7 (ABC), Amarillo, Texas, requesting the substitution of channel 20 for channel 7 at Amarillo in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 20 for channel 7 at Amarillo.

DATES: Effective June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 17110 on April 1, 2021. The Licensee filed comments in support of the petition reaffirming its commitment to apply for channel 20. No other comments were filed. The Licensee asserts that KVII, as a VHF channel station, has a long history of dealing with severe reception problems. In addition, the Licensee states that the substitution of channel 20 for channel 7 will result in enhanced signal levels to a large percentage of the population within KVII's service area, without any predicted loss of coverage and with a predicted increase of persons in the KVII service area.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 21–52; RM–11877; DA 21–594, adopted May 20, 2021, and released May 20, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

India Malcolm,

Assistant Bureau Chief for Management.

Final Rule

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments, under Texas, by revising the entry for Amarillo to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * *	* * *
TEXAS	
* * *	* * *
Amarillo	* 9, 10, 15, 19, 20
* * *	* * *

[FR Doc. 2021-11697 Filed 6-2-21; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 86, No. 105

Thursday, June 3, 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 Part 430

[EERE–2021–BT–STD–0011]

RIN 1904–AE99

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On May 7, 2021, the U.S. Department of Energy (“DOE”) published an early assessment request for information (“RFI”) undertaking an early assessment review for amended energy conservation standards for ceiling fans to determine whether to amend applicable energy conservation standards for this product. The notice provided an opportunity for submitting written comments, data, and information by June 7, 2021. DOE received a request from the Air Movement and Control Association (AMCA) and the American Light Association (ALA) for a comment period extension of 45 additional days. AMCA and ALA stated that an extension would improve the quality of the information industry submits to the department and increase the likelihood of presenting the department with consensus recommendations on many of the questions it is asking. DOE has reviewed these requests and is granting an extension of the public comment period for 21 days to allow public comments to be submitted until June 28, 2021.

DATES: The comment period for the RFI published on May 7, 2021 (86 FR 24538) is extended. DOE will accept comments, data, and information regarding this RFI received no later than June 28, 2021.

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 by email to the following address:

CeilingFans2021STD0011@ee.doe.gov. Include “Ceiling Fans Early Assessment Energy Conservation Standard RFI” and docket number EERE–2021–BT–STD–0011 and/or RIN number 1904–AE99 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and the use of special characters or any form of encryption. No telefacsimilies (“faxes”) will be accepted.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently 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 for this activity, which includes **Federal Register** notices, 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–2021–BT–STD–0011. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email:

ApplianceStandardsQuestions@ee.doe.gov.

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: Amelia.Whiting@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email:

ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On May 7, 2021, DOE published a notice that it is undertaking an early assessment review for amended energy conservation standards for ceiling fans to determine whether to amend applicable energy conservation standards for this product. Specifically, through the RFI, DOE requested data and information to evaluate whether amended energy conservation standards would result in significant savings of energy; be technologically feasible; and be economically justified. 86 FR 24538. On May 19, 2021, interested parties in the matter the Air Movement and Control Association (AMCA) and the American Light Association (ALA) jointly requested an extension of the comment period extension for an 45 additional days. (AMCA and ALA, No. 2 at p. 1).

DOE has reviewed the request and is extending the comment period to allow additional time for interested parties to submit comments. As noted, the RFI was issued as part of the early assessment stages of rulemaking to consider amendments to the energy conservation standards for ceiling fans. If DOE determines that amended energy conservation standards may be appropriate, additional notices will be published (e.g., a notice of proposed rulemaking) providing interested parties with an additional opportunity to submit comment. As such, DOE has determined that providing an additional 21 days is sufficient for this preliminary stage. Therefore, DOE is extending the comment period to June 28, 2021.

Signing Authority

This document of the Department of Energy was signed on May 26, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting

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 May 27, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021-11561 Filed 6-2-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0449; Project Identifier 2018-SW-001-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus 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 Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D; and Model AS355E, AS355F, AS355F1, AS355F2, AS355N, AS355NP helicopters. This proposed AD was prompted by reports that the lanyards (bead chain tethers), which hold the quick release pins to the forward bracket assembly of certain litter kits, can loop around the directional control pedal stubs, limiting the movement of the pedals. This proposed AD would require modification of the lanyard attachment location for certain litter kit installations. 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 July 19, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, 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.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0449; 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., Mail Stop: Room 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-2021-0449; Project Identifier 2018-SW-001-AD" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228-7330; email andrea.jimenez@faa.gov. 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-2017-37, dated December 19, 2017 (Canadian AD CF-2017-37), to correct an unsafe condition for Airbus Helicopters Model AS 350 B, AS 350 BA, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters. Transport Canada advises that there have been reports that the lanyards, which hold the quick release pins to the forward bracket assembly of certain litter kits, can loop around the directional control pedal stubs, limiting the movement of the pedals, which affects the control of the flight. If this condition exists and is not corrected during installation, this limitation may not be apparent until the pedal input is required in flight. This

condition, if not addressed, could result in difficulty controlling the helicopter.

Accordingly, Canadian AD CF–2017–37 requires modification of the lanyard attachment location for certain litter kit installations. Canadian AD CF–2017–37 also specifies that installation of an affected part number litter kit is prohibited unless the installation conforms to the requirements of Airbus Helicopters Service Bulletin SB–AHCA–128, Revision 0, dated March 24, 2017.

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 Airbus Helicopters Service Bulletin SB–AHCA–128, Revision 0, dated March 24, 2017. This service information specifies procedures for modifying the bead chain tether attachment locations for litter kits with certain part numbers. The modification includes relocating the bead chain tethers by removing the screws and washers for the pip pins on the forward bracket assembly; filling the empty holes with rivets; determining the new locations of and drilling new holes; and securing the bead chain tethers on the top side of the forward bracket assembly in the new hole locations.

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

This proposed AD would require accomplishing the actions specified in the service information already

described, except as discussed under "Differences Between this Proposed AD and the Transport Canada AD."

Differences Between This Proposed AD and the Transport Canada AD

This proposed AD would require a pre-flight check prior to each flight to determine if there is interference between the lanyards that hold the quick release pins to the forward bracket assembly of the litter kit and the flight controls. This pre-flight check requirement would be terminated upon completion of the modification of the litter kit installation. Canadian AD CF–2017–37 does not include a requirement for the pre-flight check prior to each flight to determine if there is interference between the lanyards and the flight controls.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 967 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Pre-flight check for lanyard interference.	0.5 work-hour × \$85 per hour = \$42.50 per inspection cycle.	\$0	\$42.50 per inspection cycle.	\$41,097.50 per inspection cycle.
Modification of lanyard attachment location.	1 work-hour × \$85 per hour = \$85	0	\$85	\$82,195.

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 (AD):

Airbus Helicopters: Docket No. FAA–2021–0449; Project Identifier 2018–SW–001–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 19, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, and AS350D helicopters; and Model AS355E, AS355F,

AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, with litter kits installed having any part number specified in paragraphs (c)(1) through (3) of this AD:

- (1) Part number (P/N) 350–200034 (left-hand litter kit).
- (2) P/N 350–200194 (left-hand litter kit).
- (3) P/N 350–200144 (right-hand litter kit).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that the lanyards (bead chain tethers), which hold the quick release pins to the forward bracket assembly of certain litter kits, can loop around the directional control pedal stubs, limiting the movement of the pedals, which affect the control of the flight. The FAA is issuing this AD to address interference between the litter kit lanyards and the flight controls. The unsafe condition, if not addressed, could result in limited flight control movement and difficulty controlling the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For litter kits having any part specified in paragraphs (c)(1) through (3) of this AD: Prior to each flight until the modification required by paragraph (g)(2) of this AD is accomplished, do a pre-flight check to determine if there is interference (e.g., limited movement of the pedals due to the lanyards that hold the quick release pins to the forward bracket assembly being looped around the directional control pedal stubs) between the lanyards that hold the quick release pins to the forward bracket assembly and the pedals. If interference is found, before further flight, do the modification required by paragraph (g)(2) of this AD for the affected litter kit. The pre-flight check may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9(a)(1) through (4) and § 91.417(a)(2)(v). The record must be maintained as required by § 91.417, § 121.380, or § 135.439.

(2) Within 25 hours time-in-service (TIS) after the effective date of this AD, modify the attachment location of the lanyard for litter kits having any part specified in paragraphs (c)(1) through (3) of this AD. Do the modification in accordance with paragraph 3.B.2., “Procedure,” of the Accomplishment Instructions of Airbus Helicopters Service Bulletin SB–AHCA–128, Revision 0, dated March 24, 2017.

Note 1 to paragraph (g): Litter kits, P/N 350–200034 and P/N 350–200194, may have been installed under STC SR00406NY (for Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters) or STC SR00407NY (for Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, and AS350D

helicopters). Litter kit P/N 350–200144 may have been installed under STC SR00458NY (for Model AS350BA, AS350B2, and AS350B3 helicopters).

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install a litter kit having a part number identified in paragraphs (c)(1) through (3) of this AD, on any helicopter, unless the installation is modified as required by paragraph (g)(2) of this AD.

(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., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228–7330; email andrea.jimenez@faa.gov.

(2) For information about AMOCs, contact the Manager, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email 9-AVS-AIR-730-AMOC@faa.gov.

(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>. 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.

(4) The subject of this AD is addressed in Transport Canada AD CF–2017–37 dated December 19, 2017. You may view the Transport Canada AD on the internet at <https://www.regulations.gov> in Docket No. FAA–2021–0449.

Issued on May 27, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–11615 Filed 6–2–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0447; Project Identifier AD–2021–00131–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW1500G and PW1900G series turbofan engines. This proposed AD was prompted by reports of cracks in the high-pressure compressor (HPC) rotor shaft that resulted in in-flight shutdowns (IFSDs) and unscheduled engine removals (UERs). This proposed AD would require removal and replacement of the HPC front hub and HPC rotor shaft. 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 July 19, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; fax: (860) 565–5442; email: help24@pw.utc.com; website: <https://fleetcare.pw.utc.com>. You may view this service information 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 (781) 238–7759.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No.

FAA–2021–0447; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; fax: (781) 238–7199; email: Mark.Taylor@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–2021–0447; Project Identifier AD–2021–00131–E” 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 Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. 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 received reports of cracks in the HPC rotor shaft that resulted in vibration and subsequent IFSDs and UERs. The manufacturer determined that the threads on the HPC rotor shaft were not optimized for load distribution, which resulted in vibration stresses. During one occurrence, oil was released at the high-pressure turbine (HPT) disk bore location. The manufacturer redesigned the HPC front hub and HPC rotor shaft for increased durability and decreased vibration stress. The redesigned HPC front hub is made from nickel to help with corrosion resistance. The threads on the HPC rotor shaft were also redesigned to help distribute the load on the threads and decrease vibration stress. This condition, if not addressed, could result in release of an HPT disk, damage to the engine, and damage to the airplane.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or

develop on other products of the same type design.

Related Service Information

The FAA reviewed Pratt & Whitney Service Bulletin (SB) PW1000G–A–72–00–0154–00A–930A–D, Issue No. 001, dated May 7, 2021 (PW1000G–A–72–00–0154–00A–930A–D), and Pratt & Whitney SB PW1000G–A–72–00–0101–00B–930A–D, Issue No. 001, dated May 7, 2021 (SB PW1000G–A–72–00–0101–00B–930A–D). These SBs describe procedures for removing and replacing the HPC front hub and HPC rotor shaft.

Proposed AD Requirements in This NPRM

This proposed AD would require removal and replacement of the HPC front hub and HPC rotor shaft.

Differences Between This Proposed AD and the Service Information

Pratt & Whitney SB PW1000G–A–72–00–0154–00A–930A–D and Pratt & Whitney SB PW1000G–A–72–00–0101–00B–930A–D provide instructions to concurrently perform the actions in Pratt & Whitney SB PW1000G–A–72–00–0157–00A–930A–D and SB PW1000G–A–72–00–0105–00B–930A–D, respectively. This AD does not require performance of the actions described in Pratt & Whitney SB PW1000G–A–72–00–0157–00A–930A–D or SB PW1000G–A–72–00–0105–00B–930A–D since these SBs describe ring seal replacement, which is not related to the unsafe condition addressed by this AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 94 engines installed on 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 product	Cost on U.S. operators
Replace HPC front hub and HPC rotor shaft.	25.75 work-hours × \$85 per hour = \$2,188.75.	\$120,090	\$122,278.75	\$11,494,202.50

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. FAA–2021–0447; Project Identifier AD–2021–00131–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 19, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney PW1519G, PW1521G, PW1521G–3, PW1521GA, PW1524G, PW1524G–3, PW1525G, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the high-pressure compressor (HPC) rotor

shaft that resulted in in-flight shutdowns and unscheduled engine removals. The FAA is issuing this AD to prevent cracking of the HPC rotor shaft. The unsafe condition, if not addressed, could result in release of a high-pressure turbine disk, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Action

At next engine shop visit after the effective date of this AD, remove HPC front hub, part number (P/N) 30G1910 or 30G3210, and HPC rotor shaft, P/N 30G1854, 30G3109, 30G4995, 30G4953, or 31G0014, from service and replace each part with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an “engine shop visit” is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following, which do not constitute an engine shop visit:

(i) Separation of engine flanges solely for the purposes of transportation without subsequent maintenance does not constitute an engine shop visit.

(ii) Separation of engine flanges solely for the purpose of replacing the fan without subsequent maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, a “part eligible for installation” is:

(i) For a HPC front hub: Any HPC front hub with a P/N other than P/N 30G1910 or 30G3210; and

(ii) For a HPC rotor shaft: Any HPC rotor shaft with a P/N other than P/N 30G1854, 30G3109, 30G4995, 30G4953, or 31G0014.

(i) 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 certification office, send it to the attention of the person identified in Related Information. You may email your request 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.

(j) Related Information

For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; fax: (781) 238–7199; email: Mark.Taylor@faa.gov.

Issued on May 27, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–11565 Filed 6–2–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY–263–FOR; Docket ID: OSM–2020–0002; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Kentucky Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter, the Kentucky program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes to revise their administrative regulations to correct citations and revise language related to the repeal of the interim program regulations.

This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Daylight Time (e.d.t.), July 6, 2021. If requested, we may hold a public hearing or meeting on the amendment on June 28, 2021. We will accept requests to speak at a hearing until 4:00 p.m., e.d.t. on June 18, 2021.

ADDRESSES: You may submit comments, identified by SATS No. KY–263–FOR, by any of the following methods:

- **Mail/Hand Delivery:** Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503.
- **Fax:** (859) 260–8410.
- **Federal eRulemaking Portal:** The amendment has been assigned Docket ID OSM–2020–0002 If you would like to

submit comments, go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Lexington Field Office or the full text of the program amendment is available for you to read at <https://www.regulations.gov>.

Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503, Telephone: (859) 260-3900, Email: mcastle@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Gordon Slone, Commissioner, Department for Natural Resources, Kentucky Energy and Environment Cabinet, 3000 Sower Boulevard, Frankfort, KY 40601, Telephone: (502) 564-6940, Email: GordonR.Slone@ky.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503. Telephone: (859) 260-3900; email: mcastle@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1)

and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated May 18, 2020, (Administrative Record No. KY-2005), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This submission is seeking to repeal administrative regulations at Title 405 of the Kentucky Administrative Regulations (KAR) Chapter 26:001, Operation of two (2) acres or less, since such operations are no longer allowed in the Commonwealth. This submission also references changes and other minor revisions to the administrative regulations, which are not intended to change the meaning of, but rather, to clarify content or to comply with Chapter 13A of the Kentucky Revised Statutes (KRS) legislative drafting requirements. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations,

technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.d.t. on June 18, 2021. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2021–11563 Filed 6–2–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0332]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events and Within the Fifth Coast Guard District

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations for recurring marine events that take place within the Fifth Coast Guard District area of responsibility. We invite your comments on this rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 6, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0332 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Jerry Barnes, Fifth Coast Guard District Office of Waterways Management, U.S. Coast Guard; telephone 757–398–6230, Jerry.R.Barnes@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Fifth Coast Guard District puts in place recurring special local regulations to ensure public safety for marine events that take place either on or over the navigable waters of the United States within the Fifth Coast Guard District area of responsibility as defined at 33 CFR part 3, subpart 3.25. These recurring special local regulations are found in the Code of Federal Regulations at 33 CFR 100.501 and that section’s respective table. The Coast Guard regularly updates these regulations. They were last substantively amended June 13, 2017. The Fifth Coast Guard District is proposing to revise these regulations for improved clarity, to correspond with current Coast Guard operating policies for marine events, to update existing events, add new events, and remove events that no longer require additional safety measures. Based on the nature of marine events, large numbers of participants and spectators, and event locations, the events listed in the table to 33 CFR 100.501 could pose a risk to participants or waterway users if normal

vessel traffic were to interfere with the event. Possible hazards include risks of injury or death resulting from near or actual contact among participant vessels and non-participant vessels or mariners traversing through the regulated area. In order to protect the safety of all waterway users including event participants and non-participants, this rule would establish special local regulations for the time and location of each marine event.

The purpose of this rulemaking is to ensure the safety of persons, vessels, and the navigable waters within close proximity to recurring marine events before, during, and after the scheduled events. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041. The Secretary has delegated ports and waterways authority, with certain reservations not applicable here, to the Commandant via DHS Delegation No. 0170.1(II)(70). The Commandant has further delegated these authorities within the Coast Guard as described in 33 CFR 1.05–1

III. Discussion of Proposed Rule

Changes To Improve Clarity and Reflect Current Coast Guard Marine Event Policies

We are proposing several stylistic and formatting changes to update 33 CFR 100.501, and associated tables, to provide greater clarity and remove potential ambiguities. We are also proposing to make revisions to reflect current Coast Guard marine event policy.

- Plain language edits, such as switching from passive to active voice and more clearly stating the enforcement period for each event.
- Writing regulatory requirements and definitions in the singular rather than the plural, where appropriate.
- Listing definitions and the events by COTP Zone in alphabetical order.
- Reformatting the table entries so that they all have similar formatting (there are currently discrepancies in how similar entries are formatted).
- Separating the special local regulations for each COTP Zone into their own tables.
- Amending the name and location for Sector Virginia to Portsmouth, VA, where the command center is located and to change the phone number for Sector North Carolina.

Additionally, we are proposing to consolidate all defined terms into a single paragraph, paragraph (b) of § 100.501, and list them in alphabetical order. Currently the defined terms “buffer area”, “race area”, and “spectator area” appear in the

regulatory requirements in 33 CFR 100.501(c) rather than with the definitions. These definitions would be moved to the definition section and put into alphabetical order. Regulatory requirements for these areas will remain in the regulatory requirements portion of the regulation.

We would change the defined term of “buffer area” to “buffer zone” to comport with the more common usage. The definition would be revised to reflect that it may sometimes be appropriate to have a buffer zone event if there is not a spectator area within the regulated area.

We would change the defined term “Coast Guard Patrol Commander” to “Event Patrol Commander” or “Event PATCOM” in alignment with updated local policy. The underlying associated definition would remain the same: A Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on their behalf.

We would change the defined term of “official patrol” to “official patrol vessel or official patrol” in alignment with updated local policy. The text of the

definition would remain unchanged except for some additional text at the end to allow the Event PATCOM to be augmented by local, state, or Federal officials authorized to act in support of the Coast Guard in accordance with local agreements. This revision enhances the resources available to the COTP to ensure the safety and security of the public during these events.

We are proposing to remove the defined term “spectator” and add in its place definitions for “participant” and “non-participant”. This wording change better reflects who is actually present in and near regulated areas and how the Coast Guard regulates their activities.

Delegation of Authority for Determination of Requirement for a Marine Patrol

We are proposing to amend current paragraph (b), paragraph (c) in the proposed text, to delegate authority to the local COTP in determining when a marine patrol is required. This delegation of authority from the District Commander provides the local operational commander the ability to

manage and maintain safety and security for events within their Area of Responsibility. We have also updated the text to allow for other government agencies to provide enforcement when working under local agreements and added the term Event Patrol Commander (Event PATCOM). Collectively, these changes enable the local Captain of the Port to retain operational control and incorporate risk based decision making to the event. Finally, authority has been given to the COTP, COTP representative, or Event PATCOM to postpone or cancel the event to ensure the safety of the event and the public.

Updates to Recurring Events Table

This proposed rule would add 7 new special local regulations for recurring marine events, revise 12 previously established regulations for recurring marine events, and remove 14 recurring events listed in § 100.501 for the reasons provided in the table. The revised events and the new events would be required to comply with the requirements in 33 CFR 100.501.

TABLE 1—EVENTS TO BE ADDED TO 33 CFR 100.501

USCG sector	Event	Regulated area (coordinates in proposed regulatory text)	Enforcement period *	Sponsor
Sector Maryland-National Capital Region—COTP Zone.	Flying Point Park Out- board Regatta.	Bush River and Otter Point Creek, MD.	One weekend (a consecutive Saturday and Sunday) in May.	Carolina Virginia Racing Association.
	Maryland Freedom Swim	Choptank River, MD	1. The 2nd Saturday or Sunday in May; or. 2. The 3rd Saturday or Sunday in May; or. 3. The 4th Saturday or Sunday in May; or. 4. The last Saturday or Sunday in May.	TCR Event Management.
	Oxford Funathlon Swim ..	Tred Avon River, MD	1. The 1st Saturday or Sunday in June; or. 2. The 2nd Saturday or Sunday in June; or. 3. The 3rd Saturday or Sunday in June. 4. The last Saturday or Sunday in June.	Charcot Marie Tooth Association and Therapies for Inherited Neuropathies.
	Thunder on the Choptank	Choptank River and Hambrooks Bay, MD.	1. The 3rd Saturday and Sunday in July; or. 2. The 4th Saturday and Sunday in July; or. 3. The last Saturday and Sunday in July.	Kent Narrows Racing Association.
	Washington DC Sharkfest Swim.	Upper Potomac River, MD.	1. The 3rd Saturday or Sunday in June; or. 2. The 4th Saturday or Sunday in June; or. 3. The last Saturday or Sunday in June.	Enviro-Sports Productions Inc.
	Something in the Water ..	North Atlantic Ocean, Vir- ginia Beach, VA.	The last Friday, Saturday, and Sunday in April.	Redrock Entertainment Services.
Sector Virginia—COTP Zone.	Roanoke River Races	Roanoke River, Plym- outh, NC.	1. Either: a. The 1st Saturday and Sunday in August; or. b. The 2nd Saturday and Sunday in August; or. c. The 3rd Saturday and Sunday in August; or. d. The 4th Saturday and Sunday in August; and. 2. Either: a. The 2nd Saturday and Sunday in October;.	Virginia Outlaw Drag Boat Association (VODBA).

TABLE 1—EVENTS TO BE ADDED TO 33 CFR 100.501—Continued

USCG sector	Event	Regulated area (coordinates in proposed regulatory text)	Enforcement period *	Sponsor
			b. The 3rd Saturday and Sunday in October; or. c. The 4th Saturday and Sunday in October; or. d. The last Saturday and Sunday in October.	

* The enforcement period for each of the listed special local regulations is subject to change in accordance with 33 CFR 100.501(f).

TABLE 2—SUBSTANTIVE CHANGES TO EXISTING RECURRING SPECIAL LOCAL REGULATIONS IN 33 CFR 100.501

USCG sector	Event	Location	Revision (date/coordinates)	Reason for change
Sector Delaware Bay— COTP Zone.	Point Pleasant OPA/NJ Off-shore Grand Prix.	Atlantic Ocean, Point Pleasant, NJ.	dates and coordinates	Coordinates updated to reflect accurate course location to improve public safety. Event date updated.
	Thunder Over the Boardwalk Air show.	Atlantic Ocean, Atlantic City, NJ.	dates	Event date updated.
	Ocean City Air Show	Intracoastal Waterway, Ocean City, NJ.	dates	Event date updated.
	Triathlons in Atlantic City	Intracoastal Waterway, Atlantic City, NJ.	Event name/dates and coordinates.	Coordinates updated with new course layout to ensure public safety. Event name and date updated.
Maryland-National Capital Region— COTP Zone.	Washington, DC Dragon Boat Festival.	Upper Potomac, DC	dates	Event date updated.
	Bay Bridge Paddle	Chesapeake Bay, Sandy Point Park, MD.	dates and coordinates	Coordinates updated to reflect course layout change. Zone increased to improve public safety. Event date updated.
	Catholic Charities Dragon Boat Races.	Patapsco, River, MD	dates	Event date updated.
	Baltimore Dragon Boat Challenge.	Patuxent River, MD	coordinates	Coordinates updated to reduce excessive size with no impact on public safety.
	Ocean City Grand Prix	North Atlantic Ocean, Ocean City, MD.	dates and coordinates	Coordinates updated with new course layout to ensure public safety. Event date updated.
	Cambridge Classic Powerboat Race.	Choptank River and Hambrooks Bay, MD.	dates and coordinates	Regulated area is increased to prevent hazards within the event area and ensure public safety. Change includes minor changes to coordinates for buffer and spectator areas. Event date updated.
	Southern Maryland Boat Club Summer Regatta and Bash on the Bay Regatta.	Breton Bay, MD	Event name and dates	Coordinates updated with new course layout at sponsor's request. Event name and date updated.
	NAS Patuxent River Air Expo.	Patuxent River, MD	dates	Event dates updated.

TABLE 3—SPECIAL LOCAL REGULATIONS TO BE REMOVED FROM TABLE TO 33 CFR 100.501

USCG Sector *	Event	Date(s)	Regulated area	Reason for removal
Sector Delaware Bay— COTP Zone.	Atlantic County Day at the Bay.	June—1st Sunday	Great Egg Harbor Bay, NJ ..	Event no longer held.
	Annual Escape from Fort Delaware Triathlon.	May—3rd Sunday; September—3rd Saturday.	Delaware River, DE	Event no longer held.
	Westville Parade of Lights ..	June—last Saturday	Big Timber Creek, NJ	Event no longer held.
	OPA Atlantic City Grand Prix.	June—4th Sunday	Atlantic Ocean, Atlantic City, NJ.	Event no longer held.
	U.S. Holiday celebrations	July—on or about July 4th ..	Delaware River, Philadelphia, PA.	Removing special local regulated area and deferring to safety zone for this event; removal does not negatively impact public safety.
	New Jersey Offshore Grand Prix.	May—3rd weekend	Atlantic Ocean, NJ	Event no longer held.
	U.S. Holiday Celebrations ...	October—1st Monday	Delaware River, Philadelphia, PA.	Removing special local regulated area and deferring to safety zone for this event; removal does not negatively impact public safety.
	U.S. Holiday Celebrations ...	December 31st	Delaware River, Philadelphia, PA.	Removing special local regulated area and deferring to safety zone for this event; removal does not negatively impact public safety.
Sector Maryland-National Capital Region— COTP Zone.	Middle River Dinghy Poker Run.	July—3rd, 4th, or last Saturday or Sunday.	Middle River, MD	Event no longer held.

TABLE 3—SPECIAL LOCAL REGULATIONS TO BE REMOVED FROM TABLE TO 33 CFR 100.501—Continued

USCG Sector*	Event	Date(s)	Regulated area	Reason for removal
Sector Virginia—COTP Zone.	Nanticoke River Swim and Triathlon.	May—1st Sunday	Nanticoke Rivers, MD	Removing special local regulations and deferring to navigation safety regulations; removal does not negatively impact public safety.
	Bo Bowman Memorial—Sharptown Regatta.	June—last Saturday and Sunday or July—2nd Saturday or Sunday.	Nanticoke River, MD	Event is held infrequently and thereby removed from this list of recurring marine events.
	Oxford- Bellevue Sharkfest Swim.	May—2nd, 3rd, 4th or last Saturday or Sunday.	Tred Avon River, MD	Event no longer held.
	RRBA Spring Radar Shoot-out.	June—last Saturday or July—1st Saturday.	Rappahannock River, Layton, VA.	Event no longer held.
	Hampton Bay Days	September—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.	Sunset Creek and Hampton River, VA.	Event no longer held.

* The addition of this column is to clarify the COTP zone and make clear to the reader where the change occur geographically.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the short amount of time that vessels will be restricted from regulated areas, and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications would also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information or Security Bulletins so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates

that these special local regulated areas will only be enforced one to three times per year.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit through a special local regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

These special local regulated areas will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of event participants and non-participants. The enforcement period will be short in duration and, in many of the areas, vessels can transit safely around the regulated area. Generally permission to enter, remain in, or transit through these regulated areas during the enforcement may be given when deemed safe to do so by the Event PATCOM on scene. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a

significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, because it involves establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Revise § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events within the Fifth Coast Guard District.

(a) *Applicability.* Paragraphs (a) through (i) of this section apply to the marine events listed in paragraph (i) of this section. The regulations in this

section are effective annually, for the duration of each event listed in paragraph (i) of this section. Annual notice of the exact times, and dates if there is a range of possible dates, of the enforcement period of the regulation in this section with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(b) *Definitions.* The following definitions apply to this section:

Buffer zone means a neutral area that surrounds the perimeter of the whole regulated area or a race area within a regulated area. The buffer zone provides separation between a race area and spectator area, or regulated area and a spectator area or other vessels that are operating in the vicinity of the special local regulated area for marine event. The purpose of a buffer zone is to minimize potential collision conflicts between participants, between participants and non-participants, or between participants or non-participants with nearby transiting vessels.

Captain of the Port Representative or COTP Representative means a commissioned, warrant, or petty officer of the Coast Guard designated by name by the Captain of the Port to verify an event's compliance with the conditions of its approved permit.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations in this section.

Non-participant means a person or a vessel not registered with the event sponsor either as a participant or an official patrol vessel.

Official patrol vessel or official patrol means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign, or any state or local law enforcement vessel approved by the Captain of the Port in accordance with current local agreements.

Participant means any person or vessel registered with the event sponsor as participating in the event or otherwise designated by the event sponsor as having a function tied to the event.

Race area means an area bound by coordinates provided in latitude and longitude within the regulated area

inside of which the actual racing events are held.

Regulated area means an area where special local regulations apply to a specific described waterway to include creeks, sounds, bays, rivers, and oceans. Regulated areas include all navigable waters of a specific body of water described with intent to define boundaries where the Coast Guard enforces special local regulations. Boundaries may be described from shoreline to shoreline, reference bridges or other fixed structures, by points and lines defined by latitude and longitude. All coordinates reference Datum: NAD 1983.

Spectator area means an area bound by coordinates provided in latitude and longitude within the regulated area that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Patrol of the marine event.* The respective COTP may assign one or more official patrol vessels, as described in § 100.40, to each regulated event listed in the tables in paragraph (i) of this section. For each event assigned a patrol vessel, an Event PATCOM will be designated to oversee the patrol. The patrol vessel and the Event PATCOM may be contacted on VHF-FM Channel 16. The Event PATCOM may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property.

(d) *Special local regulations—(1) Controls on vessel movement.* The Event PATCOM or official patrol vessel may forbid and control the movement of all persons and vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, the person or vessel being hailed must immediately comply with all directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) *Directions, instructions, and minimum speed necessary.* (i) The operator of a vessel in the regulated area must stop the vessel immediately when directed to do so by an official patrol vessel and then proceed only as directed.

(ii) A person or vessel must comply with all instructions of the Event PATCOM or official patrol vessel.

(iii) A vessel operator may request permission to enter and transit through a regulated area by contacting the Event PATCOM or official patrol vessel on VHF-FM channel 16. When authorized to transit through the regulated area, the vessel must proceed at the minimum speed necessary to maintain a safe

course that minimizes wake near the event area.

(3) *Race area.* Only participants and official patrol vessels are allowed to enter the race area.

(4) *Spectator area.* Non-participants are only allowed inside the regulated area if they remain within a designated spectator area or have authorization from the Event PATCOM or official patrol vessel to transit through the area. A non-participant vessel must be stationary or operate at a safe speed while within the designated spectator area. On scene official patrol vessels or the Event PATCOM will direct non-participant vessels to the spectator area. A non-participant must contact the Event PATCOM or official patrol vessel to request permission to pass through the regulated area. If permission is granted, the non-participant must pass directly through the regulated area at minimum speed necessary to maintain a safe course that minimizes wake and without loitering.

(5) *Regulated area.* Non-participants are only allowed inside the regulated area to pass through or enter and remain within a designated spectator area. A non-participant must contact the Event PATCOM or an official patrol vessel to request permission to either enter the Spectator Area or pass through the regulated area. If permission is granted, the non-participant may enter the spectator area or pass directly through the regulated area as instructed by the Event PATCOM or official patrol vessel at minimum speed necessary to maintain a safe course that minimizes wake and without loitering.

(6) *Postponement or cancellation.* The respective COTP or Event PATCOM may postpone or cancel a marine event at any time if, in the COTP's sole discretion, the COTP determines that cancellation is necessary for the protection of life or property.

(e) *Contact information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the marine event is occurring. Contact information is listed in paragraphs (e)(1) through (4) of this section. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR part 3, subpart 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271-4940.

(2) Coast Guard Sector Maryland-National Capital Region—Captain of the Port Zone, Baltimore, Maryland: (410) 576-2525.

(3) Coast Guard Sector Virginia—Captain of the Port Zone, Portsmouth, Virginia: (757) 483-8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Wilmington, North Carolina: (910) 343-3882.

(f) *Application for marine events.* The application requirements of § 100.15 apply to all marine events listed in paragraph (i) of this section. For information on applying for a marine event permit, contact the Captain of the Port for the area in which the marine event will occur, at the phone numbers listed in paragraph (e) of this section.

(g) *Enforcement periods.* Each year prior to an event the Coast Guard will announce details concerning the event, including the exact date(s) and time(s) of the enforcement period of the special local regulation in this section and the geographical area, in the Local Notices to Mariners and by Broadcast Notice to Mariners over VHF-FM marine band radio. In the case of inclement weather or other just cause found by the respective COTP, the event may be conducted within 30 days before or after the date(s) listed in paragraph (i) of this section. If the event is held on an alternate date from that listed in paragraph (i) the Coast Guard will publish a notification in the **Federal Register** announcing the exact dates and time of the enforcement period with respect to the special local regulation in this section in addition to announcement in the Local Notices to Mariners and Broadcast Notice to Mariners.

(h) *Regulations for specific marine events in paragraph (i) of this section—*
(1) *USNA Blue Angels Air Show, Coast Guard Sector Maryland-National Capital Region—COTP Zone.* Except for an emergency situation, a vessel may not anchor or maintain station within the spectator area without the permission of the COTP Maryland-National Capital Region or designated Event PATCOM. The COTP Maryland-National Capital Region has designated this spectator area for commercial small passenger vessel use. This area is closed except for commercial small passenger vessels holding a valid Certificate of Inspection regulated under 46 CFR chapter I, subchapters K and T (46 CFR 114.110 and 175.110). Vessels that meet the requirements of this section may request access to the Severn River spectator area by contacting the City of Annapolis Harbormaster at (410) 263-7973 or email harbormaster@annapolis.gov to obtain a vessel spectator area application. Vessel spectator area applications shall be submitted no later than 10 calendar

days prior to the event date. Applicants will be notified by the COTP Maryland-National Capital Region or COTP representative regarding status of applications and further instructions. All vessels shall contact the Event PATCOM on VHF-FM channels 16 or 22A prior to transiting to the spectator area to confirm entry approval. Vessels approved for spectator area access shall follow the instructions issued by the official patrol vessels or the Event PATCOM when entering the regulated area. The regulations in this section for this event will restrict access to the anchorage grounds listed at 33 CFR 110.159(a)(2) through (4).

(2) *Air Show Baltimore, Coast Guard Sector Maryland-National Capital Region—COTP Zone.* Except for an emergency situation, a vessel may not anchor or hold station within the spectator area without the permission of

the COTP Maryland-National Capital Region or Event PATCOM. The COTP Maryland-National Capital Region has designated this spectator area for commercial small passenger vessel use. This area is closed except for commercial small passenger vessels holding a valid Certificate of Inspection regulated under 46 CFR chapter I, subchapters K and T (46 CFR 114.110 and 175.110). Vessels that meet the requirements of this section may request access to the Patapsco River spectator area by contacting the Sail Baltimore at (410) 522-7300 or emailing info@sailbaltimore.org to obtain a vessel spectator area application. Vessel spectator area applications shall be submitted no later than 10 calendar days prior to the event date. Applicants will be notified by the COTP Maryland-National Capital Region or COTP representative regarding status of

applications and further instructions. All vessels shall contact the Event PATCOM on VHF-FM channels 16 or 22A prior to transiting to the spectator area to confirm entry approval. Vessels approved for spectator area access shall follow the instructions issued by on scene official patrol vessels or the Event PATCOM when entering the regulated area. The regulations in this section for this event will restrict access to the anchorage grounds listed at 33 CFR 110.158(a)(1) through (5).

(i) *Special local regulations—recurring events within the Fifth Coast Guard District by COTP Zone.* All coordinates listed reference Datum NAD 1983. As noted in paragraph (g) of this section, the enforcement period for each of the special local regulations listed in this paragraph (i) is subject to change.

(1) *Coast Guard Sector Delaware Bay—COTP Zone.*

TABLE 1 TO PARAGRAPH (i)(1)

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Ocean City Air Show ..	All navigable waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points; latitude 39°15'57" N, longitude 074°35'09" W, thence northeast to latitude 39°16'34" N, longitude 074°33'54" W, thence southeast to latitude 39°16'17" N, longitude 074°33'29" W, thence southwest to latitude 39°15'40" N, longitude 074°34'46" W, thence northwest to point of origin, near Ocean City, NJ.	One Sunday in September.	Ocean City, NJ.
Point Pleasant OPA/ NJ Offshore Grand Prix.	All navigable waters of the Atlantic Ocean in the vicinity of Point Pleasant Beach, NJ bounded by a line connecting the following points: Latitude 40°06'00" N, longitude 074°01'51" W, thence east to latitude 40°05'56" N, longitude 074°01'16" W, thence southwest to latitude 40°03'34" N, longitude 074°01'53" W, thence west to latitude 40°03'39" N, longitude 74°02'37" W, thence north parallel to the shoreline to the point of origin.	1. One Saturday and Sunday in May; or. 2. One Saturday and Sunday in June.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Association.
Thunder Over the Boardwalk Air show.	The waters of the North Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: From a point along the shoreline at latitude 39°21'31" N, longitude 074°25'04" W, thence southeasterly to latitude 39°21'08" N, longitude 074°24'48" W, thence southwesterly to latitude 39°20'16" N, longitude 074°27'17" W, thence northwesterly to a point along the shoreline at latitude 39°20'44" N, longitude 074°27'31" W, thence northeasterly along the shoreline to latitude 39°21'31" N, longitude 074°25'04" W.	One consecutive Monday, Tuesday, and Wednesday in August.	Atlantic City Chamber of Commerce.
Triathlons in Atlantic City.	All navigable waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points: Latitude 39°21'27.47" N, longitude 074°27'10.31" W, thence northeast to latitude 39°21'33" N, longitude 074°26'57" W, thence northwest to latitude 39°21'37" N, longitude 074°27'03" W, thence southwest to latitude 39°21'29.88" N, longitude 074°27'14.31" W, thence south to latitude 39°21'19" N, longitude 074°27'22" W, thence east to latitude 39°21'18.14" N, longitude 074°27'19.25" W, thence north to point of origin, near Atlantic City, NJ.	1. One Saturday in August; and 2. One Sunday in September.	Atlantic City, NJ.

¹ As noted, the enforcement dates and times for each of the listed events in this table 1 are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcaster Notice to Mariner.

(2) Coast Guard Sector Maryland-
National Capital Region—COTP Zone.

TABLE 2 TO PARAGRAPH (i)(2)

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Air Show Baltimore	<p>Regulated area: All navigable waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°16'00" N, longitude 076°36'30" W, thence east to latitude 39°16'00" N, longitude 076°33'00" W, thence south to latitude 39°14'30" N, longitude 076°33'00" W, thence west to latitude 39°14'30" N, longitude 076°36'30" W, thence north to point of origin, located between Port Covington and Seagirt Marine Terminal, Baltimore, MD.</p> <p>Spectator Area: All navigable waters of Patapsco River located between the northern boundary defined by a line drawn from the vicinity of North Locust Point Marine Terminal, Pier 1 thence east to Canton Industrial area, Pier 5; the south boundary is defined by a line drawn from vicinity of Whetstone Point thence east to Lazaretto Point. This area is located generally where Northwest Harbor, East Channel joins Patapsco River, Fort McHenry Channel, near Fort McHenry National Monument, Baltimore, MD. This area is bound by a line to the north commencing at position latitude 39°16'01" N, longitude 076°34'46" W, thence east to latitude 39°16'01" N, longitude 076°34'09" W, and bound by a line to the south commencing at position latitude 39°15'39" N, longitude 076°35'23" W, thence east to latitude 39°15'26" N, longitude 076°34'03" W. This spectator area is restricted to certain vessels as described in paragraph (h)(2) of this section.</p>	<p>Biennial, even years:</p> <ol style="list-style-type: none"> 1. The 2nd Thursday in September, following a Friday, Saturday and Sunday; or 2. The Thursday, Friday, Saturday and Sunday before Columbus Day (observed); or 3. The Thursday, Friday, Saturday and Sunday after Columbus Day (observed). 	Historic Ships in Baltimore, Inc.
Baltimore Dragon Boat Challenge.	All navigable waters of Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35'00" W, and bounded on the west by a line drawn along longitude 076°35'47" W.	<ol style="list-style-type: none"> 1. June 3rd; or 2. June 4th; or 3. The last Saturday or Sunday in June 	Baltimore Dragon Boat Club.
Bay Bridge Paddle	All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N, longitude 076°23'47.93" W; thence eastward to latitude 39°01'02.08" N, longitude 076°22'40.24" W; thence southeastward to eastern shoreline at latitude 38°59'13.70" N, longitude 076°19'58.40" W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'17.08" N, longitude 076°24'28.36" W; thence southward to latitude 38°59'38.36" N, longitude 076°23'59.67" W; thence eastward to latitude 38°59'26.93" N, longitude 076°23'25.53" W; thence eastward to the eastern shoreline at latitude 38°58'40.32" N, longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD.	The 1st Saturday or Sunday in June.	ABC Events, Inc.
Cambridge Classic Powerboat Race.	<p>Regulated area: All navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N, longitude 076°04'16" W; thence east to latitude 38°34'20" N, longitude 076°03'46" W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude 38°35'30" N, longitude 076°02'52" W; thence west along the shoreline to latitude 38°35'38" N, longitude 076°03'09" W; thence north and west along the shoreline to latitude 38°36'42" N, longitude 076°04'15" W; thence southwest across the Choptank River to latitude 38°35'31" N, longitude 076°04'57" W; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at the point of origin.</p> <p>The following locations are within the regulated area:</p> <p>Race area: Located within the navigable waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD.</p> <p>Buffer zone: All navigable waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bounded to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35'27.6" N, longitude 076°04'50.1" W, thence W. southeast to latitude 38°35'17.7" N longitude 076°04'29" W, thence south to latitude 38°35'01" N longitude 076°04'29" W, thence west to the shoreline at latitude 38°35'01" N, longitude 076°04'41.3" W.</p> <p>Spectator area: All navigable waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bounded by a line that commences at latitude 38°35'28" N, longitude 076°04'50" W; thence northeast to latitude 38°35'30" N, longitude 076°04'47" W; thence southeast to latitude 38°35'23" N, longitude 076°04'29" W; thence southwest to latitude 38°35'19" N, longitude 076°04'31" W; thence northwest to and terminating at the point of origin.</p>	One weekend (a consecutive Saturday and Sunday) in May.	Cambridge Power Boat Regatta Association
Catholic Charities Dragon Boat Races.	The navigable waters of the Patapsco River, within the Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36'30" W, located at Baltimore, MD.	<p>Biennial, even years:</p> <ol style="list-style-type: none"> 1. The 1st Saturday in September; or 2. The 2nd Saturday in September 	Associated Catholic Charities, Inc.
Chestertown Tea Party Re-enactment.	All navigable waters of the Chester River, within a line connecting the following positions: Commencing at latitude 39°12'27" N, longitude 076°03'46" W, thence south to latitude 39°12'19" N, longitude 076°03'53" W, thence east to latitude 39°12'16" N, longitude 076°03'48" W, thence north to latitude 39°12'25" N, longitude 076°03'41" W, thence west to point of origin latitude 39°12'27" N, longitude 076°03'46" W, located at Chestertown, MD.	The Saturday before Memorial Day.	Chestertown Tea Party Festival, Inc.
Eastport Yacht Club Lights Parade.	All navigable waters of Spa Creek and the Severn River, shoreline to shoreline, bounded on the east by a line drawn from Triton Light, at latitude 38°58'53.1" N, longitude 076°28'34.3" W, thence southwest to Horn Point, at 38°58'20.9" N, longitude 076°28'27.1" W, and bounded on the west by a line drawn along 076°30'00" W, that crosses the western end of Spa Creek, at Annapolis, MD.	The 2nd Saturday or Sunday in December.	Eastport Yacht Club.

TABLE 2 TO PARAGRAPH (i)(2)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Flying Point Park Outboard Regatta.	<p><i>Regulated area.</i> All navigable waters of Bush River and Otter Point Creek, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline of the Bush River at latitude 39°27'15" N, longitude 076°14'39" W and thence eastward to the eastern shoreline of the Bush River at latitude 39°27'03" N, longitude 076°13'57" W; and bounded to the south by the Amtrak Railroad Bridge, across the Bush River at mile 6.8, between Perryman, MD and Edgewood, MD. The following locations are within the regulated area:</p> <p><i>Race area.</i> The area is bounded by a line commencing at position latitude 39°26'33.1" N, longitude 076°15'46.8" W; thence westerly to latitude 39°26'33.1" N, longitude 076°15'49.3" W; thence northerly to latitude 39°26'37.1" N, longitude 076°15'52.4" W; thence northeasterly to latitude 39°26'40.0" N, longitude 076°15'52.5" W; thence easterly to latitude 39°26'45.9" N, longitude 076°15'32.2" W; thence southeasterly to latitude 39°26'45.3" N, longitude 076°15'30.0" W; thence southerly to latitude 39°26'43.8" N, longitude 076°15'29.1" W; thence southerly to latitude 39°26'42.2" N, longitude 076°15'28.9" W; thence southwesterly to latitude 39°26'40.8" N, longitude 076°15'29.3" W; thence westerly terminating at point of origin.</p> <p><i>Buffer zone:</i> The area surrounds the entire race area and is bounded by a line commencing at the shoreline at Flying Point Park at position latitude 39°26'31.9" N, longitude 076°15'32.5" W; thence westerly to latitude 39°26'30.5" N, longitude 076°15'52.7" W; thence northerly to latitude 39°26'39.9" N, longitude 076°16'00.0" W; thence easterly to latitude 39°26'51.6" N, longitude 076°15'26.7" W; thence southerly to latitude 39°26'37.0" N, longitude 076°15'22.5" W; thence southerly to latitude 39°26'33.7" N, longitude 076°15'22.8" W, located at the shoreline at Flying Point Park.</p> <p><i>Spectator area.</i> The designated spectator area is bounded by a line commencing at position latitude 39°26'39.9" N, longitude 076°15'23.3" W; thence east to latitude 39°26'39.6" N, longitude 076°15'19.4" W; thence south to latitude 39°26'36.6" N, longitude 076°15'18.7" W; thence west to latitude 39°26'37.0" N, longitude 076°15'22.5" W; thence north to point of origin.</p>	One weekend (a consecutive Saturday and Sunday) in May.	Carolina Virginia Racing Association.
The Great Chesapeake Bay Swim.	<p>All navigable waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges from shoreline to shoreline, bounded to the north by a line drawn parallel and 500 yards north of the north bridge span that originates from the western shoreline at latitude 39°00'36.6" N, longitude 076°23'55" W, thence eastward to the eastern shoreline at latitude 38°59'14.2" N, longitude 076°19'57.3" W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'18.4" N, longitude 076°24'28.2" W, thence eastward to the eastern shoreline at latitude 38°58'39.2" N, longitude 076°20'8.8" W.</p>	The 2nd Sunday in June.	The Great Chesapeake Bay Swim, Inc.
Maryland Freedom Swim.	All navigable waters of the Choptank River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°35'14.2" N, longitude 076°02'33.0" W, thence south to latitude 38°34'08.3" N, longitude 076°03'36.2" W, and bounded on the west by a line drawn from latitude 38°35'32.7" N, longitude 076°02'58.3" W, thence south to latitude 38°34'24.7" N, longitude 076°04'01.3" W, located at Cambridge, MD.	<ol style="list-style-type: none"> 1. The 2nd Saturday or Sunday in May; or 2. The 3rd Saturday or Sunday in May; or 3. The 4th Saturday or Sunday in May; or 4. The last Saturday or Sunday in May. 	TCR Event Management.
The MRE Tug of War	The navigable waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58'36" N, longitude 076°29'04.7" W at Annapolis City Dock, thence to a position at latitude 38°58'25" N, longitude 076°28'52.4" W, at Eastport, MD shoreline, near the foot of 2nd Street.	<ol style="list-style-type: none"> 1. The last Saturday in October; or 2. The 1st Saturday in November; or 3. The 2nd Saturday in November. 	The Maritime Republic of Eastport.
NAS Patuxent River Air Expo.	<p>All navigable waters of lower Patuxent River, near Solomons, MD, located between Fishing Point and base of break wall marking the entrance to East Seaplane Basin at Naval Air Station Patuxent River (adjacent to approach for runway 14), within an area bounded by a line commencing near the shoreline at latitude 38°17'39" N, longitude 076°25'47" W, thence northwest to latitude 38°17'47" N, longitude 076°26'00" W, thence northeast to latitude 38°18'09" N, longitude 076°25'40" W, thence southeast to latitude 38°18'00" N, longitude 076°25'25" W, located near the shoreline at U.S. Naval Air Station Patuxent River, MD.</p> <p>All navigable waters of Chesapeake Bay, located approximately 500 yards north of break wall marking entrance to Chesapeake Bay Basin, Naval Air Station Patuxent River (adjacent to approach for runway 32), within an area bounded by a line commencing near the shoreline at latitude 38°16'53.9" N, longitude 076°23'29.2" W, thence southeast to latitude 38°16'40" N, longitude 076°23'05" W, thence southwest to latitude 38°16'19" N, longitude 076°23'25" W, thence northwest to latitude 38°16'30.4" N, longitude 076°23'44.9" W, located near the shoreline at U.S. Naval Air Station Patuxent River, MD.</p>	<ol style="list-style-type: none"> 1. The Thursday, Friday, Saturday and Sunday before Memorial Day (observed); or 2. The Thursday, Friday, Saturday and Sunday after Memorial Day (observed); or 3. The Thursday, Friday, Saturday and Sunday before Labor Day (observed); or 4. The Thursday, Friday, Saturday and Sunday after Labor Day (observed). 	NAS Patuxent River.

TABLE 2 TO PARAGRAPH (i)(2)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Ocean City Air Show ..	All navigable waters of the North Atlantic Ocean within an area bounded by the following coordinates: Commencing at a point near the shoreline in vicinity of 33rd Street, Ocean City, MD, latitude 38°21'48.8" N, longitude 075°04'10" W, thence eastward to latitude 38°21'32" N, longitude 075°03'12" W, thence south to latitude 38°19'22.7" N, longitude 075°04'09.5" W, thence west to latitude 38°19'38.5" N, longitude 075°05'05.4" W, thence north along the shoreline to point of origin, located adjacent to Ocean City, MD.	1. The 1st consecutive Thursday, Friday, Saturday, and Sunday in June; or 2. The 2nd consecutive Thursday, Friday, Saturday, and Sunday in June; or 3. The 3rd consecutive Thursday, Friday, Saturday, and Sunday in June.	Town of Ocean City, MD.
Ocean City Offshore Grand Prix.	<i>Regulated area:</i> All navigable waters of North Atlantic Ocean bounded by the following coordinates: Commencing at a point near the shoreline at position latitude 38°21'42" N, longitude 075°04'11" W; thence east to latitude 38°21'33" N, longitude 075°03'10" W; thence southwest to latitude 38°19'25" N, longitude 075°04'02" W; thence west to the shoreline at latitude 38°19'35" N, longitude 075°05'02" W, at Ocean City, MD. The following locations are within the regulated area: <i>Race area:</i> The area is bounded by a line commencing at latitude 38°19'46.85" N, longitude 075°04'43.28" W, thence east to latitude 38°19'44.23" N, longitude 075°04'29.89" W, thence north and parallel to the Ocean City, MD shoreline to latitude 38°21'23.24" N, longitude 075°03'48.87" W, thence west to latitude 38°21'25.12" N, longitude 075°04'02.45" W, thence south and parallel to the Ocean City, MD shoreline to the point of origin. <i>Buffer zone:</i> The area is 500 yards in all directions surrounding the "Race area" and is bounded by a line commencing at a point near the shoreline at latitude 38°19'35" N, longitude 075°05'02" W, thence east to latitude 38°19'28" N, longitude 075°04'17" W, thence north and parallel to Ocean City, MD shoreline to latitude 38°21'35" N, longitude 075°03'24" W, thence west to the shoreline at latitude 38°21'42" N, longitude 075°04'11" W, thence south along the Ocean City, MD shoreline to the point of origin. <i>Spectator area:</i> The area is bounded by a line commencing at latitude 38°19'40" N, longitude 075°04'12" W, thence east to latitude 38°19'37" N, longitude 075°03'59" W, thence northeast and parallel to the Ocean City, MD shoreline to latitude 38°21'17" N, longitude 075°03'17" W, thence west to latitude 38°21'20" N, longitude 075°03'31" W, thence southwest and parallel to Ocean City, MD shoreline to the point of origin.	1. The 1st Sunday in May; or 2. The 2nd Sunday in May; or 3. The 2nd Sunday in September; or 4. The 3rd Sunday in September; or 5. The 4th Sunday in September; or 6. The last Sunday in September.	Offshore Powerboat Association.
Oxford Funathon Swim.	The navigable waters of the Tred Avon River from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42'25" N, longitude 076°10'45" W, thence south to latitude 38°41'37" N, longitude 076°10'26" W, and bounded on the west by a line drawn from latitude 38°41'58" N, longitude 076°11'04" W, thence south to latitude 38°41'25" N, longitude 076°10'49" W, thence east to latitude 38°41'25" N, longitude 076°10'30" W, located between Bellevue, MD, and Oxford, MD.	1. The 1st Saturday or Sunday in June; or 2. The 2nd Saturday or Sunday in June; or 3. The 3rd Saturday or Sunday in June.	Charcot Marie Tooth Association and Therapies for Inherited Neuropathies.
Rock Hall and Waterman's Triathlon Swims.	The navigable waters of Rock Hall Harbor from shoreline to shoreline, bounded by a line drawn from latitude 39°07'58.9" N, longitude 076°15'02" W, thence southeast and parallel along the harbor breakwall to latitude 39°07'50.1" N, longitude 076°14'41.7" W, located at Rock Hall, MD.	1. The Saturday and Sunday after Memorial Day (observed); and 2. The 1st Saturday and Sunday in October.	Kinetic Multisports, LLC.
Southern Maryland Boat Club Summer and Fall Regattas.	<i>Regulated area:</i> All navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N, and bounded to the west by a line drawn along longitude 076°38'30" W, located at Leonardtown, MD. The following locations are within the regulated area: <i>Race area:</i> The area is bounded by a line commencing at position latitude 38°17'09.78" N, longitude 076°38'22.71" W, thence southeast to latitude 38°16'58.62" N, longitude 076°37'50.91" W, thence southwest to latitude 38°16'51.89" N, longitude 076°37'55.82" W, thence northwest to latitude 38°17'05.44" N, longitude 076°38'27.20" W, thence northeast to point of origin. <i>Buffer zone:</i> The area is approximately 125 yards in all directions surrounding the "Race area" and is bounded by a line commencing at the shoreline west of Leonardtown Wharf Park at position latitude 38°17'13.80" N, longitude 076°38'24.72" W, thence southeast to latitude 38°16'58.61" N, longitude 076°37'44.29" W, thence southwest to latitude 38°16'46.35" N, longitude 076°37'52.54" W, thence northwest to latitude 38°16'58.78" N, longitude 076°38'26.63" W, thence north to latitude 38°17'07.50" N, longitude 076°38'30.00" W, thence northeast to point of origin.	1. Either: a. July 4th; or b. The last Saturday and Sunday of July; and 2. Either: a. The 1st Saturday and Sunday in October; or b. The 2nd Saturday and Sunday in October.	Southern Maryland Boat Club.

TABLE 2 TO PARAGRAPH (i)(2)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Thunder on the Choptank.	<p><i>Spectator areas: Northeast Spectator Fleet Area.</i> The area is bounded by a line commencing at position latitude 38°16'59.10" N, longitude 076°37'45.60" W, thence north-east to latitude 38°17'01.76" N, longitude 076°37'43.71" W, thence southeast to latitude 38°16'59.23" N, longitude 076°37'37.25" W, thence southwest to latitude 38°16'53.32" N, longitude 076°37'40.85" W, thence northwest to latitude 38°16'55.48" N, longitude 076°37'46.39" W, thence northeast to latitude 38°16'58.61" N, longitude 076°37'44.29" W, thence northwest to point of origin.</p> <p><i>Southeast Spectator Fleet Area.</i> The area is bounded by a line commencing at Buzzard Point at position latitude 38°16'47.20" N, longitude 076°37'54.80" W, thence south to latitude 38°16'43.30" N, longitude 076°37'55.20" W, thence east to latitude 38°16'43.20" N, longitude 076°37'47.80" W, thence north to latitude 38°16'44.80" N, longitude 076°37'48.20" W, thence northwest to point of origin..</p> <p><i>South Spectator Fleet Area.</i> The area is bounded by a line commencing at position latitude 38°16'55.36" N, longitude 076°38'17.26" W, thence southeast to latitude 38°16'50.39" N, longitude 076°38'03.69" W, thence south to latitude 38°16'48.87" N, longitude 076°38'03.68" W, thence northwest to latitude 38°16'53.82" N, longitude 076°38'17.28" W, thence north to point of origin.</p> <p><i>Regulated area.</i> All navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N, longitude 076°04'16" W; thence east to latitude 38°34'20" N, longitude 076°03'46" W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude 38°35'30" N, longitude 076°02'52" W; thence west along the shoreline to latitude 38°35'38" N, longitude 076°03'09" W; thence north and west along the shoreline to latitude 38°36'42" N, longitude 076°04'15" W; thence southwest across the Choptank River to latitude 38°35'31" N, longitude 076°04'57" W; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at the point of origin. The following locations are within the regulated area.</p> <p><i>Race Area.</i> Located within the navigable waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD.</p> <p><i>Buffer zone.</i> All navigable waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35'27.6" N, longitude 076°04'50.1" W; thence southeast to latitude 38°35'17.7" N, longitude 076°04'29" W; thence south to latitude 38°35'01" N, longitude 076°04'29" W; thence west to the shoreline at latitude 38°35'01" N, longitude 076°04'41.3" W.</p> <p><i>Spectator area.</i> All navigable waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35'28" N, longitude 076°04'50" W; thence northeast to latitude 38°35'30" N, longitude 076°04'47" W; thence southeast to latitude 38°35'23" N, longitude 076°04'29" W; thence southwest to latitude 38°35'19" N, longitude 076°04'31" W; thence northwest to and terminating at the point of origin.</p>	<p>1. The 3rd Saturday and Sunday in July; or</p> <p>2. The 4th Saturday and Sunday in July; or</p> <p>3. The last Saturday and Sunday in July.</p>	Kent Narrows Racing Association.
USNA Blue Angels Air Show.	<p><i>Regulated area:</i> All navigable waters of the Severn River, from shoreline to shoreline, bounded to the northwest by a line drawn along the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58'39.5" N, longitude 076°28'49" W, thence southeast to a point 1500 yards ESE of Chinks Point, MD at latitude 38°57'41" N, longitude 076°27'36" W, thence northeast to Greenbury Point at latitude 38°58'27.7" N, longitude 076°27'16.4" W. The following location is within the regulated area:</p> <p><i>Spectator area:</i> All navigable waters of the Severn River bounded by a line commencing at latitude 38°58'38.2" N, longitude 076°27'56.9" W, thence southeast to latitude 38°58'24.9" N, longitude 076°27'47.6" W, thence west to latitude 38°58'22.3" N, longitude 076°27'54.5" W, thence northwest to latitude 38°58'28.3" N, longitude 076°28'11" W, thence east to point of origin. This area is located generally in the center portion of Middle Ground Anchorage, Severn River, MD. This spectator area is restricted to certain vessels as described in paragraph (h)(1) of this section.</p>	The Tuesday and Wednesday before Memorial Day (observed).	U.S. Naval Academy.
USNA Crew Races	All navigable waters of the Severn River, from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00'58" N, longitude 076°31'32" W, thence to the north shoreline at latitude 39°01'11" N, longitude 076°31'10" W. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58'39.5" N, longitude 076°28'49" W, thence easterly to Carr Point, MD at latitude 38°58'58" N, longitude 076°27'41" W.	<p>1. Either:</p> <p>a. The 3rd Saturday and Sunday in May; or</p> <p>b. The 4th Saturday and Sunday in May; or</p> <p>c. The last Saturday and Sunday in May; and</p> <p>2. Every Saturday and Sunday in May.</p>	U.S. Naval Academy.
USNA Safety at Sea Seminar.	All navigable waters of the Severn River, from shoreline to shoreline, bounded to the northwest by the Naval Academy (SR-450) Bridge and bounded to the southeast by a line drawn from Triton Light at latitude 38°58'53.0" N, longitude 076°28'34.4" W, thence easterly to Carr Point, MD at latitude 38°58'58.7" N, longitude 076°27'38.9" W.	<p>1. The 4th Saturday in March; or</p> <p>2. The last Saturday in March; or</p> <p>3. The 1st Saturday in April.</p>	U.S. Naval Academy.

TABLE 2 TO PARAGRAPH (i)(2)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Washington, DC Drag-on Boat Festival.	All navigable waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge, located at Georgetown, Washington, DC.	1. The 3rd Saturday and Sunday in May; or. 2. The 2nd Saturday and Sunday in June; or 3. The 3rd Saturday and Sunday in June.	Taiwan—U.S. Cultural Association.
Washington's Crossing: Swim Across the Potomac.	All navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47'35" N, longitude 077°02'22" W, thence east along the northern extent of the Woodrow Wilson Memorial (I-495/I-95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47'36" N, longitude 077°01'32" W, thence south along the Maryland shoreline to latitude 38°46'52" N, longitude 077°01'13" W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47'23" N, longitude 077°03'03" W, thence north along the Virginia shoreline to the point of origin.	The 1st Sunday in June.	Wave One Swimming.
Washington DC Sharkfest Swim.	All navigable waters of the Upper Potomac River, within an area bounded by a line connecting the following points: From the Rosilie Island shoreline at latitude 38°47'30.30" N, longitude 077°01'26.70" W, thence west to latitude 38°47'30.00" N, longitude 077°01'37.30" W, thence south to latitude 38°47'08.20" N, longitude 077°01'37.30" W, thence east to latitude 38°47'09.00" N, longitude 077°01'09.20" W, thence southeast along the pier to latitude 38°47'06.30" N, longitude 077°01'02.50" W, thence north along the shoreline and west along the southern extent of the Woodrow Wilson (I-95/I-495) Memorial Bridge and south and west along the shoreline to the point of origin, located at National Harbor, MD.	1. The 3rd Saturday or Sunday in June; or. 2. The 4th Saturday or Sunday in June; or 3. The last Saturday or Sunday in June.	Enviro-Sports Productions Inc.

¹As noted, the enforcement dates and times for each of the listed events in this table 2 are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcaster Notice to Mariner.

(3) *Coast Guard Sector Virginia—COTP Zone.*

TABLE 3 TO PARAGRAPH (i)(3)

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Blackbeard Festival, Battle of Hampton.	<i>Regulated area:</i> The navigable waters of Sunset Creek and Hampton River shoreline to shoreline bounded to the north by the I-64 Bridge over the Hampton River and bounded to the south by a line drawn from Hampton River Channel Light 16 (LL 10945), located at latitude 37°01'03" N, longitude 076°20'24" W, thence west across the Hampton River to finger pier at Bluewater Yacht Center, located at latitude 37°01'03" N, longitude 076°20'28" W. The following locations are within the regulated area: <i>Spectator Vessel Anchorage Areas—</i> <i>Area A.</i> Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shoreline at latitude 37°01'46.6" N, longitude 076°20'21.3" W, thence east across the river to latitude 37°01'42.6" N, longitude 076°20'12.3" W, and bounded to the north by the I-64 Bridge over the Hampton River. The anchorage area will be marked by orange buoys. <i>Area B.</i> Located along the eastern side of the Hampton River channel, south of the route 60/143 bridge and Joy's Marina, and adjacent to the shoreline that fronts the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: latitude 37°01'27.6" N, longitude 076°20'23.1" W, thence south to latitude 37°01'22.9" N, longitude 076°20'26.1" W. The anchorage area will be marked by orange buoys.	May—last Friday, Saturday and Sunday or June—1st Friday, Saturday and Sunday. October—3rd and 4th weekend.	City of Hampton.
Cock Island Race	The navigable waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, VA, latitude 36°50'51.6" N, longitude 076°18'07.9" W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51'00.3" N, longitude 076°17'51" W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, VA, at latitude 36°50'50.9" N, longitude 076°18'07.7" W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50'33.6" N, longitude 076°17'54.1" W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, VA at latitude 36°50'13.2" N, longitude 076°17'44.8" W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50'08.8" N, longitude 076°17'37.5" W; and bounded to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50'21.5" N, longitude 076°17'14.5" W, and Norfolk at latitude 36°50'35" N, longitude 076°17'10" W.	1. The 2nd Saturday in June; or 2. The 3rd Saturday in June.	Portsmouth Boat Club & City of Portsmouth, VA.

TABLE 3 TO PARAGRAPH (i)(3)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Hampton Cup Regatta.	<p><i>Regulated area:</i> All navigable waters of Mill Creek, adjacent and north of Fort Monroe, Hampton, VA. The regulated area includes the following areas:</p> <p><i>Race area:</i> All navigable waters within the following boundaries: to the north, a line drawn along latitude 37°01'03" N, to the east a line drawn along longitude 076°18'30" W, to the south a line drawn parallel with the Fort Monroe shoreline, and west boundary is parallel with the Route 258—East Mercury Boulevard Bridge—causeway. The following locations are within the regulated area:</p> <p><i>Buffer zone A:</i> All navigable waters bounded by a line connecting the following points: latitude 37°00'43" N, longitude 076°18'54" W, thence north along the causeway to latitude 37°01'03" N, longitude 076°18'52" W, thence southwest to latitude 37°01'00" N, longitude 076°18'54" W, thence south to Route 143 causeway at latitude 37°00'44" N, longitude 076°18'58" W, thence east along the shoreline to point of origin.</p> <p><i>Buffer zone B:</i> All navigable waters bounded by a line connecting the following points: latitude 37°01'08" N, longitude 076°18'49" W, thence east to latitude 37°01'08" N, longitude 076°18'23" W, thence south to latitude 37°00'33" N, longitude 076°18'23" W, thence west to latitude 37°00'33" N, longitude 076°18'30" W, thence north to latitude 37°01'03" N, longitude 076°18'30" W, thence west to latitude 37°01'03" N, longitude 076°18'49" W, thence north to point of origin.</p> <p><i>Spectator area:</i> All navigable waters bounded by a line connecting the following points: latitude 37°01'08" N, longitude 076°18'23" W, thence east to latitude 37°01'08" N, longitude 076°18'14" W, thence south to latitude 37°00'54" N, longitude 076°18'14" W, thence southwest to latitude 37°00'37" N, longitude 076°18'23" W, thence north to point of origin.</p>	<ol style="list-style-type: none"> 1. The 1st consecutive Friday, Saturday, and Sunday in August; or. 2. The 2nd consecutive Friday, Saturday and Sunday in August; and 3. The 4th Saturday and Sunday in September. 	Hampton Cup Regatta Boat Club.
Mattaponi Drag Boat Race.	<p><i>Regulated area:</i> All navigable waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, VA. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52'43" W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53'41" W just north of Wakema, VA. The following locations are within the regulated area</p> <p><i>Buffer zone:</i> The navigable waters of Mattaponi River extending 200 yards outwards from east and west boundary lines described in this section.</p> <p><i>Spectator area:</i> The regulated area cannot accommodate spectator vessels due to limitations posed by shallow water and insufficient waters to provide adequate separation between race course and other vessels. Spectators are encouraged to view the race from points along the adjacent shoreline.</p>	June—3rd Saturday and Sunday or 4th Saturday and Sunday.	Mattaponi Volunteer Rescue Squad and Dive Team.
Norfolk Harborfest	The navigable waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the north corner of the landing at Hospital Point, Portsmouth, VA, latitude 36°50'51.6" N, longitude 076°18'07.9" W, and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51'00.3" N, longitude 076°17'51" W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, VA, at latitude 36°50'50.9" N, longitude 076°18'07.7" W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50'33.6" N, longitude 076°17'54.1" W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, VA at latitude 36°50'13.2" N, longitude 076°17'44.8" W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50'08.8" N, longitude 076°17'37.5" W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50'21.5" N, longitude 076°17'14.5" W, and Norfolk at latitude 36°50'35" N, longitude 076°17'10" W.	<p>June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.</p> <ol style="list-style-type: none"> 1. The 1st consecutive Friday, Saturday, and Sunday in June; or 2. The 2nd consecutive Friday, Saturday, and Sunday in June. 	Norfolk Festevents, Ltd.
Pony Penning Swim	The navigable waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55'01" N, longitude 075°22'40" W, thence south to latitude 37°54'50" N, longitude 075°22'46" W; and to the southwest by a line drawn from latitude 37°54'54" N, longitude 075°23'00" W, thence east to latitude 37°54'49" N, longitude 075°22'49" W.	<ol style="list-style-type: none"> 1. The last Wednesday and following Friday in July; or 2. The 1st Wednesday and following Friday in August. 	Chincoteague Volunteer Fire Department.
Poquoson Seafood Festival Workboat Races.	<p><i>Regulated area:</i> The navigable waters of the Back River, Poquoson, VA. The following locations are within the regulated area:</p> <p><i>Race area:</i> The area is bounded on the north by a line drawn along latitude 37°06'30" N, bounded on the south by a line drawn along latitude 37°06'15" N, bounded on the east by a line drawn along longitude 076°18'52" W, and bounded on the west by a line drawn along longitude 076°19'30" W.</p> <p><i>Buffer zone:</i> The navigable waters of Back River extending 200 yards outwards from east and west boundary lines, and 100 yards outwards from the north and south boundary lines described in this section.</p> <p><i>Spectator area:</i> Is located along the south boundary line of the buffer zone described in this section and continues to the south for 300 yards.</p>	<ol style="list-style-type: none"> 1. The last Sunday in September; or. 2. The 1st Sunday of October; or 3. The 2nd Sunday of October. 	City of Poquoson.
Something in the Water.	<i>Regulated area:</i> All navigable waters of the North Atlantic Ocean immediately adjacent to Virginia Beach, VA bounded on the south side by a line beginning on the shore line at latitude 36°49'49.20" N, longitude 75°58'04.54" W, thence easterly to latitude 36°49'49.27" N, longitude 75°57'58.49" W, just seaward of the Rudee Inlet break-wall, thence northerly to latitude 36°51'34.83" N, longitude 75°58'28.82" W, adjacent to Neptune's Park at 30th street, thence westerly to the shore line at latitude 36°51'34.83" N, longitude 75°58'35" W, and thence southerly along the shore line back to the beginning point.	The last Friday, Saturday, and Sunday in April.	Redrock Entertainment Services.

TABLE 3 TO PARAGRAPH (i)(3)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Virginia Boat Club (VBC) Sprints Regatta on the James River.	<p>Buffer zone: The navigable waters of the North Atlantic Ocean extending 200 yards towards the eastern boundary line described in this section.</p> <p>Spectator Area: Spectator craft are not permitted within the regulated area during the enforcement period. The regulated area is established to provide adequate separation between event participants on the beach and prohibit unauthorized waterside entry during the event.</p> <p>All navigable waters of the James River in the vicinity of Robious Landing Park, Midlothian, VA. The regulated area includes a section of the James River approximately 1300 yards long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 077°38'04" W, and bounded to the west by a line that runs parallel along longitude 077°38'54" W, north of Robious Landing Park.</p>	<p>1. The 2nd Saturday or Sunday in June; or</p> <p>2. The 3rd Saturday or Sunday in June.</p>	Virginia Boat Club Richmond, VA.

¹ As noted, the enforcement dates and times for each of the listed events in this table 3 are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcaster Notice to Mariner.

(4) *Coast Guard Sector North Carolina—COTP Zone.*

TABLE 4 TO PARAGRAPH (i)(4)

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Crossing, The	All navigable waters of Lake Gaston, from shoreline to shoreline, directly under the length of Eaton Ferry Bridge (NC State Route 903), commencing at the southern bridge entrance at latitude 36°30'38" N, longitude 077°57'53" W, and extending to the northern bridge entrance at latitude 36°31'19" N, longitude 077°57'33" W, and bounded to the west by a line drawn parallel and 100 yards from and the western side of Eaton Ferry Bridge near Littleton, NC.	The 2nd Saturday in August.	Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, AKA O'SAIL.
PPD Ironman North Carolina.	All navigable waters of Masonboro Inlet, shoreline to shoreline starting at location latitude 34°11'13" N, longitude 077°48'53" W, thence north along Banks Channel to latitude 34°12'14" N, longitude 077°48'04" W, thence west to Motts channel, terminating at Sea Path Marina at latitude 34°12'44" N, longitude 077°48'25" W, Wrightsville Beach, NC.	<p>1. The 3rd Friday or Saturday in October; or</p> <p>2. The 4th Friday or Saturday in October; or 3. The last Friday or Saturday in October</p>	Ironman, Wilmington, NC.
Roanoke River Races	All navigable waters of the Roanoke River in Plymouth, NC, from approximate positions: latitude 35°52'25" N, longitude 076°44'33" W, then northwest to latitude 35°52'29" N, longitude 076°44'37" W, then southwest along the shoreline to latitude 35°52'00" N, longitude 076°45'31" W, then south to latitude 35°51'56" N, longitude 076°45'30" W, then northeast along the shoreline to the point of origin, a length of approximately one mile.	<p>1. Either:</p> <p>a. The 1st Saturday and Sunday in August; or</p> <p>b. The 2nd Saturday and Sunday in August; or</p> <p>c. The 3rd Saturday and Sunday in August; or</p> <p>d. The 4th Saturday and Sunday in August; and</p> <p>2. Either:</p> <p>a. The 2nd Saturday and Sunday in October; b. The 3rd Saturday and Sunday in October; or</p> <p>c. The 4th Saturday and Sunday in October; or</p> <p>d. The last Saturday and Sunday in October</p>	Virginia Outlaw Drag Boat Association (VODBA)
Swim the Loop and Motts Channel Sprint.	All navigable waters surrounding Harbor Island, NC including Intracoastal waterway, Lees Cut, Banks Channel and Motts Channel. Enforcement area extends approximately 100 yards from the shoreline of Harbor Island and is bounded by a line connecting the following points: latitude 34°12'55" N, longitude 077°48'59" W, thence northeast to latitude 34°13'16" N, longitude 077°48'39" W, thence southeast to latitude 34°13'06" N, longitude 077°48'18" W, thence east to latitude 34°13'12" N, longitude 077°47'41" W, thence southeast to latitude 34°13'06" N, longitude 077°47'33" W, thence south to latitude 34°12'31" N, longitude 077°47'47" W, thence southwest to latitude 34°12'11" N, longitude 077°48'01" W, thence northwest to latitude 34°12'29" N, longitude 077°48'29" W, thence north to latitude 34°12'44" N, longitude 077°48'32" W, thence northwest to point of origin.	<p>1. The 4th Saturday or Sunday in September; or</p> <p>2. The last Saturday or Sunday in September</p>	Without Limits Coaching, Inc.

TABLE 4 TO PARAGRAPH (i)(4)—Continued

Event	Regulated area	Enforcement period(s) ¹	Sponsor
Wilmington YMCA Triathlon.	All navigable waters of Motts Channel, from shoreline to shoreline and between Wrightsville Channel Day beacon 14 (LLNR 30220), located at latitude 34°12'17.8" N, longitude 077°48'09.1" W, thence westward to Wrightsville Channel Day beacon 25 (LLNR 30255), located at latitude 34°12'52.1" N, longitude 077°48'53.5" W.	1. The 3rd, 4th, or last Saturday in September; or 2. The last Saturday in October; or 3. The 1st or 2nd Saturday in November	Wilmington, NC, YMCA.

¹ As noted, the enforcement dates and times for each of the listed events in this table 4 are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcaster Notice to Mariner.

Dated: May 10, 2021.

Laura M. Dickey,
Rear Admiral, U.S. Coast Guard, Commander,
Fifth Coast Guard District.

[FR Doc. 2021–11570 Filed 6–2–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0379]

RIN 1625–AA00

Safety Zone; Lake Charles, Lake Charles, LA

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for all navigable waters of Lake Charles west of 93°13'51.2" W, east of 93°14'8.3" W, and extending 500 yards south from the northern shore of Lake Charles. This safety zone is necessary to protect persons and vessels from hazards associated with a Pro Watercross event on August 28 and 29, 2021 in Lake Charles, LA. Entry of vessels or persons into this zone would be prohibited unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 18, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0379 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Christopher Saylor, MSU Lake Charles, U.S. Coast Guard; telephone 337–491–7816, email Christopher.M.Saylor@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On May 19, 2021, the Pro Watercross Organization notified the Coast Guard that it would be conducting watercross races from 8 a.m. through 6 p.m. on August 28 and 29, 2021. These watercross races are scheduled to be conducted along the north shore of Lake Charles in waters west of 93°13'51.2" W, east of 93°14'8.3" W, and extending 500 yards south from the north shoreline of Lake Charles, LA. The Captain of the Port Marine Safety Unit Port Arthur (COTP) has determined that potential hazards associated with the pro watercross races would be a safety concern for spectator craft and vessels in the vicinity of these race events.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters in the vicinity of the pro watercross race course, during, and after the scheduled races. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary safety zone from 8 a.m. on August 28, 2021, through 6 p.m. on August 29, 2021. The safety zone would be enforced from 8 a.m. through 6 p.m. on both days the 28th and the 29th of August 2021. The safety zone would cover all navigable waters west of 93°13'51.2" W, east of 93°14'8.3" W, and extending 500 yards south from the

north shoreline of Lake Charles, LA. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, in the navigable waters of the Lake Charles during the watercross races.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at by telephone at 337–912–0073.

The COTP or a designated representative may prohibit or control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel would come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative may terminate enforcement of the safety zone at the conclusion of the event.

The COTP or a designated representative would inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based the size, location, and duration of the safety zone. The temporary safety zone would be enforced on a 500-yards by 500-yards portion of navigable waters of Lake Charles, LA, for only two days. This rule would be enforced to protect personnel, vessels, and the marine environment from hazards associated with the pro watercross race.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

the human environment. This proposed rule involves a safety zone lasting 10 hours on each of the two event days, and would prohibit entry within 500 yards of the beach area of North Lake Charles. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. We review all

comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0379 to read as follows:

§ 165.T08–0379 Safety Zone; Lake Charles, Lake Charles, Louisiana.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lake Charles west of 93°13'51.2" W, east of 93°14'8.3" W, and extending 500 yards south from the northern shore of Lake Charles. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, on the navigable waters of the Lake Charles during the watercross races.

(b) *Enforcement period.* This section will be enforced from 8 a.m. through 6 p.m. on August 28, 2021 and August 29, 2021.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at by telephone at 337–912–0073.

(2) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(4) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 27, 2021.

Molly A. Wike,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2021–11584 Filed 6–2–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0208]

RIN 1625–AA87

Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish two security zones for certain waters of Rehoboth Beach to prevent waterside threats and incidents for persons under the protection of the United States Secret Service (USSS) in the vicinity of Rehoboth Beach, Delaware. These security zones would be enforced intermittently and only for the protection of persons protected by USSS when in the area and will restrict vessel traffic while the zone is being enforced. This rule would prohibit vessels and people from entering the zones unless specifically exempt under the provisions of this rule or granted specific permission from the Captain of the Port (COTP) Delaware Bay or a designated representative. Any vessel requesting to transit the zones without pause or delay, will typically be authorized to do so by on scene enforcement vessels. We invite your comments on this proposed rule.

DATES: Comments and related material must be received by the Coast Guard on or before July 19, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–

2021–0208 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4889, email Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
§ Section
U.S.C. United States Code
USSS United States Secret Service

II. Background, Purpose, and Legal Basis

On occasion, persons protected by the USSS under 18 U.S.C. 3056 or pursuant to Presidential memorandum will visit Rehoboth Beach, Delaware, and the surrounding vicinity. These visits require the implementation of heightened security measures for persons protected by the USSS who may be present in the vicinity of Rehoboth Beach, Delaware. Due to the close proximity of the Lewes and Rehoboth canal, and the Atlantic Ocean, these security zones are necessary for USSS protectees, the public, and the surrounding waterway.

The purpose of this proposed rulemaking is to protect USSS protectees and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231), as delegated by Department of Homeland Security Delegation no. 0170.1, section II, paragraph 70, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 to the Captains of the Port.

III. Discussion of Proposed Rule

The COTP is proposing to establish two security zones for the protection of USSS protectees when present in the vicinity of Rehoboth Beach, Delaware. This rule is necessary to expedite the

establishment and enforcement of these security zones when short notice is provided to the COTP for USSS protectees who may be present in the area.

Security Zone One is bounded on the north by a line drawn from 38° 44.36' North Latitude (N), 075° 5.32' West Longitude (W), thence easterly to 38° 44.37' N, 075° 5.31' W proceeding from shoreline to shoreline on the Lewes and Rehoboth Canal in a Southeasterly direction where it is bounded by a line drawn from 38° 43.89' N, 075° 5.31' W, thence easterly to 38° 43.90' N, 075° 5.07' W thence northerly across the entrance to the yacht basin to 38° 43.93' N, 075° 5.09' W.

Security Zone Two extends 500 yards seaward from the shoreline, into the Atlantic Ocean beginning at 38° 44.86' N, 075° 4.83' W, proceeding southerly along the shoreline to 38° 43.97' N, 075° 4.70' W.

These security zones may be activated individually or simultaneously with respect to the presence of USSS protectees. These zones will be enforced intermittently. Enforcement of these zones will be broadcast via Broadcast Notice to Mariners (BNM) and/or local Safety Marine Information Broadcast (SMIB) on VHF-FM marine channel 16, as well as actual notice via on scene Coast Guard Personnel. The public can learn the status of the security zone via an information release for the public via website <https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40>.

No vessel or person would be permitted to enter either security zone without first obtaining permission from the COTP or a designated representative. However, we anticipate that vessels requesting to transit these zones would typically be authorized to transit without pause or delay by on-scene enforcement vessels. When a vessel or person is permitted to enter

the security zone after obtaining permission from the COTP or a designated representative, the vessel or person must proceed as directed by on scene enforcement vessels. Any vessel or person permitted to transit the security zone would be required to continue through the zone without pause or delay as directed by on scene enforcement vessels. No vessel or person will be permitted to stop or anchor in the security zone. At times, for limited duration, it is anticipated that vessels may be prohibited from entering the zone due to movement of persons protected by USSS. During those times, actual notice will be given to vessels in the area.

When these security zones are enforced, the COTP would issue a BNM and/or SMIB via VHF-FM channel 16. The public can learn the status of the security zone via an information release for the public via website <https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40>.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A combined regulatory analysis (RA) and Regulatory Flexibility Analysis follows.

This proposed rule would establish the following two security zones: (1) A half-mile stretch of the Lewes and Rehoboth Canal; and (2) a one-mile section of Rehoboth Beach stretching 500 yards from the shoreline. The enforcement of these two security zones is expected to be intermittent. Vessels would normally be allowed to transit but not stop within the security zones. However, when persons protected by the USSS are moving in or out of the area, the Coast Guard may halt traffic in these two security zones. The Coast Guard expects such instances to happen relatively infrequently and for a short duration (1–3 hours).

In order to implement this rule, the Coast Guard proposes to station Coast Guard personnel at the borders of the security zones with the authority to enforce this security zone. In the few instances where USSS protectees are in transit, these Coast Guard personnel would ensure that no traffic transits through the security zones. Recreational boaters wishing to transit the area may inquire directly with the Coast Guard personnel posted at the boundaries of the security zones, rather than being required to contact the COTP.

Table 1 provides a summary of the proposed rule's costs and qualitative benefits.

TABLE 1—SUMMARY OF THE PROPOSED RULE'S IMPACTS

Category	Summary
Potentially Affected Population.	This rule would impact recreational boaters wishing to use the Lewes and Rehoboth Canal or the North Shores section of Rehoboth Beach.
Unquantified Costs.	Recreational boaters of the Lewes and Rehoboth Canal would need to speak with Coast Guard personnel stationed at the entrances of the security zones. These recreational boaters would be informed that they will be unable to stop or loiter inside the security zone. In certain instances where persons protected by USSS are in transit, traffic may be halted on the Lewes Rehoboth canal. In these instances, recreational boaters wishing to use the canal would instead need to take a circuitous route or forgo their trip all together.
Unquantified Benefits.	This rule would secure the area to meet objectives of the USSS and keep USSS protectees safe.

Affected Population

The Coast Guard does not collect data on the vessels and individuals using either the Lewes and Rehoboth Canal or the North Shores Section of Rehoboth Beach, the areas that would be impacted by this proposed rule. To estimate the affected population, we used information directly observable from Google Maps, as well as the subject-matter expertise of Coast Guard personnel with knowledge of the area.

The proposed two security zones—a half-mile section of the Lowes Rehoboth Canal and a one-mile section of

Rehoboth Beach—are distinct. As such, we assess the affected populations for these two areas separately.

(1) Security Zone 1: Lewes Rehoboth Canal

This proposed regulation would impact any recreational boater wishing to transit the Lewes Rehoboth Canal. The Lewes Rehoboth Canal is about 10 miles long and connects the Broadkill River and the Delaware Bay to Rehoboth Bay. The security zone would begin approximately two-thirds of the way through the canal (if starting from the Delaware Bay) and last for about a half

mile. As such, recreational boaters wishing to transit the canal from the communities of Lewes, Dewey Beach, North Shores, Rehoboth Beach, and West Rehoboth may be impacted by this proposed rule.¹

These communities are seasonal; their populations are much larger and more active in the summer than in the winter. Vessel traffic in the canal follows the same pattern. Coast Guard officers stationed in this region estimated the numbers of vessels transiting this zone per day by season. We present these estimates in table 2.

TABLE 2—VESSEL TRAFFIC BY TIME OF YEAR

Months	Vessels transiting the canal per day
January through March	20 vessels per day.
April	75 vessels per day.
May through September	More than 200 vessels per day.
October through December	50 vessels per day.

The vessel traffic in the canal is entirely recreational. There are no commercial vessels that transit the canal. Moreover, the canal is quite shallow. The Coast Guard's 27-foot vessels navigate the canal with difficulty because of the depth. Kayaks, canoes, and other manually powered watercraft are frequently used in the canal (not counted in the daily vessel traffic estimates).

In addition to the daily traffic of recreational boaters wishing to transit the security zone, there are a number of boat slips located either within the security zone or require transiting the security zone to access. There are also houses that border sections of the canal wholly inside the security zone. We reviewed satellite images from Google Maps to identify the number of boat slips within the security zone or require transiting the security zone to access. Based on these satellite images, we estimate that 17 private houses that lie entirely within the canal security zone contain either a boat slip or dock. The boat slips indicate that recreational vessel usage might be undertaken by the owners or occupiers of these properties. Because they lie fully inside the security zone, they would be impacted every time they took out their vessels.

Additionally, a small man-made canal branches off the main Lewes and Rehoboth Canal and leads into a small man-made lake. The southern edge of the safety zone continues just past the entrance to this second canal. Private

houses and the North Shores Marina inhabit the land surrounding the second canal and its adjoining lake. Some of these houses contain docks or boat slips. Recreational vessel operators would require transiting through the security zone to reach either the boat slips at these private homes or the North Shores Marina. Use of this canal and lake is primarily local and by small recreational vessels, as this second canal may only be 3 feet deep in certain places. Using Google Maps, we count 14 boat slips or docks connected to private houses and 30 spaces for recreational vessels at the North Shores Marina.

(2) Security Zone 2: Rehoboth Beach

This proposed rule would also impact any recreational boaters that would transit the area 1 mile by 500 yards offshore of the North Shores section of Rehoboth Beach. Because of its proximity to the shore, the Coast Guard does not estimate than any recreational boaters or commercial vessels routinely operate in this section of the ocean. Vessels operating this close to shore could face additional hazards due to the surf and other marine currents and would avoid this area.

Costs

As above, we assess the costs to the two security zones separately.

(1) Security Zone 1: Lewes and Rehoboth Canal

In table 2, we present the Coast Guard's estimate of the average vessel

traffic. Under normal course of operations, the Coast Guard anticipates that recreational boaters transiting the canal would have a very brief conversation with the Coast Guard official stationed at the entrance to the security zone. Recreational boaters would then proceed through the security zone (without stopping or loitering) and exit the security zone. We anticipate that this conversation would last between 15 and 30 seconds per recreational boater. Because we do not know how many recreational boaters are on the average boat and because of how small the amount of time per recreational boaters is likely to be, we do not estimate the total costs of these conversations.

Additionally, above we discussed that there are a number of houses and a marina that are contained within the security zone or would require transiting the security zone in order to access. The Coast Guard observes that recreational vessel operators who reside or are visiting a location inside the security zone should be able to relay this information to the Coast Guard personnel stationed at the entrance of the security zone. When recreational boaters provide this additional information, it may increase the duration of the conversation. However, there are only 17 houses with private docks or boat slips contained within the security zone. It is likely, therefore, that the Coast Guard personnel stationed at either end of the security zone would

¹ Dewey Beach lies on the isthmus between Rehoboth Bay and the Atlantic Ocean south of

Rehoboth beach and north of the Delaware Seashore State Park.

become aware of these vessels and their owners and operators. As a result, conversations may become more brief overtime.

In order to access the private docks and boat slips of the 14 houses and the North Shores Marina, recreational vessel operators would need to transit through a small portion of the security zone. The Coast Guard would interpret the vessels seeking to access this second canal as innocent passage. As a result, the Coast Guard personnel do not intend to converse with recreational boaters intending to access the second canal unless they notice suspicious activity. Instead, Coast Guard personnel would report vessels transiting the second canal to the USSS representatives. Because Coast Guard personnel would not converse with the recreational vessel operators transiting this region, we estimate that there would be no costs on boaters who only pass through the lower stretch of the canal security zone in order to access the North Shores Marina or the private houses on the canal or lake.

The costs discussed above cover the normal operations when access to the canal is still permitted. However, when certain individuals protected by USSS are transiting the area, the Coast Guard may shut down access to the canal. Such closures could last from 1 to 3 hours, or longer. If the security zone is closed to all traffic, recreational boaters would not be able to transit the length of the canal. Recreational boaters wishing to transit through the security zone would be unable to do so.

If this closure happens suddenly, recreational boaters could be stranded on either side of the canal. The distance through the canal is about 10 miles, but to avoid the canal by taking a more circuitous route around Rehoboth Beach would add 25 miles to the journey. Additionally, a significant portion of this distance requires operations in the Atlantic Ocean. The Atlantic Ocean is considerably rougher than the intracoastal waterways. As a result, many of the recreational watercraft unable to transit the security zone may be unable to take an alternate route, either because they may not have a vessel suitable to a coastwise route or may not have the time to add an additional 25 miles on to the journey.

Because we do not know the frequency or duration of full closures of the security zone, we are unable to quantitatively assess the costs to either temporarily stranded vessel operators or to vessel operators wishing to transit the closed waterway. Public comments as to

the frequency and use of the canal in this security zone are encouraged.²

(2) Security Zone 2: North Shores Section of Rehoboth Beach on the Atlantic Ocean

We do not estimate that any vessels would routinely operate in this section of Rehoboth Beach, as discussed in the Affected Population section above. Additionally, were recreational vessel operators to transit this security zone, it is far easier to exit or avoid the security zone than in the canal. Recreational boaters merely would need to be greater than 500 yards from shore. As a result, we do not estimate any costs incurred by the second proposed security zone.

Benefits

Upon request by the USSS for the Coast Guard to implement security measures in certain sections of the Lewes and Rehoboth Canal and certain sections offshore from Rehoboth Beach, the Coast Guard is proposing to create two security zones covering these areas. The security zones are necessary to prevent waterside threats and incidents that could impact the safety and security of USSS protectees when present in the area.

Both security zones aid the USSS in controlling the area and preventing actors wishing to cause harm to the functioning of the U.S. Government by attacking persons protected by the USSS. Were such an attack to be attempted or to occur, the societal impacts could be sizable and potentially severe to the Nation's Government. Additionally, the local impacts would be substantial as well. The area could be closed for a significant period as any necessary investigations occur. This proposed regulatory action would greatly decrease the likelihood of these potential impacts. The Coast Guard has no way to quantify the frequency of malfeasant actors or the extent to which this proposed rule would diminish the frequency of their attempted or successful actions. However, we believe that the value of these benefits would be greater than the costs of the proposed regulation.

Regulatory Alternatives Considered

We considered alternatives to the proposed regulatory action to determine if an alternative could accomplish the stated objectives of applicable statutes and could minimize any economic impact on small entities. In developing

² Details as to what type of boat or vessel, the frequency, number of people usually onboard, and the location from which the vessel came from are requested.

this rule, the Coast Guard considered the following alternatives:

Alternative 1: No Action/Status Quo

Without this proposed rule, malfeasant actors could have unfettered access to locations near persons protected by USSS. We believe that this unfettered access presents an unacceptable security risk to the United States. As such, we rejected this alternative.

Alternative 2: Do Not Permit any Traffic Inside the Security Zone

The Coast Guard considered closing the security zone to traffic entirely, which would have had the added cost of making it impossible to fully transit the canal. We rejected this alternative because there are potentially over 200 recreational boaters a day transiting the proposed security zones in the summer. These boaters would lose their ability to have recreational access of the waterway and any enjoyment that provides them. Additionally, 31 homes with boat slips and a marina with 30 spots are inaccessible without transiting the security zones. These homes, despite existing on the canal with a dock, would be unable to use the waterway. Consequently, we rejected this alternative because the costs would be too high.

Alternative 3: Allow Vessels To Transit the Waterway, But Do Not Permit Vessels To Transit During the Movement of Certain Individuals Protected by USSS

This is our preferred alternative and discussed throughout the regulatory analysis. We believe it balances the costs to public in the form of quick conversations with transiting recreational vessels and the occasional inconvenience of a temporary canal closure due to USSS protectees moving around the area with the benefits of ensuring the security of these protected persons.

B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic effect on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

As discussed above, the affected population is entirely recreational. As a result, the individuals impacted by this

proposed rule cannot be small entities fitting the definitions set out by the Regulatory Flexibility Act. Based on this analysis, we found this proposed rulemaking, if promulgated, would not affect a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(f)), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves two security zones for the protection of USSS protectees while present in the vicinity of Rehoboth Beach, Delaware. Normally such actions are categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.561 to read as follows:

§ 165.561 Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth Beach, DE.

(a) *Location.* The following area are security zones; these coordinates are based on North American Datum 83 (NAD83):

(1) *Security zone one:* All waters of the Lewes and Rehoboth Canal bounded on the north by a line drawn from 38° 44.35' North Latitude (N), 075° 5.32' West Longitude (W), thence easterly to 38° 44.37' N, 075° 5.31' W proceeding from shoreline to shoreline on the Lewes and Rehoboth Canal in a Southeasterly direction where it is bounded by a line drawn from 38° 43.89' N, 075° 5.31' W, thence easterly to 38° 43.90' N, 075° 5.07' W thence northerly across the entrance to the yacht basin to 38° 43.93' N, 075° 5.09' W.

(2) *Security zone two:* All waters of the Atlantic Ocean extending 500 yards seaward from a line beginning at 38° 44.86' N, 075° 4.86' W, proceeding southerly along the shoreline to 38° 43.97' N, 075° 4.70' W.

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

USSS protectee means any person for whom the United States Secret Service requests implementation of a security zone in order to supplement protection of said person(s).

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Entry into or remaining in a security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or designated representative when the security zones are being enforced. At the start of each enforcement, all persons and vessels within the security zone must depart the zones immediately or obtain authorization from the COTP or designated representative to remain within either zone. All vessels authorized to remain in the zone(s) must

proceed as directed by the COTP or designated representative.

(3) A person or vessel operator who intends to enter or transit the security zones while the zones are being enforced must obtain authorization from the COTP or designated representative. While the zones are being enforced the COTP or designated representative will determine access to the zones on a case-by-case basis. A person or vessel operator requesting permission to enter or transit the security zone may contact the COTP or designated representative at 215-271-4807 or on marine band radio VHF-FM channel 16 (156.8 MHz), or by visually or verbally hailing the on-scene law enforcement vessel enforcing the zone. On-scene Coast Guard personnel enforcing this section can be contacted on marine band radio, VHF-FM channel 16 (156.8 MHz). The operator of a vessel must proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the COTP or designated representative to enter the security zone all persons and vessels must comply with the instructions of the COTP or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(4) Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light or other means, a person or operator of a vessel must proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(5) Unless specifically authorized by on scene enforcement vessels, no vessel or person will be permitted to stop or anchor in the security zone. A vessel granted permission to enter or transit within the security zone(s) must do so without delay or pause for the entirety of its time within the boundaries of the security zone(s). At times, for limited duration, it is anticipated that vessels may be prohibited from entering the zone due to movement of persons protected by USSS. During those times, the Coast Guard will provide actual notice to vessels in the area.

(6) The U.S. Coast Guard may secure the entirety of either or both security zones if deemed necessary to address security threats or concerns.

(7) The U.S. Coast Guard may be assisted by Federal, State, and local law enforcement agencies in the patrol and enforcement of the security zone

described in paragraph (a) of this section.

(d) *Enforcement.* (1) The Coast Guard activates the security zones when requested by the U.S. Secret Service for the protection of individuals who qualify for protection under 18 U.S.C 3056(a) or Presidential memorandum. The COTP will provide the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), information release at the website: <https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40> as well as on-scene notice by designated representative or other appropriate means in accordance with 33 CFR 165.7.

(2) These security zones may be enforced individually or simultaneously.

Dated: May 27, 2021.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2021-11764 Filed 6-2-21; 8:45 am]

BILLING CODE 9110-04-P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Price Changes

AGENCY: Postal Service™.

ACTION: Proposed rule; request for comments.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), to reflect changes coincident with the recently announced mailing services price adjustments.

DATES: We must receive your comments on or before July 6, 2021.

ADDRESSES: Mail or deliver comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW, RM 4446, Washington, DC 20260-5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1-202-268-2906 in advance. Email comments, containing the name and address of the commenter, to: PCFederalRegister@usps.gov, with a subject line of "August 2021 International Mailing Services Proposed Price Changes." Faxed comments are not accepted. All submitted comments and attachments are part of the public

record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Kathy Frigo at 202–268–4178 or Dale Kennedy at 202–268–6592.

SUPPLEMENTARY INFORMATION:

International Price and Service Adjustments

On May 28, 2021, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory

Commission (PRC), effective on August 29, 2021. The Postal Service proposes to revise Notice 123, *Price List*, available on Postal Explorer® at <https://pe.usps.com>, to reflect these new price changes. The new prices are or will be available under Docket Number R2021–2 on the Postal Regulatory Commission's website at www.prc.gov.

This proposed rule describes the price changes for the following market dominant international services:

- First-Class Mail International (FCMI) service

- International extra services and fees

First-Class Mail International

The Postal Service plans to increase prices for single-piece FCMI postcards, letters, and flats by approximately 8.4%. The proposed price for a single-piece postcard will be \$1.30 worldwide. The First-Class Mail International letter nonmachinable surcharge will increase to \$0.30. The proposed FCMI single-piece letter and flat prices will be as follows:

Weight not over (oz.)	Price groups			
	1	2	3–5	6–9
Letters				
1	\$1.30	\$1.30	\$1.30	\$1.30
2	1.30	1.96	2.43	2.25
3	1.83	2.60	3.55	3.20
3.5	2.36	3.25	4.68	4.14
Flats				
1	2.60	2.60	2.60	2.60
2	2.85	3.38	3.67	3.62
3	3.09	4.14	4.73	4.61
4	3.31	4.92	5.81	5.62
5	3.55	5.69	6.87	6.63
6	3.79	6.45	7.93	7.64
7	4.03	7.23	9.00	8.64
8	4.27	7.99	10.06	9.64
12	5.45	9.64	12.20	11.73
15.994	6.63	11.31	14.33	13.80

International Extra Services and Fees

The Postal Service plans to increase prices for certain market dominant international extra services including:

- Certificate of Mailing
- Registered Mail™
- Return Receipt
- Customs Clearance and Delivery Fee

- International Business Reply™ Mail Service

CERTIFICATE OF MAILING

	Fee
Individual pieces	
Individual article (PS Form 3817)	\$1.65
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.65
Firm mailing sheet (PS Form 3665), per piece (minimum 3) First-Class Mail International only	0.47
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	\$9.35
Each additional 1,000 pieces (or fraction thereof)	1.20
Duplicate copy of PS Form 3606	1.65

Registered Mail

Fee: \$17.15.

Return Receipt

Fee: \$4.75.

Customs Clearance and Delivery

Fee: per piece \$7.05.

International Business Reply Service

Fee: Cards \$1.75; Envelopes up to 2 ounces \$2.25.

Following the completion of Docket No. R2021–2, the Postal Service will adjust the prices for products and services covered by the International Mail Manual. These prices will be on Postal Explorer at pe.usps.com.

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed changes to *Mailing Standards of the United States Postal Service*, International Mail

Manual (IMM®), which is incorporated by reference in the *Code of Federal Regulations* in accordance with 39 CFR 20.1, and to associated changes to Notice 123, *Price List*.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is proposed to be amended as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

- 1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

- 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), as follows:

New prices will be listed in the updated Notice 123, *Price List*.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2021–11721 Filed 6–1–21; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: On May 28, 2021 the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective August 29, 2021. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) that we would adopt to implement the changes coincident with the price adjustments.

DATES: Submit comments on or before July 6, 2021.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to PCFederalRegister@usps.gov, with a subject line of “August 2021 Domestic Mailing Services Proposal.” Faxed comments are not accepted. You may inspect and photocopy all written

comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT:

Jacqueline Erwin at (202) 268–2158, or Dale Kennedy at (202) 268–6592.

SUPPLEMENTARY INFORMATION: Proposed prices will be available under Docket No. R2021–2 on the Postal Regulatory Commission's website at www.prc.gov.

The Postal Service's proposed rule includes: Changes to prices, mail classification updates, product simplification efforts, and a few minor revisions to the DMM.

Direct Pallet Discount for Marketing Mail High Density Flats

The Postal Service is proposing to offer additional discounts to move additional USPS Marketing Mail High Density flats to direct pallets.

Flat shaped pieces on direct pallets are operationally desirable, pallets can be directly cross docked to the Destination Delivery Units (DDUs). These pallets consist of Carrier Route and finer sorted bundles such as High Density, High Density Plus, and Saturation. The nature of their make-up allows the Postal Service to avoid moving these pallets to bundle sorters within the plant, sorting the bundles, and moving these bundles back to the dock to be transported to the DDU.

First-Class Mail Nonautomation Letters Change

Currently, the rate structure for all nonautomation letters only offers one price for machinable and nonmachinable letters and a nonmachinable surcharge for pieces that are nonmachinable.

The Postal Service is proposing to offer two prices for machinable letters, AADC and Mixed AADC; and three prices for nonmachinable letters, 5-digit, 3-digit, and Mixed ADC. This structural change will reduce revenue at risk and better align prices for customers mailing nonautomation letters, machinable and nonmachinable. This change will also eliminate the nonmachinable surcharge applicable to nonautomation presort letters.

Although exempt from the notice and comment requirements of the

Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

- 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

- 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail

* * * * *

230 First-Class Mail

233 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.2 Price Computation for First-Class Mail Letters and Flats

1.2.1 Cards and Letters

Commercial First-Class Mail Presorted cards and letters are charged as follows: [Revise 1.2.1b2 and 1.2.1b3; to read as follows:]

* * *b. Letters: * * *

2. Machinable (Presorted): One price per presort level up to the maximum 3.5 ounces.

3. Nonmachinable: One price per presort level up to the maximum 3.5 ounces.* * *

* * * * *

235 Mail Preparation

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.3 Nonmachinable Preparation**5.3.1 Nonmachinable Bundling**

[Remove current 5.3.1c entirely; re-letter current 5.3.1d to 5.3.1c; to read as follows:]

* * * a. 5-digit (required); 10-piece minimum; red Label 5 or optional endorsement line (OEL); labeling not required for pieces in full 5-digit trays.

b. 3-digit (required); 10-piece minimum; green Label 3 or OEL.

c. Mixed ADC (required); no minimum; tan Label X or OEL.

5.3.2 Traying and Labeling

[Remove current 5.3.2c entirely; re-letter current 5.3.2d to 5.3.2c; to read as follows:]

* * * c. Mixed ADC (required); no minimum; labeling:

1. Line 1: Use L201; for mail originating in ZIP Code areas in Column A, use "MXD" followed by city, state, and 3-digit ZIP Code prefix in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

2. Line 2: "FCM LTR MANUAL WKG."

* * * * *

240 Commercial Mail USPS Marketing Mail**243 Prices and Eligibility**

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route USPS Marketing Mail Letters and Flats

* * * * *

6.5 High Density and High Density Plus (Enhanced Carrier Route) Standards—Flats

* * * * *

[Add new section 6.5.3; to read as follows:]

6.5.3 High Density Carrier Route Bundles on a 5-digit Pallet (High Density-CR Bundles/Pallet Price Eligibility)—Flats

High Density—CR Bundles/Pallet prices apply to each piece in a carrier route bundle of 10 or more pieces that are palletized under 705.8.0 on a 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC, DSCF, or DDU entry.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.3 USPS Marketing Mail or Parcel Select Lightweight—Bundles, Sacks, or Trays

[Add new second sentence to 8.10.3; to read as follows:]

* * * For USPS Marketing Mail High Density flats price eligibility, only 5-digit pallets under 8.10.3a–c are allowed, and the pallets must be entered under None, DNDC, DSCF or DDU standards (Use "HD/HD+ DIRECT" for one route and "HD/HD+ CR-RTS" for multiple routes on the line 2 contents description). * * * Preparation sequence and labeling:

[Revise sub-section 8.10.3a2; to read as follows:]

* * * 2. "STD" followed by "FLTS"; followed by "HD/HD+" for High Density flats pricing eligibility; followed by "CARRIER ROUTES" (or "CR-RTS"); followed by "SCHEME" (or "SCH"). * * *

[Revise 8.10.3b2; to read as follows:]

2. Line 2: For flats and Marketing parcels (Product Samples only), "STD FLTS" or "STD MKTG," as applicable; followed by "HD/HD+" for High Density flats pricing eligibility; followed by "CARRIER ROUTES" (or "CR-RTS"). For letters, "STD LTRS"; followed by "CARRIER ROUTES" (or "CR-RTS"); followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

[Add new 8.10.3c, re-letter current 8.10.3c–8.10.h to 8.10.3d–8.10.3i; to read as follows:]

c. 5-digit carrier route, required for High Density flats pricing eligibility, permitted for bundles. Pallet must contain only carrier route mail for one carrier and same 5-digit ZIP Code. Labeling

1. Line 1: city, state and 5-digit ZIP Code destination
2. Line 2: "STD" followed by "FLTS"; followed by "HD/HD+ DIRECT" * * *

* * * * *

Notice 123 (Price List)

[Revise prices as applicable.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2021–11722 Filed 6–1–21; 4:15 pm]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 1, 2, and 27**

[WT Docket No 19–348; Report No. 3174; FRS 28894]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by David Silver, on behalf of The Aerospace Industries Association; D. Cary Mitchell, on behalf of The Blooston Rural Carriers; and Carri Bennet, on behalf of The Rural Wireless Association, Inc.

DATES: Oppositions to the Petition must be filed on or before June 18, 2021. Replies to an opposition must be filed on or before June 28, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Joyce Jones, Wireless Telecommunications Bureau, Mobility Division, (202) 418–1327 or joyce.jones@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3174, released May 20, 2021. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: <http://apps.fcc.gov/ecfs/>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Facilitating Shared Use in the 3100–3550 MHz Band, FCC 21–32, 86 FR 17920, April 7, 2021, WT Docket No. 19–348. This document is being published pursuant to 47 CFR 1.429(e). See also 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 3.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021-11676 Filed 6-2-21; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 86, No. 105

Thursday, June 3, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States will meet during a one-day virtual plenary session to consider proposed recommendations and to conduct other business. Written comments may be submitted in advance, and the meeting will be accessible to the public.

DATES: The meeting will take place on Thursday, June 17, 2021, from 9:00 a.m.–4:15 p.m. The meeting may adjourn early if all business is finished.

ADDRESSES: To facilitate participation during the ongoing COVID–19 pandemic, the meeting will be conducted virtually. Information on how to access the meeting will be available on the agency's website prior to the meeting at <https://www.acus.gov/meetings-and-events/plenary-meeting/74th-plenary-session-virtual>.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080; email smcgibbon@acus.gov.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes

the Assembly of the Conference (5 U.S.C. 595).

Agenda: The Assembly will receive updates on past, current, and pending Conference initiatives. In addition, pending final action by the Conference's the Council, five proposed recommendations will be considered. Summaries of the recommendations appear below:

Clarifying Statutory Access to Judicial Review of Agency Action. This proposed recommendation urges Congress to enact a cross-cutting statute that addresses certain recurring technical problems in statutory provisions governing judicial review of agency action that may cause unfairness, inefficiency, or unnecessary litigation. It also offers a set of drafting principles for Congress when it writes new or amended judicial review statutes. It draws in large part on ACUS's forthcoming *Sourcebook of Federal Judicial Review Statutes*, which analyzes the provisions in the U.S. Code governing judicial review of rules and adjudicative orders and identifies recurring drafting problems in them.

Early Input on Regulatory Alternatives. This proposed recommendation addresses when and how agencies should solicit input on alternatives to rules under consideration before issuing notices of proposed rulemaking. Among other things, it provides targeted measures for agencies to obtain input from knowledgeable persons in ways that are cost-effective and equitable and that maximize the likelihood of obtaining diverse, useful responses.

Mass, Computer-Generated, and Fraudulent Comments. This proposed recommendation offers best practices for managing mass and computer-generated comments, as well as a type of fraudulent comments referred to as "malattributed comments," in agency rulemakings. Among other things, it offers best practices for agencies to consider with respect to using technology to process such comments, managing their public rulemaking dockets in response to such comments, and ensuring transparency with respect to any such actions they undertake.

Periodic Retrospective Review. This proposed recommendation identifies best practices for agencies as they conduct retrospective review of their regulations on a periodic basis. It

provides guidance for agencies on identifying the types of regulations that are strong candidates for review, determining the optimal frequency of review, soliciting public feedback to enhance their review efforts, identifying staff to participate in review, and coordinating review efforts with other agencies.

Virtual Hearings in Agency Adjudication. This proposed recommendation addresses the use of virtual hearings, in which one or more participants attend remotely using a personal computer or mobile device, in agency adjudications. Virtual hearings have become increasingly common in agency adjudications, especially during the COVID–19 pandemic, but they can pose unique logistical challenges and raise questions of accessibility, transparency, privacy, and data security. The proposed recommendation identifies best practices for improving existing virtual-hearing programs and establishing new ones when appropriate.

Additional information about the proposals and the agenda, as well as any changes or updates to the same, can be found at the 74th Plenary Session page on the Conference's website prior to the start of the meeting: <https://www.acus.gov/meetings-and-events/plenary-meeting/74th-plenary-session-virtual>.

Public Participation: The Conference welcomes the virtual attendance of the public at the meeting, subject to bandwidth limitations. Members of the public who wish to view the meeting are asked to RSVP online at the 74th Plenary Session web page shown above, no later than two days before the meeting, in order to ensure adequate bandwidth. For anyone who is unable to view the live event, an archived video recording of the meeting will be available on the Conference's website shortly after the conclusion of the event: https://youtube.com/channel/UC1Gu44Jq1U7XsGdC9TfI_zA.

Written Comments: Persons who wish to comment on any of the proposed recommendations or official statement may do so by submitting a written statement either online by clicking "Submit a comment" on the 74th Plenary Session web page shown above or by mail addressed to: June 2021 Plenary Session Comments, Administrative Conference of the

United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (EDT), Friday, June 11, 2021, to ensure consideration by the Assembly.

Dated: May 27, 2021.

Shawne McGibbon,
General Counsel.

[FR Doc. 2021-11627 Filed 6-2-21; 8:45 am]

BILLING CODE 6110-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-NOP-21-0038; NOP-21-05]

Meeting of the National Organic Standards Board; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the National Organic Standards Board (NOSB). The NOSB assists the USDA in the development of standards for substances to be used in organic production and advises the Secretary of Agriculture on any other aspects of the implementation of the Organic Foods Production Act (OFPA).

DATES: An in-person meeting will be held October 19–21, 2021, from 8:30 a.m. to approximately 6:00 p.m. Pacific Time (PT) each day and may include a virtual broadcast. The NOSB will hear oral public comments via webinars on Wednesday, October 13, 2021, and Thursday, October 14, 2021, from 12:00 p.m. to approximately 5:00 p.m. Eastern Time (ET), and at the in-person meeting on Tuesday, October 19, 2021, and Wednesday, October 20, 2021. The deadline to submit written comments and/or sign up for oral comment at either the webinar or in-person meeting is 11:59 p.m. ET, September 30, 2021.

ADDRESSES: The webinars are virtual and will be accessed via the internet and/or phone. Access information will be available on the AMS website prior to the webinars. The in-person meeting will take place at the Holiday Inn Sacramento Downtown—Arena, 300 J Street, Sacramento, California, 95814, United States and may be broadcast virtually. Detailed information pertaining to the webinars and in-person meeting, including potential virtual viewing options, can be found at <https://www.ams.usda.gov/event/>

national-organic-standards-board-nosb-meeting-sacramento-ca.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Avenue SW, Room 2642–S, STOP 0268, Washington, DC 20250–0268; Phone: (202) 997–0115; Email: nosb@usda.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2 and 7 U.S.C. 6518(e), as amended, AMS is announcing a meeting of the NOSB. The NOSB makes recommendations to USDA about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the Organic Foods Production Act, 7 U.S.C. 6501 *et seq.* NOSB is holding a public meeting to discuss and vote on proposed recommendations to USDA, to obtain updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and to receive comments from the organic community. The meeting is open to the public. Registration is only required to sign up for oral comments. All meeting documents and instructions for participating will be available on the AMS website at <https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-sacramento-ca>. Please check the website periodically for updates. Meeting topics will encompass a wide range of issues, including substances petitioned for addition to or removal from the National List of Allowed and Prohibited Substances (National List), substances on the National List that are under sunset review, and guidance on organic policies.

Public Comments: Comments should address specific topics noted on the meeting agenda.

Written comments: Written public comments will be accepted on or before 11:59 p.m. ET on September 30, 2021, via <http://www.regulations.gov> (Docket No. AMS-NOP-21-0038). Comments submitted after this date will be added to the public comment docket, but Board members may not have adequate time to consider those comments prior to making recommendations. NOP strongly prefers comments be submitted electronically. However, written comments may also be submitted (*i.e.*, postmarked) via mail to the person listed under **FOR FURTHER INFORMATION CONTACT** by or before the deadline.

Oral Comments: NOSB will hear oral public comments via webinars on Wednesday, October 13, 2021, and Thursday, October 14, 2021, from 12:00 p.m. to approximately 5:00 p.m. Eastern Time (ET) and at the in-person meeting on Tuesday, October 19, 2021, and Wednesday, October 20, 2021. Each commenter wishing to address the Board must pre-register by 11:59 p.m. ET on September 30, 2021 and can register for only one speaking slot. Instructions for registering and participating in the webinars can be found at <https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-sacramento-ca>.

Meeting Accommodations: The meeting hotel is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: May 28, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021-11688 Filed 6-2-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Prepare an Environmental Impact Statement for the Gould Wash Flood Protection Project, Washington County, Utah

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Utah State Office announces its intent to prepare an EIS for the Gould Wash Flood Protection Project within the Warner Draw Watershed in Washington County, Utah. NRCS is requesting comments to identify significant issues and alternatives to be addressed in the EIS from all interested individuals. The EIS process will examine existing flood control measures

and evaluate additional (new) alternatives identified during scoping.

DATES: We will consider comments that we receive by July 6, 2021. Comments received after this date will be considered to the extent possible.

ADDRESSES: We invite you to submit formal scoping comments. Comments may be submitted by any of the following methods:

- *Email:* gouldwash@mcmjac.com;
- *Mail or hand delivery to:* Ms. Bobbi Preite, McMillen Jacobs Associates, 1471 Shoreline Dr., Suite 100, Boise, ID 83702; or

- *Telephone:* (208) 985-1542.

To be included on the EIS mailing list, please provide your contact information through any of the comment options above. Please note that any respondent's entire scoping comment, including their personal contact information, may be made publicly available at any time during the EIS process.

FOR FURTHER INFORMATION CONTACT: Mr. Norm Evenstad; telephone: (801) 524-4569; or email at norm.evenstad@usda.gov.

SUPPLEMENTARY INFORMATION

Purpose and Need

The primary purpose for watershed planning and preparation of an EIS is flood prevention and flood damage reduction in Hurricane City, Utah. NRCS will provide technical assistance and financial support for the EIS process and the implementation of the selected alternative. Watershed planning was authorized under Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954, as amended, and Public Law 78-534, the Flood Control Act of 1944.

This action is needed because 50 percent of all the properties or portions of properties that adjoin Gould Wash through the town of Hurricane, Utah are flooded in any given year. Gould Wash has an uncontrolled drainage area of approximately 64.5 square miles. A total of 650 residences, 99 commercial businesses or offices, and 82 roads currently would be inundated during a 100-year flood. Flood control of Gould Wash is critical to prevent future flood damage and loss of property and life.

Initial agency scoping of this federally assisted action indicates that proposed alternatives may have significant local and regional impacts to the environment. Norm Evenstad, State Conservationist, has determined that the preparation of an EIS is needed. This EIS will be prepared as required by section 102(2)(C) of the National Environmental Policy Act of 1969

(NEPA); the Council on Environmental Quality Regulations (40 CFR parts 1500-1508); and NRCS regulations that implement NEPA in 7 CFR part 650.

Consultation with Tribal Nations and interested parties will be conducted as required by the National Historic Preservation Act of 1966 (as amended through 1992) (16 U.S.C. 470f).

Description

In efforts to control Gould Wash as it traverses through Hurricane City, various steps have been taken including hardening the stream banks to prevent erosion and straightening the channel to avoid private property and buildings. During small events these measures suffice in protecting property, however, during a 100-year flood event the channel is overtopped and flooding is widespread throughout Hurricane City. Watershed planning under the EIS will evaluate the effectiveness, environmental effects, and the socio-economic impacts of the original channelization efforts. The results of these analyses will provide the context for determining the environmental, economic, and social effects of considered alternatives for additional (new) flood prevention or flood damage reduction measures for the Gould Wash Flood Protection Project within the Warner Draw Watershed in Washington County, Utah. The focused planning area is 64.5 square miles.

Scoping Process

NRCS invited all interested individuals and organizations, public agencies, and Tribes to comment on the scope of the EIS, including the project's purpose and need, alternatives proposed to date, new alternatives that should be considered, specific areas of study that might be needed, and evaluation methods to be used. One scoping meeting to present the project and develop the scope of the EIS was held on Tuesday, February 4, 2020, in the Bryce Canyon Room at the Hurricane Community Center in Hurricane, Utah. A presentation was conducted followed by a group question-and-answer period. Project team members were available for individual questions and discussions.

Alternatives

The objective of the EIS is to formulate and evaluate alternatives for flood prevention or flood damage reduction in the Gould Wash channel through the Town of Hurricane City. Alternatives to be evaluated include the development of dam(s) in the Gould Wash headwaters and modifications of the channel through Hurricane City. The actions will require upland watershed

treatments to reduce runoff, major rehabilitation of the channel through town and land use changes in the floodplain.

Potential impacts include wetland and flood plain alteration. Permitting with the U.S. Army Corps of Engineers regarding potential wetland impacts will be pursued prior to final design and construction. A draft EIS will be prepared and circulated for review and comment by agencies and the public per 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. NRCS invites agencies and individuals who have special expertise, legal jurisdiction, or interest in the Gould Wash Watershed to participate and identify potential alternatives.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies: 10.904 Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Emily Fife,

State Conservationist, Utah, Natural Resources Conservation Service.

[FR Doc. 2021-11646 Filed 6-2-21; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Prepare an Environmental Impact Statement for the Upper Price River Watershed Project, Carbon County, Utah

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Utah State Office announces its intent to prepare an EIS for the Upper Price River Watershed Project within the Upper Price River Watershed in Carbon County, Utah. NRCS is requesting comments to identify significant issues and alternatives to be addressed in the EIS from all interested individuals. The EIS process will examine existing flood control measures and evaluate additional (new) alternatives identified during scoping.

DATES: We will consider comments that we receive by July 6, 2021. Comments

received after this date will be considered to the extent possible.

ADDRESSES: We invite you to submit formal scoping comments. You may submit your comments through one of the methods below:

- *Email:* Info@UpperPriceRiverEIS.com.
- *Mail or Hand Delivery:* Upper Price River EIS, Horrocks Engineers, 2162 West Grove Parkway, Suite 400, Pleasant Grove, UT 84062.
- *Telephone:* (435) 922-3882.

To be included on the EIS mailing list, please respond to one of the options above with your contact information. Please note that any respondent's entire scoping comment, including their personal contact information, may be made publicly available at any time during the EIS process.

FOR FURTHER INFORMATION CONTACT: Mr. Norm Evenstad; telephone (801) 524-4569; or email at norm.evenstad@usda.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose for watershed planning and preparation of an EIS is to increase and maintain safe and reliable supplies of water for the local community, increase water conservation, and improve water delivery efficiency in the Upper Price River Watershed in Carbon County, Utah. NRCS will provide technical assistance and financial support for the EIS and the implementation of the selected alternative. Watershed planning was authorized under Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954, as amended, and Public Law 78-534, the Flood Control Act of 1944.

Because of a mismatch between the time when snowpack melts in the Upper Price River Watershed and the time when water is in highest demand for agricultural and municipal uses, several municipalities in Carbon County face regular shortages of water during the summer months and must obtain additional water from other sources.

Initial agency scoping of this federally assisted action indicates that proposed alternatives may have significant local, regional, or national impacts on the environment. Norm Evenstad, NRCS Assistant State Conservationist-Water Resources, has determined that the preparation of an EIS is needed. This EIS will be prepared as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality Regulations (40 CFR parts 1500-

1508); and NRCS regulations that implement NEPA in 7 CFR part 650.

Consultation with Tribal Nations and interested parties will be conducted as required by the National Historic Preservation Act of 1966 (as amended through 1992) (16 U.S.C. 470f).

Description

The project seeks to reduce the regular water shortages several municipalities in Carbon County experience during the summer months. Major problems consist of a lack of water for crops and pasture, fences, farmsteads, machinery, buildings, livestock, county and township roads and bridges, and urban areas in the cities of Price, Helper, and Wellington, as well as Price Canyon and Scofield Reservoir.

The EIS process will evaluate alternatives that will increase and maintain safe and reliable supplies of water for the local community while increasing water conservation, and improving water delivery efficiency in the Upper Price River Watershed.

Watershed planning under the EIS will evaluate the effectiveness, environmental effects, and socio-economic impacts of the original project measures over the last 64 years. The results of these analyses will provide the context for determining the environmental, economic, and social effects of considered alternatives for additional (new) water retention and supply options for the Carbon County municipalities.

Scoping Process

One scoping meeting to present the project and develop the scope of the EIS was held online on Thursday, October 29, 2020. A presentation was conducted followed by a group question-and-answer period. Project team members were available for individual questions and discussions. Comments received, including the names and addresses of those who comment, will be part of the public record.

Alternatives

The objective of the EIS is to formulate and evaluate alternatives that increase and maintain safe and reliable supplies of water for the community, that increase water conservation, and improve water delivery efficiency. Alternatives to be evaluated include the construction of a new reservoir somewhere in the Upper Price River drainage system, to use abandoned coal mines for water storage, to increase water conservation measures, or a combination of these options.

Potential impacts include wetland and flood plain alteration. Permitting with the U.S. Army Corps of Engineers regarding potential wetland impacts will be pursued prior to final design and construction. A draft EIS will be prepared and circulated for review and comment by agencies and the public per 40 CFR 1503.1, 1502.20, 1506.11, 1502.17, and 7 CFR 650.13. NRCS invites agencies and individuals who have special expertise, legal jurisdiction, or interest in the Upper Price River Watershed to participate and identify potential alternatives.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies: 10.904 Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Emily Fife,

State Conservationist, Utah, Natural Resources Conservation Service.

[FR Doc. 2021-11645 Filed 6-2-21; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-42-2021]

Approval of Subzone Status; Pepperl+Fuchs, Inc., Katy, Texas

On March 8, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Port of Houston Authority, grantee of FTZ 84, requesting subzone status subject to the existing activation limit of FTZ 84, on behalf of Pepperl+Fuchs, Inc., in Katy, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 14070-14071, March 12, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 84AC was approved on May 27, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 84's 2,000-acre activation limit.

Dated: May 27, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021–11631 Filed 6–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–04–2021]

Foreign-Trade Zone (FTZ) 22— Chicago, Illinois; Authorization of Production Activity, AbbVie, Inc. (Pharmaceutical Products), North Chicago and Lake County, Illinois

On January 27, 2021, AbbVie, Inc., submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 22S, in North Chicago and Lake County, Illinois.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 7989, February 3, 2021). On May 27, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: May 27, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021–11630 Filed 6–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Chris Rodriguez, 20 Liberty Drive, Thomasville, NC 27360; Order Denying Export Privileges

On October 18, 2019, in the U.S. District Court for the Eastern District of Virginia, Chris Rodriguez (“Rodriguez”), was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778) (“AECA”). Specifically, Rodriguez was convicted of willfully attempting to export, exporting and causing to be exported from the United States to San Pedro Sula, Honduras, defense articles, that is 27 firearms and hundreds of rounds of ammunition, which were and are designated as defense articles on the United States Munitions List, without having first obtained from the Department of State, a license for such exports or written authorization for such

exports. Rodriguez was sentenced to 18 months in prison, supervised release for three years and a \$100 assessment. Rodriguez was also placed on the U.S. Department of State Debarred List.

Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),¹ the export privileges of any person who has been convicted of certain offenses, including, but not limited to, Section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Rodriguez's conviction for violating Section 38 of the AECA, and has provided notice and opportunity for Rodriguez to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”). 15 CFR 766.25.² BIS has received a written submission from Rodriguez.

Based upon my review of the record, including Rodriguez's written response, and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Rodriguez's export privileges under the Regulations for a period of seven years from the date of Rodriguez's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Rodriguez had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until October 18, 2026, Chris Rodriguez, with a last known address of 20 Liberty Drive, Thomasville, NC 27360, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the

Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other

¹ ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Rodriguez's conviction post-dates ECRA's enactment on August 13, 2018.

² The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2021).

³ The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

person, firm, corporation, or business organization related to Rodriguez by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Rodriguez may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Rodriguez and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 18, 2026.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2021-11648 Filed 6-2-21; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-902]

Organic Soybean Meal From India: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Lauren Caserta, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2021, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of organic soybean meal from India.¹ Currently, the preliminary determination is due no later than June 25, 2021.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires

¹ See *Organic Soybean Meal From India: Initiation of Countervailing Duty Investigation*, 86 FR 22136 (April 27, 2021).

Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On May 26, 2021, the petitioners submitted a timely request that Commerce postpone the preliminary CVD determination.³ The petitioners stated that they request postponement of the preliminary determination of this CVD investigation to provide Commerce with sufficient time to analyze adequately all alleged subsidies received by the mandatory respondents during the period of investigation.⁴

In accordance with 19 CFR 351.205(e), the petitioners stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.*, August 30, 2021.⁵ Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the

² The petitioners are: Organic Soybean Processors of America (OSPA) and American Natural Processors, LLC, Organic Production Services, LLC, Professional Proteins, Ltd., Sheppard Grain Enterprises LLC, Simmons Grain Company, Super Soy, LLC, and Tri-State Crush LLC.

³ See Petitioners' Letter, "Organic Soybean Meal from India: Petitioners' Request to Postpone the Countervailing Duty Investigation Preliminary Determination," dated May 26, 2021.

⁴ *Id.* at 2.

⁵ Postponing the preliminary determination to 130 days after initiation would place the deadline on Saturday, August 28, 2021. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 27, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-11670 Filed 6-2-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-838]

Polyester Textured Yarn From Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn from Indonesia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is October 1, 2019, through September 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Toni Page or Peter Shaw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1398 or (202) 482-0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this LTFV investigation on November 17, 2020.¹ On April 2, 2021, Commerce postponed the preliminary determination in this

¹ See *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 74680 (November 23, 2020) (*Initiation Notice*).

investigation and the revised deadline is now May 26, 2021.²

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The product covered by this investigation is polyester textured yarn from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁶ As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

² *See Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 17362 (April 2, 2021).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Polyester Textured Yarn from Indonesia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ *See Initiation Notice*, 85 FR at 74681.

⁶ *See* Memorandum, "Antidumping Duty Investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam: Preliminary Scope Decision Memorandum," dated concurrently with this notice (Preliminary Scope Decision Memorandum).

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.⁷ There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value has been calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily used an adverse inference when selecting from among the facts otherwise available to determine the margin for PT Polyfin Canggih (Polyfin), one of three companies selected for individual examination in this investigation.⁸ For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated individual estimated weighted-average dumping margins for PT. Asia Pacific Fibers Tbk (Asia Pacific) and PT. Mutu Gading Tekstil (Mutu Gading) that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for Asia Pacific and Mutu Gading using each company's publicly-ranged values for the merchandise under consideration.⁹

⁷ Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and "Public Comment" section of this notice.

⁸ For a full discussion on respondent selection in the investigation, *see* the Preliminary Determination Memorandum at 2.

⁹ With more than one respondent under examination, Commerce normally calculates (A) a weighted-average of the estimated weighted-average

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer or exporter	Estimated weighted-average dumping margin (percent)
PT Polyfin Canggih	* 26.07
PT. Asia Pacific Fibers Tbk	9.20
PT. Mutu Gading Tekstil	7.45
All Others	8.71

* Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit for estimated antidumping duties as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping

dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). As complete publicly-ranged sales data was available, Commerce based the all-others rate on the publicly-ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* Memorandum, "Antidumping Duty Investigation of Polyester Textured Yarn from Indonesia: Preliminary Determination Calculation for the All-Others," dated May 26, 2021.

margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID-19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁰ The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum.¹¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents

containing business proprietary information until further notice.¹²

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 30, 2021, pursuant to 19 CFR 351.210(e), Asia Pacific and Mutu Gading requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹³ Asia Pacific and Mutu Gading stated that the reasons for their requests is the magnitude and complexity of this investigation, as well as the time required for verification, briefing, holding a hearing, and issuing a final determination that addresses all the legal and factual issues raised by the

interested parties in this proceeding.¹⁴ Under the circumstances of this case, a postponement of the final determination for the maximum statutory period is warranted. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of polyester textured yarn from Indonesia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, 19 CFR 351.205(c), and 19 CFR 351.210(g).

Dated: May 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packaging method (such as spindles, tubes, or beams).

¹⁴ See Mutu Gading Final Postponement Request at 2; see also Asia Pacific Final Postponement Request at 2.

¹⁰ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

¹¹ See Preliminary Scope Decision Memorandum.

¹² See *Temporary Rule*.

¹³ See Mutu Gading's Letter, "Polyester Textured Yarn from Indonesia: Request to Postpone the Final Determination," dated April 30, 2021 (Mutu Gading Final Postponement Request); see also Asia Pacific's Letter, "Polyester Textured Yarn from Indonesia: Request to Postpone the Final Determination," dated April 30, 2021 (Asia Pacific Final Postponement Request).

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. Scope Comments
- VI. Application of Facts Available and Use of Adverse Inferences
- VII. All-Others Rate
- VIII. Discussion of Methodology
- IX. Currency Conversion
- X. Recommendation

[FR Doc. 2021–11634 Filed 6–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From Ukraine: Final Results of Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines in this administrative review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from Ukraine (Agreement) that signatory Ukrainian producers/exporters Azovstal Iron & Steel Works (Azovstal) and Ilyich Iron and Steel Works (Ilyich), which are subsidiaries of Metinvest Holding LLC (Metinvest), are in compliance with the Agreement and that the Agreement is meeting the statutory requirements under sections 734(b) and (d) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is November 1, 2018 through October 31, 2019.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Jill Buckles, Bilateral Agreements Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–6230, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2021, Commerce published the *Preliminary Results* of the administrative review of the Agreement.¹ The administrative review covers signatory Ukrainian producers/exporters Azovstal and Ilyich, which are subsidiaries of Metinvest and were individually examined in this review. We invited interested parties to comment on the *Preliminary Results*. No interested party submitted comments. Hence, these final results are unchanged from the *Preliminary Results*.

Scope of Review

For purposes of this Agreement, the products covered are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) for example, products which have been bevelled or rounded at the edges.

This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the

scope of the Agreement is dispositive. Specifically excluded from subject merchandise within the scope of the Agreement is grade X–70 plate.

Final Results of the Administrative Review

As a result of this administrative review, we continue to find Azovstal and Ilyich, collectively participating as Metinvest, to be in compliance with the terms of the Agreement during the POR and that the Agreement is meeting the statutory requirements under sections 734(b) and (d) of the Act. Commerce conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.”

Section 734(b) provides that Commerce may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree to revise their prices to eliminate completely any amount by which the normal value (NV) of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price) of that merchandise. In addition, section 734(d) of the Act requires that Commerce be satisfied that suspension of the investigation is in the public interest and that effective monitoring of the agreement is practicable.

Commerce continues to find no evidence of non-compliance by Azovstal and Ilyich with respect to ensuring that subject merchandise is sold in the United States at prices that are at or above the applicable NV determined by Commerce. Therefore, Commerce continues to find for these final results that the Agreement is meeting the statutory requirements of section 734(b) of the Act. In addition, with regard to the requirements of 734(d) of the Act, Commerce continues to find for these final results that the Agreement is in the public interest and that effective monitoring of the Agreement is practicable.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (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

¹ See *Agreement Suspending the Antidumping Investigation of Certain Cut-To-Length Carbon Steel Plate from Ukraine: Preliminary Results of 2018–2019 Administrative Review*, 86 FR 15647 (March 24, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

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 of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: May 27, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–11673 Filed 6–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–843]

Polyester Textured Yarn From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn from Thailand is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is October 1, 2019, through September 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2483.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this LTFV investigation on November 17, 2020.¹ On April 2, 2021, Commerce postponed the preliminary determination in this

investigation and the revised deadline is now May 26, 2021.²

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The product covered by this investigation is polyester textured yarn from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁶ As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation*

² *See Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations*, 86 FR 17362 (April 2, 2021).

³ *See* Memorandum, “Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Polyester Textured Yarn from Thailand,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ *See Initiation Notice*, 85 FR at 74681.

⁶ *See* Memorandum, “Antidumping Duty Investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam: Preliminary Scope Decision Memorandum,” dated concurrently with this notice (Preliminary Scope Decision Memorandum).

Notice. *See* the scope in Appendix I to this notice.

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.⁷ There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Jong Stit Co., Ltd. (Jong Stit). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Jong Stit. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Sunflag Thailand Ltd. (Sunflag). Consequently, the rate calculated for Sunflag is also assigned as the rate for all other producers and exporters in Thailand, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

⁷ Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and “Public Comment” section of this notice.

¹ *See Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 74680 (November 23, 2020) (*Initiation Notice*).

Exporter or producer	Estimated weighted-average dumping margin (percent)
Sunflag Thailand Ltd	14.80
Jong Stit Co., Ltd	56.80
All Others	14.80

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties any calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID-19 pandemic, Commerce is unable to conduct on-site verification in

this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.⁸ The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum.⁹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁰

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the

⁸ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

⁹ See Preliminary Scope Decision Memorandum.

¹⁰ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 28, 2021, pursuant to 19 CFR 351.210(e), Sunflag requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹¹ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reason for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of polyester textured yarn from Thailand are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, 19 CFR 351.205(c) and 19 CFR 351.210(g).

¹¹ See Sunflag's Letter, "Polyester Textured Yarn from Thailand: Request to Postpone Final Determination and to Extend Provisional Measures," dated April 28, 2021.

Dated: May 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packaging method (such as spindles, tubes, or beams).

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. Scope Comments
- VI. Application of Facts Available and Use of Adverse Inferences
- VII. Discussion of the Methodology
- VIII. Currency Conversion
- IX. Recommendation

[FR Doc. 2021–11632 Filed 6–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–823]

Polyester Textured Yarn From Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn (yarn) from Malaysia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is October 1, 2019, through September 30, 2020. Interested parties

are invited to comment on this preliminary determination.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this investigation on November 17, 2020.¹ On April 2, 2021, Commerce postponed the preliminary determination in this investigation and the revised deadline is now May 26, 2021.²

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The product covered by this investigation is polyester textured yarn from Malaysia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for

¹ *See Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 74680 (November 23, 2020) (*Initiation Notice*).

² *See Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 17362 (April 2, 2021).

³ *See* Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Polyester Textured Yarn from Malaysia,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

parties to raise issues regarding product coverage (scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁶ As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.⁷ There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act and normal values in accordance with section 773 of the Act. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis* margins or determined entirely under section 776 of the Act. In this investigation, Commerce preliminarily calculated a rate of 17.35 percent for Recron (Malaysia) Sdn. Bhd. (Recron). Because Recron's rate is not zero, *de minimis* or based entirely on section 776 of the Act, we are relying on Recron's rate as the

⁵ *See Initiation Notice*, 85 FR at 74680.

⁶ *See* Memorandum, “Antidumping duty investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand and Vietnam: Preliminary Scope Decision Memorandum,” dated concurrently with this notice (Preliminary Scope Decision Memorandum).

⁷ Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and “Public Comment” section of this notice.

estimated weighted-average dumping margin for all other exporters and producers not individually examined.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Recron (Malaysia) Sdn. Bhd.	17.35
All Others	17.35

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit as follows: (1) The cash deposit rate for each of the companies listed above will be equal to the company-specific estimated weighted-average dumping margin as determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin as established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel

restrictions in response to the global COVID-19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments regarding non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.⁸ The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum.⁹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁰

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the

event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On May 18, 2021, pursuant to 19 CFR 351.210(e), Recron requested in the event of an affirmative preliminary determination, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹¹ On May 6, 2021, the petitioners also filed a request to postpone the final determination in the event of a negative preliminary determination.¹² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

¹¹ See Recron's Letter, "Polyester Textured Yarn from Malaysia: Request to Extend the Final Determination," dated May 18, 2021.

¹² See Petitioners' Letter, "Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam—Petitioners' Request for Postponement of the Final Antidumping Determination," dated May 6, 2021.

⁸ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

⁹ See Preliminary Scope Decision Memorandum.

¹⁰ See *Temporary Rule*.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, 19 CFR 351.205(c), and 19 CFR 351.210(g).

Dated: May 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packaging method (such as spindles, tubes, or beams).

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. Scope Comments
- VI. Affiliation
- VII. All-Others Rate
- VIII. Discussion of Methodology
- IX. Currency Conversion
- X. Recommendation

[FR Doc. 2021–11633 Filed 6–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–832]

Polyester Textured Yarn From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines

that polyester textured yarn from the Socialist Republic of Vietnam (Vietnam) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is April 1, 2020, through September 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Preston Cox or Yang Jin Chun, 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) 482–5041 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this LTFV investigation on November 17, 2020.¹ On April 2, 2021, Commerce postponed the preliminary determination of this investigation and the revised deadline is now May 26, 2021.²

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The product covered by this investigation is polyester textured yarn from Vietnam. For a complete

description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.⁶ As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.⁷ There will be no further opportunity for comments on scope related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because Vietnam is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act.

In addition, Commerce has relied on facts available under section 776(a) of the Act to determine the cash deposit rate assigned to the Vietnam-wide entity. Furthermore, pursuant to sections 776(a) and (b) of the Act, because the Vietnam-wide entity did not cooperate to the best of its ability in responding to the Commerce's request for data, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the Vietnam-wide Entity. For a complete description of the methodology

¹ See *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 74680 (November 23, 2020) (*Initiation Notice*).

² See *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 17362 (April 2, 2021).

³ See Memorandum, "Polyester Textured Yarn from the Socialist Republic of Vietnam: Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ See *Initiation Notice*, 85 FR at 74681.

⁶ See Memorandum, "Antidumping Duty Investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam: Preliminary Scope Decision Memorandum," dated concurrently with this notice (Preliminary Scope Decision Memorandum).

⁷ Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. See Preliminary Scope Decision Memorandum; see also the "Public Comment" section of this notice.

underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,⁸ Commerce explained that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.⁹

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Century Single Entity ¹⁰ .	Century Single Entity.	2.67
Vietnam-Wide Entity.	.....	22.82

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Vietnam producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the

estimated weighted-average dumping margin established for the Vietnam-wide entity; and (3) for all third-country exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Vietnam producer/exporter combination (or the Vietnam-wide entity) that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID-19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be announced at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the due date for case briefs.¹¹ The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has temporarily modified certain of its

requirements for serving documents containing business proprietary information until further notice.¹²

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date, time, and location of the hearing two days before the scheduled date of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 29, 2021, the Century Single Entity requested that Commerce postpone its final determination and extend the provisional measures period from four to no more than six months pursuant to 19 CFR 351.210(e).¹³ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter, the Century Single Entity, accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the

¹² See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹³ See Century Single Entity's Letter, "Request to Postpone Final Determination & Provisional Measures," dated April 29, 2021.

⁸ See *Initiation Notice*, 85 FR at 74684.

⁹ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

¹⁰ The Century Single Entity is comprised of Century Synthetic Fiber Corporation and Century Synthetic Fiber Corporation—Branch. See Memorandum, "Less-Than-Fair-Value Investigation of Polyester Textured Yarn from the Socialist Republic of Vietnam: Affiliation and Collapsing Analysis for Century Synthetic Fiber Corporation and Century Synthetic Fiber Corporation—Branch," dated concurrently with this notice.

¹¹ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c) and 19 CFR 351.210(g).

Dated: May 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. This scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packaging method (such as spindles, tubes, or beams).

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Scope Comments
- VI. Selection of Respondents

- VII. Affiliation and Collapsing
- VIII. Discussion of the Methodology
- IX. Currency Conversion
- X. Recommendation

[FR Doc. 2021-11635 Filed 6-2-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-137]

Pentafluoroethane (R-125) From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Benjamin A. Luberda, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1959 and (202) 482-2185, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2021, the Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of pentafluoroethane (R-125) from the People's Republic of China (China).¹ Currently, the preliminary determination is due no later than June 21, 2021.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is

necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On May 21, 2021, the petitioner submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.³ The petitioner stated that it requests postponement “to permit Commerce to fully develop the record in this investigation.”⁴ The petitioner believes additional time is necessary to ensure that Commerce is able “to sufficiently review all questionnaire responses and new factual information, including that with respect to surrogate country and data to value factors of production.”⁵ The petitioner also correctly notes that Commerce has not yet received respondent’s supplemental questionnaire responses which are necessary for a complete accounting of production and sales data.⁶

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than August 10, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 27, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-11672 Filed 6-2-21; 8:45 am]

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³ See Petitioner’s Letter, “Petitioner’s Request to Postpone the Preliminary Determination,” dated May 21, 2021.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

¹ See Pentafluoroethane (R-125) from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation, 86 FR 8583 (February 8, 2021).

² The petitioner is Honeywell International Inc.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-957]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from the People's Republic of China (China) would likely lead to the continuation or recurrence of countervailable subsidies at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT:

Theodore Pearson, Office I, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2631.

SUPPLEMENTARY INFORMATION:**Background**

On November 10, 2010, Commerce published the CVD Order on seamless pipe from China in the **Federal Register**.¹ On February 1, 2021, Commerce published the notice of initiation of the second sunset review of the *CVD Order*² on seamless pipe from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).³ On February 16, 2021, BENTELER Steel/Tube Manufacturing Corp. (BENTELER),⁴ Tenaris Bay City, Inc. and IPSCO Tubulars Inc. (in combination, Tenaris USA),⁵ United

States Steel Corporation (U.S. Steel),⁶ and Vallourec Star, L.P. (Vallourec)⁷ (collectively, domestic producers) filed timely notices of intent to participate in accordance with 19 CFR 351.218(d)(1). Each of these companies claimed interested party status under section 771(9)(C) of the Act, as U.S. producers of the domestic like product.

On March 3, 2021, Commerce received an adequate substantive response collectively from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁸ Commerce did not receive substantive responses from any other domestic or respondent interested parties in this proceeding, nor was a hearing requested.

On March 23, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.⁹ Accordingly, Commerce conducted an expedited (120-day) sunset review of the CVD Order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The scope of this order consists of certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (*e.g.*, hot-finished or cold-drawn), end finish (*e.g.*, plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.*, bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials (ASTM) or American

Antidumping and Countervailing Duty Orders on Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from China," dated February 16, 2021.

⁶ See U.S. Steel's Letter, "Five-Year ("Sunset") Review of Antidumping and Countervailing Duty Orders on Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from China: Notice of Intent to Participate," dated February 16, 2021.

⁷ See Vallourec's Letter, "Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the People's Republic of China (Second Sunset Review): Notice of Intent to Participate," dated February 16, 2021.

⁸ See Domestic Producers' Letter, "Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the People's Republic of China (Second Sunset Review): Substantive Response," dated March 3, 2021.

⁹ See Commerce's Letter, "Sunset Reviews Initiated on February 1, 2021," dated March 23, 2021.

Petroleum Institute (API) specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, ASTM A-1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the order are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A-335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the order are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.*, outside diameter and wall thickness of ASTM A-53, ASTM A-106 or API 5L specifications.

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum.¹⁰ A list of the topics

¹ See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 69050 (November 10, 2010) (CVD Order).

² See CVD Order.

³ See *Initiation of Five-Year "Sunset" Reviews*, 80 FR 59133 (October 1, 2015).

⁴ See BENTELER's Letter, "Notice of Intent to Participate in Second Sunset Reviews of the Antidumping and Countervailing Duty Orders on Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from China," dated February 16, 2021.

⁵ See Tenaris USA's Letter, "Notice of Intent to Participate in Second Sunset Reviews of the

¹⁰ See Memorandum, "Issues and Decision Memorandum for the Final Results of Expedited Second Sunset Review of the Countervailing Duty Order on Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," dated concurrently with, and

Continued

discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System

(ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://enforcement.trade.gov/frn>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the *CVD Order* on seamless pipe from China would be likely to lead to continuation or recurrence of a net countervailable subsidy at the following rates:

Manufacturers/producers/exporters	Net countervailable subsidy (percent)
Tianjin Pipe (Group) Corp., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., TPCO Charging Development Co., Ltd	8.24
Hengyang Steel Tube Group Int'l Trading, Inc., Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., Xigang Seamless Steel Tube Co., Ltd., Wuxi Seamless Special Pipe Co., Ltd., Wuxi Resources Steel Making Co., Ltd., Jiangsu Xigang Group Co., Ltd., Hunan Valin Xiangtan Iron & Steel Co., Ltd., Wuxi Sifang Steel Tube Co., Ltd., Hunan Valin Steel Co., Ltd., Hunan Valin Iron & Steel Group Co., Ltd	49.56
All Others	28.90

Notification Regarding Administrative Protective Order (APO)

This notice serves as the only 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). Timely notification of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: May 27, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the CVD Order
- IV. History of the CVD Order
- V. Legal Framework
- VI. Discussion of the Issues
- VII. Final Results of Sunset Review

hereby adopted by, this notice (Issues and Decision Memorandum).

¹ See *Countervailing Duty Order; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 26931 (May 6, 2020) (*Initiation*).

³ The Borusan Companies are Borusan Holding A.S. (also referred to as Borusan Holding), Borusan Mannesmann Boru Yatirim Holding (BMBY),

VIII. Recommendation

[FR Doc. 2021-11671 Filed 6-2-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-502]

Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; Calendar Year 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that exporters/producers of circular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey) received countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019.

DATES: Applicable June 3, 2021.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal).

⁴ See Memorandum, "Selection of Respondents for Individual Examination," dated June 2, 2020 (Respondent Selection Memorandum).

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁶ See Memorandum, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-8362.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, Commerce published in the **Federal Register** the countervailing duty order on circular welded carbon steel pipes and tubes from Turkey.¹ On May 6, 2020, Commerce published a notice of initiation of an administrative review of the *Order* covering 37 companies.² On June 2, 2020, Commerce selected the Borusan Companies³ as the sole mandatory respondent for individual examination in this administrative review.⁴ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.⁵ On December 7, 2020, Commerce extended the due date of the preliminary results of this administrative review until May 28, 2021.⁶

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁷ A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System

Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated December 7, 2020.

⁷ See Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube Products from the Republic of Turkey; 2019," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

(ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Order

The merchandise covered by the Order is circular welded carbon steel pipes and tubes from Turkey. For a complete description of the scope of the Order, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting 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 preliminarily determine that there is a subsidy, *i.e.*, a financial contribution by an “authority” that confers a benefit to the recipient, and that the subsidy is specific.⁸ For a full description of the methodology underlying our conclusions, see the accompanying Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

On May 11, 2020, Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) timely filed a no-shipments certification.⁹ On May 18, 2020, Toscelik Profil ve Sac Endustrisi A.S., Tosyalı Dis Ticaret A.S., and Toscelik Metal Ticaret A.S. (collectively, the Toscelik Companies), timely submitted a no-shipments certification.¹⁰ On May 20, 2020, Cayirova Boru Sanayi ve Ticaret A.S., Yucel Boru ve Profil Endustrisi A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively, the Yucel Companies) timely filed a no-shipments certification.¹¹ On June 15, 2020, Cinar Boru Profil Sanayi ve Ticaret Anonim Sirketi (Cinar Boru) submitted a claim of no shipment.¹² Based on information received from U.S. Customs and Border Protection

(CBP),¹³ as well as CBP’s responses to our further inquiries,¹⁴ we intend to rescind the administrative review with regard to Toscelik Companies, the Yucel Companies, and Cinar Boru in accordance with 19 CFR 351.213(d)(3) in the final results of review.

Additionally, on June 8, 2020, the Borusan Companies submitted a letter to Commerce timely certifying that Borusan Istikbal, Borusan Birlesik Boru Fabrikaları San ve Tic. (Borusan Fabrikaları), Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik), Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Dagitim), Tubeco Pipe and Steel Corporation (Tubeco), and Borusan Lojistik Dagitim Depolama Tasimacilik ve Ticaret A.S. (Borusan Lojistik) had no entries, exports, or sales of subject merchandise during the POR.¹⁵ Based on information from CBP, we intend to rescind the administrative review with regard to Borusan Fabrikaları, Borusan Gemlik, Borusan Dagitim, Tubeco, and Borusan Lojistik in accordance with 19 CFR 351.213(d)(3).¹⁶ We do not intend to rescind the review for Istikbal, because we preliminarily determine that it is part of the cross-owned entity referred to as the Borusan Companies, the mandatory respondent in this review.

Regarding Erbosan, the results of the query Commerce performed on the trade database maintained by CBP indicated that shipments produced and/or exported by Erbosan entered the United States during the POR.¹⁷ Consistent with Commerce’s findings in the Respondent Selection Memorandum,¹⁸ we preliminarily determine that subject merchandise produced and/or exported by Erbosan entered the United States during the POR. Therefore, we are not rescinding the review with regard to Erbosan.

¹³ See Memorandum, “Results of Customs and Border Protection Query Results,” dated May 11, 2020 (CBP Query Memorandum).

¹⁴ See Memorandum, “Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (C-489–502): Cinar Boru,” dated July 9, 2020; Memorandum, “Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (C-489–502): Certain Borusan Companies,” dated July 9, 2020; and Memorandum, “Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (C-489–502): Yucel Companies and Toscelik Companies,” dated September 15, 2020. We collectively refer to these memoranda as the No Shipment Memoranda for Various Companies.

¹⁵ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey. Case No. C-489–502: No Shipment Letter,” dated June 5, 2020.

¹⁶ See No Shipment Memoranda for Various Companies.

¹⁷ See CBP Query Memorandum.

¹⁸ See Respondent Selection Memorandum at 5.

Preliminary Results of the Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(4), for the period January 1, 2019, through December 31, 2019, we determine that the net subsidy rates for the producers/exporters under review to be as follows:

Company	Net subsidy rate (percent)
Borusan Holding A.S., Borusan Mannesmann Boru Yatirim Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret T.A.S. (collectively, the Borusan Companies) ..	0.83
Borusan Mannesmann	0.83
Borusan Ithicat ve Dagitim A.S.	0.83
Borusan Mannesmann Pipe US, Inc.	0.83
Cagil Makina Sanayi ve Ticaret A.S.	0.83
Cimtas Boru Imalatları ve Ticaret Sirketi	0.83
Eksen Makina	0.83
Erbosan Erciyas Boru Sanayi ve Ticaret A.S.	0.83
Guner Eksport	0.83
Guyen Celik Boru San. Ve Tic. Ltd. (also known as Guyen Steel Pipe)	0.83
HDM Celik Boru Sanayi ve Ticaret Ltd. Sti	0.83
Kale Baglantı Teknolojileri San ve Tic. A.S.	0.83
Kalibre Boru Sanayi ve Ticaret A.S.	0.83
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	0.83
Net Boru Sanayi ve Dis Ticaret Koll. Sti	0.83
Noksel Celik Boru Sanayi A.S.	0.83
Perfektup Ambalaj San. ve Tic. A.S.	0.83
Schenker Arkas Nakliyat ve Ticaret A.S.	0.83
Umrhan Celik Boru Sanayii A.S. (also known as Umrhan Steel Pipe Inc.)	0.83
Vespro Muhendislik Mimarlik Danismanlik Sanayi ve Ticaret A.S.	0.83

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which we intend to rescind this review, upon issuance of the final rescission, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate

⁸ 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.

⁹ See Erbosan’s Letter, “No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) in the 2019 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey,” dated May 11, 2020.

¹⁰ See Toscelik Companies’ Letter, “Circular Welded Carbon Steel Pipe from Turkey; Toscelik No Shipments Letter,” dated May 18, 2020.

¹¹ See Yucel Companies’ Letter, “Circular Welded Carbon Steel Pipe from Turkey; Yucel No Shipments Letter,” dated May 20, 2020.

¹² See Cinar Boru’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey (C-489–502),” dated June 15, 2020.

equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties for each of the 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, except, where the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required. For all non-reviewed firms, 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, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.¹⁹ Interested parties may submit written arguments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing the case briefs.²⁰ Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs may respond only to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a

table of authorities.²¹ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.²²

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.²³ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues addressed during the hearing will be limited to those raised in the briefs.²⁴ If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.²⁵ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 27, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Review
- IV. Scope of the Order
- V. Subsidies Valuation Information
- VI. No-Shipment Claims and Intent to Rescind
- VII. Non-Selected Rate
- VIII. Analysis of Programs

IX. Recommendation

[FR Doc. 2021-11680 Filed 6-2-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet on Wednesday, June 16, 2021, from 11:00 a.m. to 4:00 p.m. Eastern time. The purpose of this meeting is to discuss and review the role and responsibilities of the Judges Panel and information received from the National Institute of Standards and Technology (NIST) in order to ensure the integrity of the Malcolm Baldrige National Quality Award (Award) selection process. The agenda will include: Judges Panel roles and processes; Baldrige Program updates; new business/public comment; lessons learned from the 2020 judging process; and the 2021 Award process. A portion of this meeting is closed to the public in order to protect the proprietary data to be examined and discussed.

DATES: The Judges Panel will meet on Wednesday, June 16, 2021 from 11:00 a.m. Eastern Time until 4:00 p.m. Eastern Time. The portion of the meeting that is closed to the public will take place on Wednesday, June 16, 2021 from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be a virtual meeting by webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, email robert.fangmeyer@nist.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Wednesday, June 16, 2021 from 11:00 a.m. to 4:00 p.m. Eastern Time. The

¹⁹ See 19 CFR 351.224(b).

²⁰ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

²¹ See 19 CFR 351.309(c)(2) and 351.309(d)(2).

²² See *Temporary Rule*.

²³ See 19 CFR 351.310(c).

²⁴ See 19 CFR 351.310(c).

²⁵ See 19 CFR 351.310.

Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions. The primary purpose of this meeting is to assemble to discuss and review the role and responsibilities of the Judges Panel and information received from NIST in order to ensure the integrity of the Malcolm Baldrige National Quality Award selection process. During the closed session on June 16, 2021 from 2:00 p.m. to 4:00 p.m. the Judges Panel will discuss lessons learned from the 2020 judging process and the 2021 Award process. The agenda may change to accommodate Judges Panel business. The final agenda will be posted on the NIST website at <https://www.nist.gov/baldrige/how-baldrige-works/baldrige-community/judges-panel>.

The open portion of the meeting from 11:00 a.m. to 2:00 p.m. Eastern Time will include discussions on the Judges Panel roles and processes and Baldrige program updates and is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions related to the Panel's business are invited to request a place on the agenda. Approximately 30 minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but is likely to be about three minutes each. Questions from the public will not be considered during this period. Requests must be submitted by email to Robyn Verner at robyn.verner@nist.gov and must be received by 4:00 p.m. Eastern Time, June 9, 2021 to be considered. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements by email to robyn.verner@nist.gov or 301-975-2361.

Admittance instructions: All participants will be attending via webinar. Please contact Ms. Verner by email at robyn.verner@nist.gov or 301-975-2361 for detailed instructions on how to join the webinar. All requests must be received by 4:00 p.m. Eastern Time, Wednesday, June, 9, 2021.

The portion of the meeting from 2:00 p.m. to 4:00 p.m. Eastern Time will include discussions on lessons learned from the 2020 judging process and on

the 2021 Award process, and is closed to the public in order to protect the proprietary data to be examined and discussed. The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Employment, Litigation and Information, formally determined, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94-409, that a portion of the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. Portions of the meeting involve examination of prior year Award applicant data. Award applicant data are directly related to the commercial activities and confidential information of the applicants.

Pursuant to 41 CFR 102-3.150(b), this **Federal Register** notice for this meeting is being published fewer than 15 calendar days prior to the meeting as exceptional circumstances exist due to COVID-19.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2021-11617 Filed 6-2-21; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS-2021-0006; OMB Control Number 0704-0397]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Requests for Equitable Adjustment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to comments received by July 6, 2021.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Contract Modifications and related clause at DFARS 252.243-7002; OMB Control Number 0704-0397.

Type of Request: Revision and extension.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 131.

Responses per Respondent: 1.

Annual Responses: 131.

Hours per response: 14.3, approximately.

Estimated Hours: 1,879.

Reporting Frequency: On occasion.

Needs and Uses: The information collection required by the clause at DFARS 252.243-7002, Requests for Equitable Adjustment, implements 10 U.S.C. 2410(a). The clause requires contractors to certify that requests for equitable adjustment exceeding the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for equitable adjustment. DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustments to contracts.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2021-11625 Filed 6-2-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System**

[Docket DARS–2021–0004; OMB Control Number 0704–0533]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Part 249, Termination of Contracts, and a Related Clause at DFARS 252.249–7002, Notification of Anticipated Contract Termination or Reduction

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to comments received by July 6, 2021.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 249, Termination of Contracts, and a Related Clause at DFARS 252.249–7002, Notification of Anticipated Contract termination or Reduction; OMB Control Number 0704–0533.

Type of Request: Extension.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 42.

Responses per Respondent: 6.19, approximately.

Annual Responses: 260.

Hours per response: 0.74, approximately.

Estimated Hours: 193.

Reporting Frequency: On occasion.

Needs and Uses: Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.249–7002, Notification of Anticipated Contract Termination or Reduction, is used in all contracts under a major defense program. This clause requires contractors, within 60 days after receipt of notice from the contracting officer of an anticipated termination or substantial reduction of a contract, to provide notice of the anticipated termination or substantial reduction to first-tier subcontractors with a subcontract valued at \$700,000 or more. The clause also requires flowdown of the notice requirement to lower-tier subcontractors with a subcontract value at \$150,000 or more. The purpose of this

requirement is to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. chapter 32) for employees of DoD contractors and subcontractors adversely affected by contract termination or substantial reductions under major defense programs.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Jennifer D. Johnson,
Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2021–11623 Filed 6–2–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System**

[Docket Number DARS–2021–0013; OMB Control Number 0704–0246]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Part 245, Government Property, and Related Clauses and Forms

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision and extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed revision and extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information

collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through September 30, 2021. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by August 2, 2021.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0246, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* osd.dfars@mail.mil. Include OMB Control Number 0704–0246 in the subject line of the message.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Ziegler, OUSD(A&S)DPC/DARS, 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 571–372–6095.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253; OMB Control Number 0704–0246.

Type of Request: Revision.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 1,504.

Responses per Respondent: 25, approximately.

Annual Responses: 37,479.

Average Burden per Response: 1 hour, approximately.

Annual Response Burden Hours: 36,058.

Reporting Frequency: On occasion.

Needs and Uses: This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of Government property.

DFARS 245.302 concerns contracts with foreign governments or

international organizations. Paragraph (1)(i) requires contractors to request and obtain contracting officer approval before using Government property on work for foreign governments and international organizations.

DFARS 245.604–3 concerns the sale of surplus Government property. Under paragraph (b), a contractor may be directed by the plant clearance officer to issue informal invitations for bids. Under paragraph (d), a contractor may be authorized by the plant clearance officer to purchase or retain Government property at less than cost if the plant clearance officer determines this method is essential for expeditious plant clearance.

The contract clause at DFARS 252.245–7003, Contractor Property Management System Administration, prescribed at 245.107(5), addresses the requirement for contractors to respond in writing to initial and final determinations from the administrative contracting officer that identifies deficiencies in the contractor's property management system.

DD Form 1348–1A, DoD Single Line Item Release/Receipt Document, is prescribed at DFARS 245.7001–3 for use when authorized by the plant clearance officer.

DD Form 1639, Scrap Warranty, is prescribed in the clause at DFARS 252.245–7004, Reporting, Reutilization, and Disposal. When scrap is sold by the contractor, after Government approval, the purchaser of the scrap material(s) may be required to certify, by signature on the DD Form 1639, that (i) the purchased material will be used only as scrap and (ii), if sold by the purchaser, the purchaser will obtain an identical warranty from the individual buying the scrap from the initial purchaser. The warranty contained in the DD Form 1639 expires five years from the date of the sale.

Jennifer D. Johnson,
Regulatory Control Officer, Defense
Acquisition Regulations System.

[FR Doc. 2021–11638 Filed 6–2–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site; Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the

Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Monday, June 28, 2021; 1:00 p.m.–3:00 p.m.

ADDRESSES:

Online Virtual Meeting: To attend, please send an email to: srscitizensadvisoryboard@srs.gov by no later than 4:00 p.m. ET on Friday, June 25, 2021.

To Submit Public Comments: Public comments will be accepted via email prior to and after the meeting. Comments received by no later than 4:00 p.m. ET on Friday, June 25, 2021 will be read aloud during the virtual meeting. Comments will also be accepted after the meeting, by no later than 4:00 p.m. ET on Monday, July 5, 2021. Please submit comments to srscitizensadvisoryboard@srs.gov.

FOR FURTHER INFORMATION CONTACT:

Amy Boyette, Office of External Affairs, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120; email: srscitizensadvisoryboard@gmail.com.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Chair Update
- Deputy Designated Federal Officer Update
- Board Discussion on Draft Recommendation, Revise the Member Appointment Process
- Reading of Public Comments
- Voting: Draft Recommendation, Revise the Member Appointment Process

Public Participation: The online virtual meeting is open to the public. Written statements may be filed with the Board either before or after the meeting as there will not be opportunities for live public comment during this online virtual meeting. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should email them as directed above.

Minutes: Minutes will be available by writing or calling Amy Boyette at the

address or telephone number listed above. Minutes will also be available at the following website: <https://cab.srs.gov/srs-cab.html>.

Signed in Washington, DC, on May 27, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–11601 Filed 6–2–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–493–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed East 300 Upgrade Project and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) for the East 300 Upgrade Project (Project), proposed by Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in Passaic and Sussex Counties, New Jersey and Susquehanna County, Pennsylvania. The EIS will tier off Commission staff's Environmental Assessment (EA) and its findings and conclusions for the Project issued on February 19, 2021, and respond to comments filed on the EA.¹ The EIS will assist the Commission in its consideration of the Project's contribution to climate change and its decision-making process to determine whether Tennessee's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the "Schedule for Environmental Review" section of this notice.

The National Environmental Policy Act Process

The production of the EIS is part of the Commission's overall National Environmental Policy Act review process. Commission staff will independently analyze the proposed Project and prepare a draft EIS, which 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 draft and

¹ The EA for the Project is filed in Docket No. CP20–493–000 under Accession No. 20210219–3034.

final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in July 2021.

Issuance of Notice of Availability of the final EIS September 24, 2021

90-day Federal Authorization Decision Deadline December 23, 2021

If a schedule change becomes necessary for the final 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) 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 proposed 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 CP20-493-000 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 1).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.

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. 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.

Dated: May 27, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-11664 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-450-000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on May 18, 2021, Enable Gas Transmission, LLC (EGT), 910 Louisiana Street, 48th Floor, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and EGT's blanket certificate

issued in Docket Nos. CP82-384-000 and CP82-384-001, for authorization to abandon in place all existing compressor units and related major and minor auxiliary facilities at its Taylor Compressor Station in Columbia County, Arkansas, 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, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this prior notice request should be directed to Lisa Yoho, Senior Director, Regulatory and FERC Compliance, Enable Gas Transmission, LLC, 910 Louisiana Street, 48th Floor, Houston, Texas 77002, at (346) 701-2539 or by email to lisa.yoho@enablemidstream.com.

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 July 26, 2021. 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,¹ any person² 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

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

² For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice.

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,³ and must be submitted by the protest deadline, which is July 26, 2021. 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 Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is July 26, 2021. 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.

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 July 26, 2021. 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 CP21-450-000 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"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below.⁷ Your submission must reference the Project docket number CP21-450-000..

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

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 at: 910 Louisiana Street, 48th Floor, Houston, Texas 77002, or email (with a link to the document) at: lisa.yoho@enablemidstream.com. Any subsequent submissions by an intervenor must be served on the

⁶ 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.

⁷ Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11657 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-14-000]

Adelphia Gateway, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Marcus Hook Electric Compression Project and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) for the Marcus Hook Electric Compression Project (Project), proposed by Adelphia Gateway, LLC (Adelphia) in Delaware County, Pennsylvania. The EIS will tier off Commission staff's Environmental Assessment (EA) and its findings and conclusions for the Project issued on February 9, 2021, and respond to comments filed on the EA.¹ The EIS will assist the Commission in its consideration of the Project's contribution to climate change and its

¹ The EA for the Project is filed in Docket No. CP21-14-000 under Accession No. 20210209-3004.

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

decision-making process to determine whether Adelphia's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the "Schedule for Environmental Review" section of this notice.

The National Environmental Policy Act Process

The production of the EIS is part of the Commission's overall National Environmental Policy Act review process. Commission staff will independently analyze the proposed Project and prepare a draft EIS, which 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 draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in June 2021.

Issuance of Notice of Availability of the final EIS: September 10, 2021
90-day Federal Authorization Decision Deadline: December 9, 2021

If a schedule change becomes necessary for the final 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; Native American Tribes; elected officials; environmental and public interest groups; 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 proposed 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 CP21-14-000 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 1).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.

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. 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.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11660 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 619-164]

Pacific Gas and Electric Company; The City of Santa Clara; Notice of Meeting

a. *Project Name and Number:* Bucks Creek Hydroelectric Project No. 619.

b. *Date and Time of Meeting:* June 14, 2021; 1:00 p.m.–2:00 p.m. Eastern Time.

c. *FERC Contact:* Frank Winchell, frank.winchell@ferc.gov.

d. *Purpose of Meeting:* To discuss the final Programmatic Agreement issued by the Commission for the relicensing of the Bucks Creek Hydroelectric Project.

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend; however, participation will be limited between the Commission's staff, Advisory Council on Historic Preservation, and California State Historic Preservation Office. Please email the FERC contact noted above by June 9, 2021, to receive specific instructions on how to attend. The meeting will be held remotely using Microsoft Teams.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11665 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-2005-000]

Hickory Park Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hickory Park Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

²For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 16, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: May 27, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-11710 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-449-000]

Dominion Energy Overthrust Pipeline, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on May 17, 2021, Dominion Energy Overthrust Pipeline, LLC (DEOP), 333 South State Street, Salt Lake City, Utah 84111, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208(b) and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and DEOP's blanket certificate issued in Docket No. CP82-493-000, for authorization to construct, own and maintain additional piping and valves within five separate station yards located along the pipeline all within the state of Wyoming. The Point of Rocks West Project (Project) would create 130,000 Dekatherms per day of new capacity flowing east to west from Wamsutter to Opal. DEOP states that no new compression would be installed, and DEOP states that minimal ground disturbance is anticipated for the Project. DEOP estimates the cost of the Project to be approximately \$4.866 million, 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://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 at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this prior notice request should be directed to Greg Williams, Regulatory Specialist, Dominion Energy Services, 333 South State Street, Salt Lake City, Utah 84111, at (801) 324-5370 or greg.williams@dominionenergy.com.

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 July 26, 2021. 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,¹ any person² 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,³ and must be submitted by the protest deadline, which is July 26, 2021. 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 Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is July 26, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

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.

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 July 26, 2021. 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 CP21-449-000 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 ⁶

⁶ 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

(2) You can file a paper copy of your submission by mailing it to the address below.⁷ Your submission must reference the Project docket number CP21-449-000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

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 at: 333 South State Street, Salt Lake City, Utah 84111 or email (with a link to the document) at greg.williams@dominionenergy.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.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11659 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

interested persons to submit brief, text-only comments on a project.

⁷ Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-2001-000]

Shell Chemical Appalachia LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Shell Chemical Appalachia LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 16, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: May 27, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021-11709 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981-044]

Oconto Electric Cooperative; 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:* Application for Temporary Variance of Reservoir Elevation Requirements.

b. *Project No:* P-1981-044.

c. *Date Filed:* November 16, 2020.

d. *Applicant:* Oconto Electric Cooperative (licensee).

e. *Name of Project:* Stiles Hydroelectric Project.

f. *Location:* The project is located on the Oconto River in Oconto County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Kent A. Lyng, Engineer, Oconto Electric Cooperative, P.O. Box 168, 7479 REA Road, Oconto, WI 54154, Phone: (920) 846-2816 extension 1017.

i. *FERC Contact:* Mark Pawlowski, (202) 502-6052, mark.pawlowski@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* June 10, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using

the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-77-306. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee (or Oconto) requests a 5-foot temporary variance of the minimum impoundment elevation of the Stiles impoundment (Machickanee Flowage) required by Article 401 of the project license. Article 401 requires the licensee maintain a minimum impoundment elevation of 623.2 feet National Geodetic Vertical Datum. The purpose of the variance is to reduce invasive plant growth and improve fish habitat. Article 402 of the license requires that any scheduled maintenance impoundment drawdowns below the minimum elevation required by Article 401 must not occur during April, May, and June to protect near-shore fish spawning and nursery activities. The proposed 5-foot drawdown is scheduled to begin in July 2021.

l. *Locations of the Application:* This filing may be viewed on the

Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 27, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-11667 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP20–527–000]

Columbia Gulf Transmission, LLC; Notice of Intent To Prepare a An Environmental Impact Statement for the Proposed; East Lateral Xpress Project and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) for the East Lateral Xpress Project (Project), proposed by Columbia Gulf Transmission, LLC (Columbia Gulf) in Jefferson, Plaquemines, St. Mary, and Lafourche Parishes, Louisiana. The EIS will tier off Commission staff's Environmental Assessment (EA) and its findings and conclusions for the Project issued on March 16, 2021, and respond to comments filed on the EA.¹ The EIS will assist the Commission in its consideration of the Project's contribution to climate change and its decision-making process to determine whether Columbia Gulf's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the "Schedule for Environmental Review" section of this notice.

The National Environmental Policy Act Process

The production of the EIS is part of the Commission's overall National Environmental Policy Act review process. Commission staff will independently analyze the proposed Project and prepare a draft EIS, which 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 draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion

of a final EIS for the Project, which is based on an issuance of the draft EIS in June 2021.

Issuance of Notice of Availability of the final EIS—September 17, 2021
90-day Federal Authorization Decision Deadline—December 16, 2021

If a schedule change becomes necessary for the final 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) 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 proposed 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 CP20–527–000 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 1).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers

a free service called eSubscription. 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.

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. 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.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021–11662 Filed 6–2–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–161–000.

Applicants: Hubbard Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hubbard Wind, LLC.

Filed Date: 5/27/21.

Accession Number: 20210527–5234.

Comments Due: 5 p.m. ET 6/17/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–026; ER10–1817–023; ER10–1819–030; ER10–1820–033.

Applicants: Public Service Company of Colorado, Southwestern Public Service Company, Northern States Power Company a Minnesota corporation, Northern States Power Company a Wisconsin corporation.

Description: Notice of Change in Status of Public Service Company of Colorado, et al.

Filed Date: 5/27/21.

¹ The EA for the Project is filed in Docket No. CP20–527–000 under Accession No. 20210316–3010.

² For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice.

Accession Number: 20210527–5296.
Comments Due: 5 p.m. ET 6/17/21.
Docket Numbers: ER20–1210–003.
Applicants: Hazleton Generation LLC.
Description: Report Filing: Reactive Service Tariff Refund Report to be effective N/A.

Filed Date: 5/27/21.

Accession Number: 20210527–5110.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–1047–002.

Applicants: Southwestern Public Service Company.

Description: Tariff Amendment: SPS–GSEC–RBEC IA-Faria 724—Supplemental Filing to be effective 7/26/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5194.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–1401–002.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: Tariff Amendment: 2021 Interchange Agreement Annual Filing—Refile to be effective 1/1/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5184.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–1652–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2021–05–27 OATT-Transmn Svc Study Filing—Amnd to be effective 7/26/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5158.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–1813–002.

Applicants: Yellow Pine Energy Center I, LLC.

Description: Tariff Amendment: Second Amendment to Yellow Pine Energy Center I, LLC App for MBR Authorization to be effective 5/28/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5067.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–1814–002.

Applicants: Yellow Pine Energy Center II, LLC.

Description: Tariff Amendment: Second Amendment to Yellow Pine Energy Center II, LLC App for MBR Authorization to be effective 5/28/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5072.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–1990–001.

Applicants: Blackwell Wind Energy, LLC.

Description: Tariff Amendment: Blackwell Wind Energy, LLC Amendment to the Application for MBR Authorization to be effective 7/24/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5219.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2003–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 6072; Queue No. AF2–293 to be effective 5/4/2021.

Filed Date: 5/26/21.

Accession Number: 20210526–5210.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER21–2004–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 354, Newman 6 Large Generator Interconnection Agreement to be effective 5/5/2021.

Filed Date: 5/26/21.

Accession Number: 20210526–5211.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER21–2005–000.

Applicants: Hickory Park Solar, LLC.

Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 7/9/2021.

Filed Date: 5/26/21.

Accession Number: 20210526–5219.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER21–2007–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Central Nebraska Pre-Filing Stipulation and Offer of Settlement to be effective N/A.

Filed Date: 5/27/21.

Accession Number: 20210527–5064.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2009–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 5817; Queue No. AF2–085 to be effective 9/15/2020.

Filed Date: 5/27/21.

Accession Number: 20210527–5105.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2010–000.

Applicants: Luz Solar Partners Ltd., III.

Description: Tariff Cancellation: Luz Solar Partners Ltd., III Notice of Cancellation of Market-Based Rate Tariff to be effective 5/27/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5111.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2011–000.

Applicants: Luz Solar Partners Ltd., IV.

Description: Tariff Cancellation: Luz Solar Partners Ltd., IV Notice of Cancellation of Market-Based Rate Tariff to be effective 5/28/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5114.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2012–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 607R40 Evergy Kansas Central, Inc. NITSA NOA to be effective 5/1/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5124.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2013–000.

Applicants: Luz Solar Partners Ltd., V.

Description: Tariff Cancellation: Luz Solar Partners Ltd., V Notice of Cancellation of Market-Based Rate Tariff to be effective 5/28/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5129.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2014–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notice of Termination of Quarantina DSA SA No. 1131 to be effective 7/18/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5139.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2015–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: Joint 205 SGIA among NYISO, NYSEG, Orangeville Energy SA2562, CEII to be effective 5/20/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5152.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2016–000.

Applicants: Minco Wind V, LLC.

Description: Tariff Cancellation: Minco Wind V, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 5/28/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5167.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2017–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Third Amended LGIA Maverick SA No. 98 to be effective 5/28/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5174.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2018–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Tariff Cancellation: DEC—Notice of Cancellation of Service Agreements SA Nos. 46, 166, 153 and 347 to be effective 7/27/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5259.

Comments Due: 5 p.m. ET 6/17/21.

Docket Numbers: ER21–2019–000.

Applicants: California Independent System Operator Corporation.

Description: Tariff Cancellation: 2021–05–27 Termination of DSHBAOA—Griffith to be effective 6/1/2021.

Filed Date: 5/27/21.

Accession Number: 20210527–5270.

Comments Due: 5 p.m. ET 6/17/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 27, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021–11707 Filed 6–2–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–27–000]

North Baja Pipeline, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed North Baja Xpress Project and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) for the North Baja Xpress Project (Project), proposed by North Baja Pipeline, LLC (North Baja) in La Paz County, Arizona and Imperial County, California. The EIS will tier off Commission staff's Environmental Assessment (EA) and its findings and conclusions for the Project issued on September 8, 2020, and respond to

comments filed on the EA.¹ The EIS will assist the Commission in its consideration of the Project's contribution to climate change and its decision-making process to determine whether North Baja's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the "Schedule for Environmental Review" section of this notice.

The National Environmental Policy Act Process

The production of the EIS is part of the Commission's overall National Environmental Policy Act review process. Commission staff will independently analyze the proposed Project and prepare a draft EIS, which 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 draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in July 2021.

Issuance of Notice of Availability of the final EIS: October 22, 2021
90-day Federal Authorization Decision Deadline: January 20, 2022

If a schedule change becomes necessary for the final 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) 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 proposed 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 CP20–27–000 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 1).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.

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. 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.

¹ The EA for the Project is filed in Docket No. CP20–27–000 under Accession No. 20200908–3009.

² For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11663 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2997-031]

South Sutter Water District; Notice of Waiver Period for Water Quality Certification Application

On May 17, 2021, South Sutter Water District submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act Section 401(a)(1) water quality certification filed with the California State Water Resources Control Board (California Water Board), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6, we hereby notify the California Water Board of the following:

Date of Receipt of the Certification Request: May 17, 2021.

Reasonable Period of Time to Act on the Certification Request: One year.

Date Waiver Occurs for Failure to Act: May 17, 2022.

If the California Water Board fails or refuses to act on the water quality certification request by the above waiver date, then the agency's certifying authority is deemed waived pursuant to Section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: May 19, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11666 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20-48-000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Enhancement By Compression Project and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) for the Enhancement by Compression Project (Project), proposed by Iroquois

Gas Transmission System, L.P. (Iroquois) in Greene and Dutchess Counties, New York and Fairfield and New Haven Counties, Connecticut. The EIS will tier off Commission staff's Environmental Assessment (EA) and its findings and conclusions for the Project issued on September 30, 2020, and respond to comments filed on the EA.¹ The EIS will assist the Commission in its consideration of the Project's contribution to climate change and its decision-making process to determine whether Iroquois' proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the "Schedule for Environmental Review" section of this notice.

The National Environmental Policy Act Process

The production of the EIS is part of the Commission's overall National Environmental Policy Act review process. Commission staff will independently analyze the proposed Project and prepare a draft EIS, which 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 draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-documents>).

Schedule for Environmental Review

This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in June 2021.

Issuance of Notice of Availability of the final EIS September 3, 2021
90-day Federal Authorization Decision Deadline December 2, 2021

If a schedule change becomes necessary for the final 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. 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 proposed 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 CP20-48-000 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 1).

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.

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. Be sure you have selected an

¹ The EA for the Project is filed in Docket No. CP20-48-000 under Accession No. 20200930-3011.

² For instructions on connecting to eLibrary, refer to the "Additional Information" section of this notice.

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.

Dated: May 27, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11661 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21-686-001.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing Compliance Filing—Crediting of Storage Reservation Charges to be effective 5/1/2021.

Filed Date: 5/26/21.

Accession Number: 20210526-5164.

Comments Due: 5 p.m. ET 6/7/21.

Docket Numbers: RP21-843-000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: ROFR Agreement Definition Modification to be effective 6/25/2021.

Filed Date: 5/26/21.

Accession Number: 20210526-5206.

Comments Due: 5 p.m. ET 6/7/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 27, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-11708 Filed 6-2-21; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0351; FRL-10024-26-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section the Clean Air Act, as amended ("CAA" or the "Act"), notice is given of a proposed consent decree in *Association of Irrigated Residents v. EPA*, No. 4:21-cv-426-JST (N.D. CA.). On January 17, 2021, Plaintiff filed a complaint in the United States District Court for the Northern District of California, Oakland Division, alleging that the Environmental Protection Agency (EPA) failed to perform several mandatory duties under the CAA. On May 10, 2019, the State of California submitted a SIP revision to EPA with two components titled "2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards" and "San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan" (together, the "SJV PM_{2.5} Plan") to address CAA requirements for attainment of the PM_{2.5} NAAQS in the SJV Area. The SJV PM_{2.5} Plan includes measures intended to control emissions of fine particulate matter and its precursors within the San Joaquin Valley for purposes of attaining the 1997 annual and 24-hour PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS and 2012 annual PM_{2.5} NAAQS. The proposed consent decree would establish deadlines for EPA to take final actions on the portions of the SJV PM_{2.5} Plan that address requirements for the various PM_{2.5} NAAQS by specific dates.

DATES: Written comments on the proposed consent decree must be received by July 6, 2021.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2021-0351, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any

personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564-5601; email address: wilcox.geoffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2021-0351) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish deadlines for EPA to take final

actions pursuant to the CAA. First, the proposed consent decree would establish a deadline for EPA to take action pursuant to CAA section 110(k)(2)–(4) to approve, disapprove, conditionally approve, or approve in part and disapprove in part the SJV PM_{2.5} Plan's 2006 24-hour PM_{2.5} NAAQS Serious area plan contingency measures element. The proposed consent decree would require EPA to take action on the SIP submission for this requirement by no later than November 30, 2021.

Second, the proposed consent decree would establish a deadline for EPA to take final action pursuant to CAA section 110(k)(2)–(4) to approve, disapprove, conditionally approve, or approve in part and disapprove in part, the SJV PM_{2.5} Plan's 1997 24-hour PM_{2.5} NAAQS Serious area and CAA section 189(d) plan. The proposed consent decree would require EPA to take action on the SIP submission for these requirements by no later than February 28, 2022.

Third, the proposed consent decree would establish a deadline for EPA to take final action pursuant to CAA section 110(k)(2)–(4) to approve, disapprove, conditionally approve, or approve in part and disapprove in part, the SJV PM_{2.5} Plan's 2012 annual PM_{2.5} NAAQS Serious area plan. The proposed consent decree would require EPA to take action on the SIP submission for these requirements by no later than April 29, 2022.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2021–0351, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
Associate General Counsel.

[FR Doc. 2021–11692 Filed 6–2–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10024–57–Region 3]

Delegation of Authority to the Commonwealth of Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On May 17, 2021, the Environmental Protection Agency (EPA) sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On May 17, 2021, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce certain Federal NSPS and NESHAPs had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The telephone number is (215) 814 2217, or Mr. Burger can also be reached via electronic mail at burger.riley@epa.gov.

SUPPLEMENTARY INFORMATION: On November 12, 2020, Virginia notified EPA that Virginia had updated its incorporation by reference of Federal NSPS, NESHAP, and Maximum Available Control Technology (MACT) standards to include many such standards, as they were published in final form in the Code of Federal Regulations (CFR) dated July 1, 2020. On May 17, 2021, EPA sent Virginia a letter acknowledging that Virginia now

has the authority to implement and enforce the NSPS, NESHAP, and MACT standards as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports, and other correspondence required pursuant to the delegated NSPS, NESHAP, and MACT must be submitted to both EPA, Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

Michael G. Dowd, Director
Air Division
Virginia Department of Environmental
Quality
P.O. Box 1105
Richmond, VA 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and National Emission Standards for Hazardous Air Pollutants for Source Categories (MACT standards) which are found at 40 CFR parts 60, 61 and 63, respectively. In those actions, EPA also delegated to Virginia the authority to implement and enforce any future federal NSPS, NESHAP or MACT Standards on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated November 12, 2020, Virginia submitted to EPA revised versions of Virginia's regulations which incorporate by reference specified federal NSPS, NESHAP and MACT standards, as those federal standards had been published in final form in the Code of Federal Regulations dated July 1, 2020. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority and made only allowed wording changes.

Virginia stated that it had submitted the revisions "to retain its authority to enforce the NSPSs and NESHAPs under the delegation of authority granted by EPA on August 27, 1981 (46 FR 43300) and to enforce the MACT standards under the delegation of authority granted by EPA on January 26, 1999 (64 FR 3938) and January 8, 2002 (67 FR 825)."

Virginia provided copies of its revised regulations which specify the NSPS, NESHAP and MACT Standards which it had adopted by reference. Virginia's revised regulations are entitled 9 VAC 5–50 "New and Modified Stationary Sources," and 9

VAC 5–60 "Hazardous Air Pollutant Sources." These revised regulations have an effective date of November 11, 2020.

Based on Virginia's submittal, EPA acknowledges that EPA's delegations to Virginia of the authority to implement and enforce EPA's NSPS, NESHAP, and MACT standards have been updated, as provided for under the terms of EPA's previous delegation of authority actions, to allow Virginia to implement and enforce the federal NSPS, NESHAP and MACT standards which Virginia has adopted by reference as specified in Virginia's revised regulations 9 VAC 5–50 and 9 VAC 5–60, both effective on November 11, 2020.

Please note that on December 19, 2008, in *Sierra Club v. EPA*,¹ the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR part 63. Because Virginia incorporated 40 CFR part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR part 63 due to the Court's ruling in *Sierra Club vs. EPA*.

EPA appreciates Virginia's continuing NSPS, NESHAP and MACT standards enforcement efforts, and also Virginia's decision to take automatic delegation of additional or updated NSPS, NESHAP and MACT standards by adopting them by reference.

Sincerely,
Cristina Fernandez, Director
Air and Radiation Division

This notice acknowledges the update of Virginia's delegation of authority to implement and enforce NSPS, NESHAP, and MACT standards.

Dated: May 27, 2021.

Cristina Fernandez,
Director, Air & Radiation Division, Region III.

[FR Doc. 2021–11652 Filed 6–2–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0295 and 3060–0281; FRS 29475]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 2, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0295.

¹ *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008).

Title: Section 90.607, Supplemental Information to be Furnished by Applicants for Facilities Under Subpart S.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 301 respondents; 301 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 308(b).

Total Annual Burden: 75 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in Section 90.607 require the affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for.

This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum and prevents spectrum warehousing.

OMB Control Number: 3060-0281.

Title: Section 90.651, Supplemental Reports Required of Licensees Authorized Under this Subpart.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 41 respondents; 67 responses.

Estimated Time per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Total Annual Burden: 11 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In a Report and Order (FCC 99-9, released February 19, 1999) in WT Docket 97-153, the Commission, under section 90.651, adopted a revised time frame for reporting the number of mobile units placed in operation from eight months to 12 months of the grant date of their license. The radio facilities addressed in this subpart of the rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. This rule section requires licensees to report the number of mobile units served via FCC Form 601. The Commission is extending this reporting requirement for a period of three years in the Office of the Management and Budget's (OMB) inventory.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021-11679 Filed 6-2-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 29460]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of re-establishment of the Communications Security, Reliability, and Interoperability Council.

SUMMARY: The Federal Communications Commission (Commission) hereby announces that the Communications Security, Reliability, and Interoperability Council (hereinafter CSRIC or Council) will be re-established for a two-year period pursuant to the Federal Advisory Committee Act (FACA) and in accordance with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418-1916 or email: suzon.cameron@fcc.gov,

or Kurian Jacob, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418-2040 or email: kurian.jacob@fcc.gov.

SUPPLEMENTARY INFORMATION: After consultation with the General Services Administration, the Commission intends to re-establish the charter on or before June 30, 2021, providing the Council with authorization to operate for two years.

The purpose of the Council is to advise the Commission and to make recommendations that foster the security, reliability, and interoperability of communications systems.

Advisory Committee

The CSRIC will be organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The Council will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Council will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Committee will be conducted in an open, transparent, and accessible manner. The Committee shall terminate two (2) years from the filing date of its charter, or earlier upon the completion of its work as determined by the Chairperson of the FCC, unless its charter is renewed prior to the termination date.

During the CSRIC's next term, it is anticipated that it will meet in Washington, DC, approximately four (4) times a year. The first meeting will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date. In addition, as needed, working groups or subcommittees (ad hoc or steering) will be established to facilitate the Committee's work between meetings of the full Council. Meetings of the Council will be fully accessible to individuals with disabilities.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021-11684 Filed 6-2-21; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0113; FRS 29286]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority**AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (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 August 2, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to 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 at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0113.

Title: Form 2100, Schedule 396—Broadcast Equal Employment Opportunity Program Report.
Form Number: FCC 2100, Schedule 396.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Number of Respondents and Responses: 2,960 respondents, 2,960 responses.

Estimated Time per Response: 0.5–2 hours.

Frequency of Response: On renewal reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,336 hours.

Total Annual Cost: \$666,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Broadcast Equal Employment Opportunity (EEO) Program Report, FCC Form 2100, Schedule 396, is a device that is used to evaluate a licensee's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. Schedule 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Class A and Low Power TV and International stations as well as Satellite Digital Audio Radio Service ("SDARS") licensees.¹ The recordkeeping requirements for FCC Form 2100, Schedule 396 are covered under OMB control number 3060–0214.

Federal Communications Commission.

Marlene Dortch,*Secretary, Office of the Secretary.*

[FR Doc. 2021–11683 Filed 6–2–21; 8:45 am]

BILLING CODE 6712–01–P

¹In 1997, the Commission determined that SDARS licensees must comply with the Commission's EEO requirements. See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band, 12 FCC Rcd 5754, 5791, 91 (1997) ("1997 SDARS Order"), FCC 97–70. In 2008, the Commission clarified that SDARS licensees must comply with the Commission's EEO broadcast rules and policies, including the same recruitment, outreach, public file, website posting, record-keeping, reporting, and self-assessment obligations required of broadcast licensees, consistent with 47 CFR 73.2080, as well as any other Commission EEO policies. See Applications for Consent to the Transfer of Control of Licenses, SM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, 23 FCC Rcd 12348, 12426, 174, and note 551 (2008) ("XM-Sirius Merger Order").

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0824; FRS 29219]

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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 2, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to 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: 3060–0824.

Title: Service Provider and Billed Entity Identification Number and Contact Information Form.

Form Number: FCC Form 498.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and Not-for-profit institutions.

Number of Respondents and

Responses: 26,000 respondents; 26,000 responses.

Estimated Time per Response: 0.75 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154 and 254 the Communications Act of 1934, as amended.

Total Annual Burden: 19,500 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) who administers the universal service program must preserve the confidentiality of all data obtained from respondents and contributors to the universal service programs, must not use the data except for purposes of administering the universal service programs, and must not disclose data in company-specific form unless directed to do so by the Commission. With respect to the FCC Form 498, USAC shall publish each participant's name, SPIN, and contact information via USAC's website. All other information, including financial institution account numbers or routing information, shall remain confidential.

Needs and Uses: One of the functions of the Universal Service Administrative Company (USAC) is to provide a means for the billing, collection and disbursement of funds for the universal service support mechanisms. On October 1998, the OMB approved FCC Form 498, the "Service Provider Information Form" to enable USAC to collect service provider name and address, telephone number, Federal Employer Identification Number (EIN), contact names, contact telephone numbers, and remittance information. FCC Form 498 enables participants to request a Service Provider Identification Number (SPIN) and provides the official record for participation in the universal service support mechanisms. The remittance information provided by participants on FCC Form 498 enables USAC to make payments to participants in the universal service support mechanisms.

Pursuant to 47 CFR 54.202, 54.301, 54.303, 54.307, 54.309, 54.311, 54.504, 54.407, 54.422, 54.514, 54.515, 54.679, 54.702, 54.802, and 54.902, USAC collects service provider name, phone numbers, other contact information, and remittance information for all four of the universal service support mechanisms—Schools and Libraries, Rural Health Care, High-Cost and Low-Income (commonly referred to as Lifeline). On July 23, 2014, the Commission released an Order and FNPRM (WC Docket No. 13–184, FCC 14–99; 79 FR 49160, August 19, 2014) (*E-rate Modernization Order*) modernizing the E-rate program. Specifically, the *E-rate Modernization Order* revised the Commission rules to allow an applicant that pays the full cost of the Schools and Libraries (E-rate) supported services to a service provider to receive direct reimbursement from USAC.

The Digital Accountability and Transparency Act (DATA Act) directs Federal agencies to report financial obligations and standardize the information that recipients of federal funds report to government agencies. To comply with the DATA Act, the DATA Act Business Type is reported on FCC Form 498. When completing or updating this form, service providers and billed entities are required to select up to three business types that best describes the organization.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–11677 Filed 6–2–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984.

Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)-523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 201217–004.

Agreement Name: Port of Long Beach Data Services Agreement.

Parties: The City of Long Beach, acting by and through its Board of Harbor

Commissioners, PierPASS LLC, International Transportation Service, LLC; LBCT LLC d/b/a Long Beach Container Terminal LLC.; Total Terminals International, LLC; Pacific Maritime Services, L.L.C.; SSAT (Pier A), LLC; and SSA Terminals, LLC.

Synopsis: The amendment extends the duration of the agreement, revises the maximum amount of compensation payable thereunder in light of the extension, and makes non-substantive revisions to Article 9.5. The parties request expedited review.

Proposed Effective Date: 7/11/2021.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/13210>.

Dated: May 28, 2021.

Rachel E. Dickon,
Secretary.

[FR Doc. 2021–11656 Filed 6–2–21; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 July 6, 2021.

A. *Federal Reserve Bank of Richmond* (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or Comments.applications@rich.frb.org:

1. *Shore Bancshares, Inc., Easton, Maryland*; to acquire *Severn Bancorp, Inc.*, and thereby indirectly acquire *Severn Savings Bank, FSB*, both of Annapolis, Maryland, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11685 Filed 6-2-21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket No. OP-1749]

Potential Modifications to the Federal Reserve Policy on Payment System Risk To Expand Access to Collateralized Intraday Credit, Clarify Access to Uncollateralized Credit, and Support the Deployment of the FedNow Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comment on proposed changes to part II of the Federal Reserve Policy on Payment System Risk (PSR policy) that would expand access to collateralized intraday credit from the Federal Reserve Banks (Reserve Banks) and clarify the eligibility standards for accessing uncollateralized intraday credit from Reserve Banks. These proposed changes build upon the revisions to the PSR policy adopted in 2008 and implemented in 2011, which the Board designed to improve intraday liquidity management and payment flows for the banking system while helping to mitigate the credit exposures of the Reserve Banks from daylight overdrafts. In addition, the Board is requesting comment on changes to part II of the PSR policy to support the deployment of the FedNowSM Service (FedNow Service). Relatedly, the Board is proposing to incorporate the Federal

Reserve Policy on Overnight Overdrafts (Overnight Overdrafts policy) into the PSR policy.

DATES: Comments on the proposed changes must be received on or before August 2, 2021.

ADDRESSES: You may submit comments, identified by Docket No. OP-1749, by any of the following methods:

- *Agency Website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Email:* regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. Please make an appointment to inspect comments by calling (202) 452-3684.

FOR FURTHER INFORMATION CONTACT:

Jason Hinkle, Assistant Director (202-912-7805), Michelle Olivier, Lead Financial Institution Policy Analyst (202-452-2404), Brajan Kola, Senior Financial Institution Policy Analyst (202-736-5683) Division of Reserve Bank Operations and Payment Systems, or Evan Winerman, Senior Counsel (202-872-7578), Legal Division, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, please contact 202-263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Intraday Credit in the PSR Policy

The PSR policy is intended to foster the safety and efficiency of payment and settlement systems.¹ Part II of the PSR policy governs the provision of intraday

credit (also known as daylight overdrafts) to depository institutions² (institutions) with accounts at the Reserve Banks. In particular, part II of the PSR policy outlines the methods used to provide intraday credit to ensure the smooth functioning of payment and settlement systems, while controlling credit risk to the Reserve Banks associated with intraday credit. To be eligible for intraday credit, the PSR policy requires that an institution be "financially healthy" and have regular access to the discount window.³ The PSR policy also establishes limits, or "net debit caps," on the value of an institution's daylight overdrafts.⁴ The Reserve Banks use an ex post system to measure daylight overdrafts in institutions' Federal Reserve accounts. An institution's eligibility for intraday credit depends on various factors including the institution's most recent financial and supervisory information. An institution's supervisory rating, as well as the ratings of its holding company and affiliate institutions, are key components of the process for determining an institution's eligibility for intraday credit.⁵

In 2008, the Board approved changes to part II of the PSR policy to encourage greater collateralization of daylight overdrafts, recognizing that collateral reduces credit risk to Reserve Banks.⁶ In particular, the 2008 changes amended the PSR policy to state that "the Reserve Banks supply intraday balances and credit predominantly through explicitly collateralized daylight overdrafts to healthy institutions."⁷ In addition, the Board included explicit language that emphasized the role of the Reserve Banks in providing intraday credit to institutions in order to ensure the

² Depository institutions include commercial banks, savings banks, savings and loan associations, and credit unions.

³ See section II.D.1 of the PSR policy.

⁴ *Id.* The size of an institution's net debit cap equals the institution's "capital measure" multiplied by its "cap multiple." An institution's capital measure is a number derived from the size of its capital base. An institution's cap multiple is determined by the institution's cap category. Under section II.D.2 of the PSR policy, an institution's "cap category" is one of six classifications: The three self-assessed categories ("high," "above average," and "average"); "de minimis"; "exempt-from-filing;" and "zero."

⁵ To assist institutions in implementing part II of the PSR policy, the Federal Reserve has prepared two documents: The Overview of the Federal Reserve's Payment System Risk Policy on Intraday Credit (Overview) and the Guide to the Federal Reserve's Payment System Risk Policy on Intraday Credit (Guide). The Guide contains detailed eligibility standards for requesting and maintaining uncollateralized capacity.

⁶ See 73 FR 79109 (December 24, 2008). These changes were not fully implemented until 2011.

⁷ See section II.B of the PSR policy.

¹ See https://www.federalreserve.gov/paymentsystems/psr_about.htm.

efficient and effective functioning of the payment system. The Board also adopted a dual-pricing framework intended to provide a financial incentive to institutions to collateralize their daylight overdrafts. Under the dual-pricing framework, Reserve Banks charge no fee for collateralized daylight overdrafts, but charge a fee of 50 basis points for uncollateralized daylight overdrafts.⁸

In addition to incentivizing institutions to collateralize their daylight overdrafts, the PSR policy allows institutions that might otherwise be constrained by their uncollateralized net debit caps to request collateralized capacity under the “maximum daylight overdraft capacity” (max cap) program.⁹ Under the program, an institution’s max cap equals its uncollateralized net debit cap plus its additional collateralized capacity.¹⁰

Although the PSR policy’s dual-pricing framework encourages institutions to collateralize their daylight overdrafts, collateralized capacity under the max cap program is not currently an option for institutions with lower levels of intraday capacity. Institutions that select the “exempt” or “de minimis” net debit cap categories (which do not require a self-assessment) are ineligible to request collateralized capacity under the max cap program. Likewise, institutions with a voluntary zero net debit cap, and institutions that the Reserve Banks have assigned a zero net debit cap because of their account management or financial condition, cannot request collateralized capacity under the max cap program.

Further, obtaining collateralized capacity under the max cap program requires certain administrative steps from and analysis by requesting institutions. First, institutions must provide a business case outlining their need for collateralized capacity, and must submit a board of directors resolution approving the collateralized

capacity at least annually and whenever the institution modifies the amount of requested collateralized capacity.¹¹ Second, the max cap program is limited to institutions that have already adopted a self-assessed net debit cap, which requires an institution to perform a self-assessment of its creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.¹²

In proposing the changes discussed below, the Board recognizes that the extension of intraday credit to institutions on a collateralized basis generally poses less risk to the Reserve Banks and the payment system than the extension of intraday credit on an uncollateralized basis. As such, the removal of some restrictions on access to collateralized intraday credit could improve the effectiveness of Reserve Bank intraday credit as a liquidity tool without a significant increase in credit risk to the Reserve Banks and the payment system.

B. FedNow Service and the PSR Policy

In 2020, the Board approved the FedNow Service, a new 24x7x365 real-time gross settlement service with clearing functionality to support end-to-end instant retail payments in the United States.¹³ The FedNow Service will settle funds transfers between FedNow Service participants¹⁴ through

¹¹ Section II.E.2 of the PSR policy allows U.S. branches or agencies of foreign banking organizations (FBOs) to use a streamlined procedure for requesting a max cap. An FBO that uses the streamlined procedure is not required to provide a business case for a max cap, nor is it required to obtain a board of directors resolution authorizing a max cap, so long as (a) the FBO has an FBO PSR capital category of “highly capitalized,” and (b) the requested total capacity is 100 percent or less of the FBO’s worldwide capital times the self-assessed cap multiple. See section II.D.2 and n. 63 of the PSR policy for a discussion of FBO PSR capital categories.

¹² See section II.D.a of the PSR policy and n. 4, *supra*, which discuss cap categories. The high, above average, and average cap categories require a self-assessment.

¹³ See “Service Details on Federal Reserve Actions to Support Interbank Settlement of Instant Payments,” 85 FR 48522 (August 11, 2020), available at <https://www.federalregister.gov/documents/2020/08/11/2020-17539/service-details-on-federal-reserve-actions-to-support-interbank-settlement-of-instant-payments>. The FedNow Service will be available to customers in 2023 and further details on the timeframe for launch will be announced through established Reserve Bank channels once additional work is completed. See also “Federal Reserve updates FedNowSM Service launch to 2023,” (February 2, 2021), available at <https://frbserve.org/news/press-releases/020221-federal-reserve-updates-fednow-service-launch-to-2023.html>.

¹⁴ The term “FedNow Service participants” encompasses those participating institutions that use the FedNow Service to send instant payments involving end users as well as institutions that may

debit and credit entries to balances in master accounts held at the Reserve Banks. The new service will provide an infrastructure to promote ubiquitous, safe, and efficient instant retail payments in the United States. The FedNow Service will enable credit transfers that support a range of different types of payments for individuals and businesses, and will support the transfer of supplemental information, such as invoices, related to a payment.

The PSR policy currently aligns the calculation of daylight overdrafts and the “business day” with the scheduled operating day for the Fedwire Funds Service.¹⁵ The FedNow Service will have a 24-hour business day, each day of the week, including weekends and holidays. The close of the FedNow Service will align on all calendar days with the close of the Fedwire Funds Service.¹⁶ If the close of the Fedwire Funds Service is extended on any given day, the close of the FedNow Service will also be extended to maintain alignment. Given the continuous, 24-hour nature of the FedNow Service, the opening time will occur immediately after the close of the FedNow Service. In addition, the Reserve Banks will implement a seven-day accounting regime as part of implementing the FedNow Service. Under this framework, an end-of-day balance will be calculated for each day of the week, with transactions occurring on weekends and holidays recorded and reported in the same way as transactions occurring Monday through Friday.¹⁷ End-of-day balances will be reported on Federal Reserve accounting records for each FedNow Service participant on each business day.

Access to intraday credit will be available on a 24x7x365 basis to FedNow Service participants, including those that use the FedNow Service to send instant payments involving end

only use the FedNow LMT (described below) to make funds transfers for liquidity management purposes to other FedNow Service participants. The term “end users” encompasses individuals and businesses.

¹⁵ The Fedwire Funds Service closes at 7:00:59 p.m. ET and re-opens for the next business day at 9:00 p.m. See 84 FR 71940 (December 30, 2019) and 85 FR 61747 (September 30, 2020). The schedule for funds transfers through Fedwire Funds is provided in the Reserve Banks’ Operating Circular 6.

¹⁶ 85 FR 48522, 48531. Both the Fedwire Funds and the FedNow Services will close at 7:00:59 p.m. ET. On weekends and holidays, when the Fedwire Funds Service is closed, the FedNow Service close will still align with this closing time.

¹⁷ The Board expects that participating institutions will record FedNow Service transactions in their customer accounts according to their own business day and accounting conventions (while still providing immediate access to funds received through the FedNow Service).

⁸ See section II.C of the PSR policy. Collateral eligibility and margins are the same for PSR policy purposes as for the discount window. See <http://www.frbdiscountwindow.org/> for information on the discount window and PSR collateral acceptance policy and collateral margins.

⁹ Section II.E of the PSR policy notes that max caps are “intended to provide extra liquidity through the pledge of collateral by the few institutions that might otherwise be constrained from participating in risk-reducing payment system initiatives.”

¹⁰ See section II.E of the PSR policy. When the Board initially adopted the max cap program in 2001, it recognized that collateral helps reduce risk to Reserve Banks and the public sector. See 66 FR 64419, 64423 (December 13, 2001) (“The Board believes that requiring collateral allows the Federal Reserve to protect the public sector from additional credit risk while providing extra liquidity to the few institutions that might otherwise be constrained.”).

users or that use a liquidity management tool within the service (FedNow LMT) to make funds transfers to other FedNow Service participants.¹⁸ Access to 24x7x365 intraday credit will support the smooth functioning of the FedNow Service (including FedNow LMT).

C. Overnight Overdrafts Policy

Intraday overdrafts occur when an institution has a negative balance in its Federal Reserve account during the Fedwire Funds Service operating day. Overnight overdrafts occur when an institution has a negative account balance at the end of the Fedwire Funds Service operating day. While the PSR policy addresses daylight overdrafts, the Overnight Overdrafts policy addresses overnight overdrafts.

To minimize Reserve Bank exposure to overnight overdrafts, the Overnight Overdrafts policy imposes a penalty fee to discourage institutions from incurring overnight overdrafts.¹⁹ If an institution has a negative balance at the end of the business day, Reserve Banks apply an overnight overdraft penalty for a 24-hour period. Currently, the penalty fee includes a multiday charge for overnight overdrafts over weekends and holidays. The penalty fee increases by one percentage point for each overnight overdraft after an institution's third overnight overdraft in a rolling 12-month period.

II. Discussion of Proposed Changes

The Board is proposing to modify the PSR policy to expand access to collateralized capacity and reduce the administrative steps associated with requesting collateralized capacity. With these proposed changes, the Board intends to improve intraday liquidity management and payment flows while

assisting the Reserve Banks in managing intraday credit risk. The proposed changes also seek to clarify the terms for accessing uncollateralized intraday credit and the circumstances under which an institution may remain eligible for uncollateralized capacity if its holding company or affiliate is assigned a low supervisory rating.

Additionally, the Board is proposing changes to the PSR policy and the Overnight Overdrafts policy to align these policies with the deployment of the FedNow Service and a 24x7x365 payment environment. Relatedly, the Board is proposing to incorporate the Overnight Overdrafts policy as part III of the PSR policy in order to reflect the close relationship between daylight overdrafts and overnight overdrafts in an institution's account.

The Board is also proposing several technical changes and corrections to the PSR policy. These changes are not substantive in nature and reflect current practices that the Reserve Banks use to administer the PSR policy.

While the Board is collectively requesting comment on the proposed changes discussed below, the proposed changes may become effective at different times. The Board intends for the FedNow Service-related changes to the PSR policy and the Overnight Overdrafts policy to come into effect when the Reserve Banks begin processing transactions associated with the FedNow Pilot Program.²⁰

A. Access to Collateralized Capacity

As noted above, while the PSR policy incentivizes collateralization of daylight overdrafts, an institution requesting collateralized capacity above its net debit cap must provide a business case outlining its need and must submit an annual board of directors resolution approving its collateralized capacity. Additionally, collateralized capacity under the max cap program is available only to institutions that have first completed a self-assessment. The Board is proposing amendments to the PSR policy that would expand access to collateralized capacity and reduce the administrative steps associated with requesting collateralized capacity.

1. Expanding Access To Collateralized Capacity

The Board proposes to amend section II.E of the PSR policy to expand the pool of institutions eligible to request collateralized capacity. Specifically,

²⁰ See "Federal Reserve announces FedNowSM Pilot Program Participants," (January 24, 2021), available at <https://www.frb-services.org/news/press-releases/012521-federal-reserve-announces-fednow-pilot-program-participants.html>.

while the max cap program is currently limited to institutions with self-assessed net debit caps,²¹ the Board is proposing to expand the max cap program by allowing institutions with a cap category of "zero," "exempt," or "de minimis" to request collateralized capacity from their Reserve Banks. A domestic institution would be eligible to request collateralized capacity if its Prompt Corrective Action (PCA) designation²² is "undercapitalized," "adequately capitalized," or "well capitalized." Similarly, a U.S. branch or agency of a foreign banking organization (FBO) would be eligible to request collateralized capacity if its FBO PSR capital category²³ is "undercapitalized," "sufficiently capitalized," or "highly capitalized."

So long as an institution remains at least "undercapitalized," the institution would remain eligible to request collateralized intraday credit under the max cap program—even if the institution, the holding company, or an affiliate has a "fair," "marginal," or "unsatisfactory" supervisory rating.²⁴ Given the important role that collateral plays in reducing credit risk to Reserve Banks, the Board believes that the eligibility criteria for requesting collateralized capacity should be less restrictive than the criteria for accessing uncollateralized capacity. As a result, some institutions that are not eligible to establish a positive net debit cap would be eligible for collateralized capacity.²⁵ The Board believes that these proposed changes would provide institutions greater flexibility in managing intraday credit, would assist institutions with liquidity and risk-management planning, and would not materially increase credit risk to Reserve Banks.

2. Reducing Administrative Steps

The Board is proposing to simplify the process for requesting and maintaining collateralized capacity under the max cap program. Under the current general procedure for requesting a max cap, an institution requesting collateralized capacity must provide a

²¹ Reserve Banks would require that an institution remain financially healthy and be eligible for regular access to the discount window to qualify for a max cap.

²² 12 U.S.C. 1831o.

²³ See section II.D.2 of the PSR policy.

²⁴ Domestic institutions with a PCA designation of "significantly undercapitalized" or "critically undercapitalized" would not be eligible to request collateralized intraday credit under the max cap program. Similarly, FBOs with an FBO PSR capital category of "intraday credit ineligible" would not be eligible to request collateralized intraday credit under the max cap program.

²⁵ Section II.B, *infra*, describes proposed changes to the Board's standards for requesting and maintaining uncollateralized capacity.

¹⁸ 85 FR 48522, 48531–32. The FedNow LMT will enable participants in the FedNow Service to transfer funds between one another to support liquidity needs related to payment activity in the FedNow Service. The tool will also be available to support participants in private-sector instant payment services backed by joint accounts at a Reserve Bank by enabling transfers between the master accounts of such participants and their joint account. The FedNow LMT will be available during specific hours, for example, when such transfers are not currently possible through other Reserve Bank services. Controls related to the FedNow LMT, service terms, eligibility requirements, enrollment processes, and hours of availability will be announced prior to the launch of the FedNow Service through established Reserve Bank communication channels.

¹⁹ See Board of Governors of the Federal Reserve System, "Policy on Overnight Overdrafts," (Effective July 12, 2012). Available at https://www.federalreserve.gov/paymentsystems/oo_policy.htm. The overnight overdraft penalty rate is equal to the primary credit rate plus 4 percentage points (annual rate). There is also a minimum penalty fee of 100 dollars per occasion, regardless of the amount of the overnight overdraft.

business case outlining its need for collateralized capacity and must submit an annual board of directors resolution approving its collateralized capacity. The Board believes that simplifying this process would encourage more institutions to obtain collateralized capacity, which could promote further collateralization of daylight overdrafts.

The Board is proposing to eliminate, in most circumstances, the requirement that institutions provide a written business case to their Reserve Banks when requesting collateralized capacity under the max cap program. Specifically, the Board proposes that an institution would need to provide a written business case only if (1) the institution's requested max cap exceeds the institution's capital measure multiplied by 2.25, which is the cap multiple associated with the "High" self-assessed cap category,²⁶ or (2) the Reserve Bank exercises discretion to require that the institution submit a business case due to recent developments in the institution's condition.

The Board is also proposing to eliminate the requirement that an institution's board of directors submit an annual resolution approving requests for collateralized capacity. Instead, the Board proposes that an institution's

board of directors would need to provide a resolution only when the institution initially requests collateralized capacity. Once a Reserve Bank has approved an institution's collateralized capacity, the collateralized capacity would generally remain in place, without the need for further action by the institution, so long as the institution remains at least "undercapitalized." An institution would need to submit a resolution from its board of directors if the institution requests an increase to its previously approved collateralized capacity.

An institution's collateralized capacity, on any given day, will continue to equal the value of collateral the institution has pledged to the Reserve Bank, not to exceed the difference between the institution's max cap and its net debit cap.²⁷ An institution seeking to increase its max cap by pledging additional collateral to its Reserve Bank must request and receive approval from its Reserve Bank. The Board is not proposing any other changes to the process for obtaining collateralized capacity under the max cap program.

B. Clarifying Access To Uncollateralized Capacity

The Board is proposing to amend section II.D of the PSR policy to clarify

the terms under which institutions would be eligible to maintain access to their uncollateralized intraday credit capacity. Currently, the PSR policy does not detail when an institution can request and maintain uncollateralized capacity; it states only that "[a]n institution must be financially healthy and have regular access to the discount window in order to adopt a net debit cap greater than zero."²⁸ Separately, however, the Board's Guide to the PSR policy establishes more detailed eligibility standards for requesting and maintaining uncollateralized capacity. The Board is proposing to simplify these eligibility standards and incorporate them directly into the PSR policy.

The Board proposes to clarify in the PSR policy that an institution's eligibility to adopt and maintain a positive net debit cap depends on an assessment of its creditworthiness, which results from the institution's (1) PCA designation or FBO PSR capital category,²⁹ and (2) most recent supervisory ratings. Specifically, the Board would incorporate into the PSR policy the following table to clarify when institutions can request a positive net debit cap.

ELIGIBILITY CRITERIA FOR REQUESTING A POSITIVE NET DEBIT CAP

Domestic capital category/ FBO PSR capital category	Supervisory rating ⁶³			
	Strong	Satisfactory	Fair	Marginal or unsatisfactory
<i>Well capitalized/Highly capitalized</i>	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
<i>Adequately capitalized/Sufficiently capitalized</i>	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
<i>Undercapitalized</i>	May be eligible subject to a full assessment of creditworthiness.	May be eligible subject to a full assessment of creditworthiness.	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).
<i>Significantly or critically undercapitalized/ Intraday credit ineligible.</i>	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).

As noted in the eligibility criteria, an institution requesting a "high," "above average," or "average" net debit cap, must perform a self-assessment of its creditworthiness, intraday funds management and control, customer credit policies and controls, and

operating controls and contingency procedures. The Board proposes to clarify in the PSR policy that, if an institution seeks a self-assessed net debit cap, it would be ineligible for a positive net debit cap if its self-assessment results in the lowest

possible rating for any one of the four components of the self-assessment in the Guide.

The Board is also proposing revisions to the PSR policy that would clarify the impact of an institution's holding company's or affiliate's supervisory

²⁶ See n. 4, *supra*, for a discussion of cap categories and cap multiples.

²⁷ See n. 74 of the PSR policy.

²⁸ See section II.D.1 of the PSR policy. Institutions that may pose special risks to the Federal Reserve, such as those that are not eligible for regular access to the discount window, those incurring daylight overdrafts in violation of the Federal Reserve's PSR

policy, or those in weak financial condition, are generally assigned a zero cap.

²⁹ See section II.D.2 of the PSR policy. Reserve Banks use information primarily from the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q) in order to determine an institution's FBO PSR capital category. U.S. branches and agencies of FBOs based in jurisdictions that have not implemented capital standards substantially

consistent with those established by the Basel Committee on Banking Supervision would be eligible to request any of the net debit cap categories, but the Reserve Banks would require that such institutions perform a full assessment of creditworthiness if the FBO requests a self-assessed or de minimis net debit cap. Reserve Banks may require a full assessment of creditworthiness if such FBOs are requesting an exempt-from-filing cap.

rating on the institution's eligibility for a positive net debit cap. Currently, an institution can lose its net debit cap if its holding company or affiliate receives a low (marginal or unsatisfactory) supervisory rating. The Board proposes that, if an institution's holding company or affiliate is assigned a low supervisory rating,³⁰ the institution would be eligible to request the exempt, de minimis, or average cap categories but would not be eligible to request the above average or the high self-assessed cap categories. Additionally, Reserve Banks will assign an institution a zero net debit cap if supervisory information of the holding company or affiliated institutions reveals material operating or financial weaknesses that pose significant risks to an institution.

The Board believes that the proposed change would provide greater certainty to institutions and would allow the Reserve Banks to tailor intraday credit access in response to supervisory developments.

C. Changes To Support the Deployment of the FedNow Service

The Board is proposing changes to the PSR policy and the Overnight Overdrafts policy to align these policies with the deployment of the FedNow Service. The proposed changes would modify the PSR policy to address changes associated with a 24x7x365 payment environment. Currently, intraday credit is available only during the Fedwire Funds Service operating day. The Board recognizes that access to 24x7x365 intraday credit would support the smooth functioning of the FedNow Service. Accordingly, the Reserve Banks will offer intraday credit on a 24x7x365 basis to all FedNow Service participants, including those that use the FedNow Service to send instant payments between end users and users of the FedNow LMT.³¹ The Reserve Banks will assess daylight overdraft fees on FedNow Service participants seven days a week, including weekends and holidays. Institutions that settle the FedNow activity of respondents in their master accounts as correspondent banks will be assessed daylight overdraft fees, and therefore will need to manage their

account balances to cover respondents' FedNow activity, even if those correspondents do not directly use the FedNow Service.

Reserve Banks expect that FedNow Service participants will manage their master accounts in compliance with Federal Reserve policies. As described further below, FedNow Service participants will need to avoid negative balances at the close of the business day. Negative balances not cured by the end of the business day result in overnight overdrafts.

1. Definition of "Business Day"

The Board is proposing to revise section II.A of the PSR policy to define the "business day" as the 24-hour duration beginning immediately after the previous day's regularly-scheduled close of the Fedwire Funds Service and the FedNow Service, and ending with the regularly-scheduled close of the Fedwire Funds Service and the FedNow Service.³² The next business day would begin immediately after the scheduled close of the Fedwire Funds Service and the FedNow Service.

Given the continuous, 24-hour nature of the FedNow Service, the opening of the FedNow Service will occur immediately after close. Because FedNow Service participants will have access to intraday credit on a 24-hour basis, the Board believes that daylight overdrafts should be based on a 24-hour business day for all institutions.

2. Daylight Overdraft and Penalty Fee Calculations

The Board is proposing to revise the daylight overdraft and the penalty fee calculations for all institutions in order to reflect the 24-hour business day. Currently, the daylight overdraft fee is calculated using an annual rate of 50 basis points that is prorated to the scheduled duration of the Fedwire Funds operating day.³³ The Board is proposing to change section II.C of the PSR policy so that the daylight overdraft fee would be based on the 24-hour business day. Due to this proposed change, the effective annual overdraft rate would continue to be 50 basis

points, but the effective daily daylight-overdraft rate would increase from 0.0000127 under the 22-hour business day to 0.0000138 under the 24-hour business day.³⁴

Similarly, the Board is proposing to adjust the penalty rate for overdrafts under section II.F of the PSR policy to reflect the 24-hour business day.³⁵ The annual rate used to determine the daylight-overdraft penalty fee is currently equal to the annual rate applicable to the daylight overdrafts of other institutions (50 basis points) plus 100 basis points, prorated to the length of the scheduled Fedwire Funds operating day. The 150-basis point penalty rate applied to the 24-hour business day would increase the effective daily penalty rate slightly, from 0.0000381 under a 22-hour business day to 0.0000416 under the 24-hour business day.³⁶

An institution's daily daylight overdraft charge (or penalty charge) equals the effective daily rate multiplied by the institution's average daily uncollateralized daylight overdraft, which is calculated by dividing the sum of its negative uncollateralized Federal Reserve account balance at the end of each minute by the total number of minutes in the relevant business day. Currently, the relevant business day for this purpose is the Fedwire Funds operating day (1320 minutes under the 22-hour operating day). Under the proposal, the total number of minutes in the relevant business day will increase to 1440 to reflect the 24-hour business day. The increase in the length of the relevant business day from 22 hours to 24 hours will offset in part the increase to the effective daily rate. After accounting for changes to the fee rates and the average uncollateralized daylight overdraft calculation, the Board estimates that gross fees before application of fee waivers would increase by less than 0.4 percent with

³⁴ Under a 24-hour business day, the effective annual daylight-overdraft rate would be (24/24) multiplied by 50 basis points, or 0.0050, and the effective daily daylight-overdraft rate on a 360-day year would be (.0050/360), or 0.0000138.

³⁵ Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. These include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies.

³⁶ Under a 22-hour business day, the effective annual daylight-overdraft penalty rate is (22/24) multiplied by 150 basis points, or 0.002778, and the effective daily daylight-overdraft penalty rate on a 360-day year is (.002778/360), or truncated to 0.0000381. Under a 24-hour business day, the effective annual daylight-overdraft penalty rate will be (24/24) multiplied by 150 basis points, or 0.0150, and the effective daily daylight-overdraft penalty rate on a 360-day year would be (0.0150/360), or 0.0000416.

³⁰ For this purpose, a low supervisory rating for a holding company would include a Deficient-2 rating in any of the components of the Large Financial Institution (LFI) rating system or an RFI rating of 4 or 5. A low supervisory rating for an affiliate institution would be defined as a CAMELS rating of 4 or 5.

³¹ See 85 FR 48522, 48531–32. Intraday credit on a 24x7x365 basis will also be available to support participants in a private-sector instant payment service backed by a joint account at a Reserve Bank by enabling transfers between the master accounts of those participants and the joint account.

³² The business day will align on all calendar days with the regularly scheduled close of the Fedwire Funds and the FedNow Service at 7:00:59 p.m. ET. On weekends and holidays, when the Fedwire Funds Service is closed, the end of the business day would align with the close of the FedNow Service and the regularly scheduled close time of the FedNow Service. The next business day would begin at 7:01:00 p.m. ET.

³³ The Fedwire operating day is currently 22 hours, the effective annual rate is (22/24) multiplied by 50 basis points, or approximately 0.004583, and the effective daily daylight-overdraft rate based on a 360-day year is (0.004583/360), or 0.0000127.

the move from a 22-hour business day to a 24-hour business day.³⁷

3. New Posting Rule for FedNow Funds Transfers

The Board is proposing to add a new posting rule in section II.A of the PSR policy to clarify that, for purposes of measuring daylight overdrafts, debits and credits to an institution's master account for funds transfers over the FedNow Service, including FedNow LMT transfers, would post to an institution's account balance as they are processed throughout the 24-hour business day. In this way, debits and credits to an institution's master account related to transfers over the FedNow Service would be treated equivalently to debits and credits related to transfers over the Fedwire Funds Service, Fedwire Securities Service, and the National Settlement Service.

4. Posting Certain Transactions at the Regularly Scheduled Close of the Business Day

Currently, section II.A of the PSR policy identifies several transaction types that are processed earlier in the day but “[p]ost after the close of Fedwire Funds Service.”³⁸ The Board is proposing to revise this posting rule so that these specific transactions would post at the regularly scheduled close of the Fedwire Funds Service and the FedNow Service before the next business day begins. Posting these transactions at the regularly scheduled close of the Fedwire Funds Service and the FedNow Service would ensure that an institution's account balance is updated before the next business day begins (immediately after the regularly scheduled close of the Fedwire Funds Service and the FedNow Service).

The Board is also proposing to clarify that Fedwire Funds Service and

FedNow Service transactions occurring during extensions of the Fedwire Funds Service and the FedNow Service would be backdated so that they post at the regularly scheduled close of the Fedwire Funds and the FedNow Service and not at the end of the extended hours. As a result, a funds transfer occurring during an extension of the Fedwire Funds Service and the FedNow Service would post to an institution's account before the next regularly scheduled business day begins.³⁹ This practice would ensure that Reserve Banks monitor daylight overdrafts based on a consistent 24-hour business day even on days when the Fedwire Funds and the FedNow Service are extended.

5. Changes to the Policy on Overnight Overdrafts

The Board is proposing to incorporate the Overnight Overdrafts policy as part III of the PSR policy. The Board believes that incorporating the Overnight Overdrafts policy into the PSR policy would underscore the close relationship between daylight overdrafts and overnight overdrafts.

The Board is also proposing modifications to simplify the Overnight Overdrafts policy and align the Overnight Overdrafts policy with the deployment of the FedNow Service. The Board is proposing that all institutions would continue to be charged an overnight overdraft penalty fee rate equal to the primary credit rate plus 4 percentage points (annual rate) if its Federal Reserve account has a negative balance at the end of the scheduled business day—that is, at the regularly scheduled close of the FedNow Service.

Currently, the penalty fee includes a multiday charge for overnight overdrafts over weekends and holidays. FedNow Service participants that incur an overnight overdraft before a weekend or holiday will have the opportunity to achieve a positive balance before the close of business day on a Saturday, Sunday, or holiday. Accordingly, the Board proposes that a FedNow Service participant would not automatically incur a multiday charge for an overnight overdraft before a weekend or holiday. However, institutions that are not FedNow Service participants and incur an overnight overdraft before a weekend or holiday will not have the opportunity

to achieve a positive balance before the end of the weekend or holiday. Accordingly, these institutions would automatically incur a multiday charge for an overnight overdraft before a weekend or holiday.

The Board is proposing to eliminate the fee-escalation feature in the Overnight Overdrafts policy for all institutions. The current Overnight Overdrafts policy includes a fee-escalation feature where the penalty fee for an overnight overdraft increases by one percentage point for each overnight overdraft after an institution has already experienced three overnight overdrafts in a rolling 12-month period. The escalation feature is rarely triggered since overnight overdrafts are uncommon. Additionally, Reserve Banks have other risk-mitigation tools for institutions that incur frequent overnight overdrafts. For example, Reserve Banks can counsel institutions that incur overnight overdrafts (by letter or phone) and, when necessary, can escalate the counseling to an institution's senior management. Reserve Banks also have discretion to remove an institution's access to intraday credit. Accordingly, the Board believes that maintaining the fee-escalation feature once the FedNow Service launches would add unnecessary complexity to the Overnight Overdrafts policy and would not meaningfully reduce risk to the Reserve Banks.

D. Technical Changes to Text of the PSR Policy

The Board is also proposing technical changes to the PSR policy. First, the Board proposes to revise a sentence in footnote 61 of the PSR policy, which states that, for purposes of the PSR policy, the Reserve Banks evaluate U.S. branches and agencies of an FBO as a family “because these entities have no existence separate from the FBO.” The Board proposes to amend this provision to state that, because U.S. branches and agencies are part of a single FBO family, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital.

Second, the Board proposes to revise a sentence in footnote 76 of the PSR policy, which discusses the streamlined procedure that highly capitalized FBOs can use to request a max cap. The amendment would clarify that the streamlined procedure is available to

³⁷ Analysis assumes that the size and duration of institutions' daylight overdrafts remains unchanged between a 22-hour and 24-hour operating day. Institutions' gross daily daylight overdraft fees are summed across a two-week reserve maintenance period and then reduced by a fee waiver of \$150, which is primarily intended to minimize the burden of the PSR policy on institutions that use small amounts of intraday credit.

³⁸ Currently, there are various transactions that post after the close of Fedwire Funds, including currency and coin shipments; noncash collection; term-deposit settlements; Federal Reserve Bank checks presented after 3:00 p.m. eastern time but before 3:00 p.m. local time; foreign check transactions; small-dollar credit corrections and adjustments; term deposit settlements; and all debit corrections and adjustments. Discount-window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances, a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

³⁹ The Reserve Banks will continue to use an exp post system to measure daylight overdrafts in institutions' Federal Reserve accounts. As an example, if the close of the Fedwire Funds Service and the FedNow Service is extended from the regularly scheduled close of 7:00:59 p.m. ET to 7:30:59 p.m. ET, a transaction occurring at 7:10 p.m. ET, would post at 7:00 p.m. ET for purposes of measuring daylight overdrafts.

“highly capitalized” FBOs, not “well capitalized” FBOs.⁴⁰

III. Request for Comment

The Board is seeking comment on all aspects of the proposed changes. The Board also requests comment on the following specific questions:

1. Would the proposed changes help to clarify the conditions for maintaining access to intraday credit for purposes of your institution’s liquidity planning and risk management efforts?

2. If the Board were to adopt the proposed simplifications to the procedure for requesting a max cap, should the Board eliminate the existing streamlined process for FBOs to request a max cap in section II.E.2 of the PSR policy? If not, how would FBOs continue to benefit from the streamlined process in section II.E.2?

3. Should the supervisory ratings of an institution’s holding company and affiliate(s) continue, as proposed, to be key factors in a Reserve Bank’s evaluation of whether an institution is eligible for uncollateralized intraday credit?

IV. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities, and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. While the Board does not believe that the proposed changes would have a significant impact on small entities, and regardless of whether the RFA applies to the PSR policy *per se*, the Board has nevertheless prepared the following Initial Regulatory Flexibility analysis in accordance with 5 U.S.C. 603. The Board requests public comments on all aspects of this analysis.

1. *Statement of the need for, objectives of, and legal basis for, the proposed rule.*

Section 11(j) of the Federal Reserve Act⁴¹ authorizes the Board to oversee the Reserve Banks’ provision of intraday credit to Reserve Bank account holders. The Board is issuing this proposal to better align the PSR policy with the Board’s objectives to reduce the reliance of the banking industry on

uncollateralized intraday credit while ensuring the smooth operation of payment and settlement systems. The Board is also proposing changes that would support the deployment of the FedNow Service.

2. *Small entities affected by the proposed rule.* Pursuant to regulations issued by the Small Business Administration (SBA) (13 CFR 121.201), a “small entity” includes an entity that engages in commercial banking and has assets of \$600 million or less (NAICS code 522110). As of January 2021, nearly 3,200 institutions that maintain Federal Reserve accounts are small entities. Approximately 3,000 of those institutions maintain positive net debit caps. However, none of these institutions currently have a max cap. The proposal would only affect those entities, regardless of size, that choose to request additional collateralized capacity beyond their uncollateralized net debit cap. The proposed changes would clarify, but would not alter, institutions’ eligibility to request and maintain net debit caps.

3. *Projected reporting, recordkeeping, and other compliance requirements.* The proposed changes would alter the procedures by which institutions obtain collateralized intraday credit from the Reserve Banks. As described above, the proposed changes would expand access to collateralized capacity, and would simplify and reduce the administrative steps associated with obtaining and keeping collateralized capacity. If an institution requests collateralized capacity for the first time or requests an increase in its collateralized capacity, it would need to submit a resolution from its board of directors. Generally, an institution would not need to provide a business case justifying its request for collateralized capacity, nor would it need to obtain a self-assessed net debit cap before it can request collateralized capacity.

4. *Identification of duplicative, overlapping, or conflicting Federal rules.* The Board has not identified any Federal rules that duplicate, overlap with, or conflict with the proposed changes to the PSR policy.

5. *Significant alternatives.* The Board does not believe that alternatives to the proposed changes would better accomplish the objectives of limiting credit risk to the Reserve Banks while minimizing the economic impact on small entities, but the Board welcomes comments on potential alternatives.

V. Competitive Impact Analysis

When considering changes to an existing service, the Board conducts a competitive impact analysis to

determine whether there will be a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or the Federal Reserve’s dominant market position deriving from such legal differences.⁴² The Board believes that there would be no adverse effects to other service providers resulting from the proposed changes to the PSR policy and the Overnight Overdrafts policy. While the proposed changes could provide institutions with additional collateralized intraday credit in their Federal Reserve accounts, as well as access to uncollateralized intraday credit on a 24x7x365 basis, institutions could use this credit to fund payments activity using private-sector or Reserve Bank services, at their discretion.

VI. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is 7100–0217. The Board reviewed the PSR policy changes it is considering under the authority delegated to the Board by the OMB. Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

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

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection technique or other forms of information technology; and

(e) Estimates of the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates

⁴⁰ Generally, the “highly capitalized” FBO capital category corresponds to the “well capitalized” PCA designation for domestic institutions. See n. 63 of the PSR policy.

⁴¹ 12 U.S.C. 248(j).

⁴² See The Federal Reserve in the Payments System (issued 1984; revised 1990), Federal Reserve Regulatory Service 9–1558.

should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; by facsimile to (202) 395-5806; or by email to: *aira_submission@omb.eop.gov*, Attention, Federal Banking Agency Desk Officer.

Proposed Revisions, With Extension for Three Years, of the Following Information Collection

(1) *Title of Information Collection:* Annual Report of Net Debit Cap.

Agency Form Number: FR 2226.

OMB Control Number: 7100-0217.

Frequency of Response: Annually.

Respondents: Institutions' boards of directors.

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Board's Payment System Risk (PSR) policy. The reporting panel includes all financial institutions with access to the discount window that are eligible to request intraday credit. The Report of Net Debit Cap comprises three resolutions, which are filed by an institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second resolution is used to establish a self-assessed net debit cap.⁴³ The third resolution is used to establish simultaneously a self-assessed net debit cap and maximum daylight overdraft capacity.

Current Actions: Currently, institutions with a self-assessed net debit cap may file the third resolution in order to obtain collateralized capacity under the max cap program. The proposed changes to the PSR policy would expand access to collateralized capacity under the max cap program to include all domestic institutions with a PCA designation of undercapitalized, adequately capitalized, or well capitalized. The proposed changes would also expand access to collateralized capacity under the max cap program to include all FBOs with an FBO PSR category of undercapitalized, sufficiently capitalized, or highly capitalized. Finally, the proposed changes would eliminate the

requirements that an institution provide (i) a business case outlining its need for collateralized capacity and (ii) an annual board of directors resolution approving its collateralized capacity. In order to facilitate these proposed changes to the PSR policy, the third resolution would be amended so that an eligible institution could request collateralized capacity regardless of whether the institution has a self-assessed net debit cap. The proposed revision would not increase the estimated average hours per response to FR 2226 but would likely expand the estimated number of respondents requesting collateralized capacity under the max cap program.

Estimated number of respondents: De Minimis Cap: Non-FBOs, 893 respondents and FBOs, 18 respondents; Self-Assessment Cap: Non-FBOs, 106 respondents and FBOs, 9 respondents; and Maximum Daylight Overdraft Capacity, 59 respondents.

Estimated average hours per response: De Minimis Cap—Non-FBOs, 1 hour and FBOs, 1.5 hour; Self-Assessment Cap—Non-FBOs, 1 hour and FBOs, 1.5 hours, and Maximum Daylight Overdraft Capacity, 1 hour.

Estimated annual burden hours: De Minimis Cap: Non-FBOs, 893 hours and FBOs, 27 hours; Self-Assessment Cap: Non-FBOs, 106 hours and FBOs, 13.5 hours; and Maximum Daylight Overdraft Capacity, 59 hours.

The following portion titled "Federal Reserve Policy on Payment System Risk" will not publish in the Code of Federal Regulations.

Federal Reserve Policy on Payment System Risk

Revisions to Section II.A of the PSR Policy

The Board proposes to revise section II.A of the PSR policy as follows:

A. Daylight Overdraft Definition and Measurement

A daylight overdraft occurs when an institution's Federal Reserve account is in a negative position during the business day.³³ The Reserve Banks use an ex post system to measure daylight overdrafts in institutions' Federal Reserve accounts. Under this ex post measurement system, certain transactions, including Fedwire funds transfers, FedNow funds transfers, book-entry securities transfers, and net settlement transactions are posted as they are processed during the business day. Other transactions, including ACH and check transactions, are posted to institutions' accounts according to a defined schedule. The following table

presents the schedule used by the Federal Reserve for posting transactions to institutions' accounts for purposes of measuring daylight overdrafts.

³³ For purposes of measuring daylight overdrafts, the business day is the 24-hour period of time that begins immediately after the regularly-scheduled close of the Fedwire Funds Service (on days when the Fedwire Funds Service is open) and the FedNow Service (on all days, including weekends and holidays).

*Procedures for Measuring Daylight Overdrafts*³⁴

Opening Balance (Previous Business Day's Closing Balance)

Post throughout the business day:

- +/- FedNow funds transfers
- +/- Fedwire funds transfers³⁵
- +/- Fedwire book-entry securities transfers
- +/- National Settlement Service entries.
- + Fedwire book-entry interest and redemption payments on securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States³⁶
- + Electronic payments for matured coupons and definitive securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States.³⁷

³⁴ This schedule of posting rules does not affect the overdraft restrictions and overdraft measurement provisions for nonbanks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

³⁵ Funds transfers that the Reserve Banks function for certain international organizations using internal systems other than payment processing systems such as Fedwire will be posted throughout the business day for purposes of measuring daylight overdrafts.

³⁶ The GSEs include Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), entities of the Federal Home Loan Bank System (FHLBS), the Farm Credit System, the Federal Agricultural Mortgage Corporation (Farmer Mac), the Student Loan Marketing Association (Sallie Mae), the Financing Corporation, and the Resolution Funding Corporation. The international organizations include the World Bank, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank. The Student Loan Marketing Association Reorganization Act of 1996 requires Sallie Mae to be completely privatized by 2008; however, Sallie Mae completed privatization at the end of 2004. The Reserve Banks no longer act as fiscal agents for new issues of Sallie Mae securities, and Sallie Mae is not considered a GSE.

The term "interest and redemption payments" refers to payments of principal,

⁴³ Institutions use these two resolutions to establish a capacity for daylight overdrafts above the lesser of \$10 million or 20 percent of the institution's capital measure. Financially-healthy U.S. chartered institutions that rarely incur daylight overdrafts in excess of the lesser of \$10 million or 20 percent of the institution's capital measure do not need to file board of directors resolutions or self-assessments with their Reserve Bank.

interest, and redemption on securities maintained on the Fedwire Securities Service.

The Reserve Banks will post these transactions, as directed by the issuer, provided that the issuer's Federal Reserve account contains funds equal to or in excess of the amount of the interest and redemption payments to be made. In the normal course, if a Reserve Bank does not receive funding from an issuer for the issuer's interest and redemption payments by the established cut-off hour of 4:00 p.m. eastern time on the Fedwire Securities Service, the issuer's payments will not be processed on that day.

³⁷ Electronic payments for credits on these securities will post according to the posting rules for the mechanism through which they are processed, as outlined in this policy. However, the majority of these payments are made by check and will be posted according to the established check posting rules as set forth in this policy.

* * * * *

Post at the close of the Fedwire Funds Service and the FedNow Service ⁵¹

+/- All other transactions. These transactions include the following: Currency and coin shipments; noncash collection; term-deposit settlements; Federal Reserve Bank checks presented after 3:00 p.m. eastern time but before 3:00 p.m. local time; foreign check transactions; small-dollar credit corrections and adjustments; term deposit settlements; and all debit corrections and adjustments. Discount-window loans and repayments are normally posted after the close of the Fedwire Funds Service as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

⁵¹ The posting of transactions that occur during extensions of the Fedwire Funds Service and the FedNow Service will be backdated to the regularly scheduled close of the Fedwire Funds Service and the FedNow Service.

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Revisions to Section II.C of the PSR Policy

The Board proposes to revise section II.C, paragraphs 3 and 4 of the "Federal Reserve Policy on Payment System Risk" as follows:

C. Pricing

* * * * *

Daylight overdraft fees for uncollateralized overdrafts (or the uncollateralized portion of a partially collateralized overdraft) are calculated using an annual rate of 50 basis points, quoted on the basis of a 24-hour day and

a 360-day year. The effective daily rate equals the annual rate divided by 360.⁵⁷ An institution's daily daylight overdraft charge is equal to the effective daily rate multiplied by the institution's average daily uncollateralized daylight overdraft.

An institution's average daily uncollateralized daylight overdraft is calculated by dividing the sum of its negative uncollateralized Federal Reserve account balances at the end of each minute of the regularly scheduled business day by the total number of minutes in the 24-hour business day. A negative uncollateralized Federal Reserve account balance is calculated by subtracting the unencumbered, net lendable value of collateral pledged from the total negative Federal Reserve account balance at the end of each minute. Each positive end-of-minute balance in an institution's Federal Reserve account is set to equal zero. Fully collateralized end-of-minute negative balances are similarly set to zero.

⁵⁷ The effective daily daylight-overdraft rate is truncated to 0.0000138.

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Revisions to Section II.D of the PSR Policy

The Board proposes to revise section II.D of the "Federal Reserve Policy on Payment System Risk" as follows:

II. D. Net Debit Caps (Uncollateralized Intraday Credit Capacity)

Each institution incurring uncollateralized daylight overdrafts in its Federal Reserve account must adopt a net debit cap, that is, a ceiling on the total uncollateralized daylight overdraft position that it can incur during any given day. An institution's cap category and capital measure determine the size of its net debit cap. Specifically, the net debit cap is calculated as an institution's cap multiple times its capital measure:

net debit cap = cap multiple × capital measure

Cap categories and their associated cap levels, set as multiples of an institution's capital measure, are listed below:

NET DEBIT CAP MULTIPLES

Cap category	Cap multiple
High	2.25.
Above average	1.875.
Average	1.125.
De minimis	0.4.
Exempt-from-filing ⁶⁰	\$10 million or 0.20.

NET DEBIT CAP MULTIPLES— Continued

Cap category	Cap multiple
Zero	0.

⁶⁰ The net debit cap for the exempt-from-filing category is equal to the lesser of \$10 million or 0.20 multiplied by the capital measure.

Pledging collateral does not increase an institution's net debit cap, although certain institutions may be eligible to obtain additional collateralized capacity in excess of their net debit caps (see section II.E). For the treatment of overdrafts that exceed the net debit cap, see section II.G.

While capital measures differ, the net debit cap provisions of this policy apply similarly to foreign banking organizations (FBOs) as to U.S. institutions. Consistent with practices for U.S.-chartered depository institutions, the Reserve Banks will advise home-country supervisors of the daylight overdraft capacity of U.S. branches and agencies of FBOs under their jurisdiction, as well as of other pertinent information related to the FBOs' caps. The Reserve Banks will also provide information on the daylight overdrafts in the Federal Reserve accounts of FBOs' U.S. branches and agencies in response to requests from home-country supervisors.

1. Eligibility

An institution must have regular access to the discount window in order to adopt a net debit cap greater than zero. Granting a net debit cap, or any extension of intraday credit, to an institution is at the discretion of the Reserve Bank. As detailed in the following matrix, an institution's eligibility to adopt and maintain a positive net debit cap depends on the institution's creditworthiness as determined by (1) its Prompt Corrective Action (PCA) designation⁶¹ or FBO PSR capital category,⁶² and (2) the supervisory rating.

⁶¹ An insured depository institution is (1) "well capitalized" if it significantly exceeds the required minimum level for each relevant capital measure, (2) "adequately capitalized" if it meets the required minimum level for each relevant capital measure, (3) "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure, (4) "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure, or (5) "critically undercapitalized" if it fails to meet any leverage limit (the ratio of tangible equity to total assets) specified by the appropriate federal banking agency, in consultation with the FDIC, or any other relevant capital

measure established by the agency to determine when an institution is critically undercapitalized (12 U.S.C. 1831o).

⁶² The four FBO PSR capital categories for FBOs are “highly capitalized,” “sufficiently capitalized,” “undercapitalized,” and “intraday credit ineligible.” To determine whether it is highly capitalized or sufficiently capitalized, an FBO should compare its risk-based capital ratios to the corresponding ratios in Regulation H for

well-capitalized and adequately capitalized banks. 12 CFR 208.43(b). Additionally, an FBO must have a leverage ratio of 4 percent or 3 percent (calculated under home-country standards) to qualify as, respectively, highly capitalized or sufficiently capitalized. To determine whether it is undercapitalized, an FBO would compare its risk-based capital ratios to the corresponding ratios in Regulation H. Additionally, an FBO would be deemed undercapitalized if its home-country

leverage ratio is less than 3 percent. Finally, to determine whether it is intraday credit ineligible, an FBO should compare its risk-based capital ratios to the corresponding ratios in Regulation H for significantly undercapitalized banks. Additionally, an FBO would be deemed intraday credit ineligible if its home-country leverage ratio is less than 2 percent.

ELIGIBILITY CRITERIA FOR REQUESTING A POSITIVE NET DEBIT CAP

Domestic capital category/ FBO PSR capital category	Supervisory rating ⁶³			
	Strong	Satisfactory	Fair	Marginal or Unsatisfactory
<i>Well capitalized/Highly capitalized.</i>	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
<i>Adequately capitalized/Sufficiently capitalized.</i>	Eligible	Eligible	Eligible	Ineligible (Zero net debit cap).
<i>Undercapitalized</i>	May be eligible subject to a full assessment of creditworthiness.	May be eligible subject to a full assessment of creditworthiness.	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).
<i>Significantly or critically undercapitalized/Intraday credit ineligible.</i>	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).	Ineligible (Zero net debit cap).

⁶³ Supervisory composite ratings, such as the Uniform Bank Rating System (CAMELS) and the RFI Rating System, are generally assigned on a scale from 1 to 5, with 1 being the strongest rating. Thus, a supervisory rating of 1 is considered Strong, a rating of 2 is considered Satisfactory, a rating of 3 is considered Fair, a rating of 4 is considered Marginal, and a rating of 5 is considered Unsatisfactory. An institution will not be eligible for uncollateralized capacity if a supervisory agency assigns a Marginal or Unsatisfactory supervisory rating to the institution. If an institution's holding company has been assigned a Deficient-2 rating in any of the components of the Large Financial Institution (LFI) rating system or an RFI rating of 4 or 5, the institution will not be eligible to request the above average and high self-assessed net debit caps but may be eligible for a lower net debit cap. Similarly, if an institution's affiliates are assigned a Marginal or Unsatisfactory supervisory rating, the institution will not be eligible to request the above average and high self-assessed net debit caps but may be eligible for a lower net debit cap. Reserve Banks will assign an institution a zero net debit cap if supervisory information of the holding company and affiliated institutions reveals material operating or financial weaknesses that pose significant risks to the institution.

As described further in section II.D.2.a, an institution seeking to establish a net debit cap category of high, above average, or average must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedure. An institution that performs a self-assessment will be deemed ineligible for a positive net debit cap if its self-assessment results in the lowest possible rating for any one of the four components of the self-assessment process.

2. Cap Categories

* * * * *

a. Self-Assessed

In order to establish a net debit cap category of high, above average, or average, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.⁶⁴ For domestic institutions, the assessment of creditworthiness is based on the institution's supervisory rating and PCA designation.⁶⁵ For U.S.

branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision, the assessment of creditworthiness is based on the institution's supervisory rating and its FBO PSR capital category.⁶⁶ An institution may perform a full assessment of its creditworthiness in certain limited circumstances—for example, if its condition has changed significantly since its last examination or if it possesses additional substantive information regarding its financial condition. Additionally, U.S. branches and agencies of FBOs based in jurisdictions that have not implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision are required to perform a full assessment of creditworthiness to determine their ratings for the creditworthiness component. An institution performing a self-assessment must also evaluate its intraday funds-management procedures and its procedures for evaluating the financial condition of and establishing intraday credit limits for its customers. Finally, the institution must evaluate its

operating controls and contingency procedures to determine if they are sufficient to prevent losses due to fraud or system failures. The Guide includes a detailed explanation of the self-assessment process.

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⁶⁴ This assessment should be done on an individual-institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, and so on. An exception is made in the case of U.S. branches and agencies of FBOs. Because these entities are part of a single FBO family, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital.

⁶⁵ See n. 61 *supra*.

⁶⁶ See n. 62 *supra*.

* * * * *

d. Zero

Some institutions that could obtain positive net debit caps choose to have zero caps. Often these institutions have very conservative internal policies regarding the use of Federal Reserve intraday credit. If an institution that has adopted a zero cap incurs a daylight overdraft, the Reserve Bank counsels the

institution and may monitor the institution's activity in real time and reject or delay certain transactions that would cause an overdraft. If the institution qualifies for a positive cap, the Reserve Bank may suggest that the institution adopt an exempt-from-filing cap or file for a higher cap if the institution believes that it will continue to incur daylight overdrafts or overdrafts in excess of its assigned cap limit.

In addition, a Reserve Bank may assign an institution a zero net debit cap. Institutions that may pose special risks to the Reserve Banks, such as those without regular access to the discount window, those incurring daylight overdrafts in violation of this policy, those that are ineligible for intraday credit based on their supervisory rating and PCA designation/FBO PSR capital category (see section II.A), or those that are otherwise in weak financial condition are generally assigned a zero cap (see section II.F). Recently chartered institutions may also be assigned a zero net debit cap.

Certain institutions with zero caps, including institutions that have been involuntarily assigned a zero cap by a Reserve Bank, may be eligible to request collateralized capacity from their Reserve Bank (see sections II.E). * * *

Revisions to Section II.E of the PSR Policy

The Board proposes to revise section II.E of the "Federal Reserve Policy on Payment System Risk" as follows:

E. Collateralized Intraday Credit Capacity

Subject to the approval of its administrative Reserve Bank, an eligible institution may pledge collateral to secure collateralized daylight overdraft capacity in addition to uncollateralized capacity from its net debit cap.⁷⁴ The resulting combination of uncollateralized and collateralized capacity is known as the maximum daylight overdraft capacity (max cap) and is defined as follows:

maximum daylight overdraft capacity =
net debit cap + collateralized
capacity.⁷⁵

Once approved, the Reserve Bank will monitor the institution to ensure that it does not exceed its max cap. Pledging less collateral reduces an institution's effective maximum daylight overdraft capacity level, but pledging more collateral does not increase the maximum daylight overdraft capacity above the approved max cap level.

1. Eligibility

An institution that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. A domestic institution is eligible to request collateralized intraday credit if its PCA designation is "undercapitalized," "adequately capitalized," or "well capitalized."⁷⁶ Similarly, an FBO is eligible to request collateralized intraday credit if its FBO PSR capital category is "undercapitalized," "sufficiently capitalized," or "highly capitalized."⁷⁷ Provided that it meets these capitalization requirements, an institution is eligible to request collateralized capacity even if the institution is not eligible to adopt a positive net debit cap (see section II.D.1).

⁷⁴ The administrative Reserve Bank is responsible for the administration of Federal Reserve credit, reserves, and risk-management policies for a given institution. All collateral must be acceptable to the administrative Reserve Bank. The Reserve Bank may, at its discretion, accept securities in transit on the Fedwire Securities Service as collateral to support the maximum daylight overdraft capacity level. Collateral eligibility and margins are the same for PSR policy purposes as for the discount window. See <http://www.frbdiscountwindow.org/> for information.

⁷⁵ Collateralized capacity, on any given day, equals the amount of collateral pledged to the Reserve Bank, not to exceed the difference between the institution's maximum daylight overdraft capacity level and its net debit cap in the given reserve maintenance period.

⁷⁶ See n. 61, *supra*.

⁷⁷ See n. 62, *supra*.

2. General Procedure for Requesting Collateralized Capacity

If an institution is requesting collateralized capacity for the first time, it must submit a resolution from its board of directors indicating its board's approval of the requested max cap. Increases to collateralized capacity previously approved by Reserve Banks will also require a board of directors resolution. In most cases, an institution will not have to provide to a Reserve Bank a business case justifying its request for collateralized capacity. However, an institution must provide a business-case justification if:

- The institution requests a max cap in excess of its capital measure multiplied by 2.25; or
- The administrative Reserve Bank exercises discretion to require that the institution submit a business-case justification due to recent developments in the institution's condition.

Once a Reserve Bank has approved an institution's collateralized capacity, the collateralized capacity will remain in place, without the need for further action by the institution, provided that the institution maintains the eligibility standards outlined above.

3. Streamlined Procedure for Certain FBOs

An FBO that is highly capitalized⁷⁸ and has a self-assessed net debit cap may request from its Reserve Bank a streamlined procedure to obtain a maximum daylight overdraft capacity. These FBOs are not required to provide documentation of the business case or obtain a board of directors resolution for collateralized capacity in an amount that exceeds its current net debit cap (which is based on 10 percent worldwide capital times its cap multiple), as long as the requested total capacity is 100 percent or less of worldwide capital times a self-assessed cap multiple.⁷⁹ In order to ensure that intraday liquidity risk is managed appropriately and that the FBO will be able to repay daylight overdrafts, eligible FBOs under the streamlined procedure will be subject to an initial and periodic review of liquidity plans that are analogous to the liquidity reviews undergone by U.S. institutions.⁸⁰ If an eligible FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, it would be subject to the general procedure.

⁷⁸ See n. 62, *supra*.

⁷⁹ For example, an FBO that is highly capitalized is eligible for uncollateralized capacity of 10 percent of worldwide capital times the cap multiple. The streamlined collateralized capacity procedure would provide such an institution with additional collateralized capacity of 90 percent of worldwide capital times the cap multiple. As noted above, FBOs report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225).

⁸⁰ The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home country supervisor.

Revisions to Section II.F of the PSR Policy

The Board proposes to revise section II.F, paragraphs 3 and 4 of the "Federal Reserve Policy on Payment System Risk" as follows:

F. Special Situations

Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight

overdraft incurred by the institution. These include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies. The annual rate used to determine the daylight-overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other institutions (50 basis points) plus 100 basis points. The effective daily overdraft penalty rate equals the annual penalty rate divided by 360.⁸¹ The daylight-overdraft penalty rate applies to the institution's daily average daylight overdraft in its Federal Reserve account. The daylight-overdraft penalty fee for these institutions is charged in lieu of, not in addition to, the daylight overdraft fee that applies to other institutions.

⁸¹ The effective daily daylight-overdraft penalty rate is truncated to 0.0000416.

* * * * *

Add Part III. Policy on Overnight Overdrafts as follows:

Part III. Policy on Overnight Overdrafts

An overnight overdraft is a negative balance in a Federal Reserve account at the close of the business day. The Board expects institutions to avoid overnight overdrafts.

To minimize the Reserve Banks' exposure to overnight overdrafts, which are not always collateralized, the Board authorizes Reserve Banks to discourage depository institutions from incurring overnight overdrafts by charging a penalty fee. Institutions that do not extinguish their daylight overdrafts and incur overnight overdrafts are subject to ex post counseling in addition to a penalty fee.

The Board establishes the following penalty rate structure for overnight overdrafts:

1. An overnight overdraft penalty rate of the primary credit rate plus 4 percentage points (annual rate).
2. A minimum penalty fee of 100 dollars, regardless of the amount of the overnight overdraft. The minimum fee is administered per each occasion.
3. A charge for each calendar day (including weekends and holidays) that an overnight overdraft is outstanding.

⁹² See n. 33, which defines the term "business day" for this purpose.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021-11649 Filed 6-2-21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than July 6, 2021.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *United Bancorporation of Alabama, Atmore, Alabama*; to acquire Town-Country National Bank, Camden, Alabama.

Board of Governors of the Federal Reserve System, May 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11690 Filed 6-2-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC-2016-0001; Docket Number NIOSH-260-A]

Final Current Intelligence Bulletin 70: Health Effects of Occupational Exposure to Silver Nanomaterials

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: NIOSH announces the availability of the final Current Intelligence Bulletin (CIB) 70: Health Effects of Occupational Exposure to Silver Nanomaterials.

DATES: The final document was published on May 26, 2021 on the CDC website.

ADDRESSES: The document may be obtained at the following link: <https://www.cdc.gov/niosh/docs/2021-112/>.

FOR FURTHER INFORMATION CONTACT: Jay Vietas, (jvietas@cdc.gov), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop C-14, 1090 Tusculum Avenue, phone (513) 533-8150 (not a toll free number).

SUPPLEMENTARY INFORMATION: NIOSH first published a request on December 19, 2012, for information on occupational exposure to silver nanomaterials, possible health effects in workers exposed to silver nanomaterials, toxicology studies of silver nanomaterials in animals and cellular systems, and information on exposure measurement methods, control measures, and other data in the **Federal Register** [77 FR 75169]. In January 2016, NIOSH released a draft of the CIB for external review and published notices of a public meeting and comment period on January 21, 2016 in the **Federal Register** [81 FR 342], and February 10, 2016 [81 FR 7124]. A public meeting was held on March 23, 2016, and members of the public, stakeholders, and scientific peer reviewers were given the opportunity to provide comments by April 22, 2016. In response to those comments, NIOSH performed a second systematic review of the scientific literature through January 2017 to include additional publications on the occupational exposure to silver nanomaterials and possible health effects in humans and toxicology

studies of silver nanomaterials in animals and cellular systems. Based on review of the scientific literature, NIOSH revised the draft CIB and developed a recommended exposure limit (REL) for silver nanomaterials. The revised draft CIB was released for public review with a **Federal Register** notice on September 18, 2018 [83 FR 47174]. The notice included a request for comments from peer reviewers and the public and provided information regarding a second public meeting that was held on October 30, 2018. The purpose of the public review was to obtain comments on whether the NIOSH draft document (1) adequately and clearly described the scientific literature on the potential adverse health effects of silver nanomaterials, and (2) demonstrated that the NIOSH recommendations on occupational exposure to silver nanomaterials are consistent with current scientific knowledge. Public, stakeholder, and scientific peer reviewers were given the opportunity to submit comments to the docket by November 30, 2018.

NIOSH carefully considered the comments received on the revised draft document. Reviewers provided comments on the NIOSH assessment of the potential adverse health effects of occupational exposure to silver nanomaterials, on the data and methods NIOSH used to develop a recommended exposure limit for silver nanomaterials, on the NIOSH recommended methods for assessing and controlling exposures to silver nanomaterials in the workplace, and on the identified data gaps and future research needs. In developing the final document, NIOSH performed an additional systematic literature search in April 2019 to determine if any subsequent studies in animals or humans had been published that pertained to the quantitative risk assessment and the derivation of a REL for silver nanomaterials. No additional studies were found that impacted those topics. NIOSH responded to the public, stakeholder, and peer review comments received and developed the final document consistent with the responses to comments. These comments and the NIOSH responses are available at: <https://www.regulations.gov/search/docket?filter=cdc-2016-0001>.

The final CIB provides a comprehensive scientific review of the scientific literature pertaining to occupational exposure to silver nanomaterials. The literature includes studies of exposures to silver

nanomaterials in the workplace, toxicological effects of exposure to silver nanomaterials in experimental animal and cellular systems, and effects of particle size and other properties on the toxicological effects of silver. NIOSH assessed the potential health risks of occupational exposure to silver nanomaterials by evaluating the scientific literature. Studies in animals have shown adverse lung and liver effects associated with exposure to silver nanoparticles. Based on an assessment of those data, NIOSH developed a REL for silver nanomaterials. This new REL applies to processes that produce or use silver nanomaterials in the workplace. In addition, NIOSH continues to recommend its existing REL for total silver (metal dust and soluble compounds, as Ag) [www.cdc.gov/niosh/npg/npgd0557.html]. In the CIB, NIOSH provides recommendations on the measurement and control of occupational exposures to silver and silver nanomaterials.

NIOSH further recommends the use of workplace exposure assessments, engineering controls, safe work procedures, training, and education, and established medical surveillance approaches to prevent potential adverse health effects from occupational exposure to silver nanomaterials. NIOSH proposes research needed to fill remaining data gaps on the potential adverse health effects of occupational exposure to silver nanomaterials.

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2021-11626 Filed 6-2-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Refugee Support Services (RSS) and RSS Set Aside Sub-Agency List (0970-0556)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) Office of

Refugee Resettlement (ORR) seeks approval for a revision to an existing information collection, requesting Refugee Support Services (RSS) grantees and RSS Set Aside grantees to provide the agency name, city, state, website, and funding amount for each contracted sub-grantee. Additionally, ORR seeks approval to have the option to make this information public. This would enhance the accessibility of refugee service provider information to eligible clients in support of the service referral responsibilities of the State Refugee Coordinators. Similar information for ORR's discretionary grants is currently made public.

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. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This data collection requests RSS grantees and RSS Set Aside grantees to provide the agency name, city, state, website, and funding amount for each contracted sub-grantee.

The information will be used for national resource mapping pertaining to ORR RSS funding at the local level. Improved communication and the knowledge of all local providers is important to ORR's overall oversight of the program. In addition to RSS formula funding to states and state replacement agencies who then issue sub-awards to local providers, ORR also awards discretionary grants that directly fund local refugee service providers. This report will provide ORR a complete picture of the availability all ORR resources to assist newly arrived refugees at the local level increasing our ability to identify gaps or target areas of need.

Respondents: State governments and replacement designees.

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
RSS and RSS Set Aside Sub-grantee List	56	3	2	336	112

Estimated Total Annual Burden Hours: 112.

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: Refugee Act of 1980 [Immigration and Nationality Act, Title IV, Chapter 2 Section 412 (e)] and 45 CFR 400.28.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021-11653 Filed 6-2-21; 8:45 am]

BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-D-0391]

Oral Drug Products Administered via Enteral Feeding Tube: In Vitro Testing and Labeling Recommendations; Draft Guidance for Industry; 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 entitled "Oral Drug Products Administered Via Enteral Feeding Tube: In Vitro Testing and Labeling Recommendations." This draft guidance provides recommendations for consistent in vitro testing of oral drug products to demonstrate their suitability to be administered via enteral tube. In addition, it supports the development of clear product-specific enteral tube

administration instructions in labeling for administration to patients unable to ingest oral drug products.

DATES: Submit either electronic or written comments on the draft guidance by August 2, 2021 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-0391 for "Oral Drug Products Administered Via Enteral Feeding Tube: In Vitro Testing and Labeling Recommendations." 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, or 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:

Amy Muhlberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg., 51, Rm. 3117, Silver Spring, MD 20993-0002, 240-402-6901; or Shanil Haugen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg., 66, Rm. 2612, Silver Spring, MD 20993-0002, 301-796-0301.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Oral Drug Products Administered Via Enteral Feeding Tube: In Vitro Testing and Labeling Recommendations.” This draft guidance provides recommendations regarding in vitro testing of oral drug products, other than solutions, administered via enteral feeding tube (hereinafter *enteral tube*) that are subject to: (1) New drug applications (original or supplemental) where applicants are seeking and/or revising enteral tube administration instructions and related information in labeling; (2) abbreviated new drug applications where the reference listed drug contains enteral tube administration instructions and related information in labeling; and (3) investigational new drug applications where the investigational drug product is administered or planned for administration via enteral tube. Specifically, the draft guidance provides recommendations for consistent in vitro testing of oral drug products to demonstrate their suitability to be administered via enteral tube. In addition, it supports the development of

clear, product-specific enteral tube administration instructions in labeling for administration to patients unable to ingest oral drug products.

Enteral tubes are critical for patients who are unable to swallow oral dosage forms because of feeding disorders, severe intellectual disabilities, neurological disorders, cancers, and other medical conditions or therapies that compromise swallowing or the function of the proximal gastrointestinal system. It is critical that each drug administered via enteral tube is delivered at the correct dose in a manner that preserves the drug’s expected safety and efficacy profile and does not compromise the integrity of the tube.

Some FDA-approved drug products marketed in the United States include instructions for enteral tube administration in their labeling. However, testing is not sufficiently widespread or consistent, and the content and format of labeling statements regarding administration of drug products via enteral tube vary.

The Agency recognizes the need for consistent in vitro testing to ensure safe and effective delivery of drugs that may be administered via enteral tube and to identify drugs that cannot be administered through an enteral tube without altering the safety and effectiveness profile of the drug product or compromising the integrity of the tube.

The draft guidance covers selection of appropriate enteral tubes for testing, selection of the dispersion media and preparation of the drug dispersion, and testing conditions and methods. Additional recommendations are given for modified release drug products. Completion of the recommended testing of a drug product prepared in the same manner as it will be prepared for administration to a patient in the clinical setting should allow applicants to demonstrate whether a drug product is suitable for enteral tube administration and identify drug products that are incompatible with enteral tube administration.

Finally, the draft guidance covers how to summarize information regarding administration of the drug product via enteral tube in labeling, including example labeling statements for drug products that can be safely and effectively administered via enteral tube and labeling statements for drug products that are not recommended for administration via enteral tube.

FDA requests comment from the public regarding the extent to which the recommendations in the guidance could be applicable to nonprescription

products marketed under over-the-counter monographs that could be administered via enteral tube.

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 “Oral Drug Products Administered Via Enteral Feeding Tube: In Vitro Testing and Labeling Recommendations.” 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 draft 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 (44 U.S.C. 3501-3521) is not required for this draft guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910-0014 and 0910-0001, respectively. The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910-0572.

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/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>, or <https://www.regulations.gov>.

Dated: May 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-11622 Filed 6-2-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; "Limited Competition for the Continuation of a Multisite Clinical Trial Data Coordinating Center (Collaborative U24, Clinical Trial Optional)".

Date: June 16, 2021.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Chief, Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301-594-3456, schmidma@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 27, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11644 Filed 6-2-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Special Review Group Contracts.

Date: June 25, 2021.

Time: 10:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, Rockville, MD 20852, 301-827-9087, mooremar@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 27, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11640 Filed 6-2-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Early Phase Clinical Trials of Natural Products (NP).

Date: July 15, 2021.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, shiyong.huang@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 27, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11643 Filed 6-2-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Pain Research Coordinating Committee.

The meeting will be open to the public. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Pain Research Coordinating Committee.

Date: July 6, 2021.

Time: 1:30 p.m. to 4:30 p.m. Eastern Time (ET).

Agenda: The meeting will cover committee business items including updates on NIH HEAL Initiative and Common Fund programs. It will include follow up of IPRC recommendations and member updates.

Webcast Live: <http://videocast.nih.gov/>.

Deadline: Submission of intent to submit written/electronic statement for comments: Tuesday, June 29th, by 5:00 p.m. ET.

Place: National Institutes of Health, Building 31, 31 Center Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda L. Porter, Ph.D., Director, Office of Pain Policy and Planning, Office of the Director, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892, Phone: (301) 451-4460, Email: Linda.Porter@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

The meeting will be open to the public via NIH Videocast <https://videocast.nih.gov/>. Visit the IPRCC website for more information: <http://iprcc.nih.gov>. Agenda and any additional information for the meeting will be posted when available.

Dated: May 27, 2021.

Tyeshia M. Roberson,

Program Analyst; Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11641 Filed 6-2-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6210-N-04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2020

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2020 and ending on December 31, 2020.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410-0500, telephone 202-708-3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2020.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a

new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

- a. Identify the project, activity, or undertaking involved;
- b. Describe the nature of the provision waived and the designation of the provision;
- c. Indicate the name and title of the person who granted the waiver request;
- d. Describe briefly the grounds for approval of the request; and
- e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2020 through December 31, 2020. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory

section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Additionally, this notice includes waivers made pursuant to the Coronavirus Aid, Relief and Economic Security Act (CARES Act), not previously published in the **Federal Register**. These waivers are listed separately from other individual waivers within each program office grouping, as CARES Act waivers broadly covered all affected parties rather than individual, case-by-case situations. The lists include additional Memoranda and Notices issued regarding broad CARES Act waivers provided by HUD since the enactment of the Act on March 27, 2020. In addition, the lists provide a short, two- or three-line description of each memo or notice, identifying the specific CARES Act authority and purpose of the waivers addressed therein.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2020) before the next report is published (the first quarter of calendar year 2021), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Damon Y. Smith,

Principal Deputy General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2020 Through December 31, 2020

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

- I. Regulatory waivers granted by the Office of Community Planning and Development.
- II. Regulatory waivers granted by the Office of Housing.
- III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- *Regulation:* 24 CFR 92.203(a)(1) and (2), 24 CFR 92.64(a).

Project/Activity: Source documentation for HOME Investment Partnerships Program (HOME) income determinations.

Nature of Requirement: The regulations require initial income determinations for HOME beneficiaries and annual income determination for a TBRA tenant by examining source documentation covering the most recent two months.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The waiver permits participating jurisdictions, upon notifying the Department, to accept self-certification of income in lieu of source documentation to determine the eligibility for HOME assistance of persons where source documentation does not accurately reflect current income and/or when social distancing measures make submission of source documentation unduly difficult. Many families affected by actions taken to reduce the spread of COVID-19, such as business closures resulting in loss of employment or lay-offs, will not have documentation that accurately reflects current income and may not be able to qualify for HOME assistance if the requirement remains effective. Additionally, the waiver is necessary to help participating jurisdictions comply with national, state, or local health authorities' recommendations on social distancing to reduce the risk of spreading COVID-19.

Applicability: The waiver applies to individuals and families who are applying for admission to a HOME rental unit or a HOME tenant-based rental assistance program, and individuals and families that are existing tenants of HOME rental projects or current recipients of tenant-based rental assistance, who would be placed at risk or experience hardship by submission of source documentation, as determined by the participating jurisdiction, in consideration of national, state or local health authorities' COVID-19 guidelines. A participating jurisdiction that chooses to use this waiver must ensure that the income self-certification takes into consideration all income, including any unemployment and emergency benefits that the Department determines to be income under 24 CFR 5.609(c)(9). The participating jurisdiction must conduct rent and income reviews in accordance with 24 CFR 92.203(a)(1) and (2) within 120 days after the end of the extended waiver period. The participating jurisdiction must include

tenant income self-certifications in each project file.

The waiver is effective from December 4, 2020, through September 30, 2021. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.203(a)(2) and 24 CFR 92.64(a) (Insular Areas).

Project/Activity: Income determinations for HOME Tenant-Based Rental Assistance (TBRA).

Nature of Requirement: The regulations require the participating jurisdiction to determine a TBRA tenant's annual income by examining at least 2 months of source documentation evidencing income and projecting anticipated income forward for the next 12 months. This waiver permits participating jurisdictions to follow the regulations at 24 CFR 92.203(a)(1)(ii) in lieu of requiring a review of source documentation. The HOME regulations at 24 CFR 92.203(a)(1)(ii) allow the participating jurisdiction to obtain a written statement of the amount of the family's anticipated annual income and household size, along with a certification that the information is complete and accurate.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: Given the economic disruptions caused by the COVID-19 pandemic, source documentation from the past two months may not reflect the current financial circumstances of many households. Requiring participating jurisdictions to determine an individual's annual income using source documentation would be administratively burdensome, may not reflect current or anticipated income, and may result in individuals or families being incorrectly disqualified from receiving TBRA. In addition, social distancing measures may make submission of source documentation unduly difficult.

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship. This requirement is waived through September 30, 2021, for tenant-based rental assistance provided in response to the COVID-19 pandemic. The participating jurisdiction must ensure that the tenant's self-certification indicates how the tenant's financial situation has changed, (*i.e.*, job loss or reduced wages), and includes all income, including any unemployment and emergency benefits that the Department determines to be income under 24 CFR 5.609(c)(9).

If the household will continue to receive TBRA beyond the waiver period, the participating jurisdiction must determine the household's income eligibility in accordance with 24 CFR 92.203(a)(2) prior to executing a new TBRA contract. The participating jurisdiction must include tenant income certifications in each project file. This waiver

is effective from the date of this memorandum and remains in effect through the end of the waiver period.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.205(e)(2) and 24 CFR 92.64(a).

Project/Activity: Four-year project completion deadline.

Nature of Requirement: The regulations require that projects assisted with HOME funds be completed within four years of the date that HOME funds were committed. If the project is not complete, in accordance with the definition of "project completion" at 24 CFR 92.2, by the deadline, the project is involuntarily terminated in HUD's Integrated Data Information System (IDIS), and the participating jurisdiction must repay all funds invested in the project. The regulations permit a participating jurisdiction to request an extension of the deadline for up to one-year. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: This waiver is necessary to provide additional time to permit completion of HOME-assisted projects that may be delayed due the effect of COVID-19 on project timelines.

Applicability: This waiver applies to projects with 4-year project completion deadlines that occurred or will occur on after April 10, 2020, including projects with deadlines that were extended for one-year pursuant to an approved request under 24 CFR 92.205(e)(2) if such extension was in effect on or after April 10, 2020. The completion deadlines for covered projects are extended to September 30, 2021. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.209(a) and (h) and 24 CFR 92.64(a).

Project/Activity: Eligible tenant-based rental assistance costs and maximum TBRA subsidy.

Nature of Requirement: The regulations state that eligible TBRA costs include rental assistance and security deposit payments made to income-eligible households. Participating jurisdictions can also use HOME funds to provide utility deposit assistance if such assistance is provided in conjunction with TBRA or a security deposit payment. The amount of monthly utility costs included in TBRA is limited by the utility allowance established by the participating jurisdiction for its TBRA program. The maximum amount of monthly assistance may not exceed the difference

between the participating jurisdiction's rent standard and 30 percent of the tenant's monthly adjusted income. The participating jurisdiction must establish a minimum tenant contribution to rent, and a rent standard that is based on local market conditions or the subsidy standards under the Section 8 Housing Choice Voucher Program. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas.

This waiver allows participating jurisdictions to pay the full cost of monthly utilities in addition to rental assistance and security deposit payments for new and existing TBRA families affected by the COVID-19 pandemic. Participating jurisdictions may provide up to 100 percent subsidy for rent, security deposit payments, and utilities for tenants affected by a reduction or loss of income from the COVID-19 pandemic. In addition, this waiver allows participating jurisdictions to pay past-due rent and fees, including any late fees, as defined in the tenant's lease. This waiver also permits the payment of utility costs, late fees associated with overdue utilities, as well as necessary costs to restore utility service. All costs must still comply with 24 CFR part 200, subpart E, including the requirement that HOME assistance not be used to pay costs when other sources, including federal, state, or local assistance have already been provided to pay the same costs. The waiver also eliminates the need for the participating jurisdiction to establish utility allowances for different types and sizes of units for its TBRA program, which eliminates a significant administrative burden.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The COVID-19 pandemic has caused widespread loss or reduction of income, significantly affecting the financial stability of households, including existing TBRA families, and rendering many unable to pay rent and/or utilities. Households must be able to maintain the basic utilities required to ensure housing remains safe and sanitary. Permitting participating jurisdictions to use HOME funds to pay for utilities will enable affected households to maintain decent, safe, and sanitary housing, which necessarily requires electricity, water, and/or gas service during the pandemic.

As individuals experience financial hardship, the amount of assistance required to ensure they remain housed will often exceed the participating jurisdiction's payment standard. In addition, individuals may be unable to pay the participating jurisdiction's minimum required tenant contribution toward rent. Requiring participating jurisdictions to establish or revise payment standards and the minimum tenant contribution to rent policies in the current emergency would be burdensome and delay the provision of TBRA in response to the pandemic.

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship, including existing TBRA families that have experienced a loss or reduction in income due to the COVID-19 pandemic. This requirement is

waived through September 30, 2021, for rental assistance provided in response to the COVID-19 pandemic. Participating jurisdictions using this waiver authority must execute a rental assistance contract with the owner or tenant for a term mutually agreed upon by all parties, but not to exceed the waiver period ending on September 30, 2021. The waiver is available to all HOME participating jurisdictions.

The participating jurisdiction may pay past-due rent and fees, including late fees, in accordance with the tenant's lease and federal requirements, due on or after January 27, 2020, the effective date of the public health emergency declared by the Secretary of Health and Human Services for the COVID-19 pandemic until the end of the extended waiver period. Participating jurisdictions should establish a timeframe for TBRA assistance during the extended waiver period based on the circumstances in their jurisdiction. In accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Pub. L. 116-136) moratorium on fees, after the effective date of the rental assistance contract, the participating jurisdiction may not pay and an owner may not charge, any fees associated with nonpayment of rent from March 27, 2020 until after July 24, 2020. The participating jurisdiction must document the amount(s) and payment date(s) of any past-due rent and fees in the TBRA tenant file. The file should also include evidence that the fees comply with federal requirements, including the CARES Act, 24 CFR part 200, subpart E, and tenant's lease. The participating jurisdiction may make utility payments, including any past-due payments, late fees and utility restoration costs due on or after January 27, 2020, directly to the tenant or utility company based on utility bills submitted for the assisted unit, either by mail or electronically. The participating jurisdiction must document the amount(s) and payment date(s) of any utility payments and fees in the TBRA tenant file.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

• **Regulation:** 24 CFR 92.209(e) and 24 CFR 92.64(a) (Insular Areas).

Project/Activity: Term of rental assistance contract.

Nature of Requirement: The regulations establish requirements for the term of rental assistance contracts, including that the term must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate upon termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract is not required to terminate upon the termination of the lease, but no payments may be made after lease termination until the family executes a new lease. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The waiver eliminates the requirement that the rental assistance contract begin on the first day of the term of the lease. This waiver is necessary to enable participating jurisdictions to assist tenants that are currently housed, including existing TBRA households, but have experienced sudden financial hardship as a result of the COVID-19 pandemic. Because affected households already have an executed lease, it is impossible for the TBRA contract to begin on the first day of the term of the lease.

Applicability: This requirement is waived through September 30, 2021, for tenant-based rental assistance (TBRA) provided in response to the COVID-19 pandemic. The participating jurisdiction's requirement to execute a rental assistance contract with the owner or tenant is not waived. Participating jurisdictions using this waiver authority must execute a rental assistance contract with the owner or tenant for a term mutually agreed upon by all parties, but not to exceed the waiver period. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

• **Regulation:** 24 CFR 92.209(f) and 24 CFR 92.64(a).

Project/Activity: HOME TBRA rent reasonableness.

Nature of Requirement: The regulations require that a participating jurisdiction must disapprove a lease if the rent is not reasonable, based on an assessment of rents charged for comparable unassisted rental units. The HOME regulations at 24 CFR 92.64(a) applies this requirement to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The waiver permits participating jurisdictions to provide immediate rental assistance without requiring an assessment of rents charged for comparable unassisted rental units. Given the unprecedented need for rental assistance for individuals facing financial hardship during the pandemic, requiring participating jurisdictions to conduct a rent comparison prior to providing rental assistance presents an undue administrative burden.

Applicability: The waiver is applicable to TBRA provided to individuals and tenant households experiencing financial hardship because of a reduction or loss of income. The requirement is waived through September 30, 2021. Participating jurisdictions using this waiver authority must execute a rental assistance contract with the owner or tenant. The waiver is available to all participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development,

Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.209(g) and 24 CFR 92.64(a).

Project/Activity: HOME TBRA tenant protections—lease.

Nature of Requirement: The regulations require that each HOME-assisted tenant have a lease that complies with the tenant protection requirements of 24 CFR 92.253(a) and (b). In accordance with 24 CFR 92.253(a), there must be a lease between the tenant and the owner of rental housing assisted with HOME TBRA. The lease must have a term of not less than one year, unless both parties mutually agree to a shorter period. The lease cannot contain any of the prohibited lease terms defined in 24 CFR 92.253(b). The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The waiver permits participating jurisdictions to assist individuals currently housed but facing financial hardship, where an executed lease is already in place. During the COVID-19 pandemic, participating jurisdictions may assist individuals that are already in rental units but are unable to pay rent and/or utilities due to job loss or reduced wages. These individuals already have an executed lease that may include one or more of the prohibited lease terms included in 24 CFR 92.253(b). Requiring participating jurisdictions to immediately execute or amend leases creates an undue administrative burden and may disqualify some in-place tenants from receiving TBRA.

Applicability: In response to the COVID-19 pandemic, the requirement that a tenant assisted by TBRA have a lease that complies with the requirements of 24 CFR 92.253(b) is waived through September 30, 2021, for rental assistance provided to tenants already housed who have an executed lease. The participating jurisdictions using this waiver authority are required to execute a rental assistance contract with the tenant for a term mutually agreed upon by all parties, but not to exceed the waiver period ending on September 30, 2021. The lease provisions at 24 CFR 92.253(a) are not waived. A household receiving TBRA must have an executed lease with the project owner for a term of not less than one year, unless both parties agree to a shorter term. In addition, the participating jurisdiction must still comply with all VAWA requirements contained in 24 CFR 92.359 by including, at a minimum, a lease addendum that addresses all VAWA requirements.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.209(i) and 24 CFR 92.64(a).

Project/Activity: HOME TBRA housing quality standards.

Nature of Requirement: The regulations require that all housing occupied by households receiving HOME TBRA must meet the housing quality standards (HQS) at 24 CFR 982.401. The participating jurisdiction is required to inspect the unit for compliance prior to occupancy and annually thereafter. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The COVID-19 pandemic has created an unprecedented need for rental assistance for tenant households facing financial hardship. Participating jurisdictions must act quickly to address these needs and requiring HQS inspections of all units where HOME TBRA assistance is provided would create an administrative burden and reduce participating jurisdictions' ability to respond timely to the housing needs created by the pandemic. In addition, requiring initial HQS inspections would increase housing inspectors' risk of contracting or spreading the COVID-19 virus.

Applicability: This waiver is applicable to TBRA provided to tenant households experiencing financial hardship. This requirement is waived through September 30, 2021, for rental assistance provided in response to the COVID-19 pandemic. The lead-safe housing requirements of 24 CFR part 35, subpart M, made applicable to units leased by recipients of HOME TBRA by the HOME regulation at 24 CFR 92.355, cannot be waived. Consequently, units built before 1978 must undergo visual evaluation and paint repair in accordance with 24 CFR part 35, subpart M. Participating jurisdictions using this waiver authority must establish procedures to minimize the risk that tenants are in housing that does not meet HQS. If TBRA to the household will continue beyond September 30, 2021, the participating jurisdiction must conduct an HQS Inspection, in accordance with the HOME requirements at 24 CFR 92.209(i), prior to executing a new TBRA contract.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.210(a) and (b) and 24 CFR 92.64(a).

Project/Activity: Use of HOME funds for operating reserves for troubled HOME projects.

Nature of Requirement: The regulations establish provisions to permit HOME rental projects that are not financially viable (*i.e.*, projects for which operating costs significantly exceed operating revenue) to be preserved through the use of HOME funds to recapitalize project reserves. The regulations also require HUD to review market needs, available resources, and the likelihood of long-term viability of the project before approving this use of HOME funds. In addition, a written memorandum of agreement between HUD and the

participating jurisdiction is a precondition of this funding and the regulation places certain limitations on the amount of funding. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The waiver is necessary to enable participating jurisdictions to take rapid action to preserve the financial viability of HOME-assisted affordable rental projects currently under a HOME period of affordability. Because existing tenants in HOME units may be unable to meet their rent obligations due to the economic impact of the COVID-19 pandemic, HOME rental projects may experience operating deficits due to the sudden decrease in rental revenue. The waiver is also necessary to enable participating jurisdictions to recapitalize operating reserves to account for increased operating costs related to the COVID-19 pandemic, such as lost revenue due to the closure of amenities and/or more intensive cleaning and disinfection of common areas.

Applicability: The waiver applies to HOME-assisted rental projects currently within the period of affordability established in the HOME written agreement. Participating jurisdictions will not be required to obtain HUD approval or execute a memorandum of agreement with HUD before providing this assistance. Participating jurisdiction may only exercise this waiver authority when the project owner agrees to forego: (1) Any distributions of residual receipts resulting from the project throughout the waiver period and for a period of 6 months thereafter; (2) any right under the existing lease agreement or State or local law to pursue legal action against tenants of HOME-assisted units for non-payment of rent and the collection of any fees associated with late payments without prior approval of the participating jurisdiction; and (3) any adverse credit reporting against tenants of HOME-assisted units for nonpayment of rent or fees without prior approval of the participating jurisdiction. To clarify, per the waiver and 24 CFR part 200 requirements, costs paid for by other sources are ineligible and cannot be paid for by HOME funds. Private sources include rent received from HOME-assisted tenants. To prevent the misuse of HOME funds to pay for costs paid with other sources and to maintain the eligibility of costs paid for by HOME assistance, the owner must reduce the amount of any back rent owed by tenants by the amount of HOME operating reserve assistance deposits. The amount expended to pay operating reserve assistance must not exceed the share of operating costs attributable to the HOME-assisted units. If the owner pursues and receives back rent from a HOME-assisted tenant, the owner must repay the amount of operating reserve assistance equal to the amount of back rent received.

The participating jurisdiction may provide additional HOME funds to recapitalize operating deficit reserves for HOME-assisted rental projects if the participating jurisdiction determines that the project is experiencing operating deficits related to the economic

effects of the COVID-19 pandemic during the waiver period. The participating jurisdiction may only provide this assistance to projects experiencing operating deficits that will not be covered by insurance or other sources (e.g., other private, local, state, or federal funds). The maximum amount of HOME assistance that may be provided is equal to the total of the project's operating expenses, previously scheduled payments to a replacement reserve, and actual debt service (excluding debt service of loans in forbearance) multiplied by the proportionate share of HOME-assisted units to the total number of units in the project for the period beginning on April 1, 2020 to September 30, 2021.

Project operating expenses may be demonstrated by one of the following: Owner's most recent year-to-date financials for the project; Certified project-level accounting records covering the most recent 3 months; or Copies of project-level bank statements covering the most recent 3 months. Project operating expenses may also be adjusted due to COVID-19-related expenditures and foregone expenses due to social distancing measures and other COVID-19-related impacts. An owner may demonstrate these expenses with recent receipts, copies of work orders, revised budgets that have been certified by the project owner as true, accurate representations of current expenditures. In order to take advantage of this waiver, participating jurisdictions must amend the HOME written agreement with the project owner to include the amount of HOME funds that will be provided to an operating reserve (i.e., the proportion of total costs attributable to HOME units as described in the paragraph above), the costs eligible to be paid with HOME funds in the operating reserve (i.e., operating expenses, scheduled payments to a replacement reserve, and qualifying debt service), and the documentation the participating jurisdiction is required to maintain to demonstrate the allowable amounts and eligibility of costs paid with the HOME funds in the operating reserve. The written agreement must specify that the owner must forego: (1) Any distributions of residual receipts during the period this waiver is in effect and for a period of 6 months thereafter; (2) any right under the existing lease agreement or State or local law to pursue legal action against tenants of HOME-assisted units for non-payment of rent and the collection of any fees associated with late payments without prior approval of the participating jurisdiction; and (3) any adverse credit reporting against tenants of HOME-assisted units for nonpayment of rent or fees without prior approval of the participating jurisdiction. Within 6 months following the waiver period, the participating jurisdiction must review the project's records of actual revenue and operating expenses, total amount of HOME funds expended from the operating reserve, and the eligibility of expenses by examining invoices and receipts. The written agreement must require the project owner to repay any expenditures for costs determined to be ineligible (which includes costs paid for by other sources) and any balance of HOME funds remaining in the

reserve after the extended waiver period. Any HOME funds repaid to the participating jurisdiction must be deposited in the local HOME account and reported as program income in IDIS. The waiver is effective through September 30, 2021.

The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- **Regulation:** 24 CFR 92.252(h) and 24 CFR 92.64(a) (Insular Areas).

Project/Activity: Source documentation for income re-examinations.

Nature of Requirement: The regulations require re-examination of income of each tenant using source documentation in accordance with § 92.203(a)(1)(i) in every sixth year of the affordability period where an owner of a multifamily project with an affordability period of 10 years or more re-examine tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii). 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: This waiver permits the use of self-certification of income, as provided at § 92.203(a)(1)(ii), in lieu of source documentation to re-examine the income of tenants residing in a HOME multifamily project with a period of affordability of 10 years or more, if the reexamination of tenant income required in every sixth year of the project's period of affordability occurs on or before September 30, 2021.

This waiver is necessary because source documentation may not accurately reflect the current income of existing tenants and/or social distancing measures may make submission of source documentation unduly difficult. Many families affected by actions taken to reduce the spread of COVID-19, such as business closures resulting in loss of employment or lay-offs, will not have documentation that accurately reflects current income and will not be able to qualify for HOME assistance if the requirement remains in effect. Additionally, the waiver is necessary to help participating jurisdictions comply with national, state, or local health authorities' recommendations on social distancing to reduce the risk of spreading COVID-19.

Applicability: This waiver applies to an owner of a HOME multifamily rental project with a period of affordability of 10 years or more to use self-certification of income if a reexamination of tenant income required in every sixth year of the project's period of affordability occurs on or before September 30, 2021. This is to accommodate a tenant with source documentation that does not accurately reflect current income and/or where individuals and families would be placed at risk or experience hardship by submission of source documentation to the

owner, as determined by the participating jurisdiction, in consideration of national, state or local health authorities' COVID-19 guidelines. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- **Regulation:** 24 CFR 92.254(a)(3) and 24 CFR 92.64(a).

Project/Activity: Nine-month deadline for sale of HOME-assisted homebuyer units.

Nature of Requirement: The regulations require that a homebuyer housing unit developed with HOME funds have a ratified contract for sale to an eligible homebuyer within nine months of the date of completion of construction or rehabilitation. If there is no ratified sales contract with an eligible homebuyer within 9 months of completion of construction or rehabilitation, the housing must be rented to an eligible tenant in accordance with § 92.252. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: Many participating jurisdictions will not be able to meet this deadline due to the effect the COVID-19 pandemic will have on the ability of eligible households to qualify for mortgages as a result of income losses or the inability to schedule inspections, title searches, or closings during periods of business closures. The waiver is necessary to prevent the loss of homeownership opportunities for HOME-eligible families and temporarily suspend the required corrective action of repayment of HOME funds or conversion of the homebuyer units to rental housing.

Applicability: The waiver applies to projects for which the nine-month homebuyer sale deadline occurs on or after the date of this memorandum and extends the deadline for those projects to September 30, 2021. The waiver is available to all HOME participating jurisdictions. This waiver does not apply to the remaining requirements of the regulation, including that a homebuyer must receive housing counseling, and that a participating jurisdiction must determine eligibility of a family by including the income of all persons living in the housing.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- **Regulation:** 24 CFR 92.504(d)(1)(ii) and 24 CFR 92.64(a).

Project/Activity: On-site inspections of HOME-assisted rental housing.

Nature of Requirement: The regulations require that during the period of affordability participating jurisdictions perform on-site inspections of HOME-assisted rental housing at least once every three years to determine

compliance with the property standards and to verify the information submitted by the owners in accordance with the income and rent requirements. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: Waiving the requirement to perform ongoing on-site inspections will help protect participating jurisdiction staff and limit the spread of COVID-19. To protect participating jurisdiction staff and reduce the spread of COVID-19, this waiver extends the timeframe for participating jurisdictions to perform on-going periodic inspections and on-site reviews to determine a HOME rental project's compliance with property standards and rent and income requirements.

Applicability: The waiver is applicable to ongoing periodic inspections and does not waive the requirement to perform initial inspections of rental properties upon completion of construction or rehabilitation. Within 120 days of the end of this waiver period, participating jurisdictions must physically inspect units that would have been subject to on-going inspections during the waiver period. The waiver is also applicable to on-site reviews to determine a HOME rental project's compliance with rent and income requirements if the project owner is unable to make documentation available electronically. The waiver is in effect through September 30, 2021. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) and 24 CFR 92.64(a).

Project/Activity: Housing Quality Standards—Initial and annual inspection of units occupied by recipients of HOME tenant-based rental assistance (TBRA).

Nature of Requirement: The regulations require participating jurisdictions to initially inspect each unit to be occupied by a recipient of HOME TBRA and annually re-inspect each unit occupied by a recipient of HOME TBRA. 24 CFR 92.64(a) applies these requirements to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: Waiving the requirement that HQS inspections be performed before a HOME TBRA recipient leases and occupies a rental unit and annually re-inspect according to schedule will protect the health of both inspectors and TBRA tenants by observing physical distancing recommendations to limit the spread of COVID-19.

Applicability: The waiver is applicable to initial and annual housing quality standards inspections required to occur from April 10, 2020, through September 30, 2021. The waiver is available to all HOME participating jurisdictions.

Participating jurisdictions using this waiver authority for families assisted under

TBRA are not required to inspect for compliance with HQS in accordance with 24 CFR 982.401. Participating jurisdiction shall make reasonable efforts to address any tenant-reported health and safety issues during the waiver period. At the conclusion of the extended waiver period, all housing occupied by households receiving HOME TBRA must meet the housing quality standards (HQS) at 24 CFR 982.401.

However, this waiver does not apply to the requirements at 24 CFR 35.1215. Consequently, units built before 1978 must undergo visual evaluation and paint repair in accordance with 24 CFR part 35, subpart M. Participating jurisdictions using this waiver authority must establish procedures to minimize the risk that tenants are in housing that does not meet HQS.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) and 24 CFR 92.64(a).

Project/Activity: Annual inspection of units occupied by recipients of HOME tenant-based rental assistance (TBRA).

Nature of Requirement: Provisions require participating jurisdictions to annually inspect each unit occupied by a recipient of HOME TBRA.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: Waiving the requirement that annual HQS inspections be performed according to schedule will protect the health of both inspectors and TBRA tenants by observing physical distancing recommendations to limit the spread of COVID-19.

Applicability: The waiver is applicable to annual HQS inspections required to occur from April 10, 2020 through September 30, 2021. Participating jurisdictions using this waiver authority are not required to inspect for compliance with HQS in accordance with 24 CFR 982.401. Participating jurisdictions shall make reasonable efforts to address any tenant reported health and safety issues during the waiver period. All housing that will continue to be occupied by HOME TBRA households after the end of the extended waiver period, must be inspected for compliance with HQS prior to executing a new TBRA contract.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.551(b)(1) and 24 CFR 92.64(a).

Project/Activity: Timeframe for a HOME participating jurisdiction's response to findings of noncompliance.

Nature of Requirement: The regulations require that if HUD determines that a participating jurisdiction has not met a

provision of the HOME regulations, the participating jurisdiction must be notified and given an opportunity to respond within a time period prescribed by HUD, not to exceed 30 days. 24 CFR 92.64(a) applies this requirement to Insular Areas.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 4, 2020.

Reason Waived: The waiver is necessary to permit HUD to provide participating jurisdictions with an extended period to respond to findings of noncompliance in recognition of the unanticipated circumstances created by the COVID-19 pandemic. Requiring participating jurisdictions to respond to all findings of noncompliance within 30 days may interfere with a participating jurisdiction's ability to address the unprecedented housing needs caused by the COVID-19 pandemic.

Applicability: The waiver applies to all findings of HOME regulatory noncompliance issued from April 10, 2020, through September 30, 2021. In the notice of findings, HUD will specify a time period for the participating jurisdiction's response. HUD may also extend time periods imposed before April 10, 2020. The waiver is available to all HOME participating jurisdictions.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- *Regulation:* 24 CFR 92.252(d)(1) Utility Allowance Requirements.

Project/Activity: The County of Santa Clara, the City of Mountain View, and the County of San Luis Obispo, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of the utility allowance established by a local public housing agency (PHA) for three HOME-assisted projects: Orchard Ranch Apartments in Santa Clara County, Shorebreeze II Family Apartments in Mountain View, and Courtyard at the Meadows in San Luis Obispo County.

Nature of Requirement: The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects for which HOME funds were committed on or after August 23, 2013.

Granted By: John Gibbs, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 17, 2020.

Reason Waived: The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 402-4606.

- *Regulation:* 24 CFR 578.3, definition of permanent housing, 24 CFR 578.51(1)(1).

Project/Activity: The one-year lease requirement is waived for leases executed between the date of this memorandum and March 31, 2021, so long as the initial term of all leases is at least one month.

Nature of Requirement: Program participants residing in PSH must be the tenant on a lease for a term of at least one year that is renewable and terminable for cause.

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: HUD originally waived this requirement for 6-months on March 31, 2020 and again until December 31, 2020 on September 30, 2020 to help recipients more quickly identify permanent housing for individuals and families experiencing homelessness, which is helpful in preventing the spread of COVID-19. Extending this waiver is necessary because recipients continue to need to help program participants identify housing quickly to help prevent the spread of COVID-19.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708-4300.

- *Regulation:* 24 CFR 578.33(c).

Project/Activity: The requirement that the renewal grant amount be based on the budget line items in the final year of the grant being renewed is further waived for all projects that amend their grant agreement between January 1, 2021 and March 31, 2021 to move funds between budget line items in a project in response to the COVID-19 pandemic. Recipients may then apply in the next FY CoC Program funding cycle based on the budget line items in the grants before they were amended.

Nature of Requirement: 24 CFR 578.33(c) requires that budget line item amounts a recipient is awarded for renewal in the CoC Program Competition will be based on the amounts in the final year of the prior funding period of the project.

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: HUD originally waived this requirement for grant agreement amendments signed between March 31, 2020 and October 1, 2020 to allow recipients to move funds between budget line items in a project in response to the COVID-19 pandemic and still apply for renewal in the next FY CoC Program funding cycle based on the budget line items in the grants before they were amended. HUD again waived this requirement for all grant agreements signed from October 1, 2020 until December 31, 2020. Recipients continue to report needing

to shift budget line items to respond to the COVID-19 pandemic (e.g., providing different supportive service necessitated by the pandemic or serving fewer people because the layout of the housing does not meet local social distancing recommendations) without changing the original design of the project when it is not operating in a public health crisis and can resume normal operations.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708-4300.

- *Regulation:* 24 CFR 578.37(a)(1)(ii)(F).

Project/Activity: The requirement in 24 CFR 578.37(a)(1)(ii)(F) that projects require program participants to meet with case managers not less than once per month is waived for all permanent housing-rapid re-housing projects until March 31, 2021.

Nature of Requirement: Recipients must require program participants of permanent housing-rapid re-housing projects to meet with a case manager at least monthly.

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: HUD originally waived this requirement for 2-months on March 31, 2020. On May 22, 2020 HUD again waived this requirement for an additional 3 months and on September 30, 2020 HUD once again waived this requirement until December 31, 2020. Recipients are continuing to report limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). In addition, not all program participants have capacity to meet via phone or internet. Waiving the monthly case management requirement as specified below will allow recipients to provide case management on an as needed basis and reduce the possible spread and harm of COVID-19.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708-4300.

- *Regulation:* 24 CFR 578.49(b)(2).

Project/Activity: The Fair Market Rent (FMR) restriction continues to be waived for any lease executed by a recipient or subrecipient to provide transitional or permanent supportive housing until March 31, 2021. The affected recipient or subrecipient must still ensure that rent paid for individual units that are leased with leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2).

Nature of Requirement: Rent payments for individual units with leasing dollars may not exceed (FMR).

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: HUD originally waived this requirement for 6-months on March 31, 2020. On September 30, 2020 HUD again waived this requirement until December 31, 2020. Extending this waiver of the limit on using grant leasing funds to pay above FMR for individual units, but not greater than reasonable rent, will assist recipients in locating additional units to house individuals and families experiencing homelessness and reduce the spread and harm of COVID-19.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708-4300.

- *Regulation:* 24 CFR 578.75(b)(1).

Project/Activity: The waiver of the requirement in 24 CFR 578.75(b)(1) that the recipient or subrecipient physically inspect each unit to assure that the unit meets Housing Quality Standards (HQS) before providing assistance on behalf of a program participant is in effect until March 31, 2021 for recipients and subrecipients that are able to obtain certification from the owner that they have no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units in question; and the recipient or subrecipient has written policies to physically inspect the unit within 3 months after the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.

Nature of Requirement: 24 CFR 278.75(b)(1) requires that recipients or subrecipients physically inspect each unit to assure that it meets HQS before any assistance will be provided for that unit on behalf of a program participant.

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: On March 31, 2020, HUD waived the physical inspection requirement at 24 CFR 578.75(b)(1) for 6-months so long as recipients or subrecipients were able to visually inspect the unit using technology to ensure the unit met HQS before any assistance was provided and recipients or subrecipients had written policies in place to physically reinspect the unit within 3 months after the health officials determined special measures to prevent the spread of COVID-19 are no longer necessary. However, this standard still relies on program participants or landlords having the technology to carry out this virtual inspection. Waiving the initial inspection requirement at 24 CFR 578.75(b)(1) as further specified below will allow recipients to move people from the streets and shelters into housing more quickly, which enables social distancing, and helps prevent the spread of COVID-19.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708-4300.

• **Regulation:** 24 CFR 578.75(c) and 24 CFR 982.401(d)(2)(ii) as required by 24 CFR 578.75(b)

Project/Activity: The requirement that each unit assisted with CoC Program funds or YHDP funds have at least one bedroom or living/sleeping room for each two persons is waived for recipients providing Permanent Housing-Rapid Rehousing assistance for leases and occupancy agreements executed by recipients and subrecipients between the date of this memorandum and March 31, 2021 and extending only until the later of (1) the end of the initial term of the lease or occupancy agreement; or (2) March 31, 2021. Recipients are still required to follow State and local occupancy laws.

Nature of Requirement: 24 CFR 578.75(c), suitable dwelling size, and 24 CFR 982.401(d)(2)(ii) as required by 24 CFR 578.75(b), Housing Quality Standards, requires units funded with CoC Program funds to have at least one bedroom or living/sleeping room for each two persons.

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: On September 30, 2020, HUD waived the requirements at 24 CFR 982.401(d)(2)(ii) and 24 CFR 578.75(c) to allow households experiencing homelessness to obtain permanent housing that is affordable and that they assess is adequate. Recipients continue to report that households experiencing homelessness remain unable to afford the limited supply of affordable housing in many jurisdictions across the country and this has been made even more challenging due to the economic impact of COVID-19. HUD is waiving the requirements at 24 CFR 982.401(d)(2)(ii) and 24 CFR 578.75(c) as further specified below to reduce the spread of COVID-19 by allowing households to move into housing instead of staying in congregate shelter. Consistent with the *Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners*, grantees should balance use of this waiver with the recommendations of public health officials to limit community spread and reduce risks to high-risk populations. For example, a large unit with rooms than can be partitioned for privacy and distancing, or the waiver can be applied for units that will house only one family household.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone (202) 708-4300.

• **Regulation:** 24 CFR 578.103(a)(7)(iv).

Project/Activity: The waiver of the requirement at 24 CFR 578.103(a)(7)(iv) that the recipient or subrecipient may only rely on program participant self-certification of income if the other permitted types of documentation are unobtainable when conducting the initial or subsequent rent or occupancy charge calculations is in effect until March 31, 2021. During this time, 24 CFR 578.103(a)(7)(iv) is waived to the extent necessary to allow recipients or subrecipients

to document annual income with the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation, even if source documents and third-party verification, are obtainable.

Nature of Requirement: 24 CFR 578.103(a)(7) requires the recipient or subrecipient to keep records of the program participant's income and the back-up documentation they relied on to determine income. The regulation establishes an order of preference for the type of documentation that recipients can rely upon. Only if source documents and third-party verification are unobtainable is a written certification from the program participant acceptable documentation of income. HUD is waiving "To the extent that source documents and third-party verification are unobtainable" in 578.103(a)(7)(iv).

Granted By: John Gibbs, Acting Assistant Secretary for Community Planning and Development.

Date Granted: December 29, 2020.

Reason Waived: On September 30, 2020, HUD waived the requirement to attempt to document that third-party verification of income was unobtainable in order for recipients and subrecipients to a program participant's own self-certification of income until December 31, 2020 because that documentation may be difficult to obtain as a result of COVID-19 pandemic and housing program participants quickly was important to prevent the spread of COVID-19. It continues to be important to move people into their own housing quickly to enable social distancing and prevent the spread of COVID-19; therefore, waiving the requirement that source documents and third-party documentation be unobtainable in order for recipients or subrecipients to rely on a program participant's own certification of their income.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7262, Washington, DC 20410, telephone number (202) 708-4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• **Regulation:** 24 CFR 200.73(c).

Project/Activity: New Hope Properties, Hopkinsville, Kentucky, Project No. 083-35769.

Nature of Requirement: 24 CFR 200.73(c) requiring that "not less than five rental dwelling units [of an FHA insured multifamily housing project] shall be on one site". Section 3.1.CC of the 2016 MAP Guide permits a project with two or more non-contiguous parcels of land when the parcels comprise one marketable, manageable real estate entity. AGM Financial Services, Inc. applied for mortgage insurance under the Section 221(d)(4) substantial rehabilitation

program. The proposed insured loan is estimated at \$26,000,000. The project will also be financed with \$20,760,447 of equity from the sale of 4% Low Income Housing Tax Credits (LIHTC), a \$2,700,000 loan from the Kentucky Housing Trust Fund, and a \$500,000 Affordable Housing Program loan. The Hendersonville Housing Authority (HHA) plans to convert their public housing inventory to project-based Section 8 rental housing through the Rental Assistance Demonstration (RAD) program. New Hope Properties consists of 454 affordable housing units in nine (9) developments with the nine referenced developments being located on more than 24 parcels of land.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 25, 2020.

Reason Waived: The waiver will meet HUD's goal of preserving and maintaining affordable rental housing for low-income families. The project is a low risk to the Department due to its continuing availability of project Section 8 rental housing through the Rental Assistance Demonstration Program (RAD) assistance for most units.

Contact: Patricia M. Burke, Director, Office of Multifamily Production, HTD, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6132, Washington, DC 20410, telephone (202) 402-5693.

• **Regulation:** 24 CFR 200.73(c).

Project/Activity: Friends/VVA Apartments, Columbus, Ohio, Project No. 043-11259.

Nature of Requirement: 24 CFR 200.73(c) requiring that "not less than five rental dwelling units [of an FHA insured multifamily housing project] shall be on one site". Section 3.1.CC of the 2016 MAP Guide permits a project with two or more non-contiguous parcels of land when the parcels comprise one marketable, manageable real estate entity. Orix Real Estate Capital, LLC (OREC) applied for mortgage insurance under the Section 223(f) program for Friends/VVA Apartments. Friends/VVA is a 16-unit complex owned by the nonprofit developer Columbus Housing Partnership, Inc. and is in Columbus, Ohio. It is comprised of two sites.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2020.

Reason Waived: The waiver will meet HUD's goal of preserving and maintaining affordable rental housing for low-income families. Eligible tenants are very low-income elderly or disabled. The project is a low risk to the Department due to its continuing availability of project Section 8 rental housing assistance for all units.

Contact: Patricia M. Burke, Director, Office of Multifamily Production, HTD, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6132, Washington, DC 20410, telephone (202) 402-5693.

• **Regulation:** 24 CFR 203.602.

Project/Activity: Delinquency Notices to Mortgagors.

Nature of Requirement: This is a temporary waiver of the requirements in 24 CFR 203.602 for borrowers provided a COVID-19

Forbearance. This temporarily waives the requirement that a mortgagee shall give notice to any mortgagor in default no later than the end of the second month of any delinquency in payments under the mortgage during the period of the COVID-19 Forbearance.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 21, 2020.

Reason Waived: This waiver has been issued to address potential confusion and uncertainty surrounding mortgage servicing policy changes enacted due to the Coronavirus Disease 2019 (COVID-19) pandemic.

Applicability: This waiver is applicable to mortgages where the Borrower is on an FHA COVID-19 Forbearance.

Contact: Elissa Saunders, Acting Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9172, Washington, DC 20410, telephone (202) 402-2378.

• *Regulation:* 24 CFR 206.55(d)(1).

Project/Activity: The requirement that an Eligible Non-Borrowing Spouse for a Home Equity Conversion Mortgage (HECM) must, within 90 days from the death of the last surviving borrower, establish legal ownership or other ongoing legal right to remain for life in the property securing the HECM.

Nature of Requirement: This is a partial waiver of the requirement in 24 CFR 206.55(d)(1) that an Eligible Non-Borrowing Spouse must, within 90 days from the death of the last surviving borrower, establish legal ownership or other ongoing legal right to remain for life in the property securing the HECM.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 1, 2020.

Reason Waived: This partial waiver has been issued due to public health concerns around the spread of Coronavirus Disease 2019 (COVID-19), the declaration of a National Emergency and the resulting closures of courthouses and government offices necessary to meet the requirement of 24 CFR 206.55(d)(1).

Applicability: The partial waiver does not apply to any provisions of 24 CFR 206.55 other than 24 CFR 206.55(d)(1). The partial waiver is limited to a 12-month period from the date of issuance.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Superbia Retirement Village, FHA Project Number 117-SH006T, Oklahoma City, OK. The Foundation for Senior Citizens, Incorporated (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects, states “Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance,

prepayment of the mortgage, or a sale of the project.”

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2020.

Reason Waived: The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve the affordable housing resource for an additional 35 years through the execution and recordation of a Rental Use Agreement.

Contact: Crystal Martinez, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6174, Washington, DC 20410, telephone (202) 402-3718.

• *Regulation:* 24 CFR 266.410(e).

Project/Activity: Housing Opportunities Commission of Montgomery County (HOC) no project name or number listed.

Nature of Requirement: The 24 CFR 266.410(e), which requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. The waiver would permit HOC to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years for the projects identified in the “Multifamily Pipeline Projects”.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2020.

Reason Waived: The waiver was granted to allow Housing Opportunities Commission of Montgomery County’s (HOC) clients additional financing options to their customers and to align HOC business practices with industry standards, thus furthering the creation of a preservation of affordable housing throughout Maryland.

The regulatory waiver is subject to the following conditions:

1. The waiver is limited to ten (10) transactions and expires on December 31, 2025.
2. Housing Opportunities Commission of Montgomery County must elect to take 50 percent or more of the risk of loss on all transactions.
3. Mortgages made under this waiver may have amortization periods of up to 40 years, but with a minimum term of 17 years.
4. All other requirements of 24 CFR 266.410—Mortgage Provision remain applicable. The waiver is applicable only to loans made under Housing Opportunities Commission of Montgomery County’s Risk Sharing Agreement.
5. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents.
6. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225.
7. Housing Opportunities Commission of Montgomery County must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions.
8. The loans exceeding \$50 million require a separate waiver request.

9. Occupancy is no less than 93 percent for previous 12 months of the HFA loan to be refinanced.

10. No defaults in the last 12 months of the HFA loan to be refinanced.

11. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition.

12. A Property Capital Needs Assessment (PCNA) must be performed, and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

13. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

i. a. Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b. In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012-14—Use of “New Regulation” Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time Housing Opportunities Commission of Montgomery County determines that a project’s excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, Housing Opportunities Commission of Montgomery County must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract’s termination must be returned.

• *Regulation:* 24 CFR 266.410(e).

Project/Activity: Illinois Housing Development Authority (IHDA) no project name or number listed.

Nature of Requirement: The 24 CFR 266.410(e), which requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. The waiver would permit IHDA to use balloon loans that would have a minimum term of 17 years and a maximum amortization period of 40 years for the projects identified in the “Multifamily Pipeline Projects”.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 21, 2020.

Reason Waived: The waiver was granted to allow Illinois Housing Development Authority’s (IHDA) clients additional financing options to their customers and to align IHDA business practices with industry standards, thus furthering the creation of a preservation of affordable housing throughout Illinois.

The regulatory waiver is subject to the following conditions:

1. The waiver is limited to thirty (30) transactions and expires on October 31, 2025.
2. Illinois Housing Development Authority must elect to take 50 percent or more of the risk of loss on all transactions.
3. Mortgages made under this waiver may have amortization periods of up to 40 years, but with a minimum term of 17 years.

4. All other requirements of 24 CFR 266.410—Mortgage Provision remain applicable. The waiver is applicable only to loans made under Illinois Housing Development Authority's Risk Sharing Agreement.

5. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of the Section 8 or comparable unassisted rents.

6. Projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225.

7. Illinois Housing Development Authority must comply with regulations stated in 24 CFR 266.210 for insured advances or insurance upon completion transactions.

8. The loans exceeding \$50 million require a separate waiver request.

9. Occupancy is no less than 93 percent for previous 12 months of the HFA loan to be refinanced.

10. No defaults in the last 12 months of the HA loan to be refinanced.

11. A 20-year affordable housing deed restriction placed on title that conforms to the Section 542(c) statutory definition.

12. A Property Capital Needs Assessment (PCNA) must be performed, and funds escrowed for all necessary repairs, and reserves funded for future capital needs; and

13. For projects subsidized by Section 8 Housing Assistance Payment (HAP) contracts:

1. a: Owner agrees to renew HAP contract(s) for 20-year term, (subject to appropriations and statutory authorization, etc.), and b: In accordance with regulations in 24 CFR 883.306(e), and Housing Notice 2012-14—Use of “New Regulation” Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts of Offset Project-Based Section 8 Housing Assistance Payments, if at any time Illinois Housing Development Authority determines that a project's excess funds (surplus cash) after project operations, reserve requirements and permitted distributions are met, Illinois Housing Development Authority must place the excess funds into a separate interest-bearing account. Upon renewal of a HAP Contract the excess funds can be used to reduce future HAP payments or other project operations/purposes. When the HAP Contract expires, is terminated, or any extensions are terminated, any unused funds remaining in the Residual Receipt Account at the time of the contract's termination must be returned.

• *Regulation:* 24 CFR 3282.14(b).

Project/Activity: Manufactured Housing Production, Nationwide.

Nature of Requirement: The Office of Manufactured Housing Programs (OMHP) received several individual requests through the Alternative Construction (AC) process outlined in the Code of Federal Regulations (CFR) at 24 CFR 3282.14. This regulation requires each manufacturer to submit a request for Alternative Construction consideration. Rather, OMHP provided an Alternative Construction approval that may be used by any manufacturer experiencing supply chain issues for 25 ampere circuit breakers with code compliant water heater appliances.

Granted By: Dana T. Wade, Assistant Secretary for Housing—Federal Housing

Date Granted: December 18, 2020.

Reason Waived: In order to resolve this matter for the whole industry in an expedient manner while protecting the health and safety of consumers and maintaining durability of the homes, a regulatory waiver of 24 CFR 3282.14(b), Request for Alternative Construction, provides resolution for all affected manufacturers. This temporary regulatory waiver of 24 CFR 3282.14(b) allows OMHP to issue the industry-wide AC Letter that allows 25 ampere circuit breakers with code compliant water heater appliances to be used for the construction of HUD Code-compliant manufactured homes through June 30, 2021.

Contact: Jason McJury, Deputy Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 9170, Washington, DC 20410, telephone (202) 402-2480.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 982.517; 24 CFR 983.301(f)(2)(ii).

Project/Activity: Housing Authority of the City of San Buenaventura (HACSB) requested a project-specific utility allowance for a Project Based Voucher (PBV) project.

Nature of Requirement: For the Housing Choice Voucher (HCV) program, 24 CFR 982.517 requires that a PHA maintain a utility allowance schedule for all tenant-paid utilities, and the utility allowance schedule must be determine based on the typical cost of utilities and services paid by energy-conserving households that occupy units of similar size and type in the same locality. For the PBV program, 24 CFR 983.301(f)(2)(ii) requires that PHAs may not establish or apply different utility allowance amounts for the PBV program, and that the same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

Granted By: R. Hunter Kurtz, Assistant Secretary for Public and Indian Housing.

Date Granted: November 18, 2020.

Reason Waived: The PHA requested a waiver to establish a site-specific utility allowance for a PBV project and provided justification for the request. The PHA submitted an analysis of utility rates for the community and consumption data of project residents. Due to the energy efficient upgrades at the project, the community consumption estimates are significantly higher than the consumption expected at the site. The PHA demonstrated good cause that the utility allowance provided under the HCV program would discourage conservation and ultimately lead to inefficient use of HAP funds at the PBV project. Thus, pursuant to the waiver authority provided at 24 CFR 5.110, HUD determined that there was good cause to waive 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517.

Contact: Danielle Bastarache, Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, Office of

Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4204, Washington, DC 20410, telephone (202) 402-5264.

• *Regulation:* 24 CFR 983.3.

Project/Activity: The New York City Housing Authority (NYCHA) is undertaking a large-scale preservation of 1,718 units across sixteen (16) project sites in Manhattan, commonly known as the Permanent Affordability Commitment Together (PACT) Manhattan Bundle (the “Redevelopment”). For the purposes of determining the number of Housing Assistance Payments (HAP) contracts required to be used for the Redevelopment, NYCHA requested the use of an alternative definition of “project” in order to be operationally efficient, reduce administrative burden, and overcome potential confusion for property management.

Nature of Requirement: “Project” is defined in PBV regulations at 24 CFR 983.3 as a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. Contiguous in the definition of project includes “adjacent to,” and touching along a boundary or a point. PHAs may define a PBV project in their administrative plan within the bounds of the regulatory definition.

Granted By: R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing.

Date Granted: November 23, 2020.

Reason Waived: NYCHA proposed an alternative definition of “project” that would group any buildings within a radius of approximately eight blocks for the purpose of placing them under individual HAP Contracts. Due to the nature of NYCHA's public housing developments, which often include multiple buildings over several blocks, the subject regulations would require NYCHA to enter into multiple HAP Contracts for each public housing project and/or building undergoing conversion. For the Redevelopment, without the regulatory waiver, NYCHA would be required to execute 25 HAP Contracts (RAD and non-RAD PBV combined), despite several of the buildings being closely clustered and currently administered as a single project under the public housing program. Through the waiver, NYCHA would reduce the number of overall HAP contracts for the Redevelopment from twenty-five to thirteen RAD and non-RAD PBV HAP Contracts. In addition, due to the magnitude of the NYCHA Section 8 program, the proposed grouping would save an estimated 11,000 hours of staff time and cost during construction, 540 hours on monthly administration, and 720 hours on additional annual administration. Therefore, HUD determined good cause to waive 24 CFR 983.3 so that NYCHA may use the proposed definition of project for the PACT Manhattan Bundle that includes the 16 sites and 1,718 units identified in the waiver request.

Contact: Danielle Bastarache, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Room 4204, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4204, Washington, DC 20410, telephone (202) 402-5264.

- *Regulation:* 24 CFR 983.51(b)(1).

Project/Activity: Ark-Tex Council of Governments (ATCOG), a partner voucher agency, requested a waiver to award PBVs to a Public Housing project that repositioned through a Section 22 Streamlined Voluntary Conversion (SVC) action approved by HUD on June 24, 2020.

Nature of Requirement: 24 CFR 983.51(b)(1) requires a Public Housing Agency (PHA) to award Project-Based Vouchers (PBVs) via a competitive selection.

Granted By: R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing.

Date Granted: November 18, 2020.

Reason Waived: The Mount Pleasant Housing Authority (MPHA) is the Public Housing-only agency that received the SVC approval for the 145 units, which comprise MPHA's entire Public Housing portfolio. Under the SVC approval, MPHA is required to ensure that the 145 units at the property are developed and operated as affordable housing for low-income families with incomes at or below 80 percent of area median income for not less than 30 years. To accomplish this, MPHA proposed to place the property under a PBV Housing Assistance Payments (HAP) contract. However, since ATCOG does not have an ownership interest in the project, the Housing Opportunity Through Modernization Act requirements for non-competitive selection, as detailed in PIH 2017–21, Attachment L, are not met. ATCOG serves nine northeast Texas counties and one southwest Arkansas county, covering over 6,400 square miles. Based on this, ATCOG expected that there is a strong likelihood that the PBVs could be awarded to a project other than MPHA's converted project. Thus, HUD determined good cause to waive 24 CFR 983.51(b)(1) so that ATCOG may select MPHA's Section 22 SVC-approved project for an award of PBVs without following a competitive process.

Contact: Danielle Bastarache, Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4204, Washington, DC 20410, telephone (202) 402–5264.

- *Regulation:* 24 CFR 983.152(c).

Project/Activity: Massachusetts Department of Housing and Community Development (MDHCD) requested to allow environmental remediation activities required by the Massachusetts Department of Environmental Protection (MDEP) commence at a project prior to an Agreement to Enter into a Housing Assistance Payment (AHAP) contract.

Nature of Requirement: 24 CFR 983.152(c) requires that a public housing agency (PHA) may not enter into an AHAP contract if construction or rehabilitation has commenced after proposal submission.

Granted By: R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing.

Date Granted: November 18, 2020.

Reason Waived: The Haywood Homes project consists of construction of 55 new housing units for Section 18 disposition. As part of the disposition review process and planning activities for the project, Newton Housing Authority (NHA) discovered that the property contains a concentration of mercury

that exceeds the reporting threshold under the Massachusetts Contingency Plan and the project was subject to required reporting and remediation. The scope of the environmental remediation and related work is specified in an engineering report dated May 20, 2020. NHA has been unable to enter into an AHAP with the project owner because various key proposed financing awards and commitments are still ongoing for the subsidy layering review (SLR). Project-based voucher (PBV) program regulations require the completion of an SLR prior to AHAP execution (24 CFR 983.55(b)). Therefore, HUD determined good cause to waive 24 CFR 983.152(c) so that the work identified in the May 20, 2020 engineering report may be performed, prior to entering into an AHAP for the Haywood Homes project.

Contact: Danielle Bastarache, Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4204, Washington, DC 20410, telephone (202) 402–5264.

- *Regulation:* 24 CFR 983.152(c).

Project/Activity: Cuyahoga Metropolitan Housing Authority requested to allow their development partners to commence certain remediation activities prior to an Agreement to Enter into a Housing Assistance Payment (AHAP) contract.

Nature of Requirement: 24 CFR 983.152(c) requires that a public housing agency (PHA) may not enter into an AHAP contract if construction or rehabilitation has commenced after proposal submission.

Granted By: R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing.

Date Granted: November 9, 2020.

Reason Waived: On January 9, 2020, the CMHA's Board of Commissioners authorized the award of 60 PBVs for the redevelopment of a project, known as the Blanket Mills project. On March 29, 2020, a severe storm partially collapsed an adjoining building that now needs to be demolished (Piano building), and according to an engineering report dated April 2, 2020, the main building (Blanket Mills building) needs to be preserved/restored and made weather tight until anticipated restoration work can begin. CMHA has been unable to enter into an AHAP with the project owner because various key proposed financing awards and commitments are still ongoing for the subsidy layering review (SLR). Project-based voucher (PBV) program regulations require the completion of an SLR prior to AHAP execution (24 CFR 983.55(b)). Therefore, HUD determined good cause to waive 24 CFR 983.152(c) so that the work identified in the April 2, 2020 engineering report may be performed, prior to CMHA entering into an AHAP for the rehabilitation of the Blanket Mills main building.

Contact: Danielle Bastarache, Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4204, Washington, DC 20410, telephone (202) 402–5264.

HUD's Summary of CARES Act Notices Providing Waivers: 10/1/20 to 12/31/20

Authority: Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and regulatory waiver authority is also provided by 24 CFR 5.110 and 91.600.

CARES Act Waiver: PIH Notice 2020–13, HCV–4; 24 CFR 982.305(c).

Description: The Southern Nevada Regional Housing Authority (SNRHA) requested a waiver for five cases in which the HAP Contract was executed more than 120 days after the lease start date (the regulatory requirement is 60 days and the alternative requirement in the CARES Act Waiver Notice is 120 days). The delay was due to staffing issues and unforeseen circumstances related to COVID–19.

Authority: 24 CFR 982.305(c)(4) states that any Housing Assistance Payment (HAP) Contract executed more than 60 days after the lease term begins will be void and the public housing agency (PHA) may not pay any HAP to the owner. *PIH Notice 2020–13: COVID–19 Statutory and Regulatory Waivers and Alternative Requirements for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Assessment Program, Revision 1*, provided an alternative requirement for 24 CFR 982.305(c), provides an alternative requirement that HAP Contracts must be executed within 120 days, instead of 60 days, to provide additional time due to the impact of the coronavirus on PHA operations.

Granted By: R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing.

Date Granted: November 18, 2020.

Purpose/Reason Waived: SNRHA requested a waiver for five cases in which the HAP Contract was executed more than 120 days after the lease start date due to staffing issues and unforeseen circumstances related to COVID–19. In the waiver request, SNRHA provided specific details regarding the circumstances of the delay in executing the HAP Contract for each case. SNRHA also provided details regarding their operations during COVID–19, stating that the agency is operating at a 68 percent staffing rate and 15 employees were absent due to COVID–19 exposure or diagnosis. The information SNRHA submitted to the Department provided justification for the request. HUD determined that there was good cause to waive 24 CFR 982.305(c)(4) for the five cases listed in the PHA's waiver request based on the specific data provided on the agency's staffing challenges related to COVID–19. This waiver applied only to the five cases listed in the request and did not extend to future cases.

Contact: Danielle Bastarache, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, Room 4204, Department of Housing and Urban Development.

[FR Doc. 2021–11616 Filed 6–2–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS–R3–ES–2021–0042;
FXES11140300000–212]

**Draft Environmental Assessment and
Proposed Habitat Conservation Plan;
Receipt of an Application for an
Incidental Take Permit, California
Ridge Wind Farm, Champaign and
Vermilion Counties, Illinois**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability of
documents; request for comment and
information.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from California Ridge Wind Energy, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act (ESA), for its California Ridge Wind Farm (project). If approved, the ITP would authorize the incidental take of four bat species. The applicant has prepared a habitat conservation plan, which is also available for review. We also announce the availability of a draft environmental assessment, which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

DATES: We will accept comments received or postmarked on or before July 6, 2021.

ADDRESSES:

Document availability: Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2021–0042 at <http://www.regulations.gov>.

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft EA, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online:* <http://www.regulations.gov>. Search for and submit comments on Docket No. FWS–R3–ES–2021–0042.

- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2021–0042; U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB/3W, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT:

Kraig McPeck, Field Supervisor,
Illinois-Iowa Ecological Services Field

Office, U.S. Fish and Wildlife Service,
1511 47th Ave., Moline, IL 61265;
telephone: 309–757–5800, extension
202; or Andrew Horton, Regional HCP
Coordinator, U.S. Fish and Wildlife
Service—Interior Region 3, 5600
American Blvd., West, Suite 990,
Bloomington, MN 55437–1458;
telephone: 612–713–5337.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, have received an application from California Ridge Wind Energy, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for its California Ridge Wind Farm (project). If approved, the ITP would be for a 20-year period and would authorize the incidental take of the following four species: Indiana bat (federally listed as endangered), northern long-eared bat (federally listed as threatened), little brown bat (currently under discretionary review), and tricolored bat (petitioned for listing under ESA). The applicant has prepared a habitat conservation plan that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the four species. We also announce the availability of a draft environmental assessment (EA), which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

Background

Section 9 of the ESA and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. “Take” is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” listed animal species, “or to attempt to engage in any such conduct” (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant’s Proposed Project

The applicant requests a 20-year ITP to take the federally endangered Indiana bat (*Myotis sodalis*), threatened northern long-eared bat (*Myotis septentrionalis*), non-listed little brown bat (*Myotis lucifugus*), and non-listed tricolored bat (*Perimyotis subflavus*) (covered species). The applicant determined that take is reasonably certain to occur incidental to operation of 134 previously constructed wind turbines that have a total generating capacity of 214.4 megawatts and covering approximately 35,270 acres of private land. The proposed conservation strategy in the applicant’s proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to increase the understanding of the risk to covered species populations resulting from operation of wind energy facilities; minimize mortality of the covered species as a result of wind farm operations in the permit area; and to support survival and recovery of the covered species by maintaining or increasing the reproductive capacity of the populations of the covered species. The HCP provides on-site avoidance and minimization measures, which include turbine operational adjustments. The authorized level of take from the project is up to a total of 100 Indiana bats, 280 northern long-eared bats, 780 little brown bats, and 240 tricolored bats over the 20-year project duration. To offset the impacts of the taking of covered species, the applicant proposes to restore and protect up to 563.2 acres of suitable habitat for the covered species and up to 13 artificial bat roost structures. Mitigation will occur in the same or immediately adjacent watershed as the project.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We prepared a draft EA that analyzes the environmental impacts on the human environment resulting from three alternatives: A no-action alternative, the proposed action, and a more restrictive alternative consisting of feathering turbines at a wind speed that results in less impacts to bats.

Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an

intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Public Comments

The Service invites comments and suggestions from all interested parties during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. The environmental effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the proposed HCP; and
4. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on <http://regulations.gov> all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing

regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2021–11602 Filed 6–2–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**[212A2100DD AAK6006201
AOR3030.999900]**

Final Environmental Impact Statement for the Proposed Southern Bighorn Solar Projects, Clark County, Nevada

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as the lead Federal agency, with the Bureau of Land Management (BLM), the Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and the Moapa Band of Paiute Indians (Moapa Band) as cooperating agencies, intends to file a final environmental impact statement (FEIS) with the EPA for the proposed Southern Bighorn Solar Projects (SBSPs or Project). The FEIS evaluates photovoltaic (PV) solar energy generation and storage projects on the Moapa River Indian Reservation (Reservation) and collector lines along with the use of existing access roads and an existing generation interconnection (gen-tie) line located on the Reservation, Reservation lands managed by BLM, and BLM lands. This notice also announces that the FEIS is now available for public review.

DATES: To be fully considered, written comments on the FEIS must arrive no later than 30 days after EPA publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: The FEIS is available at the following website: www.southernbighornsolar.com/. You may mail, email, hand carry or telefax written comments to Mr. Chip Lewis, Regional Environmental Protection Officer, BIA Western Regional Office, Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor, Mail Room, Phoenix, Arizona 85004–3008; fax (602) 379–3833; email: chip.lewis@bia.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Lewis, BIA Western Regional Office, Branch of Environmental Quality

Services at (602) 379–6750 or Mr. Garry Cantley at (602) 379–6750.

SUPPLEMENTARY INFORMATION: The proposed Federal action, taken under 25 U.S.C. 415, is the BIA's approval of two solar energy ground leases and associated agreements entered into by the Moapa Band with 300MS 8me LLC and 425LM 8me LLC (Applicants). The agreements provide for construction, operation and maintenance (O&M), and eventual decommissioning of the PV electricity generation and battery storage facilities located entirely on the Reservation and specifically on lands held in trust for the Moapa Band, in Clark County Nevada.

The PV electricity generation and battery storage facilities would be located on up to 3,600 acres of tribal trust land (2,600 acres for SBSP I and 1,000 acres for SBSP II) and would have a combined capacity of up to 400 megawatts alternating current (MWac)—300 MWac for SBSP I, and 100 MWac for SBSP II. The two solar Projects include the solar fields, access roads, collector lines, and connection with an existing transmission gen-tie line.

Construction of the 300MWac project is expected to take approximately 14–16 months, and construction of the up to 100MWac project is expected to take approximately 8–10 months. The two projects may be constructed simultaneously or sequentially. The electricity generation and storage facilities are expected to be operated for up to 50 years under the terms of the leases, with time for construction and decommissioning. Major onsite facilities include multiple blocks of solar PV panels mounted on fixed tilt or tracking systems, pad mounted inverters and transformers, collector lines, up to 1,000 MW-hours of battery storage, access roads, and O&M facilities. Water will be needed during construction for dust control; a minimal amount will be needed during operations for administrative and sanitary use and for panel washing. The water supply required for the Projects would be leased from the Moapa Band. Access to the SBSPs will be provided via North Las Vegas Boulevard from the I–15/US 93 interchange.

The purposes of the proposed Project are, among other things, to: (1) Provide a long-term, diverse, and viable economic revenue base and job opportunities for the Moapa Band; (2) assist Nevada to meet their State renewable energy needs; and (3) allow the Moapa Band, in partnership with the Applicant, to optimize the use of the lease site while maximizing the

potential economic benefit to the Moapa Band.

The BIA and BLM will use the EIS to make decisions on the land lease and right-of-way applications under their respective jurisdiction; the EPA may use the document to make decisions under its authorities; the Band may use the FEIS to make decisions under its Environmental Policy Ordinance; and the USFWS may use the FEIS to support its decision under the Endangered Species Act.

Directions for Submitting Comments: Please include your name, return address and the caption: "FEIS Comments, Proposed Southern Bighorn Solar Projects" on the first page of your written comments.

Locations Where the FEIS is Available for Review: The FEIS will be available for review at: BIA Western Regional Office, 2600 North Central Avenue, 12th Floor, Suite 210, Phoenix, Arizona; BIA Southern Paiute Agency, 180 North 200 East, Suite 111, St. George, Utah; and the BLM Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada. The FEIS is also available on line at: www.southernbighornsolar.com.

To obtain an electronic copy of the FEIS, please provide your name and address in writing or by voicemail to Mr. Chip Lewis or Mr. Garry Cantley. Their contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the FEIS will be provided only upon request.

Public Comment Availability: Written comments, including names and addresses of respondents, will be available for public review at the BIA Western Regional Office, at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the National

Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and in accordance with the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Bryan Newland,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2021–11647 Filed 6–2–21; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1250]

Certain Cellular Signal Boosters, Repeaters, Bi-Directional Amplifiers, and Components Thereof (II); Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined not to review an initial determination ("ID") (Order No. 8) of the presiding administrative law judge ("ALJ") granting a joint motion to terminate the investigation in its entirety based on settlement.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 25, 2021, based on a complaint filed by Wilson Electronics LLC of St. George, Utah ("Wilson"). 86 FR 11555–56 (February 25, 2021). The complaint, as supplemented, alleged 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 cellular signal boosters, repeaters, bi-directional amplifiers, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,221,967; 7,409,186; 7,486,929; 7,729,669; 7,783,318; 8,583,033; 8,583,034 ("the '034 patent"); 8,639,180 ("the '180 patent"); 8,755,399; 8,849,187; 8,874,029 ("the '029 patent"); and 8,874,030 ("the '030 patent"). *Id.* The Commission's notice of investigation named as respondents Cellphone-Mate, Inc. d/b/a SureCall of Fremont, California, and Shenzhen SureCall Communication Technology Co., Ltd. of Shenzhen, China (together, "SureCall"). *Id.* at 11556. The Commission determined to sever the investigation into three separate investigations based on the complaint to further efficient adjudication. The present investigation was instituted to determine whether there is a violation of Section 337 with respect to claims 1–20 of the '034; claims 10–14, and 16–17 of the '180 patent; claims 1–10 and 13–15 of the '029 patent; and claims 1–24 of the '030 patent. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On May 12, 2021, Wilson and SureCall jointly moved to terminate the investigation based on settlement. No responses to the motion were received.

On May 13, 2021, the ALJ issued the subject ID, granting the motion and terminating the investigation based on settlement. The ID finds that the motion complies with Commission Rule 210.21(b) and that "there is no evidence showing that terminating this investigation on the basis of settlement would adversely affect the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers." Order No. 8, at 2–3. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on May 27, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 27, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11619 Filed 6-2-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-521 and 731-TA-1252-1255 and 1257 (Review)]

Steel Nails From Korea, Malaysia, Oman, Taiwan, and Vietnam

Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the countervailing duty order on steel nails from Vietnam and the antidumping duty orders on steel nails from Korea, Malaysia, Oman, Taiwan, and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 1, 2020 (85 FR 33195) and determined on September 4, 2020 that it would conduct expedited reviews (86 FR 26545, May 14, 2021).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on May 28, 2021. The views of the Commission are contained in USITC Publication 5200 (May 2021), entitled *Steel Nails from Korea, Malaysia, Oman, Taiwan, and Vietnam: Investigation Nos. 701-TA-521 and 731-TA-1252-1255 and 1257 (Review)*.

By order of the Commission.

Issued: May 28, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11703 Filed 6-2-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1260]

Certain Toner Supply Containers and Components Thereof (II); Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Amend the Complaint and Notice of 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. 6) of the presiding administrative law judge ("ALJ") granting complainants' unopposed motion to amend the complaint and notice of investigation in the above-captioned investigation to correct the identification of a respondent.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) 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 13, 2021, the Commission instituted this investigation based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, "Canon"). 86 FR 19287-88 (Apr. 13, 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, and the sale within the United States after importation of certain toner supply containers and components thereof by reason of infringement of certain claims of thirteen patents: U.S. Patent Nos. 10,209,667; 10,289,060; 10,289,061; 10,295,957; 10,488,814; 10,496,032; 10,496,033; 10,514,654; 10,520,881; 10,520,882; 8,565,649 ("the '649

patent"); 9,354,551 ("the '551 patent"); and 9,753,402 ("the '402 patent"). *Id.* at 19287. The complaint further alleges that a domestic industry exists. *Id.* The Commission instituted two separate investigations and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the '649, '551, and '402 patents as to the accused products identified in the notice of investigation. *Id.* The notice of investigation named eleven respondents: Sichuan XingDian Technology Co., Ltd. of Sichuan, China; Sichuan Wiztoner Technology Co., Ltd. of Sichuan, China; Anhuiyatengshangmaoyouxiangongsi of Ganyuqu, China; ChengDuXiangChang NanShiYouSheBeiYouXianGongSi of SiChuanSheng, China; Digital Marketing Corporation d/b/a Digital Buyer Marketing Company of Los Angeles, California; Do It Wiser, LLC d/b/a Image Toner ("Do It Wiser") of Wilmington, Delaware; Hefeiierlandianzishangwuyouxiangongsi of Chengdushi, China; Shenzhenshi Keluodeng Kejiyouxiangogonsi of Guangdong, China; MITOCOLOR INC. of Rowland Heights, California; Xianshi yanliangqu canqiubaihuodianshanghang of Shanxisheng, China; and Zhuhai Henyun Image Co., Ltd. of Zhuhai, China. *Id.* The Office of Unfair Import Investigations is also named as a party. *Id.* at 19287-88. The question of whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the remaining patents is the subject of the severed investigation based on the same complaint, Inv. No. 337-TA-1259. *See* 86 FR 19284-86 (Apr. 13, 2021).

On April 27, 2021, Canon filed a motion to amend the complaint and notice of investigation to change the identification of respondent Do It Wiser from "Do It Wiser, LLC d/b/a Image Toner" to "Do It Wiser, Inc. d/b/a Image Toner" and to make related changes in paragraph 31 of the complaint. The motion states that (i) OUII does not oppose the motion and (ii) Do It Wiser's counsel in a parallel district court lawsuit informed Canon that Do It Wiser "will not be participating in this investigation and does not oppose this motion." Mot. at 1. No responses to the motion were filed.

On May 17, 2021, the ALJ issued the subject ID granting the motion. The ID finds that, in accordance with Commission Rule 210.14(b) (19 CFR 210.14(b)), "Canon has shown good cause to amend the complaint and notice of investigation to correct the identification of the respondent identified in the original complaint as

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Do It Wiser, LLC d/b/a Image Toner.” ID at 2. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The complaint and notice of investigation are amended to change the identification of respondent Do It Wiser from “Do It Wiser, LLC d/b/a Image Toner” to “Do It Wiser, Inc. d/b/a Image Toner” and to make related changes in paragraph 31 of the complaint.

The Commission vote for this determination took place on May 27, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 28, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11702 Filed 6–2–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1246]

Certain Integrated Circuits and Products Containing the Same; Commission Determination Not To Review an Initial Determination Granting Complainant’s Motion To Terminate the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 18) of the presiding administrative law judge (“ALJ”) terminating the investigation in its entirety based on settlement.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission

may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 12, 2021 based on an amended complaint filed by complainant Tela Innovations, Inc. of Los Gatos, CA (“Tela”). 86 FR 9369 (Feb. 12, 2021). The complaint, as amended, alleged 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, or the sale within the United States after importation of certain integrated circuits and products containing the same by reason of infringement of claims 1–11, 14–20, 25, and 26 of U.S. Patent No. 10,186,523. *Id.* at 9370. The complaint further alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Acer, Inc. of New Taipei City, Taiwan; Acer America Corporation of San Jose, CA; ASUSTek Computer Inc. of Taipei, Taiwan; ASUS Computer International of Fremont, CA; Intel Corporation of Santa Clara, CA; Lenovo Group Ltd. of Beijing, China; Lenovo (United States) Inc. of Morrisville, NC; Micro-Star International Co., Ltd. of New Taipei City, Taiwan; and MSI Computer Corp. of City of Industry, CA. *Id.* The Office of Unfair Import Investigations is participating in the investigation. *Id.*

On May 11, 2021, Tela moved, without opposition, to terminate this investigation in its entirety based on settlement pursuant to Commission Rule 210.21(b). 19 CFR 210.21(b). On May 13, 2021, the ALJ issued Order No. 18, terminating the investigation in its entirety based on settlement. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID.

The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on May 27, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 27, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11620 Filed 6–2–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1181]

Certain Lithium-Ion Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Products Containing the Same; Commission Determination To Grant a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint motion to terminate the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On November 4, 2019, the Commission instituted this investigation based on a complaint filed by LG Chem, Ltd. of Seoul, Republic of Korea; LG Chem Michigan Inc. of Holland, Michigan; and Toray Industries, Inc. of Tokyo, Japan. 84 FR 59415 (Nov. 4, 2019). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain lithium-ion battery cells, battery modules, battery packs, components thereof, and products containing the same that

purportedly infringe one or more claims of U.S. Patent Nos. 7,662,517; 7,638,241; 7,709,152; and 7,771,877. *Id.* The complaint also alleged the existence of a domestic industry. *Id.* The notice of investigation names SK Innovation Co., Ltd., of Seoul, Republic of Korea and SK Battery America, Inc., of Atlanta, Georgia as respondents. *Id.* The Office of Unfair Import Investigations was not named as a party. *Id.*

On March 31, 2021, the administrative law judge issued a final initial determination, which found no violation of section 337 by the respondents.

On May 25, 2021, pursuant to Commission Rule 210.21, paragraphs (a) and (b) (19 CFR 210.21(a) and (b)), the parties filed a Joint Motion to Terminate the Investigation on the Basis of a Settlement Agreement (“the Motion”). The parties also filed confidential and public versions of the settlement agreement.

The Commission has determined that the Motion complies with the requirements of Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)) and that there are no extraordinary circumstances that would prevent the requested termination. The Commission also finds that granting the Motion would not be contrary to the public interest pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)). Accordingly, the Commission grants the Motion. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on May 27, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 27, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11621 Filed 6–2–21; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Engineering Research Centers

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF 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.

Title of Collection: Grantee Reporting Requirements for the Engineering Research Centers.

OMB Number: 3145–0220.

Type of Request: Extension without revision of an information collection.

Type of Request: Intent to seek approval to renew an information collection.

Abstract: The Engineering Research Centers (ERC) program supports an integrated, interdisciplinary research environment to advance fundamental engineering knowledge and engineered systems; educate a globally competitive and diverse engineering workforce from K–12 on; and join academe and industry in partnership to achieve these goals. ERCs conduct world-class research

through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

ERCs conduct world-class research with an engineered systems perspective that integrates materials, devices, processes, components, control algorithms and/or other enabling elements to perform a well-defined function. These systems provide a unique academic research and education experience that involves integrative complexity and technological realization. The complexity of the systems perspective includes the factors associated with its use in industry, society/environment, or the human body.

ERCs enable and foster excellent education, integrate research and education, speed knowledge/technology transfer through partnerships between academe and industry, and prepare a more competitive future workforce. ERCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers are required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, ERCs also are required to submit management and performance indicators annually to NSF via a data collection website that is managed by a technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of cash and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the ERC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center’s annual report will address the following categories of activities: (1) Vision and impact, (2) strategic plan, (3) research program, (4) innovation ecosystem and industrial collaboration, (5) education, (6) infrastructure (leadership, management,

facilities, diversity) and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, progress toward center goals, problems the Center has encountered in making progress towards goals and how they were overcome, plans for the future and anticipated research and other barriers to overcome in the following year, and specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued ERC program maintenance and growth.

Estimate of Burden: 150 hours per center for 17 centers for a total of 2,550 hours.

Respondents: Academic institutions.

Estimated Number of Responses per Report: One from each of the 17 ERCs.

Dated: May 28, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021-11678 Filed 6-2-21; 8:45 am]

BILLING CODE 7555-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2021-76; MC2021-94 and CP2021-97]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

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):* CP2021-76; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 690, Filed Under Seal; *Filing Acceptance Date:* May 26, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 3, 2021.

2. *Docket No(s):* MC2021-94 and CP2021-97; *Filing Title:* USPS Request

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).

to Add Priority Mail Contract 702 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 26, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 3, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021-11628 Filed 6-2-21; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List. **DATES:** *Date of required notice:* June 3, 2021.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 14, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 700 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2021-92, CP2021-95.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021-11701 Filed 6-2-21; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List. **DATES:** *Date of required notice:* June 3, 2021.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 26, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 702 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2021–94, CP2021–97.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–11699 Filed 6–2–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 3, 2021.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 19, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 701 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2021–93, CP2021–96.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–11698 Filed 6–2–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92052; File No. SR–NYSEArca–2021–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the American Century Sustainable Growth ETF

May 27, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b–4 thereunder,³ notice is hereby given that on May 21, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the American Century Sustainable Growth ETF under NYSE Arca Rule 8.601–E. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**1. Purpose**

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of

permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Commentary .01 to Rule 8.601–E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (“Shares”) as Active Proxy Portfolio Shares of the American Century® Sustainable Growth ETF (the “Fund”) under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E⁵

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95). Rule 8.601–E(c)(1) provides that “[t]he term ‘Active Proxy Portfolio Share’ means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601–E(c)(2) provides that “[t]he term ‘Actual Portfolio’ means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.” Rule 8.601–E(c)(3) provides that “[t]he term ‘Proxy Portfolio’ means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.”

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁶ the portfolio for each series of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).⁷ The composition of the portfolio of each series of Active Proxy Portfolio Shares will not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the

listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁶ NYSE Arca Rule 8.600–E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of the Fund’s fiscal quarter will be made publicly available 60 days after the end of the Fund’s fiscal quarter. Form N–PORT requires reporting of the Fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain the Fund’s Statement of Additional Information (“SAI”), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. The Fund’s SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

Investment Company, as provided by a series of Managed Fund Shares.

The Commission has previously approved listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.⁸ The Fund is a series of the American Century ETF Trust (the “Trust”), a Delaware statutory trust.⁹ The investment adviser for the Fund will be American Century Investment Management, Inc. (“Adviser”). State Street Bank and Trust Company will serve as the Fund’s transfer agent, custodian, and will conduct certain administrative functions. Foreside Fund

⁸ *See* Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E) (“Natixis Order”); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E) (“American Century Order”); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E) (“T. Rowe Price Approval Order”); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E). *See also* Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

⁹ The Trust is registered under the 1940 Act. On April 15, 2021, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–221045 and 811–23305 (the “Registration Statement”). The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15082), dated April 9, 2020 (“Application”). On May 12, 2020, the Commission issued an order (“Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33862, May 12, 2020). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Fund herein is based, in part, on the Registration Statement and the Application. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

Services, LLC, a registered broker dealer, will serve as the distributor (“Distributor”) of the Shares.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company’s Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.¹⁰ Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04

¹⁰ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company’s Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is or becomes a registered broker-dealer or affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio or Proxy Portfolio or has access to non-public information regarding the Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto is subject to procedures reasonably designed to prevent the use

and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund’s Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio.

Description of the Fund

According to the Registration Statement, each “Business Day”¹¹ before commencement of the trading of Shares, the Fund will publish on its website a Proxy Portfolio designed to closely track the daily performance of the Fund but the Proxy Portfolio will not be the Fund’s Actual Portfolio.

The Proxy Portfolio will be designed to closely track the daily performance of the Actual Portfolio and to reflect the economic exposures and risk characteristics of the Fund’s actual holdings on each trading day. According to the Registration Statement, this would be achieved by performing an analysis of the Fund’s Actual Portfolio (“Factor Model”). The Factor Model is comprised of three sets of factors or analytical metrics: Market-based factors, fundamental factors, and industry/sector factors. The Fund will have a universe of securities (the “Model Universe”) that will be used to generate its Proxy Portfolio. The Model Universe will be comprised solely of securities that the Fund can purchase and will be a financial index or stated portfolio of securities from which Fund investments will be selected. The results of the Factor Model analysis of the Fund’s Actual Portfolio are then applied to the Fund’s Model Universe. The daily rebalanced Proxy Portfolio is then generated as a result of this Model Universe analysis with the Proxy Portfolio being a small sub-set of the

Model Universe. The Factor Model is applied to both the Actual Portfolio and the Model Universe to construct the Fund’s Proxy Portfolio that performs in a manner substantially identical to the performance of its Actual Portfolio.

The identity and quantity of Proxy Portfolio component investments and the overlap between the holdings of the prior Business Day’s Proxy Portfolio compared to the Actual Portfolio (“Proxy Overlap”) will be publicly available on the Fund’s website before the commencement of trading in Shares on each Business Day. The Proxy Portfolio published on the Fund’s website each Business Day will include the following information for each portfolio holding in the Proxy Portfolio: (1) Ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Fund’s website will note that the Proxy Overlap is calculated based on the Proxy Portfolio and Actual Portfolio holdings as of the prior Business Day. The Proxy Overlap will be calculated by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

The Proxy Portfolio aims to allow market participants to assess the intraday value and associated risk of the Fund’s Actual Portfolio. The Proxy Portfolio will only include securities that are allowed to be held in the Actual Portfolio.

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹²

¹² The Application and Exemptive Order incorporates by reference the terms and conditions of a previous order granting the same relief, as that order may be amended from time to time. See Natixis ETF Trust II, et al., Investment Company Act Rel. Nos. 33684 (November 14, 2019) (notice) and 33711 (December 10, 2019) (order) (the “Reference Order”). Pursuant to the Reference Order as incorporated by reference into the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs; exchange-traded notes (“ETNs”); exchange-traded common stocks; exchange-traded preferred stocks; exchange-traded American Depositary Receipts (“ADRs”); exchange-traded real estate investment trusts (“REITs”); exchange-traded commodity pools; exchange-traded metals trusts; exchange-traded currency trusts; common stocks listed on a foreign exchange that trade on such exchange synchronously with the Shares (“foreign common stocks”) in the Exchange’s Core Trading Session (normally 9:30 a.m. to 4:00 p.m. Eastern time (“E.T.”)); exchange-traded futures that trade synchronously with the Fund’s Shares as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund

¹¹ “Business Day” is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is to seek capital appreciation. The Fund will generally invest in exchange-traded common stocks of large capitalization companies. Under normal circumstances, the Fund will invest at least 80% of the Fund’s net assets in sustainable securities, defined as securities to which the Adviser’s proprietary model assigns an environmental, social, and governance (“ESG”) score that is in the top three quartiles of the ESG scores the model assigns to all of the securities in the Fund’s benchmark, the Russell 1000 Growth Index.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601–E. The Fund’s holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹³

The Fund’s investments, including derivatives, will be consistent with their investment objectives and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or –3X) of the Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).

Purchases and Redemptions of Shares

According to the Registration Statement, the Trust will offer, issue and sell Shares of the Fund to investors only in specified minimum size “Creation Units” through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of the Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day.

will be listed on a U.S. national securities exchange or a U.S. futures exchange. For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements. The Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

¹³ See notes 9 & 12, *supra*.

The Trust will sell and redeem Creation Units of the Fund only on a Business Day. A Creation Unit will generally consist of at least 10,000 Shares.

According to the Registration Statement, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) and the “Cash Component,” which is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the “Deposit Amount,” which is an amount equal to the market value of the Deposit Securities, and serves to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. Together, the Deposit Securities and the Cash Component constitute the “Fund Deposit,” which will be applicable (subject to possible amendment or correction) to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The names and quantities of the instruments that constitute the Fund Deposit will be the same as the Fund’s Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.¹⁴ If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

Each Business Day, before the open of trading on the Exchange (9:30 a.m. E.T.), the Fund will cause to be published through the National Securities Clearing Corporation (“NSCC”) the names and the required number of shares of each Deposit Security and the amount of the Cash Component (if any) to be included in the current Fund Deposit (based on information as of the end of the previous Business Day for the Fund).

All orders to purchase and redeem Creation Units must be placed with the Distributor by or through an authorized participant, which has a written agreement with the Distributor that allows the authorized participant to place orders for the purchase and redemption of Creation Units (“Authorized Participant”). Only an Authorized Participant may create or redeem Creation Units directly with the Fund.

Validly submitted orders to purchase or redeem Creation Units on each

¹⁴ [sic]

Business Day will be accepted until the end of the Core Trading Session (the “Closing Time”), generally 4:00 p.m. E.T., on the Business Day that the order is placed (the “Transmittal Date”). All Creation Unit orders must be received by the Distributor no later than two hours prior to the Closing Time (normally 2 p.m. E.T.) in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Fund’s website (www.americancenturyetfs.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund’s website will include on a daily basis, per Share for the Fund, the prior Business Day’s NAV and the “Closing Price” or “Bid/Ask Price,”¹⁵ and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV.¹⁶ The Adviser has represented that the Fund’s website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge. The website also will disclose the information required under Rule 8.601–E(c)(3).¹⁷

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will

¹⁵ The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The “Bid/Ask Price” is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund’s NAV. The “National Best Bid and Offer” is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The “Closing Price” of Shares is the official closing price of the Shares on the Exchange.

¹⁶ The “premium/discount” refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

¹⁷ See note 4, *supra*. Rule 8.601–E(c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the Proxy Portfolio.

be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund's Commission filings will be provided on the Fund's website on a current basis.¹⁸ Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis within at least 60 days following the end of every fiscal quarter.

Investors can also obtain the Fund's prospectus, SAI, shareholder reports, Form N-CSR, Form N-PORT and Form N-CEN. Investors may access complete portfolio schedules for the Fund on Form N-CSR and Form N-PORT. The prospectus, SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-CSR, Form N-PORT and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at <http://www.sec.gov>. The Exchange also notes that pursuant to the Application, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association ("CTA") high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Intraday price information for all exchange-traded instruments, which include all eligible instruments and futures contracts but not cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of

the Fund.¹⁹ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.601-E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

In addition, if the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule

8.601-E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio for the Fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁰ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, or the Exchange or both will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the Exchange or both may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from

¹⁸ See note 7, *supra*.

¹⁹ See NYSE Arca Rule 7.12-E.

²⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²¹

The Advisor will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor the Fund's compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires the issuer of shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require the Trust to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-

compliance with the requirements of Rule 8.601-E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ in particular, in that it is 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.²⁴

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E. One hundred percent of the value of the Fund's Actual Portfolio (except for cash and cash equivalents) at the time of purchase will be listed on U.S. or foreign securities exchanges (or, in the limited case of futures contracts, U.S. futures exchanges). The listing and trading of such U.S. securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁵

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of the Shares.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

With respect to the Fund, the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares, that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio and Actual Portfolio for the Fund will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, shareholder reports, and

²⁵ See note 9, *supra*.

²¹ For a list of the current members of ISG, see www.isgportal.org.

its Form N-CSR, Form N-PORT and Form N-CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-CSR, Form N-PORT and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires the issuer of shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require the Trust to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund

and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Intraday price information for all exchange-traded instruments, which include all eligible instruments and futures contracts but not cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio, and quotation and last sale information for the Shares. The Proxy Portfolio holdings for the Fund (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601-E.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁶ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The components of the Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34-E(a); (b) with respect to exchange-

traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

As noted above, with respect to the Fund, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, with respect to the Fund, investors will have ready access to information regarding the Proxy Portfolio and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

²⁶ See note 9, *supra*.

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 Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Commission has previously approved proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Fund.³⁰ The Exchange also states that the Commission has previously issued a notice of filing and immediate effectiveness for a proposed rule change relating to the proposed listing on a national securities exchange of other issues of Active Proxy Portfolio Shares similar to the Fund.³¹ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³²

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ See *supra* note.

³¹ See Securities Exchange Act Release No. 90686 (December 16, 2020), 85 FR 83657 (December 22, 2020) (SR-CboeBZX-2020-090) (Notice of Filing and Immediate Effectiveness of a Proposed Rule to List and Trade Shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF, Each a Series of the Invesco Actively Managed Exchange-Traded Fund Trust, under Rule 14.11(m) (Tracking Fund Shares)).

³² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-44 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-NYSEArca-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 with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEArca-2021-44 and should be submitted on or before June 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11610 Filed 6-2-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92040; File No. SR-CBOE-2020-106]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Regarding the Minimum Increments for Electronic Bids and Offers and Exercise Prices of Certain FLEX Options and Clarify in the Rules How the System Ranks FLEX Option Bids and Offers for Allocation Purposes

May 27, 2021.

On November 16, 2020, Cboe Exchange, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules regarding the minimum increments for electronic bids and offers and exercise prices of certain FLEX options and clarify how the system ranks FLEX option bids and offers for allocation purposes. On November 30, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission published notice of the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on December 4, 2020.³ On January 14, 2021, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed

³³ 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. 90536 (November 30, 2020), 85 FR 78381 ("Notice"). Comments received on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-106/sr-cboe2020106.htm>.

⁴ 15 U.S.C. 78s(b)(2).

rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On March 4, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ 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 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 December 4, 2020.⁹ The 180th day after publication of the Notice is June 2, 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, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates August 1, 2021, as the date by which the Commission shall either approve or disapprove or the proposed rule change (File Number SR-CBOE-2020-106), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Assistant Secretary.

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⁵ See Securities Exchange Act Release No. 90926, 86 FR 6710 (January 22, 2021). The Commission designated March 4, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 91257, 86 FR 13769 (March 10, 2021).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92055; File No. SR-LTSE-2021-03]

Self-Regulatory Organizations; Long-Term Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Temporary Reduction in the Initial Listing Fee

May 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 18, 2021, Long-Term Stock Exchange (“LTSE” or the “Exchange”) 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 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

LTSE proposes a rule change to temporarily reduce by half the schedule of Initial Listing Fees for issuers’ Primary Equity Securities on LTSE in light of the competitive market for listings and the ongoing disruptions caused by the global COVID-19 pandemic.³ The Initial Listing fees would revert to their prior levels beginning on January 1, 2022.

The text of the proposed rule change is available at the Exchange’s website at <https://longtermstockexchange.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange originally filed to establish a fee schedule of listing fees for issuers of primary equity securities on January 22, 2020 (SR-LTSE-2020-02). On January 30, 2020, SR-LTSE-2020-02 was withdrawn and replaced by SR-LTSE-2020-03. See Securities Exchange Act Release No. 88133 (February 6, 2020), 85 FR 8048 (February 12, 2020).

The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposed rule change to amend Rule 14.601 to temporarily reduce by half the schedule of Initial Listing Fees for issuers’ Primary Equity Securities on LTSE in light of the competitive market for listings and the ongoing disruptions caused by the global COVID-19 pandemic.⁴ The Initial Listing fees would revert to their prior levels beginning on January 1, 2022.

1. Initial Listing Fee

The Initial Listing Fee in LTSE Rule 14.601(a)(1) is determined based on the market capitalization of the Company when it lists on the Exchange.⁵

The amount of such fee is set forth in the fee table LTSE Rule 14.601(a)(3). The Initial Listing Fee is prorated based on the number of trading days in the year remaining at the time of a Company’s initial listing.⁶ The proposed rule change would reduce the Initial Listing Fee in each listing tier for the remainder of 2021 by 50% while also retaining the proration calculation as set forth in the Rule.⁷ Thus, for example, a Company with market capitalization up to \$1 billion listing on LTSE on May 31, 2021, would have an Initial Listing Fee of \$44,642.50 (\$75,000 × 150/252).⁸ Prior to the proposed rule change, the Initial Listing Fee would have been \$89,285.00 (\$150,000 × 150/252).

Beginning January 1, 2022, the Initial Listing Fees and Annual Listing Fees would revert to the levels as originally adopted in Rule 14.601.⁹

The Exchange believes that it is appropriate to temporarily reduce the listing fees amount by half for the remainder of 2021. The market for listings is highly competitive and the Exchange believes that a temporary

⁴ “Primary Equity Security” means a Company’s first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (“ADRs”) or Shares (“ADSs”). See Rule 14.002(a)(24).

⁵ See *supra* note 3.

⁶ See LTSE Rule 14.601(a)(1)(iv).

⁷ The Annual Listing Fee, which would be assessed for calendar year 2022 for a Company listing on LTSE in 2021, is not affected by the proposed rule change.

⁸ May 31, 2021 is the 150th trading day out of a total of 252 trading days in calendar year 2021.

⁹ See *supra* note 3.

reduction in fees is appropriate at this time as the Exchange is attracting new listings. The Exchange does not believe that the proposed temporary reduction in its Initial Listing Fees will have any adverse impact on the amount of funds available for its regulatory program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act¹² because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the temporary reduction for the remainder of 2021 of the Initial Listing Fee is reasonable in view of the highly competitive market for listings and the disruptions faced by Companies as a result of the global COVID-19 pandemic. The benefits to a Company, its shareholders and stakeholders from pursuing long-term value creation were discussed extensively in the background and rationale for LTSE's Long-Term Policies.¹³ While LTSE believes that the current environment reinforces the importance for a Company to demonstrate its commitment to long-termism and the Long-Term Policies set forth in Rule 14.425, the Exchange also believes that a temporary reduction in fees is appropriate in the current economic environment. The proposed rule change applies the reduction in fees equitably in that all price tiers are reduced by 50% and the reduced Initial Listing Fee is available to all Companies

that elect to list on LTSE in calendar year 2021.

Additionally, the Exchange operates in a highly competitive market for the listing of Primary Equity Securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. A temporary reduction in price contributes to the competitive marketplace. The Exchange believes therefore that the proposed rule change supports an open market and the national market system, and is consistent with the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

LTSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would establish a temporary reduction in the schedule of Initial Listing Fees.

The market for listing services is highly competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed rule change imposes a burden on competition.

Intramarket Competition. The proposed rule change would establish a temporarily-reduced Initial Listing Fee that will be charged to all Companies listing on LTSE on the same basis. The Exchange does not believe that the proposed, temporary fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which issuers can readily choose to list securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Consequently, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also notes that other listing venues adjust their fees from time to time.¹⁴

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)¹⁵ of the Act and paragraph (f) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 No. SR-LTSE-2021-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File No. SR-LTSE-2021-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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

(December 1, 2020) (Nasdaq's Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain Annual Listing Fees).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Securities Exchange Act Release No. 86327 (July 8, 2019), 84 FR 33293 (July 12, 2019).

¹⁴ See, e.g., Securities Exchange Act Release No. 90519 (November 25, 2020), 85 FR 77324

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 No. SR-LTSE-2021-03, and should be submitted on or before June 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11612 Filed 6-2-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92057; File No. SR-CBOE-2021-034]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 3.54 and Rule 3.10

May 27, 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 May 20, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6)

thereunder.⁴ 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 Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 3.54 and Rule 3.10. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 3.54 in connection with a Designated Primary Market-Maker ("DPM") Designee.

Pursuant to Rule 3.54(a), a DPM may act as a DPM solely through its DPM Designees. A "DPM Designee" is an individual who is approved by the Exchange to represent a DPM in its capacity as a DPM. An individual must satisfy various requirements, which are included in Rule 3.54(b), in order to be a DPM Designee of a DPM. Specifically, current Rule 3.54(b)(2) provides that, as one of the requirements, the individual must be a Responsible Person of the DPM. Additionally, pursuant to current Rule 3.9(a), each Trading Permit Holder ("TPH") organization that is the holder of a Trading Permit that provides electronic access to the Exchange must designate at least one individual as the Responsible Person for that TPH organization. The Exchange notes that

Off-Floor DPMs, which is a DPM authorized to function remotely away from the Exchange's trading floor,⁵ must hold Trading Permits that provide electronic access to the Exchange. Rule 3.9(a) provides that a Responsible Person must represent the TPH organization with respect to a TPH organization's electronic Trading Permit(s) in all matters relating to the Exchange, and must be a U.S.-based officer, director or management-level employee of the TPH organization, who is responsible for the direct supervision and control of Associated Persons of that TPH organization. Rule 3.9(b) provides that each TPH organization must designate an individual nominee to represent the organization with respect to each Floor Broker Trading Permit or Market-Maker Floor Trading Permit in all matters relating to the Exchange. Thus, an On-Floor DPM, which operates on the Exchange's trading floor,⁶ is required to have a nominee for its Market-Maker Floor Trading Permit. Rule 3.9(b) provides, among other things, that each nominee of a TPH organization is required to be registered as a Market-Maker if holding a Market-Making Trading Permit, have authorized trading functions, and perform Exchange-approved trading functions only on behalf of one TPH organization. As a result, a nominee is required to be materially involved in the daily operation of the Exchange business activities of the TPH organization for which the person is a nominee.

Rule 3.10(a) requires, among other things, any individual designated to act as a Responsible Person or nominee desiring to act in one or more of the trading functions authorized by the Rules of the Exchange ("Rules", and individually, "Rule") to submit an application to the TPH Department in a form and manner prescribed by the Exchange. Additionally, Rule 3.10(d) provides that the TPH Department shall investigate, among other applicants, each applicant applying to be a Responsible Person or nominee (with the exception of any associated person applicant that is a current Trading Permit Holder, Responsible Person or nominee, any applicant that was a Trading Permit Holder, Responsible Person or nominee within 9 months prior to the date of receipt of that applicant's application by the TPH Department, and any Trading Permit Holder, Responsible Person, nominee or associated person applicant that was

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Rule 1.1, Definition of "Designated Primary Market-Maker and DPM".

⁶ See id.

investigated by the TPH Department within 9 months prior to the date of receipt of that applicant's application by the TPH Department).

The Exchange previously restructured its Trading Permits and Rules regarding Trading Permits in connection with a 2019 technology migration.⁷ Prior to this restructuring and the above-described Rules in their current form, all TPH organizations (both electronic and floor-based) were required to designate an individual nominee to represent the organization with respect to that Trading Permit in all matters relating to the Exchange and a nominee could represent either an electronic or floor-based DPM as a DPM Designee. Now, only floor-based TPHs are required to designate a nominee while TPHs that hold a Trading Permit that provides electronic access to the Exchange (including those designated as Off-Floor DPMs only) are required to designate a Responsible Person. Upon the migration-related restructuring of its Rules, the Exchange intended to require a designation of a nominee only for floor-based Trading Permits and that TPH organizations holding electronic permits would be required to designate a Responsible Person and, as such, intended to reference "Responsible Person", where appropriate in the Rules, alongside references to "nominees".⁸ In the filing that revised the Rule governing DPM Designees for the migration,⁹ the Exchange inadvertently removed the reference to nominee in the Rule governing DPM Designees, and the Rule now, unintentionally, provides that a DPM Designee must be a Responsible Person of the DPM, without regard to whether the DPM is an On-Floor or Off-Floor DPM. This poses an unnecessary regulatory burden for On-Floor DPMs, who would not otherwise be required to designate a Responsible Person as a DPM Designee if not for the inadvertent deletion of the reference to "nominee" in Rule 3.54. Therefore, the proposed rule change amends the DPM Designee requirements in proposed Rules

3.54(b)(1) and (2) to be clear that, for an Off-Floor DPM, at least one individual must be a Responsible Person of the DPM, and, for an On-Floor DPM, the individual must be a nominee of the DPM or an affiliate of the DPM, as was the requirement for an On-Floor DPM up until the fourth quarter of 2019 when the Exchange inadvertently removed the reference to nominees in Rule 3.54(b). The proposed rule change also eliminates the DPM Designee requirement in current Rule 3.54(b)(1) that an individual must be approved to be a Trading Permit Holder. A Responsible Person is not required to be approved as a Trading Permit Holder and the Exchange did not intend upon the migration-related restructuring of its Rules for a Responsible Person that is a DPM Designee to otherwise be approved as a Trading Permit Holder. Nominees are already (and will continue to be) required to be approved as Trading Permit Holders pursuant to Rule 3.9(b)(5). As a result, the Exchange believes that the elimination of this provision will mitigate any potential confusion regarding DPM Designee requirements.

Additionally, as described above, a Responsible Person must be a U.S.-based officer, director or management-level employee of the TPH organization, who is responsible for the direct supervision and control of Associated Persons of that TPH organization. Unlike a nominee, a Responsible Person is not required to have authorized trading functions on behalf of the DPM. A Responsible Person at the executive or managerial level might not be involved in the day-to-day trading activities of the DPM. Therefore, the Exchange proposes to update Rule 3.54(b)(1) so that an Off-Floor DPM may also designate individuals as DPM Designees that are involved in the performance of trading functions on behalf of the DPM, much like that of a nominee for an On-Floor DPM, as proposed. Specifically, the proposed rule change provides that, if at least one individual satisfies the Responsible Person requirement, then an Off-Floor DPM may designate additional individuals as DPM Designees that are not required to be Responsible Persons but must be involved in the day-to-day trading of the DPM's appointed classes and otherwise satisfy the DPM Designee requirements (in subparagraphs (b)(2) through (5)). As a result, an Off-Floor DPM will still be required to have a Responsible Person DPM Designee but will also be able to identify an additional DPM Designee that is more intimately involved in the actual daily trading in the DPM's appointed classes,

which is more aligned with the role of a nominee of an On-Floor DPM.

Lastly, the proposed rule change amends Rules 3.10(a) and (d) to include the term DPM Designees among the list of individuals required to apply to the TPH Department of the Exchange and among the list of individual applicants that the TPH Department must investigate pursuant to the application process. The proposed rule change ensures that the Off-Floor DPM Designees that are not necessarily required to be Responsible Persons, as proposed, must still go through the Exchange's application process.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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)¹² 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 removes impediments to and perfects the mechanism of a free and open market and national market system because it removes an unnecessary (and inadvertent) regulatory burden for On-Floor DPMs that are required, by nature of their on-floor Market-Maker position, to have a nominee pursuant to Rule 3.9 but do not hold Trading Permits that provide electronic access to the Exchange and are therefore not automatically required to designate a Responsible Person pursuant to Rule 3.9. As such, the proposed rule change allows an On-Floor DPM to designate a nominee as a DPM Designee, for which each On-Floor DPM must already have

⁷ See Securities Exchange Act Release No. 87377 (October 21, 2019), 84 FR 57500 (October 25, 2019) (SR-CBOE-2019-099).

⁸ See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059), which provided that, upon migration, a "DPM, like all member organizations, will continue to be required to maintain at least one nominee (or Responsible Person) and may choose to maintain multiple nominees (or Responsible Persons)", and that the Exchange "will require a designation of a nominee only for floor-based Trading Permits. TPH organizations that hold electronic permits will be required to designate a "Responsible Person", who must be affiliated with the TPH".

⁹ See *id.*

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² *Id.*

in place to represent its Market-Maker Floor Trading Permit(s), instead of having to take additional steps to identify and designate a Responsible Person just to qualify as a DPM Designee. The proposed rule change also reduces any potential confusion for investors by eliminating an unnecessary and redundant provision that DPM Designees must be approved as Trading Permit Holders, as this is not a requirement for Responsible Persons (nor did the Exchange otherwise intend to be a requirement for Off-Floor DPM Designees) and is already, and will continue to be, a requirement for all nominees pursuant to the Rule governing nominee requirements. The Exchange believes that nominees and Responsible Persons are qualified, pursuant to the Rules, to respectively represent an On-Floor DPM or Off Floor DPM. Additionally, the Exchange believes that the proposed rule change does not raise any new or novel issues nor affect the protection of investors because the Rules in effect prior the fourth quarter of 2019 provided that DPM Designees were required to be nominees, and TPH organizations with Floor Trading Permits Trading are still required to designate nominees pursuant to Rule 3.9.

The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system because it allows for an Off-Floor DPM to designate as a DPM Designee an individual who is more intimately involved in the daily trading functions and performance of the DPM in its appointed classes, while also still having a DPM Designee that is a Responsible Person. Although a Responsible Person is qualified to represent the DPM in all Exchange matters, given the more managerial and supervisory level requirements to be a Responsible Person, such an individual might not operate day-to-day trading functions in a DPM's appointed classes. As such, an Off-Floor DPM will be able to have a DPM Designee that is more materially involved in the daily trading operation of the DPM and have authorized trading functions and perform those functions on behalf of the DPM. The Exchange believes this will provide additional assurance that a DPM may meet its quoting requirements and other Market-Maker obligations in its appointed classes and better align the level of operational responsibility required for an Off-Floor DPM Designee with that of an On-Floor DPM Designee, as proposed. For this

reason, too, the Exchange also believes that proposed rule change furthers the objectives of Section 6(c)(3) of the Act,¹³ which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its Trading Permit Holders and person associated with Trading Permit Holders. The proposed rule change also ensures that every individual designated to represent a DPM pursuant to the Rules must continue to go through the Exchange's application and investigation process.

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 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change requiring a DPM Designee to be a nominee applies equally to all On-Floor DPMs equally, and the proposed rule change allowing an Off-Floor DPM to have additional DPM Designees required to be involved in the day-to-day operation of the DPM in its appointed classes applies equally to all Off-Floor DPMs.

The Exchange does not believe that the proposed rule change 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 only affects DPMs of the Exchange and the requirements and process regarding their designees. The proposed rule change is not intended to address any competitive issues, but rather to more appropriately align the requirements for individuals acting on behalf of DPMs with respect to their activity on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2021-034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 15 U.S.C. 78f(c)(3).

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-2021-034 and should be submitted on or before June 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11613 Filed 6-2-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92044; File No. SR-FINRA-2021-012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Per-Transaction Fee for Late and Corrective Reports to the FINRA/Nasdaq TRF and To Increase the Participation Fee

May 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 26, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620A to eliminate the per-transaction fee for late reports and corrective transactions that is currently imposed on non-Retail Participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the "FINRA/Nasdaq TRF Carteret") and the FINRA/Nasdaq Trade Reporting Facility Chicago (the "FINRA/Nasdaq TRF Chicago") (collectively, the "FINRA/Nasdaq TRF") and to increase the Participation Fee to account for the overhead costs associated with processing late and corrective transaction reports.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by Nasdaq, Inc. ("Nasdaq"). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and Nasdaq entered into a

limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/Nasdaq TRF. Nasdaq, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRF's business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

Pursuant to FINRA Rule 7620A, Participants⁵ are charged fees and may qualify for fee caps for reporting to the FINRA/Nasdaq TRF. Nasdaq administers these rules on behalf of FINRA⁶ in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF. In addition, pursuant to the contractual arrangements establishing the FINRA/Nasdaq TRF, Nasdaq collects and is entitled to all fees on behalf of the FINRA/Nasdaq TRF.

Currently, non-Retail Participants are charged a per-transaction fee for late and corrective transaction reports. Specifically, the FINRA/Nasdaq TRF imposes a "Late Report—T+N" fee of \$0.288 per trade on the Executing Party⁷ for trade reports submitted one or more days after the date of the trade (T+N). In addition, Participants are charged \$0.25 per trade to correct previously submitted trade reports. The reporting party is charged the fee when the correction is due to cancellation of a trade execution, a reporting error, or an "inhibit" or a "kill" transaction. Both parties to the trade are charged the fee when the correction is due to "break" or "decline" transactions. The FINRA/Nasdaq TRF assesses these fees primarily to address its administrative

⁵ The term "Trade Reporting Participant" or "Participant" is defined as any member of FINRA in good standing that uses the System. See FINRA Rule 7210A(k).

⁶ FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

⁷ Supplementary Material .01 of FINRA Rule 7620A defines "Executing Party (EP)" as the member with the trade reporting obligation under FINRA rules. Under FINRA Rule 6380A(b), in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

burden of processing error corrections and late submissions.

Historically, particularly when trade reporting was more manual in nature and trade volume was lower, a per-transaction fee was appropriate because the FINRA/Nasdaq TRF's efforts to address late and erroneous reports were discrete and the costs of those efforts could be more readily allocated to individual Participants. Today, the costs to the FINRA/Nasdaq TRF of processing errors and late trade reports no longer correlate directly to the number or size of late trade reports or corrective transactions. In recent years, trade reporting activity on the FINRA/Nasdaq TRF has grown substantially, and often if trade reporting errors occur, they will be large in number (e.g., where such errors are due to a systems coding error). However, late reports and corrective transactions that Participants submit to the FINRA/Nasdaq TRF electronically through FIX may not necessarily require substantial time or effort for the FINRA/Nasdaq TRF operations team to address, even if they involve a large number of trades, because the process for addressing reports submitted in this manner is now largely automated. By contrast, even a small number of late or corrective transaction reports may require significant operational support to address if they involve batch uploads or manual submissions, or if the errors are complex to fix. In sum, the costs to the FINRA/Nasdaq TRF of addressing late or erroneous trade reports no longer correlate directly on a per trade basis. For example, a Participant with upload capabilities may spend hours working with Nasdaq Operations to properly format an upload file, whereas a Participant that tests a large standardized FIX submission for late or corrective activity in the Nasdaq Test Facility may replicate the entry in production in seconds or minutes with no Nasdaq Operations support.

Rather than continue to assess a fee that does not correlate to the actual costs of processing a Participant's late reports or error corrections, or attempt the complex and burdensome task of allocating those actual costs to a Participant based upon its specific late report or correction scenario, Nasdaq, as the Business Member, proposes instead to treat these costs as general overhead that all non-Retail Participants will bear as part of the monthly Participation Fee.

Currently, the FINRA/Nasdaq TRF charges its Participants (other than Retail Participants) a \$350 per month Participation Fee, which exists to "defray certain shared and common costs associated with the operation of the FINRA/Nasdaq TRF, including

overhead costs and the costs of developing, maintaining, and upgrading shared technology."⁸ The Participation Fee ensures that all non-Retail Participants in the FINRA/Nasdaq TRF—both large and small—bear at least some baseline responsibility for the upkeep and administration of the facilities.⁹

Nasdaq, as the Business Member, believes that treating the costs of processing Participants' late or corrective transaction reports as overhead and incorporating them in the Participation Fee is appropriate because such costs are necessary for the proper administration of the FINRA/Nasdaq TRF. The FINRA/Nasdaq TRF must devote staff and other resources to processing late and corrective transaction reports regardless of the total number or frequency of such reports. Nasdaq estimates that in 2020, the FINRA/Nasdaq TRF incurred approximately \$740,000 to provide operational, business, and development support for late and corrective activity. This support comprised the equivalent of three full-time employees, customer technical guidance, FIX testing support, upload testing and processing support, system and trade processing review, and trade review. In addition, a majority of FINRA/Nasdaq TRF Participants submitted late or corrective transaction reports last year. Nasdaq notes that more than 60 percent of Participants incurred fees for late or corrective transaction reports at least once in 2020. Specifically, in 2020, 371 firms submitted a total of 1,248,568 cancellations and 298 firms submitted a total of 976,228 late reports to the FINRA/Nasdaq TRF.¹⁰ As such, Nasdaq believes it would be equitable for the FINRA/Nasdaq TRF to allocate these costs among all non-Retail Participants going forward.

To account for the costs of addressing late and erroneous trade reports, Nasdaq, as the Business Member, proposes to increase the Participation Fee for all Participants (other than Retail Participants, which are not subject to

the fee under current rules) from \$350 to \$450 per month. The proposed \$100 increase is based on \$740,000 operating costs for three full-time equivalent staff and other resources divided across the 620 non-Retail Participants on the FINRA/Nasdaq TRF.

FINRA and Nasdaq, as the Business Member, do not believe that the proposed rule change will diminish incentives for Participants to report their trades correctly and in a timely manner, as required by FINRA rules. The FINRA/Nasdaq TRF late and corrective transaction report fees are primarily intended to address the administrative burden of processing corrections and late trade reports. While these fees may generally encourage the correct reporting of transaction data, they are not intended to serve a disciplinary function, even for Participants that report trades erroneously or late in large numbers. Separate and apart from the FINRA/Nasdaq TRF late and corrective transaction report fees, FINRA rules require Participants to report their trades in a timely manner, and firms have an ongoing obligation to report trade information accurately and completely.¹¹ To the extent that a Participant fails to comply with those rules, the Participant may be subject to a FINRA enforcement action or sanctions. The specter of such enforcement actions and sanctions—rather than the FINRA/Nasdaq TRF per-transaction correction and late fees—will continue to provide an adequate incentive for Participants to endeavor to avoid large-scale trade reporting errors and late reports.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2021.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹² which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. As an initial matter, all non-Retail Participants are subject to the

⁸ See Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545, 42548 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029).

⁹ See *supra* note 8.

¹⁰ Late and corrective transaction reports nonetheless make up a very small percentage of overall trade reporting activity on the FINRA/Nasdaq TRF. For example, in 2020, 2.2 million late or corrective transactions were processed compared to over three billion trade executions reported to the FINRA/Nasdaq TRF. In addition, in 2020, 99.94% of trades reported to the FINRA/Nasdaq TRF were reported within 10 seconds, in compliance with FINRA rules. By way of comparison, in 2020, 99.82% of trades reported to the FINRA/NYSE TRF were reported within 10 seconds.

¹¹ See, e.g., FINRA Rules 6380A(a)(1) and 7260A. FINRA notes that firms that report to the FINRA/NYSE TRF have the same obligations under FINRA rules (see FINRA Rules 6380B(a)(1) and 7260B); however, the FINRA/NYSE TRF does not charge a separate fee for late or corrective transaction reports. As noted above, the rates of timely reporting to the FINRA/Nasdaq TRF and FINRA/NYSE TRF in 2020 were 99.94% and 99.82%, respectively.

¹² 15 U.S.C. 78o-3(b)(5).

same fees and access to the FINRA/Nasdaq TRF is offered on fair and nondiscriminatory terms.

The Proposal Is Reasonable

Nasdaq, as the Business Member, believes the proposals are reasonable to: (i) Eliminate the per-transaction fee for late reports and corrective transactions; and (ii) instead allocate the costs of late and corrective activity as overhead to all non-Retail Participants by increasing the monthly Participation Fee.

As discussed above, the costs that the FINRA/Nasdaq TRF incurs to process corrective and late reports no longer correlate directly to the number or size of such reports that a Participant submits. Similarly, these costs have become difficult to correlate to a particular Participant given the idiosyncratic nature of many late reports and corrective transactions and the varying levels of operational support that are required to address them. Finally, as noted above, a majority of non-Retail Participants submitted late or corrective transaction reports at least once in 2020. Accordingly, Nasdaq believes that it would be reasonable and equitable to require all non-Retail Participants to bear these costs as part of the overhead costs of operating the FINRA/Nasdaq TRF.

The Proposal is an Equitable Allocation of Fees and Is Not Unfairly Discriminatory

Nasdaq, as the Business Member, believes that the proposed rule change will allocate fees fairly among FINRA/Nasdaq TRF Participants.

As a threshold matter, Nasdaq believes that the existing formula is no longer appropriate because it may result in a Participant paying a fee that does not correlate to the actual costs of processing the Participant's late or corrective transaction reports. Currently, a Participant may incur a large fee to correct a coding or other system error that impacts a large number of trades, even though the FINRA/Nasdaq TRF is able to facilitate correction of the error on an automated basis with minimal operational support. Meanwhile, another Participant may incur a small fee to correct an error in a single trade even though the error may be complex and require significant time and support to fix.

Nasdaq intends for the proposal to allocate the costs of processing late and corrective reports in a manner that is more equitable to Participants than the existing formula. As discussed above, Nasdaq believes that these costs are appropriately classified as overhead in that: (i) They involve staff and other

resources that the FINRA/Nasdaq TRF dedicates for use in processing late and corrective reports regardless of the frequency or size of such reports; (2) these resources and costs are necessary for the proper operation of the FINRA/Nasdaq TRF; and (3) the majority of Participants make use of such resources. Additionally, these costs are difficult to correlate accurately to particular Participants due to the idiosyncratic nature of many late or corrective transaction reports and the varying levels of operational support that they require. The proposed rule change would avoid this difficulty by requiring all non-Retail Participants to bear these costs equally.

Going forward, non-Retail Participants with large numbers of late or corrective transaction reports will benefit from the proposed rule change because the additional amount that they pay in the Participation Fee will be less than the per-transaction late or corrective fee they would pay under the current formula. By contrast, non-Retail Participants with no or a small number of late or corrective transaction reports might incur a larger fee than they do now, through the increase in the Participation Fee. Nasdaq, as the Business Member, believes that these potentially disparate effects are not unfairly discriminatory because any Participant has the potential to submit late or corrective transaction reports in the future, even if they have not done so in the past, and thus all have the potential to benefit from the proposed rule change. For example, 13% of firms with late or corrective activity in 2020 did not have any late or corrective activity in 2019. Conversely, 15% of firms with late or corrective activity in 2019 did not have any late or corrective activity in 2020.

Moreover, the proposed \$100 monthly increase in the Participation Fee is small in an absolute sense, as well as small relative to the overall fees that Participants typically incur on the FINRA/Nasdaq TRF. As such, any adverse impact of the proposed rule change on Participants that currently pay little or no fees for late or corrective activity is likely to be nominal. Nasdaq notes that the FINRA/Nasdaq TRF has not raised the Participation Fee since the fee was first established in 2018, despite the fact that the costs of operating the FINRA/Nasdaq TRF generally grow one to two percent per year (in keeping with cost of living adjustments), and the FINRA/Nasdaq TRF continues to invest in developing, maintaining, and upgrading its technology.

Nasdaq does not believe that it is inequitable or unfairly discriminatory to charge the same fee to each non-Retail Participant to cover the costs of addressing late or corrective activity, even though some Participants may need to address such activity more frequently or at higher volumes than others. The existing Participation Fee already allocates other overhead costs of operating the FINRA/Nasdaq TRF in the same manner, even though some Participants may be more heavy users of the TRF, and thus may account for more electric power, computer equipment, and other overhead costs than other Participants.

Finally, Nasdaq believes that it is not inequitable or unfairly discriminatory to exempt Retail Participants from the increased Participation Fee. Under current rules, Retail Participants are exempt from paying the Participation Fee as well as the per-transaction fee for late and corrective transaction reports.¹³

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

Nasdaq, as the Business Member, does not believe that the proposed rule change will place any category of Participants at a competitive disadvantage. The proposed increase in the Participation Fee will apply equally to all Participants (other than to Retail Participants, which as noted above, are exempt from paying the Participation Fee under current rules). The proposed rule change will ensure non-Retail Participants share responsibility for the costs of correcting trade reports or reporting late trades as they already do for other types of overhead costs. Additionally, Participants are free to report their trades to another FINRA trade reporting facility ("TRF") to the extent they believe that the assessed fees are not attractive. Price competition between the TRFs is substantial, with trade reporting activity and market share moving between them in reaction to fee changes.

¹³ See FINRA Rule 7620A. See also Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029) and Securities Exchange Act Release No. 88135 (February 6, 2020), 85 FR 8079 (February 12, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-004).

Intermarket Competition

Nasdaq believes that the proposed rule change will not impose a burden on competition among the TRFs because use of the FINRA/Nasdaq TRF is completely voluntary and subject to competition.¹⁴ Nasdaq, as the Business Member, believes that the proposed rule change will strengthen the competitive position of the FINRA/Nasdaq TRF with respect to competing TRFs and will support increased competition in the market.

Moreover, Nasdaq, as the Business Member, believes that the proposed rule change is necessary for the FINRA/Nasdaq TRF to retain trade reporting business and to compete for new business since customers evaluate product and pricing when they evaluate where to submit their trade reports. Nasdaq notes that the competing TRF does not charge a separate fee to report late trades or to correct previously submitted trade reports, and Nasdaq believes that the proposed rule change will reduce any price differential between the competing TRFs in this regard. Accordingly, Nasdaq believes that the risk that this proposed rule change will impose an undue burden on intermarket competition is extremely limited.

If market participants determine that the changes proposed herein are inadequate or unattractive, it is likely that the FINRA/Nasdaq TRF will lose market share as a result. Accordingly, Nasdaq believes that the proposed rule change will not impair the ability of the other TRF to maintain its competitive standing.

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) of the Act¹⁵ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2021-012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-FINRA-2021-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-

2021-012 and should be submitted on or before June 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11608 Filed 6-2-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34289; File No. 812-15170]

Franklin Templeton Co-Investing Interval Fund, et al.

May 27, 2021.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies and business development companies ("BDCs") to co-invest in portfolio companies with each other and with certain affiliated investment funds.

APPLICANTS: Franklin Templeton Co-Investing Interval Fund ("Existing Regulated Fund"); Franklin Blackhorse, L.P., Franklin Talos, L.P., Franklin Ventures Investments, L.P.—FVP Series 1, Franklin Ventures Investments, L.P.—FVP Series 2, and Franklin Ventures Investments, L.P.—FVP Series 3 (together, "Existing Affiliated Funds"); and Franklin Advisers, Inc. ("Existing Adviser").

FILING DATES: Applicants filed the application on October 8, 2020, and amended it on April 14, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at Secretaries-Office@sec.gov and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 21, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers,

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁴ Because the FINRA/Nasdaq TRF and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: c/o Mike Mundt, by email to *mmundt@stradley.com*.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819 or Lisa Reid Ragen, Branch Chief at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the “Order”) to permit, subject to the terms and conditions set forth in the application (the “Conditions”), a Regulated Fund¹ and one or more other Regulated Funds and/or one or more Affiliated Funds² to enter into Co-

Investment Transactions with each other. “Co-Investment Transaction” means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub (as defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.³

Applicants

2. The Existing Regulated Fund is a Delaware statutory trust that will be registered under the Act as a non-diversified closed-end management investment company and intends to operate as an interval fund under rule 23c–3 of the Act. Investment decisions for the Existing Regulated Fund will be made by the Adviser in accordance with the policies approved by the Board,⁴ including members who are not “interested persons” within the meaning of section 2(a)(19) (the “Independent Directors”).⁵

3. Each of the Existing Affiliated Funds is a Delaware limited partnership. Each of the Existing Affiliated Funds would be an investment company but for section 3(c)(1) of the Act, except for Franklin Talos, LP., which would be an investment company but for section 3(c)(7) of the Act.

4. The Existing Adviser is a California corporation that is registered with the Commission as an investment adviser under the Advisers Act. The Existing Adviser serves as the investment adviser to each Existing Affiliated Fund and will serve as the primary investment adviser to the Existing Regulated Fund pursuant to an investment advisory agreement.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.⁶ Such a subsidiary may be

of real properties, and (iii) that intends to participate in the Co-Investment Program.

³ All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

⁴ “Board” means the board of directors (or the equivalent) of the applicable Regulated Fund.

⁵ No Independent Director will have any direct or indirect financial interest in any Co-Investment Transaction or any interest in any portfolio company, other than through an interest (if any) in the securities of the Regulated Funds.

⁶ “Wholly-Owned Investment Sub” means an entity (i) that is wholly-owned by a Regulated Fund

prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the applicable parent Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

6. Applicants represent that the Advisers have established rigorous processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

7. Opportunities for Potential Co-Investment Transactions may arise when investment advisory personnel of an Adviser becomes aware of investment opportunities that may be appropriate for a Regulated Fund and one or more other Regulated Funds and/or one or more Affiliated Funds. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably

(with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary (defined below), maintains a license under the SBA Act (defined below) and issues debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to this application; and (iv) that (a) would be an investment company but for section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, (b) relies on rule 3a–7 under the Act, or (c) qualifies as a REIT within the meaning of section 856 of the Code because substantially all of its assets would consist of real properties. The term “SBIC Subsidiary” means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the “SBA”) to operate under the Small Business Investment Act of 1958, as amended, (the “SBA Act”) as a small business investment company.

¹ “Regulated Funds” means the Existing Regulated Fund and any Future Regulated Funds. “Future Regulated Fund” means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) is an Adviser, and (c) that intends to participate in the Co-Investment Program. “Adviser” means the Existing Adviser together with any existing or future investment adviser (or its successor) that (i) controls, is controlled by or is under common control with the Existing Adviser, (ii) is registered as an investment adviser under the Advisers Act and (iii) is not a Regulated Fund (defined below) or a subsidiary of a Regulated Fund. The term “successor,” as applied to each Adviser, means an entity which results from a reorganization into another jurisdiction or change in the type of business organization.

² “Affiliated Fund” means any Existing Affiliated Fund or any Future Affiliated Fund. “Future Affiliated Fund” means any entity (i) whose investment adviser (and sub-adviser(s), if any) are Advisers, (ii) that either (a) would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, (b) relies on rule 3a–7 under the Act, or (c) does not meet the definition of investment company under the Act and qualifies as a real estate investment trust (“REIT”) within the meaning of section 856 of Sub-Chapter M of the Internal Revenue Code of 1986, as amended (the “Code”), because substantially all of its assets would consist

designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies⁷ and any Board-Established Criteria⁸ of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

8. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser's

⁷ "Objectives and Strategies" means a Regulated Fund's investment objectives and strategies, as described in its most current registration statement on Form N-2, other current filings with the Commission under the Securities Act of 1933 (the "Securities Act") or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

⁸ "Board-Established Criteria" means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to such Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

investment committee will approve an investment amount. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the applicable Advisers' written allocation policies and procedures, by the applicable Adviser's investment committee.⁹ The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its "Internal Order." The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.¹⁰

9. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the "External Submission"), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.¹¹ If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that

⁹ The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

¹⁰ "Required Majority" means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

¹¹ The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

"Eligible Directors" means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

the Advisers will establish, implement and maintain.¹²

B. Follow-On Investments

10. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments¹³ in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested and continue to hold an investment.

11. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.¹⁴ If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

12. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under

¹² The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

¹³ "Follow-On Investment" means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

¹⁴ "Pre-Boarding Investments" are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

Condition 8(b) if it is (i) a Pro Rata Follow-On Investment¹⁵ or (ii) a Non-Negotiated Follow-On Investment.¹⁶ Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

13. Applicants propose that Dispositions¹⁷ would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.¹⁸

¹⁵ A "Pro Rata Follow-On Investment" is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

¹⁶ A "Non-Negotiated Follow-On Investment" is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

"JT No-Action Letters" means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

¹⁷ "Disposition" means the sale, exchange or other disposition of an interest in a security of an issuer.

¹⁸ However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated

14. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition¹⁹ or (ii) the securities are Tradable Securities²⁰ and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

15. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten

Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.*, in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

¹⁹ A "Pro Rata Disposition" is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

²⁰ "Tradable Security" means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

16. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as required under Condition 15; provided however, that Condition 15 will not apply to a Regulated Fund during any time which the Holders in the aggregate own 100% of the Shares of such Regulated Fund.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit participation by a registered investment company and an affiliated person in any "joint enterprise or other joint arrangement or profit-sharing plan," as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and Rule 17d-1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d-1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in

such transactions fall within the category of persons described by rule 17d-1 and/or section 57(b), as modified by rule 57b-1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) an Adviser, that is either the Existing Adviser or an entity that controls, is controlled by, or under common control with the Existing Adviser, will be the investment adviser (and sub-adviser, if any) to each of the Regulated Funds and the Affiliated Funds, and (ii) the Adviser manages each of the Regulated Funds pursuant to its investment advisory or sub-advisory agreement. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds in a manner described by section 57(b) and related to Future Regulated Funds in a manner described by rule 17d-1; and therefore the prohibitions of rule 17d-1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d-1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done

in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. Identification and Referral of Potential Co-Investment Transactions.

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. Board Approvals of Co-Investment Transactions.

(a) If an Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction

with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with: (A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or

Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect²¹ financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,²² a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.²³

²¹ For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

²² This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

²³ "Related Party" means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

"Close Affiliate" means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b-1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

"Remote Affiliate" means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;²⁴ (B) the

Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

²⁴ In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding

investment in the security in question immediately preceding the Disposition.

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d-1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial²⁵ in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act),

individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,²⁶ immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a

Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds,

²⁵ In determining whether a holding is "immaterial" for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

²⁶ To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date,

currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the

Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an "affiliated person" (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*²⁷ Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or

²⁷ Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election; provided however, that this Condition 15 will not apply to a Regulated Fund during any time which the Holders in the aggregate own 100% of the Shares of such Regulated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92019; File No. SR-FICC-2021-801]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice To Add the Sponsored GC Service and Make Other Changes

May 27, 2021.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),² notice is hereby given that on May 12, 2021, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.³ The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice consists of modifications to the FICC Government Securities Division ("GSD") Rulebook ("Rules")⁴ in order to (i) add a new service offering, which would allow a Sponsoring Member to submit for clearing Repo Transactions with its Sponsored Members on securities that are represented by Generic CUSIP Numbers and held under a triparty custodial arrangement (the "Sponsored GC Service"), (ii) add language to Rule 3A to allow FICC to recognize, for Capped Contingency Liquidity Facility® ("CCLF") calculation purposes, any offsetting settlement obligations as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member's CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, (iii) remove the requirement

from Section 2 of Rule 3A that a Sponsoring Member provide a quarterly representation to FICC that each of its Sponsored Members is a "qualified institutional buyer" as defined in Rule 144A of the Securities Act of 1933, as amended ("Rule 144A"), or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a "qualified institutional buyer" as specified in that paragraph, and (iv) make a clarification, certain corrections, and certain technical changes, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

FICC reviewed the proposed rule change with Sponsoring Members and Sponsored Members in order to benefit from their expertise. Written comments relating to this proposed rule change have not been received from the Sponsoring Members, Sponsored Members or any other person. FICC will notify the Commission of any written comments received by FICC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed Change

The purpose of the proposed rule change is to amend the Rules to (i) add a new service offering, the Sponsored GC Service, (ii) add language to Rule 3A to allow FICC to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account to ensure that a Sponsoring Member's CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, (iii) remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide a quarterly representation to FICC that

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ On May 12, 2021, FICC filed this advance notice as a proposed rule change (SR-FICC-2021-003) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. A copy of the proposed rule change is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

⁴ Capitalized terms not defined herein are defined in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures>.

each of its Sponsored Members is a “qualified institutional buyer” as defined in Rule 144A, or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph, and (iv) make a clarification, certain corrections, and certain technical changes, as described in greater detail below.

(i) Background

Under Rule 3A (Sponsoring Members and Sponsored Members), certain Netting Members are permitted to sponsor, as Sponsoring Members, “qualified institutional buyers” as defined by Rule 144A, and certain legal entities that, although not organized as entities specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfy the financial requirements necessary to be “qualified institutional buyers” as specified in that paragraph into FICC/GSD membership.⁵ Under Rule 3A, a Sponsoring Member is permitted to submit to FICC for comparison, Novation, and netting certain types of eligible delivery versus payment (“DVP”) securities transactions (“Sponsored Member Trades”).⁶ A Sponsoring Member is required to establish an omnibus account at FICC for its Sponsored Members’ positions arising from such Sponsored Member Trades (“Sponsoring Member Omnibus Account”), which is separate from the Sponsoring Member’s regular netting accounts.⁷ For operational and administrative purposes, FICC interacts solely with the relevant Sponsoring Member as processing agent for purposes of the day-to-day satisfaction of its Sponsored Members’ obligations to or from FICC, including their

securities and funds-only settlement obligations.⁸

The current Sponsoring Member/Sponsored Member Service (the “Service”), which has been in existence since 2005, has seen a steady increase in the number of Sponsoring Members, in the number of Sponsored Members and in the volume of Sponsored Member Trades over the past three years.⁹ One of the main benefits of the Service is that it provides Sponsoring Members with the ability to offset on their balance sheets their obligations to FICC on Sponsored Member Trades with their Sponsored Members against their obligations to FICC on other eligible FICC-cleared activity, including trades with other Netting Members.

In addition, the Service allows Sponsoring Members to take lesser capital charges for Repo Transactions with Sponsored Members than would be required were such transactions uncleared.

By alleviating balance sheet and capital constraints on Sponsoring Members, the Service allows eligible institutional firms to engage in greater activity than may otherwise be feasible, which in turn increases the liquidity available in the repo market. Such greater liquidity provides stability in the market and additionally increases potential returns for investors in both cash provider institutions and collateral provider institutions. For example, the increased liquidity the Service provides allows investors in institutional firms that act as cash provider Sponsored Members to invest more of their cash than may otherwise be possible outside of clearing, which in turn allows such investors the ability to earn a greater return as a result of their institutional firms’ participation in the Service. Likewise, for investors in institutional firms that act as collateral provider Sponsored Members, the increased liquidity ensures more consistent financing opportunities than may otherwise be available outside of clearing. Such consistent access to financing may increase the amount of cash the collateral provider institutional

firms have to deploy into other investment strategies, which in turn allows their investors the opportunity to earn a greater return as a result of the institutional firms’ participation in the Service.

FICC believes that enabling more repo transactions to clear through FICC mitigates the risk of a large-scale exit by institutional firms from the U.S. financial market in a stress scenario.¹⁰ To that point, during the recent market volatility in the first quarter of 2020, the Service in fact saw its peak volume of approximately \$564 billion, rather than a decline, and no discernable impact to volumes notwithstanding the default of a Netting Member. In addition, no Sponsored Members defaulted during that volatile period.

In recent years, FICC has taken steps to enable Sponsoring Members to submit term (rather than overnight) repo transactions for clearing. Specifically, in 2019, the Commission approved rule changes that added a new close-out mechanism and adjusted the calculation of certain funds-only settlement amounts for Sponsored Member Trades that include haircuts.¹¹ FICC believes that having more centrally cleared term repo transactions would promote the prompt and accurate clearance and settlement of securities transactions because more securities transactions would benefit from FICC’s risk management and guaranty of settlement.

FICC also believes that enabling more term (rather than overnight) repo activity in the Service can serve to help reduce repo rate volatility in the market and, in turn, help to avoid events like those that occurred in September 2019, when a temporary reduction in overnight reverse repo activity by money market funds, including through the Service, contributed in part to the repo rate volatility on those days.¹²

Although the aforementioned rule changes have resulted in some Sponsoring Members transacting term Repo Transactions with certain of their

⁵ Rule 3A, Section 3(a), *supra* note 4.

⁶ Rule 3A, Section 5, *supra* note 4. The term “Sponsored Member Trade” means a transaction that satisfies the requirements of Section 5 of Rule 3A and that is (a) between a Sponsored Member and its Sponsoring Member or (b) between a Sponsored Member and a Netting Member. Rule 1, *supra* note 4.

⁷ The term “Sponsoring Member Omnibus Account” means an Account maintained by a Sponsoring Member that contains the activity of its Sponsored Members that is submitted to FICC. A Sponsoring Member may elect to establish one or more Sponsoring Member Omnibus Accounts. Each Sponsoring Member Omnibus Account may contain activity within the meaning of clause (a) of the Sponsored Member Trade definition or activity within the meaning of clause (b) of such definition. The Sponsoring Member Omnibus Account shall be separate from the Accounts associated with the Sponsoring Member’s activity as a Netting Member except as contemplated by Sections 10, 11 and 12 of Rule 3A and under the Sponsoring Member Guaranty. Rule 1, *supra* note 4.

⁸ Rule 3A, Sections 5, 6(b), 7(a), 8(a), 8(c), 9(a), and 9(c), *supra* note 4.

⁹ In March 2017, there was one Sponsoring Member and 1,422 Sponsored Members. See Securities Exchange Act Release No. 80236 (March 14, 2017), 82 FR 14265 (March 17, 2017) (SR-FICC-2017-003). The Service currently has approximately 27 Sponsoring Members and approximately 1,894 Sponsored Members. As of March 31, 2017, the aggregate Purchase Price of outstanding Sponsored Member Trades was approximately \$32.2 billion. As of March 31, 2021, the aggregate Purchase Price of outstanding Sponsored Member Trades was approximately \$286 billion.

¹⁰ The U.S. financial market experienced such a liquidity drain from the repo market in the 2007–2008 financial crisis when the bankruptcy of Lehman Brothers gave rise to concerns among cash provider institutional firms about the creditworthiness of their borrower counterparties. See Ben S. Bernanke, *The Courage to Act: A Memoir of a Crisis and its Aftermath* 397 (2017) (discussing “the paralyzing uncertainty [on the part of repo lenders] about banks’ financial health” in 2007 and 2008).

¹¹ See Securities Exchange Act Release No. 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR-FICC-2019-007).

¹² Gara Afonso et al., Federal Reserve Bank of New York, *Staff Report No. 918: The Market Events of Mid-September 2019* (March 2020), available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr918.pdf.

Sponsored Member clients, FICC has received additional feedback from several market participants that the Service's current requirement that all Sponsored Member Trades be margined exclusively in cash through FICC's funds-only settlement process is not conducive to certain cash provider Sponsored Member clients, particularly money market funds and other mutual funds, being able to transact term Repo Transactions with their Sponsoring Members in central clearing. Specifically, money market funds and other mutual funds are not generally operationally equipped to provide or receive cash margin in connection with their term repo activity (either bilaterally or in central clearing). These funds depend on transfers of securities to maintain required margin, and typically rely on a tri-party repo clearing bank to administer the collateral management on such trades. In particular, the tri-party repo clearing bank calculates the mark-to-market change in value of the securities underlying each repo transaction and facilitates the transfer of securities necessary to ensure the value of the securities equals a specified percentage of the outstanding principal amount of the repo transaction.

In light of this feedback and in order to support more repo activity (particularly term repo activity) to be able to be transacted in central clearing, FICC is proposing to add the Sponsored GC Service, which would allow Sponsoring Members and their Sponsored Member clients to execute Repo Transactions with each other on a general collateral basis in the same asset classes as are currently eligible for Netting Members to transact in through FICC/GSD's existing GCF Repo[®] Service. Such Repo Transactions would be allowed to settle on the tri-party repo platform of a Sponsored GC Clearing Agent Bank (as defined below) in a similar manner to the way Sponsoring Members and Sponsored Members settle tri-party repo transactions with each other outside of central clearing, thereby making it more operationally efficient for them to transact Repo Transactions (particularly term Repo Transactions) with each other through FICC.

(ii) Add a New Service Offering, the Sponsored GC Service

(A) Key Parameters of the Proposed Sponsored GC Service

As described above, a Sponsoring Member would be permitted to submit to FICC for Novation the End Leg of Repo Transactions with its Sponsored Member client that would be executed

in one of a series of new Generic CUSIP Numbers that would be registered with CUSIP Global Services by FICC in connection with the proposed Sponsored GC Service (each a "Sponsored GC Trade"). The proposed schedule of securities that would be eligible under each of the new Generic CUSIP Numbers that would be established for the proposed Sponsored GC Service would be identical to the current schedule of securities that are eligible under each of the existing Generic CUSIP Numbers that is currently established for the GCF Repo Service, including (i) U.S. Treasury Securities maturing in ten (10) years or less, (ii) U.S. Treasury Securities maturing in thirty (30) years or less, (iii) Non-Mortgage-Backed U.S. Agency Securities, (iv) Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") Fixed Rate Mortgage-Backed Securities, (v) Fannie Mae and Freddie Mac Adjustable Rate Mortgage-Backed Securities, (vi) Government National Mortgage Association ("Ginnie Mae") Fixed Rate Mortgage-Backed Securities, (vii) Ginnie Mae Adjustable Rate Mortgage-Backed Securities, (viii) U.S. Treasury Inflation-Protected Securities ("TIPS") and (ix) U.S. Treasury Separate Trading of Registered Interest and Principal of Securities ("STRIPS").¹³

Consistent with FICC's processing of Repo Transactions in its existing GCF Repo Service, each Sponsored GC Trade would be required to be fully collateralized with securities eligible under the applicable Generic CUSIP Number and/or cash. However, consistent with the existing Service, Sponsoring Members and Sponsored Members would be permitted to transfer a haircut on a Sponsored GC Trade so that the value of the securities at the Start Leg (the "GC Start Leg Market Value") exceeds 100% of the initial principal balance of the Sponsored GC Trade.

Consistent with the manner in which tri-party repo transactions are settled

¹³ FICC has decided to use a new series of Generic CUSIP Numbers in connection with the proposed Sponsored GC Service rather than utilizing the existing Generic CUSIP Numbers employed for GCF Repo Transactions in order to avoid any operational processing errors that could otherwise result if a trade intended for the proposed Sponsored GC Service was inadvertently processed as a GCF Repo Transaction or vice versa. To that end, a trade submitted for the proposed Sponsored GC Service would be automatically rejected by FICC if not submitted in one of the nine new Generic CUSIP Numbers earmarked for the proposed Sponsored GC Service, and a GCF Repo Transaction would be rejected by FICC if not submitted in one of the nine Generic CUSIP Numbers dedicated to the GCF Repo Service.

today outside of central clearing, the Start Leg of a Sponsored GC Trade would settle on a trade for trade basis on a Sponsored GC Clearing Agent Bank's tri-party repo platform between the Sponsoring Member and the Sponsored Member. Novation to FICC of the End Leg of a Sponsored GC Trade would occur at the time when all of the following requirements have been satisfied on a given Business Day: (i) The trade data on the Sponsored GC Trade has been submitted to FICC by the Sponsoring Member pursuant to Rule 6A by the deadline set forth in the proposed new Schedule of Sponsored GC Trade Timeframes, (ii) the data on the Sponsored GC Trade has been compared in the Comparison System pursuant to Rule 6A, (iii) the Start Leg of the Sponsored GC Trade has fully settled at the Sponsored GC Clearing Agent Bank by the deadline set forth in the proposed new Schedule of Sponsored GC Trade Timeframes, (iv) the Sponsored GC Clearing Agent Bank has, pursuant to communication links, formats, timeframes, and deadlines established by FICC for such purpose, provided to FICC a report containing such data as FICC may require from time to time, including information regarding the specific Eligible Securities that were delivered in the settlement of the Start Leg of the Sponsored GC Trade (the "Purchased GC Repo Securities"), and (v) FICC determines that the data contained in such report matches the data on the Sponsored GC Trade submitted by the Sponsoring Member to the Comparison System.

Accrued repo interest on Sponsored GC Trades would be paid and collected by FICC on a daily basis. If on any Business Day, the market value of the Purchased GC Repo Securities is less than the GC Start Leg Market Value, then the Sponsoring Member or Sponsored Member that transferred the securities in the Start Leg (the "GC Funds Borrower") would be required deliver to FICC (and FICC would be required to deliver to the GC Funds Borrower's pre-Novation counterparty) additional Eligible Securities that are represented by the same Generic CUSIP Number as the Purchased GC Repo Securities ("GC Comparable Securities") and/or cash, such that the market value of the Purchased GC Repo Securities (inclusive of the newly transferred securities and cash) is at least equal to the GC Start Leg Market Value. If on any Business Day, the market value of the Purchased GC Repo Securities is greater than the GC Start Leg Market Value, the Sponsoring Member or Sponsored Member that received the securities in

the start leg (the “GC Funds Lender”) would be required to return to FICC (and FICC would be required to return to the relevant GC Funds Borrower) Purchased GC Repo Securities such that the market value of the remaining Purchased GC Repo Securities remains at least equal to the GC Start Leg Market Value.

Such additional securities and/or cash must be delivered within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Any securities or cash transferred by the GC Funds Borrower pursuant to these requirements would constitute Purchased GC Repo Securities, and any Purchased GC Repo Securities transferred by the GC Funds Lender pursuant to these requirements would, following such transfer, no longer constitute Purchased GC Repo Securities.

In addition, consistent with the processing of Repo Transactions in FICC’s existing GCF Repo Service, a GC Funds Borrower would be permitted to substitute for Purchased GC Repo Securities, GC Comparable Securities and/or cash within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes.

In order to facilitate settlement, FICC would direct each GC Funds Borrower and GC Funds Lender to make any payment or delivery due to FICC in respect of a Sponsored GC Trade (except for certain funds-only settlement obligations, as discussed below) directly to the relevant Member’s pre-Novation counterparty. As a result, each transfer of Purchased GC Repo Securities and daily repo interest would be made directly between the relevant GC Funds Borrower and GC Funds Lender through the tri-party repo platform of a Sponsored GC Clearing Agent Bank.¹⁴

To that end, each GC Funds Borrower and GC Funds Lender would agree that

any such direct payment or delivery discharges FICC’s obligation to make the same payment or delivery. Otherwise, all legal rights and obligations as between FICC and Sponsoring Members, and as between FICC and Sponsored Members, would be the same with respect to Sponsored GC Trades as with respect to Sponsored Member Trades in the existing Service, which is governed by Rule 3A.¹⁵

(B) Risk Management of Sponsored GC Trades

Sponsored GC Trades would be risk managed in a similar fashion to Sponsored Member Trades in the existing Service.

To mitigate market risk, the VaR Charge would be calculated for each Sponsored Member client individually based on such Sponsored Member client’s activity in the existing Service, as well as such Sponsored Member client’s activity in the proposed Sponsored GC Service. The VaR Charge for the Sponsoring Member Omnibus Account would continue to be the sum of the individual VaR Charges for each Sponsored Member client, *i.e.*, the Sponsoring Member Omnibus Account would continue to be gross margined.¹⁶ To facilitate FICC’s ability to surveil a given Sponsored Member’s FICC-cleared activity across its Sponsored GC Trades as well as its other Sponsored Member Trades within the existing Service, both with the same Sponsoring Member and across Sponsoring Members (if applicable), the same symbol would be used to identify the Sponsored Member for purposes of trade submission and risk management under the proposal.

In addition, FICC would risk manage the mark-to-market risk associated with unaccrued repo interest on a Sponsored GC Trade in the same way it manages such risk in the GCF Repo Service, namely through a proposed new GC Interest Rate Mark component of funds-only settlement. This proposed new mark would be calculated in the same manner as the GCF Interest Rate Mark is for GCF Repo Transactions.¹⁷ In light

of the application of the proposed new GC Interest Rate Mark to Sponsored GC Trades, an Interest Adjustment Payment would also be applied to account for overnight use of funds by the Sponsoring Member or Sponsored Member, as applicable, based on such party’s receipt from FICC of a Forward Mark Adjustment Payment (reflecting a GC Interest Rate Mark) on the previous Business Day.¹⁸

For liquidity risk management, Sponsored Member Trades between a Sponsoring Member and its Sponsored Member in the existing Service do not independently create liquidity risk for FICC. This is because FICC is not required to complete settlement of such Sponsored Member Trades in the event that either the Sponsoring Member or Sponsored Member defaults. In the event that the Sponsoring Member defaults, Section 14(c) of Rule 3A permits FICC to close out (rather than settle) the Sponsored Member Trades of the defaulter’s Sponsored Members.¹⁹ Likewise, if the Sponsored Member defaults, FICC is also not required to complete settlement. Rather, under Section 11 of Rule 3A, FICC may offset its settlement obligations to the Sponsoring Member against the Sponsoring Member’s obligations under the Sponsoring Member Guaranty to perform on behalf of its defaulted Sponsored Member.²⁰

As a result, to the extent a Sponsoring Member either (1) runs a matched book of Sponsored Members (*i.e.*, enters into offsetting Sponsored Member Trades with its own Sponsored Members) or (2) simply enters into Sponsored Member Trades without entering into offsetting transactions, it does not increase FICC’s liquidity risk. By contrast, if a Sponsoring Member enters into an

Interest Rate Mark shall be a positive value for the Reverse Repo Party, and a negative value for the Repo Party. If the Repo Transaction’s Contract Repo Rate is less than its System Repo Rate, then the GCF Interest Rate Mark shall be a positive value for the Repo Party, and a negative value for the Reverse Repo Party. The term “GCF Interest Rate Mark” means, as regards a GCF Net Settlement Position, the sum of all the GCF Interest Rate Mark Payments on each of the GCF Repo Transactions that compose such position. Rule 1, *supra* note 4.

¹⁸ No other components of funds-only settlement would be necessary to apply to Sponsored GC Trades because, as described above, (i) all Sponsored GC Trades would novate after the settlement of the Start Legs of such trades (*i.e.*, not during the Forward-Starting Period), (ii) mark-to-market changes in the value of the securities transferred under Sponsored GC Trades would be managed by the Sponsored GC Clearing Agent Bank on FICC’s behalf (consistent with the manner in which GCF Repo Transactions are processed today), and (iii) the accrued repo interest on Sponsored GC Trades would be passed on a daily basis, as described above.

¹⁹ Rule 3A, Section 14(c), *supra* note 4.

²⁰ Rule 3A, Section 11, *supra* note 4.

¹⁴ FICC does not believe it is appropriate to require that each payment and delivery under a Sponsored GC Trade be made from (or to) the Sponsoring Member to (or from) FICC and separately from (or to) FICC to (or from) the Sponsored Member because inserting FICC in the middle of the payments and deliveries in this fashion would require substantial changes in operational processes for both Sponsored Members and Sponsoring Members. FICC does not believe such operational changes to be necessary in light of the fact that there can only be two pre-Novation counterparties involved in the settlement of a Sponsored GC Trade (*i.e.*, the Sponsoring Member and its Sponsored Member client), as opposed to the multitude of Netting Members that may be involved in the settlement of GCF Repo Transactions the payment and delivery obligations under which are aggregated and netted in FICC’s Netting System. For such GCF Repo Transactions, insertion of FICC in the middle of the payments and deliveries can streamline the settlement process and create significant operational efficiencies for Netting Members.

¹⁵ Rule 3A, *supra* note 4.

¹⁶ See Rule 3A, Section 10, *supra* note 4.

¹⁷ The term “GCF Interest Rate Mark” means, on a particular Business Day as regards any GCF Repo Transaction that is not scheduled to settle on that day, the product of the principal value of the GCF Repo Transaction on the Scheduled Settlement Date for its End Leg multiplied by a factor equal to the absolute difference between the Repo Rate established by FICC for such Repo Transaction and its Contract Repo Rate, and then multiplied by a fraction, the numerator of which is the number of calendar days from the current day until the Scheduled Settlement Date for the End Leg of the Repo Transaction and the denominator of which is 360. If the Repo Transaction’s Contract Repo Rate is greater than its System Repo Rate, then the GCF

offsetting Repo Transaction with a third-party Netting Member that is novated to FICC, then that will increase FICC's liquidity risk. This is because, unlike in the context of Sponsored Member Trades, in the event of the Sponsoring Member's default, FICC is required to settle with such third-party Netting Member.

Sponsored GC Trades would impact FICC's liquidity risk similarly to Sponsored Member Trades in the existing Service in this regard, in that liquidity risk to FICC would only be increased to the extent the Sponsoring Member enters into a Repo Transaction with a third-party Netting Member (which it may choose to do in order to offset the Sponsored GC Trade that it executed with its Sponsored Member). Accordingly, FICC proposes to manage the liquidity risk associated with Sponsored GC Trades in the same manner that it manages such risk for other Sponsored Member Trades. As discussed below in Item II(B)(iii), FICC is proposing to add language to Rule 3A to revise the manner in which it calculates a Sponsoring Member's Individual Total Amount for purposes of its CCLF obligation, with respect to all Sponsored Member Trades, including Sponsored GC Trades, in order to reflect the fact that Sponsored Member Trades do not create liquidity risk.

(C) Proposed Rule Changes

To effectuate the proposed changes described above, FICC would revise Rule 1 to add the following new defined terms: (1) GC Collateral Return Entitlement, (2) GC Collateral Return Obligation, (3) GC Comparable Securities, (4) GC Daily Repo Interest, (5) GC Funds Borrower, (6) GC Funds Lender, (7) GC Interest Rate Mark, (8) GC Repo Security, (9) GC Start Leg Market Value, (10) Purchased GC Repo Securities, (11) Sponsored GC Clearing Agent Bank, and (12) Sponsored GC Trade.

GC Collateral Return Entitlement would mean the entitlement of a Sponsoring Member or Sponsored Member, as applicable, to receive the Purchased GC Repo Securities (as defined below) in exchange for cash at the End Leg of a Sponsored GC Trade.

GC Collateral Return Obligation would mean the obligation of a Sponsoring Member or Sponsored Member, as applicable, to deliver the Purchased GC Repo Securities in exchange for cash at the End Leg of a Sponsored GC Trade.

GC Comparable Securities would mean, in relation to a Sponsored GC Trade, any GC Repo Securities that are

represented by the same Generic CUSIP Number as the GC Repo Securities that were transferred in the Start Leg of the Sponsored GC Trade, as set forth in the proposed new Schedule of GC Comparable Securities.

GC Daily Repo Interest would mean the daily interest amount that is payable under a Sponsored GC Trade.

GC Funds Borrower would mean a Sponsoring Member or Sponsored Member, as applicable, that has a GC Collateral Return Entitlement and associated cash payment obligation.

GC Funds Lender would mean a Sponsoring Member or Sponsored Member, as applicable, that has a GC Collateral Return Obligation and associated cash payment entitlement.

GC Interest Rate Mark would mean, on a particular Business Day as regards any Sponsored GC Trade where the End Leg is not scheduled to settle on that day, the product of the principal value of the Sponsored GC Trade on the Scheduled Settlement Date for its End Leg multiplied by a factor equal to the absolute difference between the System Repo Rate established by FICC for such Sponsored GC Trade and its Contract Repo Rate, and then multiplied by a fraction, the numerator of which is the number of calendar days from the current day until the Scheduled Settlement Date for the End Leg of the Sponsored GC Trade and the denominator of which is 360. If the Sponsored GC Trade's Contract Repo Rate is greater than its System Repo Rate, then the GC Interest Rate Mark would be a positive value for the GC Funds Lender, and a negative value for the GC Funds Borrower. If the Sponsored GC Trade's Contract Repo Rate is less than its System Repo Rate, then the GC Interest Rate Mark would be a positive value for the GC Funds Borrower, and a negative value for the GC Funds Lender.

GC Repo Security would mean an Eligible Security that is only eligible for submission to FICC in connection with the comparison and Novation of Sponsored GC Trades.

GC Start Leg Market Value would mean, in relation to a Sponsored GC Trade, the market value of the GC Repo Securities transferred in the Start Leg of the Sponsored GC Trade, measured as of the date of the settlement of the Start Leg of such Sponsored GC Trade.

Purchased GC Repo Securities would mean the GC Repo Securities transferred by the Sponsoring Member or Sponsored Member, as applicable, in settlement of the Start Leg of a Sponsored GC Trade, plus all cash and other GC Repo Securities transferred by such Sponsoring Member or Sponsored

Member pursuant to proposed Sections 8(b)(ii) and 8(b)(v) of Rule 3A, less any GC Repo Securities or cash received by the Sponsoring Member or Sponsored Member pursuant to proposed Sections 8(b)(iii) and 8(b)(v) of Rule 3A.

Sponsored GC Clearing Agent Bank would mean a Clearing Agent Bank that has agreed to provide FICC, upon request, under mutually agreeable terms, with clearing services for Sponsored GC Trades.

Sponsored GC Trade would mean, in connection with the Sponsored GC Service, a Sponsored Member Trade that is a Repo Transaction between a Sponsored Member and its Sponsoring Member involving securities represented by a Generic CUSIP Number the data on which are submitted to FICC by the Sponsoring Member pursuant to the provisions of Rule 6A, for Novation to FICC pursuant to proposed Section 7(b)(ii) of Rule 3A.

FICC also proposes to revise the following defined terms in Rule 1: (1) Eligible Security, (2) End Leg, (3) General Collateral Repo Transaction, (4) Generic CUSIP Number, (5) Initial Haircut, (4) Interest Adjustment Payment, (5) Sponsored Member Trade, (6) Start Leg, (7) Forward Mark Adjustment Payment, and (8) Sponsoring Member Omnibus Account, each as described in greater detail below.

FICC proposes to revise the definition of Eligible Security to state that a GC Repo Security would be deemed to be an Eligible Security only in connection with a Sponsored GC Trade.

FICC also proposes to revise the definition of End Leg to include a definition applicable to Sponsored GC Trades. As regards a Sponsored GC Trade, End Leg would mean the concluding settlement aspects of the transaction, involving the retransfer of the Purchased GC Repo Securities by the GC Funds Lender and the taking back of such Purchased GC Repo Securities by the GC Funds Borrower. Because FICC is revising the definition of End Leg to add a definition applicable to Sponsored GC Trades, FICC would also revise the first sentence of the current definition to state that it does not apply to Sponsored GC Trades by adding the phrase "or a Sponsored GC Trade" after "as regards a Repo Transaction other than a GCF Repo Transaction (or CCIT Transaction as applicable)."

FICC proposes to revise the definition of General Collateral Repo Transaction to state that General Collateral Repo Transaction would mean a Repo Transaction, other than a GCF Repo Transaction or Sponsored GC Trade

(unless the context indicates otherwise), with a Generic CUSIP Number.

FICC also proposes to revise the definition of Generic CUSIP Number to state that FICC would use separate Generic CUSIP Numbers for General Collateral Repo Transactions, GCF Repo Transactions and Sponsored GC Trades.

FICC also proposes to revise the definition of Initial Haircut to include a definition applicable to Sponsored GC Trades. As regards any Sponsored GC Trade, Initial Haircut would mean any difference between (x) the Contract Value of the Start Leg of the Sponsored GC Trade and (y) the GC Start Leg Market Value. Because FICC is revising the definition of Initial Haircut to include a definition applicable to Sponsored GC Trades, FICC would revise proposed section (i) in the definition to state that proposed section (i) would apply to any Sponsored Member Trade that is not a Sponsored GC Trade by adding the phrase “that is not a Sponsored GC Trade” after “as regards any Sponsored Member Trade.”

FICC also proposes to revise the definition Interest Adjustment Payment to include a definition applicable to Sponsored GC Trades. As regards a Sponsored GC Trade, Interest Adjustment Payment would mean the product of the GC Interest Rate Mark multiplied by the applicable Overnight Investment Rate and then multiplied by a fraction, the numerator of which is the number of calendar days between the previous Business Day and the current Business Day and the denominator of which is 360.

FICC proposes to revise the definition of Sponsored Member Trade to include Sponsored GC Trades.

FICC also proposes to revise the definition of Start Leg to include a definition applicable to Sponsored GC Trades. As regards a Sponsored GC Trade, Start Leg would mean the initial settlement aspects of the Transaction, involving the transfer of GC Repo Securities by the Sponsoring Member or Sponsored Member, as applicable, that is the GC Funds Borrower and the taking in of such GC Repo Securities by the Sponsoring Member or Sponsored Member, as applicable, that is the GC Funds Lender. Because FICC is proposing to revise the definition of Start Leg to add a definition applicable to Sponsored GC Trades, FICC would revise that the first sentence of the current definition to state that it does not apply to Sponsored GC Trades by adding the phrase “or a Sponsored GC Trade” after “as regards a Repo Transaction other than a GCF Repo Transaction.”

FICC also proposes to revise the definition of Forward Mark Adjustment Payment in Rule 1 to state that it would refer to the GC Interest Rate Mark with respect to Sponsored GC Trades.

FICC also proposes to make conforming changes to the definition of Sponsoring Member Omnibus Account to state that it may contain all types of Sponsored Member Trades. The current definition of Sponsoring Member Omnibus Account states that each Sponsoring Member Omnibus Account may contain activity within the meaning of clause (a) of the Sponsored Member Trade definition or activity within the meaning of clause (b) of such definition.

In addition, FICC proposes to revise the definition of Sponsored GC Service in Rule 1 and to revise Section VII (Sponsoring Members) of the Fee Structure, as described below.

FICC proposes to revise the definition of Sponsored GC Service in Rule 1 to state that it would mean the service offered by FICC to clear tri-party repurchase agreement transactions between Sponsoring Members and Sponsored Members, as described in Rule 3A. Currently, the definition of Sponsored GC Service states that it means a service to be offered by FICC, which has not yet been proposed for and would be subject to regulatory approval, to clear tri-party repurchase agreement transactions between the Sponsoring Members and Sponsored Members, as shall be described in Rule 3A. FICC also proposes to remove the footnote in the definition of Sponsored GC Service, which states that the Sponsored GC Service shall be the subject of a subsequent rule filing with the Commission and that the definition of Sponsored GC Service shall be revised upon approval of the subsequent rule filing, and at that time the footnote shall sunset.

FICC also proposes to revise Section VII (Sponsoring Members) of the Fee Structure to remove language that states that to the extent FICC, in consultation with its Board of Directors, does not implement the Sponsored GC Service, all previously collected Sponsored GC Pre-Payment Assessments shall be returned to the contributing Sponsoring Members in full. FICC also proposes to remove the footnote in this section which states that the Sponsored GC Service shall be the subject of a subsequent rule filing with the Commission and that Section VII of the Fee Structure shall be revised to remove the referenced sentence upon approval of the subsequent rule filing, and at that time the footnote shall sunset.

In addition, FICC proposes to revise Rule 3A, Section 5 (Sponsored Member

Trades) to state that this section does not apply to Sponsored GC Trades. Section 5 concerns the types of trades that may be submitted as Sponsored Member Trades and discusses the application of Rule 14 (Forward Trades) and Rule 18 (Special Provisions for Repo Transactions) to Sponsored Member Trades. The requirements that Sponsored GC Trades must meet would be separately enumerated in Section 7, and the provisions of Rules 14 and 18, which only apply to transactions eligible for FICC’s general netting system, would not apply to such Sponsored GC Trades.

FICC also proposes to revise Rule 3A, Section 6 (Trade Submission and the Comparison System) to state that the current Schedule of Timeframes would apply to Sponsored Member Trades other than Sponsored GC Trades. The proposed new Schedule of Sponsored GC Trade Timeframes would apply to Sponsored GC Trades.

Section 7 (The Netting System, Novation and Guaranty of Settlement) of Rule 3A would be revised to create a proposed new paragraph (a). The proposed new paragraph (a) would provide that the current provisions of Section 7, which would be reorganized as proposed new subparagraphs (i) through (iv) of proposed new paragraph (a), apply to Sponsored Member Trades other than Sponsored GC Trades. These provisions concern the netting and Novation of Sponsored Member Trades. As discussed below, different provisions would apply to Sponsored GC Trades.

Proposed new paragraph (b) of Section 7 would only apply to Sponsored GC Trades. Proposed new subparagraph (i) of proposed new paragraph (b) of Section 7 would provide that only the End Legs of a Sponsored GC Trade may be novated to FICC and that a Sponsored GC Trade is permitted (but not required) to have an Initial Haircut. Proposed new subparagraph (ii) of proposed new paragraph (b) of Section 7 would provide requirements that would have to be satisfied in order for a Sponsored GC Trade to be novated on a given Business Day. The following requirements would be included: (A) The trade data on the Sponsored GC Trade must have been submitted to FICC by the Sponsoring Member pursuant to Rule 6A by the deadline set forth in FICC’s proposed new Schedule of Sponsored GC Trade Timeframes, (B) the data on the Sponsored GC Trade must have been compared in the Comparison System pursuant to Rule 6A, (C) the Start Leg of the Sponsored GC Trade must have fully settled at the Sponsored GC Clearing Agent Bank by

the deadline set forth in FICC's proposed new Schedule of Sponsored GC Trade Timeframes, (D) the Sponsored GC Clearing Agent Bank must have, pursuant to communication links, formats, timeframes, and deadlines established by FICC for such purpose, provided to FICC a report containing such data as FICC may require from time to time, including information regarding the specific GC Repo Securities that were delivered in settlement of the Start Leg of the Sponsored GC Trade, and (E) FICC must determine that the data contained in such report matches the data on the Sponsored GC Trade submitted by the Sponsoring Member pursuant to Rule 6A. Proposed new subparagraph (iii) of proposed new paragraph (b) of Section 7 would state that, on each Business Day, FICC would provide each Sponsoring Member with one or more Reports setting forth (A) each Sponsored GC Trade, the data on which has been compared in the Comparison System and (B) each Sponsored GC Trade, the End Leg of which has been novated to FICC. Proposed new subparagraph (iv) of proposed new paragraph (b) of Section 7 would require that each Sponsoring Member and Sponsored Member acknowledges and agrees that it has authorized each relevant Sponsored GC Clearing Agent Bank to provide FICC with all information and data as FICC may require or request from time to time in order to novate and process Sponsored GC Trades.

Section 8 (Securities Settlement) of Rule 3A would be revised to create a new paragraph (a). The proposed new paragraph (a) would provide that the bulk of the current provisions of Section 8, which would be reorganized as subparagraphs (i) through (vii) of proposed new paragraph (a), apply to Sponsored Member Trades other than Sponsored GC Trades. Those provisions concern the process for settling Sponsored Member Trades. As discussed below, different settlement requirements would apply to Sponsored GC Trades.

Proposed new paragraph (b) of Section 8 would apply only to Sponsored GC Trades. Proposed new subparagraph (i) of proposed new paragraph (b) of Section 8 would state that GC Collateral Return Obligations and cash payment obligations associated with GC Collateral Return Entitlements must be satisfied by a GC Funds Lender and GC Funds Borrower, respectively, within the timeframes established for such by FICC in the proposed new Schedule of Sponsored GC Trade Timeframes. In addition, any failure by the GC Funds Borrower to satisfy its

cash payment obligations associated with GC Collateral Return Entitlements within the timeframe established for such by FICC in the proposed new Schedule of Sponsored GC Trade Timeframes would subject the GC Funds Borrower to a late fee as if such GC Funds Borrower were a Net Funds Payor within the meaning of Section IX of the Fee Structure (Late Fee Related to GCF Repo Transactions). Proposed new subparagraph (ii) of proposed new paragraph (b) of Section 8 would state that if on any Business Day, the market value of a GC Funds Borrower's GC Collateral Return Entitlement from the previous Business Day (or the current Business Day) is less than the GC Start Leg Market Value, then such GC Funds Borrower would deliver to FICC (and FICC would deliver to the relevant GC Funds Lender) additional GC Comparable Securities and/or cash, such that the market value of the GC Funds Borrower's GC Collateral Return Entitlement (and the market value of the relevant GC Funds Lender's GC Collateral Return Obligation) is at least equal to the GC Start Leg Market Value. Such additional securities and/or cash must be delivered by the GC Funds Borrower within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Proposed new subparagraph (iii) of proposed new paragraph (b) of Section 8 would state that if on any Business Day, the market value of a GC Funds Lender's GC Collateral Return Obligation from the previous Business Day (or the current Business Day) is greater than the GC Start Leg Market Value, then such GC Funds Lender would deliver to FICC (and FICC would deliver to the relevant GC Funds Borrower) some of the Purchased GC Repo Securities, such that the market value of the GC Funds Lender's GC Collateral Return Obligation (and the market value of the relevant GC Funds Borrower's Collateral Return Entitlement) is at least equal to the GC Start Leg Market Value. Such Purchased GC Repo Securities must be delivered within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Proposed new subparagraph (iv) of proposed new paragraph (b) of Section 8 would state that each GC Funds Borrower (or if the repo rate for the relevant Sponsored GC Trade is negative, the GC Funds Lender) would, within the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes, pay the daily accrued GC Daily Repo Interest to FICC (and FICC would pay such GC Daily Repo Interest to the GC Funds

Lender or GC Funds Borrower, as applicable). Proposed new subparagraph (v) of proposed new paragraph (b) of Section 8 would state that a GC Funds Borrower may substitute cash and/or GC Comparable Securities for any Purchased GC Repo Securities in accordance with the timeframe set forth in the proposed new Schedule of Sponsored GC Trade Timeframes. Proposed new subparagraph (vi) of proposed new paragraph (b) of Section 8 would state that FICC directs each Sponsored Member and Sponsoring Member to satisfy any payment or delivery obligation due to FICC, except for any obligation to pay a Funds-Only Settlement Amount, by making the relevant payment or delivery to an account at the relevant Sponsored GC Clearing Agent Bank specified by the pre-Novation counterparty to the Sponsored Member or Sponsoring Member, as applicable, in accordance with such procedures as the Sponsored GC Clearing Agent Bank may specify from time to time. Each Sponsored Member and Sponsoring Member that is owed any such payment or delivery from FICC would acknowledge and agree that, if the pre-Novation counterparty to such Sponsored GC Trade makes the relevant payment or delivery as described in the prior sentence, FICC's obligation to make such payment or delivery would be discharged and satisfied in full. Proposed new subparagraph (vii) of proposed new paragraph (b) of Section 8 would state that the market value of all GC Repo Securities would be determined by the relevant Sponsored GC Clearing Agent Bank each Business Day.

In addition, FICC proposes to move language from current Section 8(a) to proposed new Section 8(c). Proposed new Section 8(c) would state that notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member would be principally obligated to FICC with respect to all securities settlement obligations under the Rules, and the Sponsoring Member would not be a principal under the Rules with respect to the settlement obligations of its Sponsored Members. This provision would apply to both Sponsored GC Trades as well as other kinds of Sponsored Member Trades.

FICC also proposes to revise Section 9 of Rule 3A to state which provisions would apply to Sponsored Member Trades other than Sponsored GC Trades, which provisions would apply only to Sponsored GC Trades, and which provisions would apply to all

Sponsored Member Trades. Specifically, FICC proposes to add language to state that Section 9(a) applies to Sponsored Member Trades other than Sponsored GC Trades and current Sections 9(b), (c), (d), and (e), which would be reorganized as proposed new Sections 9(c)(i), (c)(ii), (c)(iii), and (c)(iv), respectively, applies to all Sponsored Member Trades. In addition, FICC proposes to add a new Section 9(b) to Rule 3A, which would only apply to Sponsored GC Trades and would state that each Sponsoring Member and Sponsored Member would be obligated to pay to FICC, and/or would be entitled to receive from FICC, the following amounts: Forward Mark Adjustment Payment and Interest Adjustment Payment. It would also state that such amounts would be payable and receivable as though they were amounts described in Rule 13.

FICC proposes to add Section 10(i) to Rule 3A that would state that for purposes of applying Rule 4 to a Sponsoring Member Omnibus Account, each Sponsored GC Trade would be treated as a GCF Repo Transaction, each GC Funds Lender and GC Funds Borrower would be treated as a GCF Counterparty, and each Sponsored GC Clearing Agent Bank would be treated as a GCF Clearing Agent Bank.

FICC would also revise Section 4 of Rule 5 (Comparison System) to add Sponsored GC Trades. Specifically, Section 4 of Rule 5 would be revised to state that GCF Repo Transactions and Sponsored GC Trades must be submitted exactly as executed.

FICC is also proposing to add a new Schedule of Sponsored GC Trade Timeframes that would only be applicable to Sponsored GC Trades. The proposed new Schedule of Sponsored GC Trade Timeframes would state that the time during which reports would be made available with respect to end of day Clearing Fund requirements and funds-only settlement requirements would be from 10:30 p.m. to 2:00 a.m. In addition, it would state that 2:00 p.m. would be the time during which reports would be made available with respect to intraday Clearing Fund requirements, and intraday funds-only settlement requirements. The proposed new Schedule of Sponsored GC Trade Timeframes would also state that at 10:00 a.m., funds-only settlement debits and credits are executed via the Federal Reserve's National Settlement Service and at 4:30 p.m., the intraday funds-only settlement debits and credits are executed via the Federal Reserve's National Settlement Service.

The proposed new Schedule of Sponsored GC Trade Timeframes would also state that 9:00 a.m. would be the

deadline for the GC Funds Borrower to satisfy the obligation described in proposed Section 8(b)(ii) of Rule 3A in accordance with the provisions of proposed Section 8(b)(vi) of Rule 3A. It would also state that FICC reserves the right to also require a GC Funds Borrower to satisfy the obligation described in proposed Section 8(b)(ii) on an intraday basis based on the market value of the applicable GC Repo Securities as determined by the GC Clearing Agent Bank in accordance with proposed Section 8(b)(vii) of Rule 3A. It would also state that 12:00 p.m. would be the deadline for the GC Funds Borrower (or if the repo rate for the relevant Sponsored GC Trade is negative, the GC Funds Lender) to pay to FICC the accrued GC Daily Repo Interest as described in proposed Section 8(b)(iv) in accordance with the provisions of proposed Section 8(b)(vi) of Rule 3A (unless the End Leg of the related Sponsored GC Trade is due to settle on the same day). The proposed new Schedule of Sponsored GC Timeframes would state that any accrued GC Daily Repo Interest that is due on the settlement day of the End Leg of the related Sponsored GC Trade would be paid in connection with the settlement of the End Leg.

The proposed new Schedule of Sponsored GC Trade Timeframes would also state that 5:00 p.m. would be the deadline for final input by the Sponsoring Members to FICC of Sponsored GC Trade data. Furthermore, 5:30 p.m. would be the deadline for (i) full settlement of the Start Leg of the Sponsored GC Trade in accordance with proposed Section 7(b)(ii)(C) of Rule 3A, (ii) substitutions of Purchased GC Repo Securities in accordance with proposed Section 8(b)(v) of Rule 3A, and (iii) satisfaction of GC Collateral Return Obligations and cash payment obligations associated with GC Collateral Return Entitlements by GC Funds Lenders and GC Funds Borrowers, respectively, in accordance with proposed Section 8(b)(i) of Rule 3A.

The proposed new Schedule of Sponsored GC Trade Timeframes would also state that the time by which a GC Funds Lender would be required to deliver any securities to a GC Funds Borrower in connection with proposed Section 8(b)(iii) of Rule 3A would be determined by the relevant Sponsored GC Clearing Agent Bank. Furthermore, it would state that all times may be extended as needed by FICC to (i) address operational or other delays that would reasonably prevent members or FICC from meeting the deadline or timeframe, as applicable, or (ii) allow

the FICC time to operationally exercise its existing rights under the Rules. In addition, it would state that times applicable to FICC are standards and not deadlines and that actual processing times may vary slightly, as necessary.

FICC also proposes to revise the Schedule for the Deletion of Trade Data to state which provisions would not apply to Sponsored GC Trades. In addition, FICC would also add language to state that trade data on Sponsored GC Trades that remain uncompleted on a given Business Day would pend in the Comparison System until FICC's deadline for final input by Sponsoring Members of Sponsored GC Trade data (as provided in the Schedule of Sponsored GC Trade Timeframes) on such Business Day. FICC would also add language to state that trade data on Sponsored GC Trades, which have been compared in the Comparison System pursuant to Rule 6A but the Start Legs of which have not fully settled at a Sponsored GC Clearing Agent Bank by the deadline set forth in FICC's proposed new Schedule of Sponsored GC Trade Timeframes, would be deleted from the Comparison System during the same processing cycle as the Repo Start Date for such Sponsored GC Trades.

FICC also proposes to revise the Schedule of Required Data Submission Items to state that items (1) and (2) in this schedule would not be required for Sponsored Member Trades.

FICC also proposes to revise the following schedules to exclude Sponsored GC Trades: (i) Schedule of Required and Accepted Data Submission Items for a Substitution and (ii) Schedule of Required and Accepted Data Submission Items for New Securities Collateral.

In addition, as described above, FICC would add a proposed new Schedule of GC Comparable Securities.

(iii) Add Language to Rule 3A To Allow FICC To Recognize, for CCLF Calculation Purposes, Any Offsetting Settlement Obligations as Between a Sponsoring Member's Netting Account and Its Sponsoring Member Omnibus Account To Ensure That a Sponsoring Member's CCLF Obligation is Calculated in a Manner That More Closely Aligns With the Liquidity Risk Associated With Sponsored Member Trades

As described above, Sponsored Member Trades between a Sponsoring Member and its Sponsored Member in the existing Service do not independently create liquidity risk for FICC. This is because FICC is not required to complete settlement of such Sponsored Member Trades in the event that either the Sponsoring Member or

Sponsored Member defaults. In the event that the Sponsoring Member defaults, Section 14(c) of Rule 3A permits FICC to close out (rather than settle) the Sponsored Member Trades of the defaulter's Sponsored Members.²¹ Likewise, if the Sponsored Member defaults, FICC is also not required to complete settlement. Rather, under Section 11 of Rule 3A, FICC may offset its settlement obligations to the Sponsoring Member against the Sponsoring Member's obligations under the Sponsoring Member Guaranty to perform on behalf of its defaulted Sponsored Member.²²

Accordingly, liquidity risk to FICC is only increased to the extent the Sponsoring Member enters into a Repo Transaction with a third-party Netting Member that is novated to FICC. Such a Repo Transaction creates liquidity risk to FICC because, in the event of the Sponsoring Member's default, FICC is required to settle with such third-party Netting Member.²³

In light of this, FICC believes that a Sponsored Member Trade should only increase the obligation of a Sponsoring Member with respect to FICC's CCLF to the extent the Sponsoring Member offsets that trade with a Repo Transaction entered into with a third-party Netting Member that is novated to FICC. To the extent a Sponsoring Member either (1) enters into an offsetting Sponsored Member Trade with another Sponsored Member (*i.e.*, it runs a matched book of Sponsored Member Trades) or (2) simply does not enter into an offsetting transaction at all, then the Sponsored Member Trade has no effect on FICC's liquidity risk, and so should not affect the Sponsoring Member's CCLF obligation.

Currently, FICC does not impose a CCLF obligation on a Sponsoring Member to the extent the Sponsoring Member runs a matched book of Sponsored Member Trades. This is because FICC calculates a Sponsoring Member's CCLF obligation based on the net settlement obligations of its Sponsoring Member Omnibus Account and the net settlement obligations of the Sponsoring Member's netting account.²⁴ In other words, FICC nets all of the positions recorded in the Sponsoring

Member's Sponsoring Member Omnibus Account, regardless of whether they relate to the same Sponsored Member, and separately nets all of the positions in Sponsoring Member's netting account. As a result, to the extent a Sponsoring Member enters into perfectly offsetting Sponsored Member Trades, the settlement obligations of those trades will net out in the Sponsoring Member Omnibus Account and in the netting account and thereby create no CCLF obligation for the Sponsoring Member.

However, currently, if a Sponsoring Member enters into a Sponsored Member Trade without entering into an offsetting transaction, it is subject to CCLF obligations for the position of its Sponsored Member recorded in its Sponsoring Member Omnibus Account as well as its own position arising from the Sponsored Member Trade recorded in its netting account. This is because, although the positions in the Sponsoring Member Omnibus Account and netting account arising from such Sponsored Member Trade are perfectly offsetting, FICC does not currently net them against each other for CCLF purposes due to the current CCLF allocation being calculated at the participant account level.²⁵

In order to ensure that a Sponsoring Member's CCLF obligation is calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades, FICC proposes to add language to Rule 3A to allow it to recognize, for CCLF calculation purposes, any offsetting settlement obligations as between a

Sponsoring Member's netting account and its Sponsoring Member Omnibus Account. This proposed change would ensure that all Sponsored Member Trades, whether perfectly offset by other Sponsored Member Trades or not, would be recognized for CCLF purposes as not affecting FICC's liquidity risk. With respect to Sponsored GC Trades in particular, this proposed change would ensure that FICC applies an appropriate CCLF obligation to a Sponsoring Member in the event a Sponsored GC Clearing Agent Bank allocates to a Sponsored GC Trade a different security than the security that underlies an offsetting Sponsored Member Trade.²⁶

Specifically, FICC proposes to add new Section 8(d) to Rule 3A, which would state that FICC, when calculating Individual Total Amounts²⁷ for a Sponsoring Member, may net any offsetting settlement obligations across the Sponsoring Member's proprietary positions and the positions of its Sponsored Members in its Sponsoring Member Omnibus Account(s).

Expected Member Impact

FICC has conducted a study for the period from January 1, 2021 to March 30, 2021 as to the impact on FICC/GSD Netting Members' CCLF allocations as a result of recognizing offset between positions in a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account. The impact of recognition of the offsetting positions as between a Sponsoring Member's netting account and its Sponsoring Member Omnibus Account relates strictly to the allocation of the total CCLF facility amongst the FICC/GSD netting membership, with certain Sponsoring Members receiving less allocation of CCLF once the offsets between the Sponsoring Member's

²⁵ Consider the following example: A Sponsoring Member sells 100 shares of CUSIP 123 to a Sponsored Member in a Repo Transaction. That transaction will result in the Sponsoring Member's netting account being long 100 shares of CUSIP 123 and the Sponsoring Member's Sponsoring Member Omnibus Account being short 100 shares of CUSIP 123. Under the existing Rules, the Sponsoring Member will have a CCLF obligation for both the long position in the netting account as well as the short position in the Sponsoring Member Omnibus Account even though, as described above, the Sponsored Member Trade does not independently create liquidity risk for FICC.

Although this limitation on offset is consistent with FICC's approach of not offsetting the positions of two accounts of the same Member for CCLF purposes, there is an important difference between Sponsored Member Trades and other FICC repo activity. As discussed above, the Service requires that a Sponsoring Member have a Sponsoring Member Omnibus Account that is separate from its netting account. For all other repo activity, the Member has the option to collapse all of its activity into a single participant account in order to achieve a similar netting benefit. Sponsoring Members do not have that option with respect to their Sponsored Member Trades, so FICC believes this proposed change is necessary to ensure that a Sponsoring Member's CCLF obligations are calculated in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades.

²⁶ For example, a Sponsoring Member may enter into a Sponsored GC Trade on a Generic CUSIP Number and an offsetting Sponsored Member Trade in a specific CUSIP Number (*e.g.*, CUSIP 123). Although CUSIP 123 may be an eligible security under the Generic CUSIP Number underlying the Sponsored GC Trade, the Sponsored GC Clearing Agent Bank may allocate to the Sponsored GC Trade a different eligible CUSIP Number (*e.g.*, CUSIP 456) from the securities eligibility schedule. In that situation, the CUSIP 123 and CUSIP 456 positions in the Sponsoring Member's netting account and the Sponsoring Member Omnibus Account would not offset within the respective account, but the proposed change to Section 8(d) of Rule 3A would allow FICC to offset the CUSIP 123 and CUSIP 456 positions across the Sponsoring Member's netting account and Sponsoring Member Omnibus Account to ensure that the CCLF obligation applicable to the Sponsoring Member accurately reflects the liquidity risk that its positions create.

²⁷ The Individual Total Amount dictates the maximum amount of liquidity a Member must provide under FICC's CCLF. See Rule 22A, Section 2a(b), *supra* note 4.

²¹ Rule 3A, Section 14(c), *supra* note 4.

²² Rule 3A, Section 11, *supra* note 4.

²³ As described above, a Sponsored GC Trade would impact FICC's liquidity risk similarly to a Sponsored Member Trade in the existing Service in this regard, in that liquidity risk to FICC would only be increased to the extent the Sponsoring Member enters into an offsetting Repo Transaction with a third-party Netting Member that is novated to FICC.

²⁴ See Rule 3A, Section 8(b) and Rule 22A, Section 2a(b), *supra* note 4.

netting account and the Sponsoring Member Omnibus Account are recognized.

(iv) Remove the Requirement From Section 2 of Rule 3A That a Sponsoring Member Provide a Quarterly Representation to FICC That Each of Its Sponsored Members is a “Qualified Institutional Buyer” as Defined in Rule 144A, or is a Legal Entity That, Although Not Organized as an Entity Specifically Listed in Paragraph (a)(1)(i) of Rule 144A, Satisfies the Financial Requirements Necessary To Be a “Qualified Institutional Buyer” as Specified in That Paragraph

FICC also proposes to remove the requirement from Section 2 of Rule 3A that a Sponsoring Member provide to FICC a quarterly representation that each of its Sponsored Members is a “qualified institutional buyer” as defined in Rule 144A, or is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph.²⁸ FICC proposes to remove this requirement because Section 3(d) of Rule 3A separately requires a Sponsoring Member to notify FICC if its Sponsored Member is no longer either a “qualified institutional buyer” as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph.²⁹ As such, FICC views the quarterly representation requirement in Section 2 of Rule 3A to be an overlapping and redundant requirement that creates administrative burdens for FICC and for its Sponsoring Members that are, in FICC’s view, unnecessary.

To effectuate the proposed changes described above, FICC would revise Rule 3A to remove Section 2(d).

(v) A Clarification, Certain Corrections, and Certain Technical Changes

FICC proposes to make a clarification to the Rules. Specifically, in the definition of Initial Haircut, FICC proposes to add the phrase “, if any,” after “absolute value of the dollar difference.”

FICC also proposes to make certain corrections to the Rules.

First, FICC proposes to correct the definition of Initial Haircut in Rule 1 so that it would be defined, with respect to

Sponsored Member Trades that are not Sponsored GC Trades, as the absolute dollar difference between the Market Value of the Sponsored Member Trade, as of the settlement date of the Start Leg, and the Contract Value of the Start Leg of the Sponsored Member Trade, instead of the Contract Value of the Close Leg (as is currently provided).

Second, FICC proposes to correct the reference in Rule 3A, Section 3(a)(ii)(B) to paragraph (a)(1)(i)(H) of Rule 144A instead of paragraph (a)(1)(i) of Rule 144A (as is currently provided).

Third, FICC also proposes to correct a typographical error in Section VII (Fee Structure) by revising from the reference to Additional Sponsored GC Credit instead of Additional Sponsored GC Assessment (as is currently provided).

FICC also proposes to make certain technical changes, such as numbering and renumbering sections and making conforming grammatical changes.

For example, because FICC is removing Section 2(d) of Rule 3A, FICC proposes to renumber the subsequent subsections in Rule 3A, Section 2. Specifically, FICC proposes to renumber current Sections 2(e), 2(f), 2(g), 2(h), 2(i), and 2(j) as Sections 2(d), 2(e), 2(f), 2(g), 2(h), and 2(i), respectively.

In addition, Section 7 of Rule 3A, in connection with FICC’s creation of a proposed new paragraph (a) as described above, FICC proposes to renumber current Sections 7(a), 7(b), 7(c) and 7(d) as new Sections 7(a)(i), 7(a)(ii), 7(a)(iii) and 7(a)(iv), respectively. In addition, in current Sections 8(b) and 8(c), FICC proposes to revise the references from Section 7 to Section 7(a) to reflect the proposed renumbering of Section 7 described above.

Likewise, in Section 8 of Rule 3A, in connection with FICC’s creation of a proposed new paragraph (a) as described above, FICC proposes to renumber current Sections 8(a), 8(b), 8(c), 8(d), 8(e), 8(f) and 8(g) as new Sections 8(a)(i), 8(a)(ii), 8(a)(iii), 8(a)(iv), 8(a)(v), 8(a)(vi), and 8(a)(vii), respectively. In addition, in current Section 8(a), FICC proposes to revise the reference from Section 8(c) to Section 8(a)(iii) to reflect the proposed renumbering of Section 8 described above. In current Section 8(f), FICC also proposes to revise the reference from subsection (b) to subsection (a)(ii) to reflect the proposed renumbering of Section 8 described above.

In addition, in current Section 9 of Rule 3A, in connection with FICC’s addition of proposed new paragraph (b) as described above, FICC proposes to renumber current Sections 9(b), 9(c), 9(d) and 9(e) as new Sections 9(c)(i),

9(c)(ii), 9(c)(iii) and 9(c)(iv), respectively.

Because FICC is adding Sponsored GC Trades to the definition of Sponsored Member Trade as described above, FICC would create new sections (a) and (b) and renumber current sections (a) and (b) as subsections (i) and (ii) of new section (a). FICC would also revise the definition of Same-Day Settling Trade and current Section 8(c) and Section 18(a) of Rule 3A to reflect the proposed changes to the Sponsored Member Trade definition.

In addition, in the definition of Initial Haircut, FICC is proposing to add section numbers (i) and (ii) to make it clear that proposed section (i) of the definition would apply to any Sponsored Member Trade that is not a Sponsored GC Trade and proposed section (ii) would apply to any Sponsored Member Trade.

In addition, FICC would also make certain conforming grammatical changes. For example, FICC would add a comma and move the word “and” in the definition of Generic CUSIP Number to reflect the addition of Sponsored GC Trades. Similarly, in each of the (i) Schedule of Required and Accepted Data Submission Items for a Substitution and (ii) Schedule of Required and Accepted Data Submission Items for New Securities Collateral, FICC would also add a comma and move the word “and” as conforming grammatical changes. As another example, FICC would also add the word “or” in the definition of Sponsored Member Trade to reflect the addition of Sponsored GC Trades. In the definition of Initial Haircut, FICC would also add the word “and” to reflect the addition of proposed section (ii). As another example, in Section 18(a) of Rule 3A, FICC would revise the reference from subsection to subsections to reflect the proposed changes to the definition of Sponsored Member Trades described above.

Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

FICC believes that the proposed changes in Item II(B)(ii) above, specifically adding a new way to settle in the Service for Sponsored GC Trades, could affect the performance of essential clearing and settlement functions.³⁰ As described above, consistent with the manner in which tri-party repo transactions are settled today outside of central clearing, as opposed to settling through FICC’s tri-party account in the manner that GCF Repo activity settles, Sponsored GC Trades would settle on a

²⁸ Rule 3A, Section 2(d), *supra* note 4.

²⁹ Rule 3A, Section 3(d), *supra* note 4.

³⁰ 17 CFR 240.19b–4(n)(2)(i).

trade for trade basis between the Sponsoring Member and Sponsored Member on a Sponsored GC Clearing Agent Bank's tri-party repo platform. FICC would direct each GC Funds Borrower and GC Funds Lender to make any payment or delivery due to FICC in respect of a Sponsored GC Trade (except for certain funds-only settlement obligations, as discussed above) directly to the relevant Member's pre-Novation counterparty. As a result, each transfer of Purchased GC Repo Securities and daily repo interest would be made directly between the relevant GC Funds Borrower and GC Funds Lender through the tri-party repo platform of a Sponsored GC Clearing Agent Bank. To that end, each GC Funds Borrower and GC Funds Lender would agree that any such direct payment or delivery discharges FICC's obligation to make the same payment or delivery.

Otherwise, all legal rights and obligations as between FICC and Sponsoring Members, and as between FICC and Sponsored Members, would be the same with respect to Sponsored GC Trades as with respect to Sponsored Member Trades in the existing Service, which is governed by Rule 3A.

Management of Identified Risks

While Sponsored GC Trades would settle between the Sponsoring Member and Sponsored Member on a trade for trade basis on a Sponsored Member's tri-party repo platform (consistent with the manner those firms settle repo with each other outside of central clearing), as opposed to settling through FICC's tri-party account in the manner that GCF Repo activity settles, FICC would nonetheless monitor the settlement status of Sponsored GC Trades through hourly (or more frequent) reporting to be provided by the Sponsored GC Clearing Agent Bank to FICC as the Sponsored GC Clearing Agent Bank, and the administration of collateralization to address mark-to-market changes in the value of the securities collateral associated with Sponsored GC activity would be monitored by FICC in a manner consistent with the way that it monitors GCF Repo activity.

Consistency With the Clearing Supervision Act

FICC believes that the proposed rule change would be consistent with Section 805(b) of the Clearing Supervision Act.³¹ The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks,

and support the stability of the broader financial system.³²

FICC believes that the proposed changes described in Items II(B)(ii) and II(B)(iii) above are consistent with the objectives of and principles of Section 805(b) of the Clearing Supervision Act cited above because FICC believes that these proposed changes would enable and may encourage Sponsoring Members to submit a greater number of securities transactions to be cleared and settled by FICC. FICC believes that having more securities transactions clear and settle through FICC would also help to promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system by mitigating the risk of a large-scale exit by institutional firms from the U.S. financial market in a stress scenario through FICC's guaranty of completion of settlement for a greater number of eligible securities transactions. By mitigating the risk of a large-scale exit by institutional firms from the U.S. financial market in a stress scenario and having more securities transactions that clear and settle through FICC in the context of its risk management processes, FICC believes the proposed rule changes described in Items II(B)(ii) and II(B)(iii) above would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, FICC believes that the proposed rule changes described in Items II(B)(ii) and II(B)(iii) above are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

FICC also believes that the proposed changes described in Items II(B)(iv) and II(B)(v) above are designed to provide clear and coherent Rules regarding Sponsoring Members. FICC believes that clear and coherent Rules should enhance the ability of FICC and Sponsoring Members to more effectively plan for, manage, and address the risks and financial requirements related to Sponsoring Members. As such, FICC believes that the proposed changes described in Items II(B)(iv) and II(B)(v) above are designed to promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

FICC also believes that the proposed changes are consistent with Rule 17Ad-22(e)(7),³³ Rule 17Ad-22(e)(18),³⁴ and

Rule 17Ad-22(e)(21)(i),³⁵ as promulgated under the Act, for the reasons stated below.

Rule 17Ad-22(e)(7) under the Act requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.³⁶ FICC believes that the proposed changes described in Item II(B)(iii) above are consistent with Rule 17Ad-22(e)(7) because, as described above, all Sponsored Member Trades (including Sponsored Member Trades in the existing Service and Sponsored GC Trades in the proposed Sponsored GC Service) do not independently create a liquidity risk. FICC believes the proposed changes described in Item II(B)(iii) above would allow FICC to calculate a Sponsoring Member's CCLF obligation in a manner that more closely aligns with the liquidity risk associated with Sponsored Member Trades. As such, FICC believes that the proposed changes described in Item II(B)(iii) above are reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, consistent with Rule 17Ad-22(e)(7).³⁷

Rule 17Ad-22(e)(18) under the Act requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct, and where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.³⁸ FICC believes that the proposed changes described in Item II(B)(iv) above would enhance clarity and therefore, may enhance compliance by the Sponsoring Members with the requirement to notify FICC if a

³² *Id.*

³³ 17 CFR 240.17Ad-22(e)(7).

³⁴ 17 CFR 240.17Ad-22(e)(18).

³⁵ 17 CFR 240.17Ad-22(e)(21)(i).

³⁶ 17 CFR 240.17Ad-22(e)(7).

³⁷ *Id.*

³⁸ 17 CFR 240.17Ad-22(e)(18).

³¹ 12 U.S.C. 5464(b).

Sponsored Member is no longer either a “qualified institutional buyer” as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A, satisfies the financial requirements necessary to be a “qualified institutional buyer” as specified in that paragraph. As described above, this requirement is set forth in Section 3(d) of Rule 3A.³⁹ With these proposed changes, there would be a clear and singular mechanism for Sponsoring Members to notify FICC of a Sponsored Member’s failure to satisfy the above-described requirement (as opposed to having overlapping and redundant requirements that could cause confusion). Therefore, FICC believes the proposed changes described in Item II(B)(iv) above are consistent with Rule 17Ad–22(e)(18).⁴⁰

Rule 17Ad–22(e)(21)(i) under the Act requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency’s management regularly review the efficiency and effectiveness of its clearing and settlement arrangements.⁴¹ FICC believes that the proposed changes described in Item II(B)(ii) above would improve the efficiency and effectiveness of FICC’s clearing and settlement arrangements by making it more operationally efficient for Sponsoring Members and their Sponsored Members that are money market funds and other mutual funds to transact Repo Transactions (particularly term Repo Transactions) through FICC by allowing them to settle such Repo Transactions on the tri-party repo platform of a Sponsored GC Clearing Agent Bank in a similar manner to the way such Sponsoring Members and Sponsored Members settle tri-party repo transactions with each other outside of central clearing. FICC also believes that the proposed rule changes described in Item II(B)(iv) above would improve the efficiency and effectiveness of FICC’s clearing and settlement arrangements by removing the quarterly representation requirement of Sponsoring Members under Section 2 of Rule 3A, which, as described above, overlaps and is redundant with the separate requirement under Section 3(d) of Rule

3A that requires a Sponsoring Member to notify FICC if its Sponsored Member is no longer either a “qualified institutional buyer” as defined in Rule 144A, or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i) of Rule 144A.⁴² Therefore, FICC believes that the proposed changes described in Items II(B)(ii) and II(B)(iv) above are consistent with Rule 17Ad–22(e)(21)(i).⁴³

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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–FICC–2021–801 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2021–801. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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 FICC and on DTCC’s website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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–FICC–2021–801 and should be submitted on or before June 18, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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³⁹ Rule 3A, Section 3(d), *supra* note 4.

⁴⁰ 17 CFR 240.17Ad–22(e)(18).

⁴¹ 17 CFR 240.17Ad–22(e)(21)(i).

⁴² Rule 3A, Section 3(d), *supra* note 4.

⁴³ 17 CFR 240.17Ad–22(e)(21)(i).

⁴⁴ 17 CFR 200.30–3(a)(91).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92071; File No. S7–24–89]

Joint Industry Plan; Order Approving the Fiftieth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, as Modified by Amendment Nos. 1 and 2

May 28, 2021.

I. Introduction

On February 11, 2021,¹ the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“Nasdaq/UTP Plan” or “Plan”)² participants³ filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)⁴ and Rule 608 of Regulation National Market System (“NMS”) thereunder,⁵ a proposal to amend the Nasdaq/UTP Plan. This amendment represents the Fiftieth Amendment to the Plan (“Amendment”).

The Amendment was published for comment in the **Federal Register** on

March 1, 2021.⁶ One comment letter was received.⁷ On March 31, 2021, a partial amendment was filed to correct an inadvertent error in the rule text.⁸ On April 7, 2021, a second partial amendment was filed to correct an inadvertent error in the rule text.⁹ This order approves the Amendment to the Plan, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal, as Modified by Amendment Nos. 1 and 2

The Amendment proposes revisions to the Plan’s provisions governing Regulatory Halts¹⁰ and Operational Halts.¹¹ The Participants state that “[t]he purpose of the amendment is to incorporate into the UTP Plan the same processes for Regulatory Halts that are proposed by the equity exchanges.”¹²

A. Regulatory Halts

1. Declaration of a Regulatory Halt

With respect to declaration of a Regulatory Halt, the Amendment would provide that the Primary Listing Market¹³ may declare a Regulatory Halt

⁶ See Securities Exchange Act Release No. 91190 (Feb. 23, 2021), 86 FR 12045 (Mar. 1, 2021) (“Notice”); Securities Exchange Act Release No. 91190A (Mar. 3, 2021), 86 FR 13411 (Mar. 8, 2021) (correction of a typographical error in the header).

⁷ Comments received in response to the Notice are available at <https://www.sec.gov/comments/s7-24-89/s72489.shtml>.

⁸ See Letter from James P. Dombach, Counsel to the Plan, to Vanessa Countryman, Secretary, Commission (Mar. 31, 2021) (to correct language inadvertently omitted by the Participants in Section X.E.1 of the Plan, as amended, to state that “[t]he Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.”) (“Amendment No. 1”).

⁹ See Letter from James P. Dombach, Counsel to the Plan, to Vanessa Countryman, Secretary, Commission (Apr. 7, 2021) (to correct language inadvertently omitted by the Participants from the last sentence in Section X.F.3 of the Plan, as amended, to state that “[o]utside Regular Trading Hours, a Participant may resume trading immediately after the SIP Halt Resume Time.”) (“Amendment No. 2”).

¹⁰ The Amendment would define “Regulatory Halt” as “a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.” See Section X.A.10 of the Plan, as amended.

¹¹ The Amendment would define “Operational Halt” as “a halt in trading in one or more securities only on a Market declared by such Participant and is not a Regulatory Halt.” See Section X.A.7 of the Plan, as amended.

¹² See Notice, *supra* note 6, 86 FR at 12046.

¹³ The Amendment would define “Primary Listing Market” as “the national securities exchange

in trading for any security for which it is the Primary Listing Market (1) as provided for in the rules of the Primary Listing Market;¹⁴ (2) if it determines¹⁵ there is a SIP Outage,¹⁶ Material SIP Latency,¹⁷ or Extraordinary Market Activity;¹⁸ or (3) in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.¹⁹

The Amendment would further provide that, in determining whether to declare a Regulatory Halt, the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market participants, and will make a good-faith determination that the criteria to declare a Regulatory Halt have been satisfied and that a Regulatory Halt is appropriate.²⁰ The

on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.” See Section X.A.8 of the Plan, as amended.

¹⁴ See Section X.C.1(a) of the Plan, as amended.

¹⁵ See Section X.C.1(b) of the Plan, as amended.

¹⁶ The Amendment would define “SIP Outage” as “a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.” See Section X.A.13 of the Plan, as amended.

¹⁷ The Amendment would define “Material SIP Latency” as “a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over Processor’s vendor lines, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.” See Section X.A.5 of the Plan, as amended.

¹⁸ The Amendment would define “Extraordinary Market Activity” as “a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.” See Section X.A.1 of the Plan, as amended.

¹⁹ See Section X.C.1(c) of the Plan, as amended.

²⁰ See Section X.C.2 of the Plan, as amended.

¹ See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 11, 2021). The Amendment was posted to the Plan’s website on February 12, 2021. See Email from James P. Dombach, Counsel to the Plan, to Michael E. Coe, Assistant Director, Commission (Feb. 12, 2021).

² The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

³ These participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (each a “Participant,” and collectively the “Participants”).

⁴ 15 U.S.C. 78k–1(a)(3).

⁵ 17 CFR 242.608.

Amendment would also provide that, the Primary Listing Market will consult, if feasible, with the affected Trading Center(s), other Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue, and that the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market.²¹

2. Initiating a Regulatory Halt

The Amendment would specify procedures for initiating a Regulatory Halt. Specifically, when initiating a Regulatory Halt, the start time of a Regulatory Halt would be when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.²² The Amendment would further provide that if the Processor is unable to disseminate notice of a Regulatory Halt or the Primary Listing Market is not open for trading, the Primary Listing Market will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through: (1) Proprietary data feeds containing quotation and last sale price information that the Primary Listing Market also sends to the Processor; (2) posting on a publicly-available Participant website; or (3) system status messages.²³ The Amendment would further specify that a Participant will halt trading for any security traded on its Market if the Primary Listing Market declares a Regulatory Halt for the security.²⁴

3. Resumption of Trading After a Regulatory Halt

The Amendment would specify certain procedures for the resumption of trading following (1) Regulatory Halts other than a SIP Halts and (2) SIP Halts.²⁵

a. Resumption of Trading After a Regulatory Halt Other Than a SIP Halt

With respect to the resumption of trading after a Regulatory Halt other than a SIP Halt, the Amendment would provide that the Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.²⁶ The Amendment would further provide that for a Regulatory Halt that is initiated by another Participant that is a Primary Listing Market, a Participant may resume trading after the Participant receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.²⁷

b. Resumption of Trading After a SIP Halt

With respect to the resumption of trading after a SIP Halt, the Amendment would provide that the Primary Listing Market will determine the SIP Halt Resume Time.²⁸ The Amendment would further provide that, in making such determination, the Primary Listing Market will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading.²⁹ The Amendment would also provide that the Primary Listing Market retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner.³⁰ Also with respect to termination of the SIP Halt, the Amendment would provide that the Primary Listing Market will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time.³¹ The Amendment would further provide that the Primary Listing Market shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the Primary Listing Market, during which period market participants may enter quotes and orders in the affected

securities.³² Under the Amendment, the Primary Listing Market would be permitted to stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.³³

Finally, the Amendment would provide that during Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time as specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, a Participant may resume trading in that security.³⁴ Under the Amendment, a Participant may, outside Regular Trading Hours, resume trading immediately after the SIP Halt Resume Time.³⁵

B. Communications

The Amendment addresses communications regarding trading halts. Specifically, the Amendment would provide that, whenever in the exercise of its regulatory functions, the Primary Listing Market for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the Primary Listing Market will notify all other Participants and the Processor of such Regulatory Halt and will provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Primary Listing Market.³⁶ The Amendment would further provide that the Processor shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) through (i) the Quote Data Feed and the Trade Data Feed and (ii) any other means the Processor, in its sole discretion, considers appropriate. Under the Amendment, each Participant would be required to continuously monitor these communication protocols established by the Operating Committee and the Processor during market hours.³⁷

²¹ See *id.* The Amendment would further provide that once a Regulatory Halt has been declared, the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market. See *id.*

²² See Section X.D.1 of the Plan, as amended.

²³ See Section X.D.2 of the Plan, as amended. The Amendment would further provide that, except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt. See Section X.D.3 of the Plan, as amended.

²⁴ See Section X.G of the Plan, as amended.

²⁵ The Amendment would define "SIP Halt" as "a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency." See Section X.A.11 of the Plan, as amended.

²⁶ See Section X.E.1 of the Plan, as amended.

²⁷ See Section X.E.2 of the Plan, as amended.

²⁸ See Section X.F.1 of the Plan, as amended. The Amendment would define "SIP Halt Resume Time" as "the time that the Primary Listing Market determines as the end of a SIP Halt." See Section X.A.12 of the Plan, as amended.

²⁹ See *id.*

³⁰ See *id.*

³¹ See Section X.F.2 of the Plan, as amended.

³² See *id.* The Amendment would further provide that, during regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the Primary Listing Market. See *id.*

³³ See *id.*

³⁴ See Section X.F.3 of the Plan, as amended.

³⁵ See *id.*

³⁶ See Section X.H of the Plan, as amended.

³⁷ See *id.* The Amendment would further provide that the failure of a Participant to continuously monitor such communication protocols as established by the Operating Committee and the Processor during market hours will not prevent the Primary Listing Market from initiating a Regulatory Halt in accordance with the procedures specified in the Amendment. See *id.*

C. Operational Halts

With respect to Operational Halts,³⁸ the Amendment would provide that a Participant must notify the Processor if it has concerns about its ability to transmit Quotation Information or Transaction Reports, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.³⁹

III. Discussion and Commission Findings

After careful review, the Commission is approving the Amendment, as modified by Amendment Nos. 1 and 2, for the reasons discussed below. Section 11A of the Act authorizes the Commission, by rule or order, to authorize or require the self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.⁴⁰ Pursuant to this authority, the Commission adopted Regulation NMS.⁴¹ Rule 603 of Regulation NMS requires the SROs to act jointly pursuant to NMS plans to “disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks.”⁴² And Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission a national market system plan (“NMS plan”) or a proposed amendment to an effective NMS plan.⁴³ Rule 608 further provides that the Commission shall approve an amendment to an NMS plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.⁴⁴

As stated above, the Commission received one comment letter regarding the proposed Amendment. The commenter states that the Amendment should be approved as filed.⁴⁵

According to the commenter, the purpose of the Amendment is to incorporate into the Plan the same processes for Regulatory and Operational Halts that are proposed by the equity exchanges, including that the Primary Listing Market be vested with the authority to determine when to initiate and end a Regulatory Halt, consistent with its rules.⁴⁶ The commenter states that the Primary Listing Market would be enabled to declare a Regulatory Halt as provided for in the Primary Listing Market’s rules, if it determines that there is a SIP Outage, Material SIP Latency, Extraordinary Market Activity, or in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market. The commenter states that the Commission should thus approve the Amendment because it is consistent with the Act and Rule 608 thereunder.⁴⁷

The Commission agrees that the Amendment, as modified by Amendment Nos. 1 and 2, is consistent with the Act and Rule 608 of Regulation NMS.⁴⁸ The Commission believes that the Amendment, as modified by Amendment Nos. 1 and 2, furthers the goals of Section 11A of the Act and of Rules 603 and 608 of Regulation NMS by establishing a clear and uniform approach with respect to trading halts under various defined circumstances. The Plan’s provisions currently lack clarity with respect to whether a Primary Listing Market may declare a Regulatory Halt due to underlying problems at the SIP, as well as the standard and process for calling a halt and resuming trading thereafter. The Amendment—and in particular the revisions that address Regulatory Halts in connection with SIP Outages, Material SIP Latency, Extraordinary Market Activity, and national, regional, or localized disruptions that necessitate a Regulatory Halt to maintain a fair and orderly market—address this shortcoming by providing for uniform rules governing how Participants will address, among other things, the initiation, implementation, and communication of trading halts, as well as the resumption of trading after a trading halt or SIP Halt, thereby clarifying the procedures to be followed and the standards to be applied, improving coordination and certainty among the Participants and other market participants, and enhancing the

resiliency and integrity of market systems. Accordingly, the Commission believes that the Amendment, as modified by Amendments Nos. 1 and 2, is in the public interest, supports the protection of investors, and helps the maintenance of fair and orderly markets because the Amendment, as modified by Amendment Nos. 1 and 2, is reasonably designed to assist market participants in understanding the processes to be followed during circumstances potentially warranting a regulatory halt, such as events involving the loss, timeliness, or accuracy of information that is processed or disseminated by the SIPs. Additionally, the Commission believes that the Amendment, as modified by Amendments Nos. 1 and 2, is reasonably designed to enhance the resiliency of the national market system by clearly memorializing the coordinated actions to be taken by the Participants during such events so that trading may resume in a fair and orderly manner.

The Commission further believes that the proposed requirement for Primary Listing Markets to make good-faith determinations⁴⁹ in consultation with other market participants, as may be applicable concerning the appropriateness of declaring a regulatory halt and resuming trading thereafter, should promote fairness and orderliness in decision-making by the Primary Listing Markets. In particular, the good-faith determination standard promotes fair and orderly markets and the protection of investors because it addresses potential concerns that Primary Listing Markets may be subject to commercial pressures in making decisions to call a Regulatory Halt and resuming trading thereafter. Accordingly, the Commission believes that the good-faith-determination standard encourages Primary Listing Markets to consider the broader interests of the national market system with respect to declaring trading halts and resuming trading thereafter, thereby promoting the maintenance of fair and orderly markets and enhancing the protection of investors.⁵⁰

For the reasons discussed, the Commission finds that the Amendment to the Nasdaq/UTP Plan, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder, and in

³⁸ See *supra* note 11 and accompanying text.

³⁹ See Section X.B. of the Plan, as amended.

⁴⁰ See 15 U.S.C. 78k-1(a)(3)(B).

⁴¹ 17 CFR 242.600–612; see also Regulation NMS, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37560 (June 29, 2005).

⁴² 17 CFR 242.603(b).

⁴³ See 17 CFR 242.608.

⁴⁴ See 17 CFR 242.608(b)(2).

⁴⁵ See Letter from Elizabeth K. King, Chief Regulatory Officer, ICE and General Counsel and Corporate Secretary, NYSE Group, Inc., to Vanessa

Countryman, Secretary, Commission, at 2 (Mar. 18, 2021) (“NYSE Letter”).

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ See 17 CFR 242.608.

⁴⁹ See, e.g., Sections X.C.2; X.E.1; X.F.1 of the Plan, as amended.

⁵⁰ This commenter also urges the Commission to publish and provide notice of any material changes that the Commission is considering with respect to the Amendments. See NYSE Letter, *supra* note 45, at 2. The Commission has determined to approve the Amendment without modification.

particular, Section 11A of the Act⁵¹ and Rule 608⁵² thereunder in that the Amendment, as modified by Amendment Nos. 1 and 2, is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. Section 11A of the Act⁵³ sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the prompt, accurate, reliable and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information. The Commission believes that the Amendment, as modified by Amendment Nos. 1 and 2, furthers these goals set forth by Congress.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,⁵⁴ and Rule 608(b)(2) thereunder,⁵⁵ that the Fiftieth Amendment to the Nasdaq/UTP Plan, as modified by Amendment Nos. 1 and 2, (File No. S7–24–89) is approved.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–11687 Filed 6–2–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92070; File No. SR–CTA/CQ–2021–01]

Consolidated Tape Association; Order Approving the Thirty-Sixth Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Seventh Substantive Amendment to the Restated CQ Plan

May 28, 2021.

I. Introduction

On February 3, 2021,¹ the Consolidated Tape Association (“CTA”)

Plan participants² filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)³ and Rule 608 of Regulation National Market System (“NMS”) thereunder,⁴ a proposal to amend the Second Restatement of the CTA Plan and the Restated Consolidated Quotation (“CQ”) Plan (collectively “CTA/CQ Plans” or “Plans”).⁵ These amendments represent the Thirty-Sixth Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Seventh Substantive Amendment to the Restated CQ Plan (“Amendments”).

The Amendments were published for comment in the **Federal Register** on March 1, 2021.⁶ One comment letter was received.⁷ This order approves the Amendments to the Plans.

II. Description of the Proposal

The Amendments propose revisions to the Plans' provisions governing Regulatory Halts⁸ and Operational

² These participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (each a “Participant,” and collectively the “Participants”).

³ 15 U.S.C. 78k–1(a)(3).

⁴ 17 CFR 242.608.

⁵ The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a “transaction reporting plan” under Rule 601 of Regulation NMS, 17 CFR 242.601, and a “national market system plan” under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608. See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR at 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR at 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995.

⁶ See Securities Exchange Act Release No. 91189 (Feb. 23, 2021), 86 FR 12038 (Mar. 1, 2021) (“Notice”).

⁷ Comments received in response to the Notice are available at <https://www.sec.gov/comments/sr-cta-cq-2021-01/srcta-cq202101.htm>.

⁸ The Amendments would define “Regulatory Halt” as “a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a

Halts.”⁹ The Participants state that “[t]he purpose of the amendments is to incorporate into the Plans the same processes for Regulatory Halts that are proposed by the equity exchanges.”¹⁰

A. Regulatory Halts

1. Declaration of a Regulatory Halt

With respect to declaration of a Regulatory Halt, the Amendments would provide that the Primary Listing Market¹¹ may declare a Regulatory Halt in trading for any security for which it is the Primary Listing Market (1) as provided for in the rules of the Primary Listing Market;¹² (2) if it determines¹³ there is a SIP Outage,¹⁴ Material SIP Latency,¹⁵ or Extraordinary Market Activity;¹⁶ or (3) in the event of

SIP Halt.” See Section XI(a)(i)(J) of the CTA Plan, as amended.

⁹ The Amendments would define “Operational Halt” as “a halt in trading in one or more securities only on a Market declared by such Participant and is not a Regulatory Halt.” See Section XI(a)(i)(G) of the CTA Plan, as amended.

¹⁰ See Notice, *supra* note 6, 86 FR at 12039.

¹¹ The Amendments would define “Primary Listing Market” as “the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.” See Section XI(a)(i)(H) of the CTA Plan, as amended.

¹² See Section XI(a)(iii)(A)(1) of the CTA Plan, as amended.

¹³ See Section XI(a)(iii)(A)(2) of the CTA Plan, as amended.

¹⁴ The Amendments would define “SIP Outage” as “a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.” See Section XI(a)(i)(M) of the CTA Plan, as amended.

¹⁵ The Amendments would define “Material SIP Latency” as “a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the high speed line or over the “high speed line” under the CQ Plan, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.” See Section XI(a)(i)(E) of the CTA Plan, as amended.

¹⁶ The Amendments would define “Extraordinary Market Activity” as “a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity

Continued

⁵¹ 15 U.S.C. 78k–1.

⁵² 17 CFR 242.608.

⁵³ 15 U.S.C. 78k–1(c)(1)(B).

⁵⁴ 15 U.S.C. 78k–1.

⁵⁵ 17 CFR 242.608(b)(2).

¹ See Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 3, 2021). The Amendments were posted to the Plans' website on February 12, 2021. See Email from James P. Dombach, Counsel to the Plans, to Michael E. Coe, Assistant Director, Commission (Feb. 12, 2021).

national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.¹⁷

The Amendments would further provide that, in determining whether to declare a Regulatory Halt, the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market participants, and will make a good-faith determination that the criteria to declare a Regulatory Halt have been satisfied and that a Regulatory Halt is appropriate.¹⁸ The Amendments would also provide that, the Primary Listing Market will consult, if feasible, with the affected Trading Center(s), other Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue, and that the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market.¹⁹

2. Initiating a Regulatory Halt

The Amendments would specify procedures for initiating a Regulatory Halt. Specifically, when initiating a Regulatory Halt, the start time of a Regulatory Halt would be when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.²⁰ The Amendments would further provide that if the Processor is unable to disseminate notice of a Regulatory Halt or the Primary Listing Market is not open for trading, the Primary Listing Market will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through: (1) Proprietary data feeds containing quotation and last

includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period." See Section XI(a)(i)(A) of the CTA Plan, as amended.

¹⁷ See Section XI(a)(iii)(A)(3) of the CTA Plan, as amended.

¹⁸ See Section XI(a)(iii)(B) of the CTA Plan, as amended.

¹⁹ See *id.* The Amendments would further provide that once a Regulatory Halt has been declared, the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market. See *id.*

²⁰ See Section XI(a)(iv)(A) of the CTA Plan, as amended.

sale price information that the Primary Listing Market also sends to the Processor; (2) posting on a publicly-available Participant website; or (3) system status messages.²¹ The Amendments would further specify that a Participant will halt trading for any security traded on its Market if the Primary Listing Market declares a Regulatory Halt for the security.²²

3. Resumption of Trading After a Regulatory Halt

The Amendments would specify certain procedures for the resumption of trading following (1) Regulatory Halts other than a SIP Halts and (2) SIP Halts.²³

a. Resumption of Trading After a Regulatory Halt Other Than a SIP Halt

With respect to the resumption of trading after a Regulatory Halt other than a SIP Halt, the Amendments would provide that the Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.²⁴ The Amendments would further provide that for a Regulatory Halt that is initiated by another Participant that is a Primary Listing Market, a Participant may resume trading after the Participant receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.²⁵

b. Resumption of Trading After a SIP Halt

With respect to the resumption of trading after a SIP Halt, the Amendments would provide that the Primary Listing Market will determine the SIP Halt Resume Time.²⁶ The Amendments would further provide that, in making such determination, the

²¹ See Section XI(a)(iv)(B) of the CTA Plan, as amended. The Amendments would further provide that, except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt. See Section XI(a)(iv)(C) of the CTA Plan, as amended.

²² See Section XI(a)(vii) of the CTA Plan, as amended.

²³ The Amendments would define "SIP Halt" as "a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency." See Section XI(a)(i)(K) of the CTA Plan, as amended.

²⁴ See Section XI(a)(v)(A) of the CTA Plan, as amended.

²⁵ See Section XI(a)(v)(B) of the CTA Plan, as amended.

²⁶ See Section XI(a)(vi)(A) of the CTA Plan, as amended. The Amendments would define "SIP Halt Resume Time" as "the time that the Primary Listing Market determines as the end of a SIP Halt." See Section XI(a)(i)(L) of the CTA Plan, as amended.

Primary Listing Market will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading.²⁷ The Amendments would also provide that the Primary Listing Market retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner.²⁸ Also, with respect to termination of the SIP Halt, the Amendments would provide that the Primary Listing Market will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time.²⁹ The Amendments would further provide that the Primary Listing Market shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the Primary Listing Market, during which period market participants may enter quotes and orders in the affected securities.³⁰ Under the Amendments, the Primary Listing Market would be permitted to stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.³¹

Finally, the Amendments would provide that during Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time as specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, a Participant may resume trading in that security.³² Under the Amendments, a Participant may, outside Regular Trading Hours, resume trading immediately after the SIP Halt Resume Time.³³

B. Communications

The Amendments address communications regarding trading halts. Specifically, the Amendments would provide that, whenever in the exercise of its regulatory functions the Primary Listing Market for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the Primary Listing

²⁷ See *id.*

²⁸ See *id.*

²⁹ See Section XI(a)(vi)(B) of the CTA Plan, as amended.

³⁰ See *id.* The Amendments would further provide that, during regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the Primary Listing Market. See *id.*

³¹ See *id.*

³² See Section XI(a)(vi)(C) of the CTA Plan, as amended.

³³ See *id.*

Market will notify all other Participants and the Processor of such Regulatory Halt and will provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Primary Listing Market.³⁴ The Amendments would further provide that the Processor shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) through the high speed line or through the “high speed line” under the CQ Plan, and (ii) any other means the Processor, in its sole discretion, considers appropriate. Under the Amendments, each Participant would be required to continuously monitor these communication protocols established by the Operating Committee and the Processor during market hours.³⁵

C. Operational Halts

With respect to Operational Halts,³⁶ the Amendments would provide that a Participant must notify the Processor if it has concerns about its ability to collect and transmit quotes, orders or last sale prices, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.³⁷

III. Discussion and Commission Findings

After careful review, the Commission is approving the Amendments, for the reasons discussed below. Section 11A of the Act authorizes the Commission, by rule or order, to authorize or require the self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.³⁸ Pursuant to this authority, the Commission adopted Regulation NMS.³⁹ Rule 603 of Regulation NMS requires the SROs to act jointly pursuant to NMS plans to “disseminate consolidated information,

including a national best bid and national best offer, on quotations for and transactions in NMS stocks.”⁴⁰ And Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission a national market system plan (“NMS plan”) or a proposed amendment to an effective NMS plan.⁴¹ Rule 608 further provides that the Commission shall approve an amendment to an NMS plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.⁴²

As stated above, the Commission received one comment letter regarding the proposed Amendments. The commenter states that the Amendments should be approved as filed.⁴³ According to the commenter, the purpose of the Amendments is to incorporate into the Plans the same processes for Regulatory and Operational Halts that are proposed by the equity exchanges, including that the Primary Listing Market be vested with the authority to determine when to initiate and end a Regulatory Halt, consistent with its rules.⁴⁴ The commenter states that the Primary Listing Market would be enabled to declare a Regulatory Halt as provided for in the Primary Listing Market’s rules, if it determines that there is a SIP Outage, Material SIP Latency, Extraordinary Market Activity, or in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market. The commenter states that the Commission should thus approve the Amendments because they are consistent with the Act and Rule 608 thereunder.⁴⁵

The Commission agrees that the Amendments are consistent with the Act and Rule 608 of Regulation NMS.⁴⁶ The Commission believes that the Amendments further the goals of Section 11A of the Act and of Rules 603 and 608 of Regulation NMS by establishing a clear and uniform approach with respect to trading halts

under various defined circumstances. The Plans’ provisions currently lack clarity with respect to whether a Primary Listing Market may declare a Regulatory Halt due to underlying problems at the SIP, as well as the standard and process for calling a halt and resuming trading thereafter. The Amendments—and in particular the revisions that address Regulatory Halts in connection with SIP Outages, Material SIP Latency, Extraordinary Market Activity, and national, regional, or localized disruptions that necessitate a Regulatory Halt to maintain a fair and orderly market—address this shortcoming by providing for uniform rules governing how Participants will address, among other things, the initiation, implementation, and communication of trading halts, as well as the resumption of trading after a trading halt or SIP Halt, thereby clarifying the procedures to be followed and the standards to be applied, improving coordination and certainty among the Participants and other market participants, and enhancing the resiliency and integrity of market systems. Accordingly, the Commission believes that the Amendments are in the public interest, support the protection of investors, and help the maintenance of fair and orderly markets because the Amendments are reasonably designed to assist market participants in understanding the processes to be followed during circumstances potentially warranting a regulatory halt, such as events involving the loss, timeliness, or accuracy of information that is processed or disseminated by the SIPs. Additionally, the Commission believes that the Amendments are reasonably designed to enhance the resiliency of the national market system by clearly memorializing the coordinated actions to be taken by the Participants during such events so that trading may resume in a fair and orderly manner.

The Commission further believes that the proposed requirement for Primary Listing Markets to make good-faith determinations⁴⁷ in consultation with other market participants, as may be applicable concerning the appropriateness of declaring a regulatory halt and resuming trading thereafter, should promote fairness and orderliness in decision-making by the Primary Listing Markets. In particular, the good-faith determination standard promotes fair and orderly markets and the protection of investors because it addresses potential concerns that

³⁴ See Section XI(a)(viii) of the CTA Plan, as amended.

³⁵ See *id.* The Amendments would further provide that the failure of a Participant to continuously monitor such communication protocols as established by the Operating Committee and the Processor during market hours will not prevent the Primary Listing Market from initiating a Regulatory Halt in accordance with the procedures specified in these Amendments. See *id.*

³⁶ See *supra* note 9 and accompanying text.

³⁷ See Section XI(a)(ii) of the CTA Plan, as amended.

³⁸ See 15 U.S.C. 78k–1(a)(3)(B).

³⁹ 17 CFR 242.600–612; see also Regulation NMS, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37560 (June 29, 2005).

⁴⁰ 17 CFR 242.603(b).

⁴¹ See 17 CFR 242.608.

⁴² See 17 CFR 242.608(b)(2).

⁴³ See Letter from Elizabeth K. King, Chief Regulatory Officer, ICE and General Counsel and Corporate Secretary, NYSE Group, Inc., to Vanessa Countryman, Secretary, Commission, at 2 (Mar. 18, 2021) (“NYSE Letter”).

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See 17 CFR 242.608.

⁴⁷ See, e.g., Sections XI(a)(iii)(B); XI(a)(v)(A); and XI(a)(vi)(A) of the CTA Plan, as amended.

Primary Listing Markets may be subject to commercial pressures in making decisions to call a Regulatory Halt and resuming trading thereafter. Accordingly, the Commission believes that the good-faith-determination standard encourages Primary Listing Markets to consider the broader interests of the national market system with respect to declaring trading halts and resuming trading thereafter, thereby promoting the maintenance of fair and orderly markets and enhancing the protection of investors.⁴⁸

For the reasons discussed, the Commission finds that the Amendments to the Plans, are consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, Section 11A of the Act⁴⁹ and Rule 608⁵⁰ thereunder in that the Amendments are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. Section 11A of the Act⁵¹ sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the prompt, accurate, reliable and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information. The Commission believes that the Amendments further these goals set forth by Congress.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,⁵² and Rule 608(b)(2) thereunder,⁵³ that the Amendments to the CTA and CQ Plans (File No. SR-CTA/CQ-2021-01) are approved.

By the Commission.
J. Matthew DeLesDernier,
Assistant Secretary.
 [FR Doc. 2021-11686 Filed 6-2-21; 8:45 am]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92051; File No. SR-C2-2021-009]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Align the Exchange's Rulebook With the Rulebook of Its Affiliated Exchange, Cboe Options, Inc. ("Cboe Options") and Make Other Formatting Changes

May 27, 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 May 19, 2021, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the "Exchange" or "C2") proposes to align the Exchange's rulebook with the rulebook of its affiliated Exchange, Cboe Options, Inc. ("Cboe Options") and make other formatting changes. 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/ctwo/), 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 align the numbers of its rules in the Exchange's Rulebook with the numbers of the same (or substantially similar) rules within the rulebook of its affiliated exchange, Cboe Options.³ The Exchange believes aligning the numbers of its rules with those of the same (or substantially similar) rules of Cboe Options to the extent practicable⁴ will reduce potential confusion for market participants. The below table sets forth the rules in the Exchange's Rulebook, their current rule numbers, and the proposed rule numbers. As noted in the table below, the proposed rule change deletes certain reserved rule numbers and adds certain reserved rule numbers to maintain number alignment with Cboe Options rule numbers.

Rule name	Current rule No.	Proposed new rule No.
Definitions	1.1	No change.
Exchange Determinations	1.2	1.5.
Time	1.3	1.6.
Trading Permit Holder Fees	2.1	No change.
Exchange's Costs of Defending Legal Proceedings	2.2	2.5.
Regulatory Revenues	2.3	2.2.
Reserved	N/A	2.4.
Trading Permits	3.1 ⁵	No change.

⁴⁸ This commenter also urges the Commission to publish and provide notice of any material changes that the Commission is considering with respect to the Amendments. See NYSE Letter, *supra* note 43, at 2. The Commission has determined to approve the Amendments without modification.

⁴⁹ 15 U.S.C. 78k-1.

⁵⁰ 17 CFR 242.608.

⁵¹ 15 U.S.C. 78k-1(c)(1)(B).

⁵² 15 U.S.C. 78k-1.

⁵³ 17 CFR 242.608(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In separate rule filings, the Exchange intends to similarly align the rule numbers of the Exchange's

other affiliated options exchanges, Cboe BZX Exchange, Inc. and Cboe EDGX Exchange, Inc. with the rule numbers of Cboe Options and the Exchange.

⁴ The Exchange notes that certain rules are applicable to it and not Cboe Options, and vice versa.

Rule name	Current rule No.	Proposed new rule No.
Denial of and Conditions to Being a Permit Holder or an Associated Person.	3.2	No change.
Persons Associated with Trading Permit Holder	3.3	No change.
Reserved	3.4	No change.
Trading Permit Holders and Persons Associated with a Trading Permit Holder Who Are or Become Subject to a Statutory Disqualification.	3.5	No change.
Dissolution and Liquidation of Trading Permit Holders	3.6	No change.
Obligations of Terminating Trading Permit Holders	3.7	No change.
Responsible Person	3.8	No change.
Integrated Billing System	3.9	2.3.
Letters of Guarantee and Authorization	3.10	3.61.
C2 Pledge	3.11	3.9.
Maintaining Current Address	3.12	3.10.
Educational Classes	3.13	3.11.
Effectiveness of a Trading Permit Holder	3.14	3.12.
Reserved	N/A	3.52 [sic]–3.59.
Sponsored Users	3.15	3.60.
Affiliation Between the Exchange and a Trading Permit Holder	3.16	3.62.
Cboe Trading as Outbound Router	3.17	3.63.
Cboe Trading as Inbound Router	3.18	3.64.
Reserved	3.19	Deleted.
Options Listing	Chapter 4 (incorporates by reference Cboe Options Chapter 4).	No change.
Business Conduct	Chapter 5 (incorporates by reference Cboe Options Chapter 8).	Chapter 8 (incorporates by reference Cboe Options Chapter 8).
Days and Hours of Business	6.1	5.1.
Unit of Trading	6.2	5.2.
Meaning of Premium Bids and Offers	6.3	5.3.
Minimum Increments for Bids and Offers	6.4	5.4.
System Access and Connectivity	6.8	5.5.
Entry and Cancellation of Orders	6.9	5.7.
Reserved	N/A	5.8.
Availability of Orders	6.10	5.6.
Opening Auction Process	6.11	5.31.
Order and Quote Book Processing, Display, Priority, and Execution	6.12	5.32.
Complex Orders	6.13	5.33.
Order and Quote Price Protection Mechanisms and Risk Controls	6.14	5.34.
Reserved	N/A	5.35.
Order Routing	6.15	5.36.
Binding Transactions	6.26	5.11.
Reserved	N/A	6.1.
Reporting of Matched Trades to Clearing Corporation	6.27	6.4.
Transaction Reports; Users' Identities	6.28	6.2.
Reserved	N/A	6.3.
Nullification and Adjustment of Options Transactions Including Obvious Errors.	6.29	6.5.
Give Up of a Clearing Trading Permit Holder	6.30	5.10.
Clearing Editor	6.31	6.6.
Trading Halts	6.32	5.20.
Authority to Take Action Under Emergency Conditions	6.33	5.23.
Disaster Recovery	6.34	5.24.
Message Traffic Mitigation	6.35	5.25.
Equity Market Plan to Address Extraordinary Market Volatility	6.39	5.21.
Disclaimers and Limitations	6.42	1.10.
Limitation on the Liability of Index Licensors for Options on Units	6.43	1.11.
Legal Proceedings Against the Exchange	6.44	1.13. ⁶
Limitation on Liability of Reporting Authorities for Indexes Underlying Options.	6.45	1.12.
Order Exposure Requirements	6.50	5.9.
Trading on Knowledge of Imminent Undisclosed Solicited Transaction	6.51	5.13. ⁷
Intermarket Linkage	Chapter 6, Section E (incorporates Cboe Options Chapter 5, Section by reference).	Chapter 5, Section E (incorporates Cboe Options Chapter 5, Section by reference).
Exercises and Deliveries	Chapter 6, Section F (incorporates Cboe Options Chapter 6, Section B by reference).	Chapter 6, Section B (incorporates Cboe Options Chapter 6, Section B by reference).
Prohibition on Transactions Off the Exchange	6.60	5.12.
Off-Floor Transfers of Positions	6.61	6.7.
Off-Floor RWA Transfers	6.62	6.8.
In-Kind Exchange of Options Positions and ETF Shares and UIT Interests.	6.63	6.9.

Rule name	Current rule No.	Proposed new rule No.
Regulatory Records, Reports, and Audits—General	Chapter 7, Section A (incorporates by reference Cboe Options Chapter 7, Section A).	No change.
Consolidated Audit Trail (CAT)	Chapter 7, Section B (incorporates by reference Cboe Options Chapter 7, Section B).	No change.
Initial Market-Maker Registration	8.1	3.52.
Market-Maker Class Appointments	8.2	5.50.
Market-Maker Class Appointment Costs	8.3	5.50(d).
Good Standing for Market-Makers	8.4	5.53.
Obligations of Market-Makers	8.5	5.51.
Market-Maker Quotes	8.6	5.52.
Securities Accounts and Orders of Market-Makers	8.7	7.6.
Financial Requirements and Arrangement for Market-Makers	8.8	Delete (Chapter 11 already incorporates an identical Cboe Options Rule by reference). ⁸
Doing Business with the Public	Chapter 9 (incorporates by reference Cboe Options Chapter 9).	No change.
Margin Requirements	Chapter 10 (incorporates by reference Cboe Options Chapter 10).	No change.
Net Capital Requirements	Chapter 11 (incorporates by reference Cboe Options Chapter 11).	No change.
Summary Suspension	Chapter 12 (incorporates by reference Cboe Options Chapter 12).	No change.
Discipline	Chapter 13 (incorporates by reference Cboe Options Chapter 13).	No change. ⁹
Arbitration	Chapter 14 (incorporates by reference Cboe Options Chapter 14).	No change.
Hearings and Review	Chapter 15 (incorporates by reference Cboe Options Chapter 15).	No change.

The proposed rule change also updates cross-references to reflect the proposed changes in the above table and

updates chapter and section headings and to conform to those in the Cboe Options rulebook. The proposed rule

change also corrects certain cross-references that are currently inaccurate, as follows:

Rule location of current inaccurate cross-reference	Current cross-reference	Revised/accurate cross-reference
1.1 (definition of “Protected Quotation”).	6.80 (incorrect Cboe Options rule number (which should be Cboe Options Rule 5.65) incorporated by reference into current C2 Chapter 6, Section E).	5.65 (Cboe Options rule number incorporated by reference into proposed C2 Chapter 5, Section E).
1.1 (definition of “System Securities”)	Chapters 5 and 24 (should be Chapter 4)	Chapter 4 (incorporates by reference Cboe Options Chapter 4).
1.1 (definition of “Unit”)	Rule 5.3, Interpretation and Policy .06 (incorrect Cboe Options rule number (which should be Cboe Options Rule 4.3, Interpretation and Policy .06) incorporated by reference into current C2 Chapter 4).	Rule 4.3, Interpretation and Policy .06 (Cboe Options rule number incorporated by reference into C2 Chapter 4).
6.42(f) (proposed Rule 1.10(f))	Chapter 19 (should be Chapter 15, which incorporates by reference Cboe Options Chapter 15).	Chapter 15 (which incorporates by reference Cboe Options Chapter 15).

⁵ In separate rule filings, the Exchange intends to align the membership rules included in Chapter 3 of the Exchange’s Rulebook with the membership rules included in Cboe Options’ Rulebook.

⁶ Proposed Rule 1.13 is the same as Cboe Options Rule 1.15. As Cboe Options Rules 1.13 and 1.14 are applicable to Cboe Options but not the Exchange, the Exchange expects Cboe Options to submit a separate filing to renumber Cboe Options Rule 1.15 to Rule 1.13, and then renumber current Cboe Options Rules 1.13 and 1.14 to Rules 1.14 and 1.15, respectively.

⁷ The Exchange notes current Rule 6.51 (proposed Rule 5.13) is the same as Cboe Options Rule 5.86(e).

As Cboe Options Rule 5.86(e) is inapplicable to C2, the proposed rule change moves current Rule 6.51 to Rule 5.13, which is a rule number not currently in the Cboe Options rulebook. The Exchange and Cboe Options will consider whether additional changes can be made to further align this and other rule numbers.

⁸ Chapter 11 of the Exchange’s Rulebook incorporates by reference Chapter 11 of the Cboe Options Rulebook, including Cboe Options Rule 11.6, which is virtually identical to current C2 Rule 8.8. Therefore, current C2 Rule 8.8 is redundant.

⁹ Currently, Chapter 13 of the Exchange Rulebook states that any references in Cboe Options Rule

13.15 to Rule 2.3 are deemed to refer to C2 Rule 3.9. Current Rule 3.9 and Cboe Options Rule 2.3 are identical, and with the proposed move of C2 Rule 3.9 to Rule 2.3, that sentence in Chapter 13 is no longer necessary. Therefore, the proposed rule change deletes that sentence from Chapter 13. Additionally, Rule 13.15(g)(19) currently includes a parenthetical reference to Rule 6.34(b), which is also referenced in the body of that rule. The other C2-specific provisions in Rule 13.15 do not include such parenthetical reference in the rule provision heading, so the proposed rule change deletes that reference for consistency throughout the rule.

Rule location of current inaccurate cross-reference	Current cross-reference	Revised/accurate cross-reference
6.43(a) (proposed Rule 1.11)	Rule 5.3.06 (incorrect Cboe Options rule number (which should be Cboe Options Rule 4.3, Interpretation and Policy .06) incorporated by reference into current C2 Chapter 4).	Rule 4.3, Interpretation and Policy .06) (Cboe Options rule number incorporated by reference into C2 Chapter 4).
3.1(f)	Chapter 17 (should be Chapter 13, which incorporates by reference Cboe Options Chapter 13).	Chapter 13 (which incorporates by reference Cboe Options Chapter 13).
3.2(e)	Chapter 19 (should be Chapter 15, which incorporates by reference Cboe Options Chapter 15).	Chapter 15 (which incorporates by reference Cboe Options Chapter 15).
3.6	Chapter 16 (should be Chapter 12, which incorporates by reference Cboe Options Chapter 12).	Chapter 12 (which incorporates by reference Cboe Options Chapter 12).
3.13 (proposed Rule 3.11)	Rule 17.50 (incorrect Cboe Options rule number, which should be Cboe Options Rule 13.15 (incorporated by reference into C2 Chapter 13) and Chapter 17 (should be Chapter 13, which incorporates by reference Cboe Options Chapter 13).	Rule 13.15 and Chapter 13 (which incorporates by reference Cboe Options Rule 13.15 and Chapter 13, respectively).
6.3(b) (proposed 5.3(b))	5.7 (should be current Rule 6.2, which is proposed Rule 5.2).	5.2.
6.10(c) (definition of "Cancel Back") ...	5.66 (incorrect Cboe Options rule, which should be Cboe Options Rule 5.66 (incorporated by reference into C2 Chapter 6, Section E (proposed C2 Chapter 5, Section E)).	5.66 (Cboe Options rule incorporated by reference into proposed C2 Chapter 5, Section E).
6.30(h) (proposed 5.10(h))	8.1 (correct Cboe Options rule number, but is incorporated by reference into current C2 Chapter 5 (proposed C2 Chapter 8)).	8.1 (Cboe Options rule incorporated by reference into proposed C2 Chapter 8).
6.51 (proposed 5.13)	8.1 (correct Cboe Options rule number, but is incorporated by reference into current C2 Chapter 5 (proposed C2 Chapter 8)).	8.1 (Cboe Options rule incorporated by reference into proposed C2 Chapter 8).
6.32, Interpretation and Policy .02(c) (proposed 5.20, Interpretation and Policy .02(c)).	6.1 (should be current 6.11 (proposed 5.31)	5.31.
6.61(a)(1) (proposed 6.7(a)(1))	8.5 and 8.14 (correct Cboe Options rule numbers, but is incorporated by reference into current C2 Chapter 5 (proposed C2 Chapter 8)).	8.5 and 8.14 (Cboe Options rules incorporated by reference into proposed C2 Chapter 8).
Chapter 7, Section B	Section F of Cboe Options Chapter VI (should be Section B of Cboe Options Chapter 6).	Section B of Cboe Options Chapter 6 [sic].

The proposed rule change makes no substantive changes to any rule text.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by aligning the numbers and format of the Exchange's rules within its Rulebook with the rule numbers of the same rules in the rulebook of Cboe Options, which is affiliated with the Exchange.¹³ The Exchange believes consistent numbering (and chapter and section headings) among rulebooks of affiliated exchanges for rules (and chapter and section headings) that are the same (or substantially similar) may simplify the

rulebooks of the Exchange and its affiliated exchanges as well as reduce confusion among participants of the Exchange that are also participants on Cboe Options. The Exchange believes this consistency will foster cooperation and coordination with persons engaged in facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change has no competitive impact, as it merely changes the numbers of certain rules (and updates cross-references, as appropriate) and chapter and section heading names and font, but makes no substantive changes to any rule text.

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.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² *Id.*

¹³ A significant portion of the Exchange's Rulebook incorporates by reference Cboe Options rules and is already aligned numerically with the Cboe Options rulebook. The proposed rule change aligns the numbers of all rules and chapters in the Exchange's Rulebook with those of the Cboe Options rulebook.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-C2-2021-009 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-C2-2021-009. 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-C2-2021-009 and should be submitted on or before June 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11609 Filed 6-2-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92072; File No. SR-BOX-2021-12]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Amend BOX Rule 5050 (Series of Options Contracts Open for Trading) To Limit Short Term Options Series Intervals

May 28, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 18, 2021, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 5050 (Series of Options Contracts Open for Trading). This proposal seeks to limit Short Term Options Series intervals between strikes which are available for quoting and trading on BOX. The text of the proposed rule change is available from

the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5050, "Series of Options Contracts Open for Trading." Specifically, this proposal seeks to limit the intervals between strikes for multiply listed equity options classes within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing.

Background

Today, BOX's listing rules within Rule 5050 permits the Exchange, after a particular class of options (call option contracts or put option contracts relating to a specific underlying stock, Exchange-Traded Fund Share,³ or

³ Exchange-Traded Fund Share shall include shares or other securities that are traded on a national securities exchange and are defined as an "NMS stock" under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (the "Money Market Instruments") (comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust or similar entity

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

ETN⁴) has been approved for listing and trading on the Exchange, to open for trading series of options therein. The Exchange may list series of options for trading on a weekly,⁵ monthly⁶ or

when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Currency Trust Shares"); or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs") or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust; provided the conditions within BOX Rule 5050(h)(1) and (2) are met. See BOX Rule 5020(h).

⁴ Securities deemed appropriate for options trading shall include shares or other securities ("Equity Index-Linked Securities," "Commodity-Linked Securities," "Currency-Linked Securities," "Fixed Income Index-Linked Securities," "Futures-Linked Securities," and "Multifactor Index-Linked Securities," collectively known as "Index-Linked Securities" or "ETNs") that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity, as described within BOX Rule 5020(k)(1)(A)–(F). See BOX Rule 5020(k).

⁵ The weekly listing program is known as the Short Term Options Series Program and is described within IM–5050–6.

⁶ The Exchange will open a minimum of one expiration month and series for each class of options open for trading on BOX. See BOX Rule 5050(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 5020. Monthly listings expire the third Friday of the month. The term "expiration date" when used in respect of a series of binary options other than event options means the last day on which the options may be automatically exercised. In the case of a series of event options (other than credit default options or credit default basket options) that are to be automatically exercised prior to their expiration date upon receipt by the Corporation of an event confirmation, the expiration date is the date specified by the listing Exchange; provided, however, that when an event confirmation is deemed to have been received by the Corporation with respect to such series of options, the expiration date will be accelerated to the date on which such event confirmation is deemed to have been received by the Corporation or such later date as the Corporation may specify. In the case of a series of credit default options or credit default basket options, the expiration date is the fourth business day after the last trading day for such series as such trading day is specified by the Exchange on which the series of options is listed; provided, however, that when an event confirmation is deemed to have been received by the Corporation with respect to a series of credit default options or single payout credit default basket options prior to the last trading day for such series, the expiration date for options of that series will be accelerated to the second business day following the day on which such event confirmation is deemed to have been received by the Corporation. "Expiration date" means, in respect of a series of range options expiring prior to February 1, 2015, the Saturday immediately

quarterly⁷ basis. BOX Rule 5050(d) sets forth the intervals between strike prices of series of options on individual stocks.⁸ In addition to those intervals, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,⁹ the \$0.50 Strike Program,¹⁰ the \$2.50 Strike Price Program,¹¹ and the \$5 Strike Program.¹²

The Exchange's proposal seeks to amend the listing of weekly series of options as proposed within new Supplementary Material .03(f) of Options 4, Section 5, by limiting the intervals between strikes in multiply listed equity options, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date. This proposal does not amend monthly or quarterly listing rules nor does it amend the \$1 Strike Price Interval Program, the \$0.50 Strike Program, the \$2.50 Strike Price Program, or the \$5 Strike Program.

Short Term Options Series Program

Today, IM–5050–6 permits BOX to open for trading on any Thursday or Friday that is a business day ("Short

following the third Friday of the expiration month of such series, and, in respect of a series of range options expiring on or after February 1, 2015 means the third Friday of the expiration month of such series, or if such Friday is a day on which the Exchange on which such series is listed is not open for business, the preceding day on which such Exchange is open for business. See The Options Clearing Corporation ("OCC") By-Laws at Section 1.

⁷ The quarterly listing program is known as the Quarterly Options Series Program and is described within IM–6090–1.

⁸ Except as otherwise provided in IM–5050–6, the interval between strike prices of series of options on individual stocks will be: (1) \$2.50 or greater where the strike price is \$25.00 or less; (2) \$5.00 or greater where the strike price is greater than \$25.00; and (3) \$10.00 or greater where the strike price is greater than \$200.00. The interval between strike prices of series of options on Exchange-Traded Fund Shares approved for options trading pursuant to BOX Rule 5020(h) shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. Pursuant to IM–5050–1(b), notwithstanding any other provision regarding the interval of strike prices of series of options on Exchange-Traded Fund Shares in this rule, the interval of strike prices on SPDR® S&P 500® ETF ("SPY"), iShares Core S&P 500 ETF ("IVV"), PowerShares QQQ Trust ("QQQ"), iShares Russell 2000 Index Fund ("IWM"), and the SPDR® Dow Jones® Industrial Average ETF ("DIA") options will be \$1 or greater.

⁹ The \$1 Strike Interval Program is described within IM–5050–2.

¹⁰ The \$0.50 Strike Interval Program is described within IM–5050–5.

¹¹ The \$2.50 Strike Interval Program is described within IM–5050–3.

¹² The \$5.00 Strike Interval Program is described within Rule 5050(d)(5).

Term Option Opening Date") series of options on an option class that expires at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire ("Short Term Option Expiration Dates"), provided an option class has been approved for listing and trading on the Exchange.¹³ Today, the Exchange may open up to thirty initial series for each option class that participates in the Short Term Option Series Program.¹⁴ Further, if the Exchange opens less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.¹⁵

The Exchange may open for trading Short Term Option Series on the Short Term Option Opening Date that expire on the Short Term Option Expiration Date at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$100, and \$1 or greater where the strike price is between \$100 and \$150 for all option classes that participate in the Short Term Options Series Program; (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or

¹³ The Exchange may have no more than a total of five Short Term Option Expiration Dates, not including any Monday or Wednesday SPY Expirations as provided below. If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. With respect to Wednesday SPY Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on the SPDR S&P 500 ETF Trust (SPY) to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire ("Wednesday SPY Expirations"). With respect to Monday SPY Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire ("Monday SPY Expirations"), provided that Monday SPY Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. The Exchange may list up to five consecutive Wednesday SPY Expirations and five consecutive Monday SPY Expirations at one time; the Exchange may have no more than a total of five Wednesday SPY Expirations and a total of five Monday SPY Expirations. Monday and Wednesday SPY Expirations will be subject to the provisions of this Rule. See IM–5050–6(c) and (d).

¹⁴ See IM–5050–6(b)(3).

¹⁵ See IM–5050–6(b)(4).

(iii) \$2.50 or greater where the strike price is above \$150. During the month prior to expiration of an option class that is selected for the Short Term Option Series Program ("Short Term Option"), the strike price intervals for the related non-Short Term Option ("Related non-Short Term Option") shall be the same as the strike price intervals for the Short Term Option.¹⁶

The Exchange may select up to fifty currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the fifty option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to thirty Short Term Option Series for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by

such exchanges under their respective short term option rules.¹⁷

The Exchange notes that listings in the weekly program comprise a significant part of the standard listing in options markets and that the industry has observed a notable increase over approximately the last five years in compound annual growth rate ("CAGR") of weekly strikes as compared to CAGR for standard third-Friday expirations.¹⁸

Proposal

The Exchange proposes to widen the intervals between strikes in order to limit the number of strikes listed for equity options (excluding options on ETFs and ETNs) listed as part of the Short Term Option Series Program that have an expiration date more than 21 days from the listing date, by adopting proposed Rule 4.5(d)(6). The Exchange notes that this proposal is substantively identical to the strike interval proposal recently submitted by Nasdaq BX, Inc. ("BX") and approved by the Securities and Exchange Commission ("Commission").¹⁹

The proposal widens intervals between strikes for expiration dates of equity option series (excluding options on ETFs and ETNs) beyond 21 days utilizing the three-tiered table in proposed IM-5050-11 (presented below) which considers both the Share Price and Average Daily Volume for the option series. The table indicates the applicable strike intervals and supersedes IM-6090-2(b)(4), which currently permits 10 additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. As a result of the proposal, IM-6090-2(b)(4) would not permit an additional series of an equity option to have an expiration date more than 21 days from the listing date to be opened for trading on the Exchange despite the noted circumstances in subparagraph (b)(4) when such additional series may otherwise be added.

Tier	Average daily volume	Share Price				
		Less than \$25	\$25 to less than \$75	\$75 to less than \$150	\$150 to less than \$500	\$500 or greater
1	Greater than 5,000	\$0.50	\$1.00	\$1.00	\$5.00	\$5.00
2	Greater than 1,000 to 5,000	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

The Share Price would be the closing price on the primary market on the last day of the calendar quarter. This value would be used to derive the column from which to apply strike intervals throughout the next calendar quarter. The Average Daily Volume would be the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume shall be calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at OCC. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume shall be calculated using the calendar quarter

prior to the last trading calendar quarter.²⁰ Under current rules, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday, as is the case today for STOs as specified within IM-5050-6.

The Exchange proposes that Short Term Options Series that are newly eligible for listing pursuant to Rule 5020(a) will not be subject to this proposed IM-5050-11 until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market.²¹ The Exchange would be permitted to list options on newly eligible listings, without any curtailment in strike intervals, until the

end of the first full quarter after they were listed. BOX's proposal would thereby permit BOX to add strikes to meet customer demand in the options class. By deferring the curtailment until after the end of the first full calendar quarter, additional information on the underlying security would be available to market participants and public investors. During this period of deferment the price of the underlying would have an opportunity to settle based on the price discovery that has occurred in the primary market. An options class that represents a newly listed primary security may fluctuate in price after its initial listing; such volatility reflects a natural uncertainty about the security. Also, BOX would have the ability to list as many strikes as are permissible for the Short Term

¹⁶ See IM-5050-1(b).

¹⁷ See IM-5050-6(b)(1).

¹⁸ See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) ("BX Strike Interval Approval Order"); and SR-2020-BX-032 as amended by Amendment No. 1 (February 10, 2021) available at: <https://www.sec.gov/comments/sr-bx-2020-032/srbx2020032-8359799-229182.pdf> ("BX proposal"); see also BX Options Strike Proliferation Proposal (February 25, 2021) available at: <https://www.nasdaq.com/solutions/bxoptions-strike-proliferation-proposal>.

¹⁹ See BX Strike Interval Approval Order, *id.*

²⁰ For example, options listed as of January 4, 2021 would be calculated on January 5, 2021 using

the Average Daily Volume from July 1, 2020 to September 30, 2020.

²¹ For example, if an options became newly eligible for listing pursuant to Rule 5020 on March 1, 2021, the first full quarterly lookback would be available on July 1, 2021. This option would become subject to the curtailment on July 2, 2021.

Options Series once the expiry is within twenty-one days. Short Term Options Series which have an expiration date less than twenty-one days from the listing date are not subject to the curtailment, thereby allowing BOX to list additional, and potentially narrower, strikes in the event of market volatility or other market events.

In the event of a corporate action, the Share Price of the surviving company would be utilized. These metrics are intended to align expectations for determining which strike intervals will be utilized. Finally, notwithstanding the limitations imposed by proposed IM-5050-11, this Strike Interval Proposal does not amend the range of strikes that may be listed pursuant to IM-5050-6, regarding the Short Term Option Series Program.

By way of example, if the Share Price for a symbol was \$142 at the end of a calendar quarter, with an Average Daily Volume greater than 5,000, thereby, requiring strike intervals to be listed \$1.00 apart, that strike interval would apply for the calendar quarter, regardless of whether the Share Price changed to greater than \$150 during that calendar quarter.²²

The proposed table within IM-5050-11 takes into account the notional value of a security, as well as Average Daily Volume in the underlying stock, in order to limit the intervals between strikes in the Short Term Options listing program. BOX would utilize OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. The OCC Customer-cleared volume represents the majority of options volume executed on the Exchange that, in turn, reflects the demand in the marketplace. The options series listed on BOX are intended to meet customer demand by offering an appropriate number of strikes. Non-Customer cleared OCC volume represents the supply side. The strike intervals for listing strikes in certain options are intended to remove repetitive and unnecessary strike listings across the weekly expiries. BOX's Strike Interval Proposal seeks to reduce the number of strikes in the furthest weeklies, where there exist wider markets and therefore lower market quality.

The proposed table within IM-5050-11 is intended to distribute strike intervals in multiply listed equity options where there is less volume as measured by the Average Daily Volume

tiers. Therefore, the lower the Average Daily Volume, the greater the proposed spread between strike intervals. Options classes with higher volume contain the most liquid symbols and strikes, therefore the finer the proposed spread between strike intervals. Additionally, lower-priced shares have finer strike intervals than higher-priced shares when comparing the proposed spread between strike intervals.

Today, weeklies are available on 16% of underlying products. The Exchange's Strike Interval Proposal curtails the density of strike intervals listed in series of options, without reducing the classes of options available for trading on BX. Short Term Options Series with an expiration date greater than twenty-one days from the listing date equates to 7.5% of the total number of strikes in the options market, which equals 81,000 strikes.²³ The Exchange expects this proposal to result in the limitation of approximately 20,000 strikes within the Short Term Options Series which is 2% of the total strikes in the options markets.²⁴ The Exchange understands there has been an inconsistency of demand for series of options beyond 21 calendar days.²⁵ The proposal takes into account customer demand for certain options classes, by considering both the Share Price and the Average Daily Volume, in order to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,²⁶ rendering these strikes less useful. The Exchange also notes that the proposal focuses on strikes in multiply listed equity options, and excludes ETFs and ETNs, as the majority of strikes reside within equity options.

This Strike Interval Proposal serves to respond to comments received from industry members with respect to the increasing number of strikes that are required to be quoted by market makers in the options industry. BOX requires Market Makers to quote a certain amount of time in the trading day in their assigned options series to maintain liquidity in the market.²⁷ With an increasing number of strikes being listed across options exchanges, Market

Makers must expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in options series. The Exchange believes that this Strike Interval Proposal would limit the intervals between strikes, reducing the number of strikes listed on BOX, and thereby allow Market Makers to expend their capital in the options market in a more efficient manner. Due to this increased efficiency, the Exchange believes that this Strike Interval Proposal would improve overall market quality on BOX by limiting the intervals between strikes in multiply listed equity options that have an expiration date more than twenty-one days, from the listing date.

Implementation

The Exchange proposes to implement the proposed changes on July 1, 2021. The Exchange will issue a notice to its Participants with the date of implementation. Lastly, the Exchange will issue a notice to its Participants whenever the Exchange is the first exchange to list an eligible Short Term Option Series.²⁸

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),²⁹ in general, and Section 6(b)(5) of the Act,³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Strike Proposal seeks to limit the intervals between strikes listed in the Short Term Options Series program that have an expiration date more than twenty-one days. While the current listing rules permit BOX to list a number of weekly strikes on its market, the Exchange's Strike Interval Proposal removes impediments to and

²³ The Exchange notes that this proposal is an initial attempt at reducing strikes and anticipates filing additional proposals to continue reducing strikes. The above referenced data, specifically the percentage of underlying products and percentage of and total number of strikes, are approximations and may vary slightly at the time of this filing.

²⁴ From information drawn from time period between January 2020 and May 2020. See BX proposal, *supra* note 19.

²⁵ See BX proposal, *supra* note 19.

²⁶ See BX proposal, *supra* note 19.

²⁷ See Rule 8050.

²⁸ When the Exchange is the first exchange to list an option class under IM-5050-11 the Exchange shall provide a notice to its Participants regarding the Short Term Option Series to be listed. Such notice will include for each eligible option class: The closing price of the underlying, the Average Daily Volume of the option class; and the eligible strike category (per the proposed table) in which the eligible option class falls under as a result of the closing price and the Average Daily Volume.

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

²² The Exchange notes that any limits on intervals imposed by the Exchange's Rules will continue to apply. In this example, the strikes would be in \$1 intervals up to \$150, which is the upper limit imposed by IM-5050-6(b)(5).

perfects the mechanism of a free and open market and a national market system by encouraging Market Makers to deploy capital more efficiently and improving market quality overall on BOX through limiting the intervals between strikes when applying the strike interval table to multiply listed equity options that have an expiration date more than twenty-one days from the listing date. Also, as BOX's Strike Interval Proposal seeks to reduce the number of weekly options that would be listed on its market in later weeks, Market Makers would be required to quote in fewer weekly strikes as a result of the Strike Interval Proposal. Amending BOX's listing rules to limit the intervals between strikes for multiply listed equity options that have an expiration date more than twenty-one days causes less disruption in the market as the majority of the volume traded in weekly options exists in options series which have an expiration date of twenty-one days or less. The Exchange's Strike Interval Proposal curtails the number of strike intervals listed in series of options without reducing the number of classes of options available for trading on BOX.

The Strike Interval Proposal takes into account customer demand for certain options classes by considering both the Share Price and the Average Daily Volume in the underlying security to arrive at the manner in which weekly strike intervals would be listed in the later weeks for each multiply listed equity options class. The Exchange utilizes OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. The OCC Customer-cleared volume represents the majority of options volume executed on the Exchange that, in turn, reflects the demands in the marketplace. The options series listed on BOX is intended to meet customer demand by offering an appropriate number of strikes. Non-Customer cleared OCC volume represents the supply side.

The Strike Interval Proposal for listing strikes in certain multiply listed equity options is intended to remove certain strikes where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs that renders the strikes less useful and thereby protects investors and the general public by removing an abundance of unnecessary choices for an options series, while also improving market quality. BOX's Strike Interval Proposal seeks to reduce the number of strikes in the furthest weeklies, where there exist wider markets, and, therefore, lower market quality. The

implementation of the proposed table is intended to spread strike intervals in multiply listed equity options, where there is less volume that is measured by the average daily volume tiers. Therefore, the lower the average daily volume, the greater the proposed spread between strike intervals. Options classes with higher volume contain the most liquid symbols and strikes, therefore the finer the proposed spread between strike intervals. Additionally, lower-priced shares have finer strike intervals than higher-priced shares when comparing the proposed spread between strike intervals.

Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume shall be calculated by utilizing data from the prior calendar quarter based on OCC Customer-cleared volume. Utilizing the second trading day allows the Exchange to accumulate data regarding OCC Customer-cleared volume from the entire prior quarter. Beginning on the second trading day would allow trades executed on the last day of the previous calendar quarter to have settled³¹ and be accounted for in the calculation of Average Daily Volume. Utilizing the previous three months is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.*, it would result in a more reliable measure of average daily trading volume than would a shorter period).

As stated, the proposal is substantively identical to the strike interval proposal recently submitted by BX and approved by the Commission.³² The Exchange believes that varied strike intervals will continue to offer market participants the ability to select the appropriate strike interval to meet that market participants' investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed rule change limits the number of Short Term Option Series

strikes available for quoting and trading on the Exchange for all market participants. Therefore, all market participants will equally be able to transact in options series in the strikes listed for trading on the Exchange. The proposal is intended to reduce the number of strikes for weekly options listed in later weeks without reducing the number of classes of options available for trading on the Exchange while also continuing to offer an appropriate number of strikes the Exchange believes will meet market participants' investment objectives.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it only impacts the permissible strike intervals for certain options series listed on the Exchange. Additionally, another options exchange has recently implemented a substantively identical to the strike interval proposal recently submitted by BX and approved by the Commission.³³ The proposal is a competitive response that will permit the Exchange to list the same series in multiply listed options as another options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)³⁴ of the Act and Rule 19b-4(f)(6) thereunder.³⁵ Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁶

³³ See BX Strike Interval Approval Order, *supra* note 19.

³⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as

³¹ Options contracts settle one business day after trade date. Strike listing determinations are made the day prior to the start of trading in each series.

³² See BX Strike Interval Approval Order, *supra* note 19.

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-BOX-2021-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BOX-2021-12. 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

designated by the Commission. The Exchange has satisfied this requirement.

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2021-12, and should be submitted on or before June 24, 2021. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11691 Filed 6-2-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92038; File No. SR-OCC-2021-003]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Establish OCC's Persistent Minimum Skin-In-The-Game

May 27, 2021.

I. Introduction

On February 10, 2021, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2021-003, ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to establish a persistent minimum level of skin-in-the-game that OCC would contribute to cover default losses or liquidity shortfalls.³ The Proposed Rule Change was published for public comment in the **Federal Register** on March 2, 2021.⁴ The

³⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, 86 FR at 12237.

⁴ Securities Exchange Act Release No. 91199 (Feb. 24, 2021), 86 FR 12237 (Mar. 2, 2021) (File No. SR-OCC-2021-003) ("Notice of Filing"). OCC also filed a related advance notice (SR-OCC-2021-801) ("Advance Notice") with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Advance Notice was published in the **Federal Register** on March 1, 2021. Securities Exchange Act Release No. 91184 (Feb. 23, 2021), 86 FR 12057 (Mar. 1, 2021) (File No. SR-OCC-2021-801). A Notice of No Objection to the Advance Notice was published in the **Federal Register** on April 12, 2021. See Securities Exchange Act Release

Commission has received comments regarding the proposal described in the Proposed Rule Change.⁵ This Order approves the Proposed Rule Change.

II. Background⁶

"Skin-in-the-game," as a component of financial risk management, entails a covered clearing agency choosing, upon the occurrence of a default or series of defaults and application of all available assets of the defaulting participant(s), to apply its own capital contribution to the relevant clearing or guaranty fund in full to satisfy any remaining losses prior to the application of any (a) contributions by non-defaulting members to the clearing or guaranty fund, or (b) assessments that the covered clearing agency require non-defaulting participants to contribute following the exhaustion of such participant's funded contributions to the relevant clearing or guaranty fund.⁷

OCC's skin-in-the-game component of its financial risk management regime is described in its current rules, which provide for the use of OCC's own capital to mitigate losses arising out of a Clearing Member default.⁸ Specifically, OCC's rules provide for the offsetting of default losses remaining after the application of a defaulted Clearing Member's margin deposits and Clearing Fund contributions with OCC's capital in excess of 110 percent of the Target Capital Requirement at the time of the default.⁹ OCC's rules also provide for charging losses remaining after the application of OCC's excess capital to OCC senior management's deferred

No. 91491 (Apr. 7, 2021), 86 FR 19061 (Apr. 12, 2021) (File No. SR-OCC-2021-801).

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-occ-2021-003/srocc2021003.htm>.

Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Advance Notice are available at <https://www.sec.gov/comments/sr-occ-2021-801/occ2021801.htm>.

⁶ Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

⁷ See Securities Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70806 (Oct. 13, 2016) (S7-03-14) ("Covered Clearing Agency Standards").

⁸ See Securities Exchange Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (File No. SR-OCC-2019-007) ("CMP Approval Order").

⁹ See OCC Rule 1006(e), available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf (last visited Mar. 16, 2021). See also CMP Approval Order at 5502.

compensation¹⁰ as well as non-defaulting Clearing Members.¹¹

OCC reviewed feedback received in connection with the initial filing of its current rules, relevant papers from industry participants and stakeholders concerning skin-in-the-game, and regulatory regimes in jurisdictions outside the United States.¹² OCC's current rules do not, however, dedicate OCC's excess capital for use solely as skin-in-the-game, or guaranty that OCC maintain a minimum amount of skin-in-the-game.¹³

Establishing the Minimum Corporate Contribution. OCC proposes to establish a persistent minimum level of skin-in-the-game that OCC would contribute to cover default losses or liquidity shortfalls. Such skin-in-the-game would consist of a minimum amount of OCC's own pre-funded resources that OCC would contribute prior to charging a loss to the Clearing Fund (the "Minimum Corporate Contribution") and the EDCP Unvested Balance.¹⁴ As proposed, funds comprising the Minimum Corporate Contribution would be excluded from OCC's liquid net assets funded by equity ("LNAFBE") for purposes of meeting OCC's Target Capital Requirement to ensure that OCC may maintain the Minimum Corporate Contribution exclusively for default management.¹⁵

OCC proposes to define the Minimum Corporate Contribution to mean the minimum level of OCC's own funds maintained exclusively to cover credit

losses or liquidity shortfalls, the level of which OCC's Board of Directors (the "Board") shall determine from time to time. To facilitate implementation of OCC's proposal, the Board approved an initial Minimum Corporate Contribution at such a level that OCC's total skin-in-the-game (*i.e.*, the sum of the Minimum Corporate Contribution and OCC's current EDCP Unvested Balance) would equal 25 percent of OCC's Target Capital Requirement. OCC stated that, in setting the initial Minimum Corporate Contribution, the Board considered factors including, but not limited to, the regulatory requirements in each jurisdiction in which OCC is registered or in which OCC is actively seeking recognition, the amount similarly situated central counterparties commit of their own resources to address participant defaults, the EDCP Unvested Balance, OCC's LNAFBE greater than 110 percent of its Target Capital Requirement, projected revenue and expenses, and other projected capital needs.¹⁶

Replenishing the Minimum Corporate Contribution. OCC proposes that, in the event it were to apply a portion of the Minimum Corporate Contribution to address losses or shortfalls arising out of a Clearing Member default, the size of the Minimum Corporate Contribution would be temporarily reduced, for a period of 270 days, to the amount remaining after its application.¹⁷ Each application of the Minimum Corporate Contribution would trigger a new 270-day period.¹⁸ Under the proposal, OCC would be obligated to notify Clearing Members of any such reduction of the Minimum Corporate Contribution. OCC believes that 270 calendar days, or approximately nine months, is sufficient time for OCC to accumulate the funds necessary to reestablish the Minimum Corporate Contribution.¹⁹

OCC proposes change to its Rules, Capital Management Policy, Default Management Policy, Clearing Fund Methodology Policy, and Recovery and Orderly Wind-Down Plan to effectuate the changes described above.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.²⁰ After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act²¹ and Rule 17Ad-22(e)(2) thereunder.²²

Before addressing the relevant portions of the Exchange Act and rules and regulations thereunder, however, we address a part of the comment submitted by Susquehanna International Group ("SIG") not related to Section 17A(b)(3)(F) of the Exchange Act or Rule 17Ad-22(e)(2) thereunder.²³ SIG argued, as one of its concerns, that OCC's fees, dues, and other charges would be per se unreasonable, and therefore inconsistent with Section 17A(b)(3)(D) of the Exchange Act, because funding the proposal with clearing fees would facilitate a shareholder windfall.²⁴ We do not address these issues in this order because OCC has not proposed to change any fees, dues, or other charges in the Proposed Rule Change.²⁵ The

¹⁰ Such deferred compensation is in trust with respect to OCC's Executive Deferred Compensation Plan ("EDCP"). See OCC Rule 101(e)(1), available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf (last visited Mar. 16, 2021). The specific EDCP funds that comprise a portion of OCC's skin-in-the-game are referred to in OCC's rules as the "EDCP Unvested Balance." See *id.*

¹¹ See OCC Rule 1006(b), available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf (last visited Mar. 16, 2021). See also CMP Approval Order at 5502. The application the EDCP Unvested Balance in parallel with non-defaulting Clearing Members' Clearing Fund contributions would necessarily occur before assessments related to the exhaustion of OCC's Clearing Fund.

¹² See Notice of Filing, 86 FR at 12238–39. For example, OCC is cognizant of the European Market Infrastructure Regulation's expectation that skin-in-the-game be a minimum of 25 percent of the central counterparty's regulatory capital requirement. See Notice of Filing, 86 FR at 12239.

¹³ See Notice of Filing, 86 FR at 12239.

¹⁴ OCC does not propose altering its rules regarding the use or sizing of the EDCP Unvested Balance.

¹⁵ In addition to the Minimum Corporate Contribution, OCC would continue to commit its LNAFBE greater than 110 percent of its Target Capital Requirement prior to charging a loss to the Clearing Fund. As proposed, OCC would apply the Minimum Corporate Contribution to address default losses before applying its excess LNAFBE.

¹⁶ See Notice of Filing, 86 FR at 12239–40.

¹⁷ For example, if the Minimum Corporate Contribution were \$100 million and OCC applied \$25 million to address default losses, then the Minimum Corporate Contribution would be temporarily set at \$75 million.

¹⁸ For example, if OCC were to contribute a portion of the Minimum Corporate Contribution on day 1 and another portion 100 days later, the Minimum Corporate Contribution would remain temporarily reduced until day 370.

¹⁹ See Notice of Filing, 86 FR at 12240. OCC stated that the analysis on which its belief is based is the same analysis on which OCC relied to set various thresholds related to OCC's plan for replenishing its regulatory capital. See *id.*

²⁰ 15 U.S.C. 78s(b)(2)(C).

²¹ 15 U.S.C. 78q–1(b)(3)(F).

²² 17 CFR 240.17Ad-22(e)(2).

²³ See letter from Richard J. McDonald, SIG, dated March 30, 2021, to Vanessa Countryman, Secretary, Commission ("SIG Letter"), available at <https://www.sec.gov/comments/sr-occ-2021-003/srocc2021003.htm>. In its comment letter, SIG argues that the Proposed Rule Change is inconsistent with Sections 17A(b)(3)(D) and (F) of the Exchange Act. The Commission's consideration of SIG's concerns pertaining to Section 17A(b)(3)(F) is addressed in section III.A. below.

²⁴ SIG Letter at 3–4.

SIG also (i) expresses concern regarding OCC's current retention of \$325 million in capital; (ii) indicates that OCC should focus on reducing clearing fee rates; and (iii) suggests that the current organization of OCC's shareholders as for profit entities creates a misalignment of interests. SIG Letter at 2. Because these issues do not bear on the grounds for approval or disapproval applicable to the Proposed Rule Change, the Commission does not address them in this order.

²⁵ Another commenter read SIG's comment to imply that the inclusion of fees as part of the proposed skin-in-the-game would incentivize OCC members to increase their charges for providing clearing services as a method of mitigating the risk of their actual skin-in-the-game. See comment submitted by CJ Chou (April 8, 2021), available at <https://www.sec.gov/comments/sr-occ-2021-003/>

reasonability of OCC's existing fees, dues, or other charges pursuant to Section 17A(b)(3)(D) of the Exchange Act is therefore beyond the scope of this Proposed Rule Change.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.²⁶ Based on its review of the record, the Commission finds the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act.

The Commission continues to regard skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.²⁷ OCC's current rules provide for the application of excess capital as skin-in-the-game. The Commission believes that OCC's proposal to set aside capital to maintain a minimum amount of skin-in-the-game strengthens OCC's existing skin-in-the-game rules. OCC's current rules align senior management's personal economic incentives with OCC's overall risk management incentives,²⁸ but do not guaranty that an amount of OCC capital would be set aside to ensure a pre-determined minimum level of skin-in-the-game.

The Commission believes that holding a defined Minimum Corporate Contribution, as opposed to an undefined amount of excess capital, would incentivize OCC further to maintain the appropriate amount of

resources to manage a Clearing Member default because failure to do so would result in a direct cost to OCC. Incentivizing OCC to maintain an appropriate amount of resources, in turn, could reduce the potential losses charged to the Clearing Fund contributions of non-defaulting Clearing Members in the event of a Clearing Member default, which in turn would help assure the safeguarding of the Clearing Fund contributions of non-defaulting Clearing Members.

In its comment letter, SIG argues that the Proposed Rule Change contravenes the protection of investors and the public interest.²⁹ SIG states that OCC was established as a monopoly organization in order to serve as a market utility³⁰ and that it has always been recognized and accepted by concerned parties that monies held as excess OCC capital are excess fees not yet rebated, as opposed to retained earnings.³¹ In support of its argument that OCC should not retain earnings generated through clearing fees, SIG states that OCC has not previously had to draw on such funds to address a shortfall.³²

The Commission is not persuaded by SIG's arguments with regard to Section 17A(b)(3)(F). As discussed above, the Commission believes that holding a defined Minimum Corporate Contribution would incentivize OCC further to maintain the appropriate amount of resources to manage a Clearing Member default. Aligning OCC's incentives with risk management considerations, such as default management, supports the public interest because it supports OCC's role as a utility for clearing and settling U.S. listed options. Further, OCC's rules do not require OCC to distribute retained earnings in excess of expenses.³³

In addition to providing those services customarily provided by clearing houses of national securities exchanges,³⁴ OCC is a Covered Clearing Agency registered with the

Commission.³⁵ As a Covered Clearing Agency, OCC is obligated to comply with risk management standards that the Commission adopted under Section 805(a)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010³⁶ and Section 17A of the Exchange Act (the "Clearing Agency Rules").³⁷ The Clearing Agency Rules address having policies and procedures regarding, *inter alia*, the maintenance of assets to address losses attributable to Clearing Member defaults³⁸ as well as general business risk losses.³⁹

SIG argues further that OCC's proposal puts only the public's skin in the game. SIG states that market participants bear the risk imprudent decisions by the exchanges in their capacity as the OCC shareholders and of their designee board members because such participants would be denied a rebate of excess fees.⁴⁰

The Commission is not persuaded by this argument either. SIG's argument assumes that OCC's Clearing Members have a right to clearing fee revenues not applied to operating costs in a given year, but, as noted above in this section, OCC's rules, as approved by the Commission, do not require OCC to distribute retained earnings in excess of expenses. SIG's argument also assumes, without support, that OCC's five Exchange Directors would not only be willing to make "imprudent decisions to the detriment of OCC's Clearing Members," but that the Exchange Directors would be able to enlist sufficient support among OCC's nine Member Directors to force such "imprudent decisions" through the Board approval process.

Based on the foregoing, the Commission believes that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.⁴¹

B. Consistency With Rule 17Ad-22(e)(2) Under the Exchange Act

Rule 17Ad-22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements

srocc2021003.htm. As the Commission understands it, SIG's argument pertains to the size and use of OCC's fees, not changes in fees imposed on clients by the Clearing Members absent a fee increase by OCC.

The commenter also expressed difficulty in obtaining quantitative data regarding clearing fee refunds and how much, proportionally, fees would contribute to the minimum skin-in-the-game under the Proposed Rule Change. *Id.* With regard to quantitative data describing clearing fee refunds, the audited financial statements that OCC posts annually include a line item for refundable clearing fees where applicable. See e.g., OCC's 2020 Financials at page 5, available at <https://www.theocc.com/getattachment/9f5d22ff-d810-4690-948d-f9a207d083d/attachment.aspx>. With regard to how much, proportionally, fees would contribute to the minimum skin-in-the-game under the Proposed Rule Change, the Commission notes that OCC has publically stated that its revenues primarily consist of clearing fee revenues. *Id.* at 7.

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ Covered Clearing Agency Standards, 81 FR at 70805-06.

²⁸ See Securities Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55199 (Oct. 15, 2019) (File No. SR-OCC-2019-805).

²⁹ SIG Letter at 4.

³⁰ SIG Letter at 1.

³¹ SIG Letter at 2.

³² SIG Letter at 2.

³³ If OCC's capital exceeds 110 percent of its Target Capital Requirement, rules authorize, but does not require, OCC's Board to reduce the cost of clearing. See Securities Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (File No. SR-OCC-2019-007). If the Board chooses to reduce the cost of clearing, it is authorized to do so by lowering fees or declaring a fee holiday as well as issuing refunds. See *Id.*

³⁴ See Fourth Amended and Restated Certificate of Incorporation of OCC, Section III, available at https://www.theocc.com/getmedia/9d7754f6-99ca-4d69-a934-a6fa996c9c16/OCC_Certificate_of_Incorporation.pdf.

³⁵ 17 CFR 240.17Ad-22(a)(15).

³⁶ 12 U.S.C. 5464(a)(2).

³⁷ 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7-08-11). See also Covered Clearing Agency Standards, 81 FR 70786. OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).

³⁸ See 17 CFR 240.17Ad-22(e)(4).

³⁹ See 17 CFR 240.17Ad-22(e)(15).

⁴⁰ SIG Letter at 3.

⁴¹ 15 U.S.C. 78q-1(b)(3)(F).

that, among other things, are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; and support the public interest requirements of the Exchange Act.⁴² In adopting Rule 17Ad-22(e)(2), the Commission discussed comments it received regarding the concept of skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.⁴³ And, while the Commission declined to include a specific skin-in-the-game requirement in the rule, it stated its belief that "the proper alignment of incentives is an important element of a covered clearing agency's risk management practices," and noted that skin-in-the-game "may play a role in those risk management practices in many instances."⁴⁴ OCC's current rules require the application management compensation and excess capital as skin-in-the-game, which in turn should help further align the interests of OCC's stakeholders, including OCC management and Clearing Members.⁴⁵

As described above, OCC's proposal would not reduce the resources OCC would apply to address default losses or remove the current skin-in-the-game component of OCC's rules. Rather, OCC proposes to set aside a defined amount of capital for the sole purpose of absorbing losses and shortfalls arising out of a Clearing Member default. OCC has clearly stated the factors that the Board would consider when determining the amount of resources to hold as skin-in-the-game, a portion of which would comprise the Minimum Corporate Contribution. OCC also proposes to establish a clear process for addressing reductions in the Minimum Corporate Contribution arising out of a Clearing Member's default. Accordingly, the Commission believes that the proposed changes to establish a persistent minimum level of skin-in-the-game are consistent with Rule 17Ad-22(e)(2) under the Exchange Act.⁴⁶

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of

Section 17A of the Exchange Act⁴⁷ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁸ that the Proposed Rule Change (SR-OCC-2021-003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11606 Filed 6-2-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92068; File No. SR-NASDAQ-2021-009]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Equity 4, Rule 4754 Relating to the Limit Up-Limit Down Closing Cross

May 28, 2021.

I. Introduction

On February 11, 2021, The Nasdaq Stock Market LLC ("Exchange" or "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 a proposed rule change to amend Equity 4, Rule ("Rule") 4754 relating to the Limit Up-Limit Down ("LULD") closing cross. The proposed rule change was published for comment in the **Federal Register** on March 3, 2021.³ On April 9, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.⁴ On April 15, 2021, pursuant to

⁴⁷ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 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. 91208 (February 25, 2021), 86 FR 12503.

⁴ In Amendment No. 1, the Exchange amended the proposal to: (1) Specify the dissemination of certain imbalance information before the LULD closing cross; (2) clarify the process for calculating the LULD closing cross price and the benchmark prices for the LULD closing cross; (3) specify the treatment of imbalance only orders for purposes of LULD closing cross price selection; (4) provide additional explanation to support the proposal; (5) specify the implementation date for the proposal;

Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ The Commission has not received any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Nasdaq closing cross is the Exchange's process for determining the price at which orders will be executed at the close and for executing those orders, and the price determined by the Nasdaq closing cross is the Nasdaq official closing price for securities that participate in the cross.⁷ The Nasdaq closing cross begins at 4:00 p.m.,⁸ and the Exchange applies a price range within which the Nasdaq closing cross must occur.⁹ Currently, the Exchange applies a threshold amount that is the greater of \$0.50 or 10% of the midpoint of the Nasdaq best bid and offer, and that amount is then added to the Nasdaq best offer and subtracted from the Nasdaq best bid to establish the price range.¹⁰

The LULD closing cross is the Exchange's process for executing closing trades in Nasdaq-listed securities when an LULD trading pause pursuant to Rule 4120(a)(12) exists at or after 3:50 p.m.

and (6) make other clarifying, technical, and conforming changes. Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2021-009/srnasdaq2021009-8670132-235426.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 91581, 86 FR 20759 (April 21, 2021). The Commission designated June 1, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.

⁷ See Rule 4754(a)(6) and (b)(4). See also Rule 4754(b)(2) (describing the methodology for determining the Nasdaq closing cross price).

⁸ All times referenced are in Eastern Time.

⁹ See Rule 4754(b). If the Nasdaq closing cross price established pursuant to Rule 4754(b)(2)(A)-(D) is outside the benchmarks established by the Exchange by a threshold amount, the Nasdaq closing cross will occur at a price within the threshold amounts that best satisfies the conditions of Rule 4754(b)(2)(A)-(D). See Rule 4754(b)(2)(E).

¹⁰ See Amendment No. 1, *supra* note 4, at 6. Nasdaq management may set and modify the benchmarks and thresholds from time to time upon prior notice to market participants. See Rule 4754(b)(2)(E).

⁴² 17 CFR 240.17Ad-22(e)(2).

⁴³ Covered Clearing Agency Standards, 81 FR at 70805-06.

⁴⁴ Covered Clearing Agency Standards, 81 FR at 70806.

⁴⁵ See CMP Approval Order at 5507.

⁴⁶ 17 CFR 240.17Ad-22(e)(2).

and before 4:00 p.m.¹¹ The Exchange proposes to make certain changes to the LULD closing cross in order to further align that process with the regular Nasdaq closing cross process.¹²

A. LULD Closing Cross Time and Benchmark Prices

Currently, unlike the regular Nasdaq closing cross, the LULD closing cross occurs at 4:00 p.m. unless an order imbalance exists, in which case the Exchange will extend the time of the cross by one minute until the order imbalance no longer exists.¹³ If this condition persists until 5:00 p.m., the Exchange will not conduct an LULD closing cross in the security and will instead use the last sale on the Exchange as the Nasdaq official closing price for that security.¹⁴ In addition, currently, unlike the regular Nasdaq closing cross, the Exchange does not apply a price range within which the LULD closing cross must occur. The Exchange now proposes to eliminate extensions of the LULD closing cross beyond 4:00 p.m.¹⁵ and to require that the LULD closing cross occur within certain benchmark prices.

As proposed, for any security that entered a trading pause that was extended prior to 3:50 p.m., the upper (lower) benchmark price would be established by adding (subtracting) a threshold amount to the upper (from the lower) auction collar¹⁶ that was last updated with the extension of the trading pause, rounded to the nearest minimum price increment (with midpoint prices being rounded up), and the lower (upper) benchmark price would be the lower (upper) auction collar that was last updated with the upper (lower) auction collar used to calculate the upper (lower) benchmark price.¹⁷ For any security that entered a

trading pause that was not extended prior to 3:50 p.m., the upper (lower) benchmark price would be established by adding (subtracting) a threshold amount to the upper auction collar for a Limit Up triggered pause (from the lower auction collar for a Limit Down triggered pause), rounded to the nearest minimum price increment (with midpoint prices being rounded up), and the lower (upper) benchmark price would be the lower (upper) auction collar disseminated with the upper (lower) auction collar used to calculate the upper (lower) benchmark price.¹⁸ For any security that entered a trading pause at or after 3:50 p.m., the upper (lower) benchmark price would be established by adding (subtracting) a threshold amount to the upper band for a Limit Up triggered pause (from the lower band for a Limit Down triggered pause), rounded to the nearest minimum price increment (with midpoint prices being rounded up), and the lower (upper) benchmark price would be the lower (upper) band in place at the time the trading pause was triggered.¹⁹ The benchmark prices would be published via the Nasdaq UTP SIP and Exchange proprietary data feeds.²⁰

The Exchange proposes to initially set the price threshold amounts at the greater of \$1.00 or 10% for securities with a reference price greater than \$1.00 (or \$0.50 for securities with a reference price equal to or less than \$1.00).²¹ As proposed, Nasdaq management would be able to set and modify these thresholds from time to time upon prior notice to market participants.²²

As proposed, at 4:00 p.m., the Exchange would conduct the LULD closing cross, and if the cross price would fall outside of the benchmark

prices, the LULD closing cross would execute all available orders at a price within or equal to the benchmark prices.²³ Any unexecuted orders intended for the LULD closing cross (*i.e.*, market on close (“MOC”),²⁴ limit on close (“LOC”),²⁵ and imbalance only (“IO”) orders),²⁶ including those that fall outside the benchmark prices, would be cancelled.²⁷ All other orders not executed in the LULD closing cross would be processed according to the entering firm’s instructions.²⁸

B. LULD Closing Cross Price Determination

Currently, the LULD closing cross price is determined by the same execution algorithm as the regular Nasdaq closing cross.²⁹ The Exchange now proposes to modify the methodology for determining the LULD closing cross price.³⁰ As proposed, the LULD closing cross would occur at the price within the benchmark prices established pursuant to proposed Rule 4754(b)(6)(E) that maximizes the number of shares of eligible interest,³¹ MOC, LOC, and IO orders in the Nasdaq market center to be executed.³² If more than one such price exists, the LULD closing cross would occur at the price within the benchmark prices that minimizes any imbalance.³³ If more

²³ See Amendment No. 1, *supra* note 4, at 12.

²⁴ See Rule 4702(b)(11) (defining a MOC order as an order type entered without a price that may be executed only during the Nasdaq closing cross).

²⁵ See Rule 4702(b)(12) (defining a LOC order as an order type entered with a price that may be executed only in the Nasdaq closing cross, and only if the price determined by the Nasdaq closing cross is equal to or better than the price at which the LOC order was entered).

²⁶ See Rule 4702(b)(13) (defining an IO order as an order entered with a price that may be executed only in the Nasdaq closing cross and only against MOC orders or LOC orders).

²⁷ See Amendment No. 1, *supra* note 4, at 12.

²⁸ See *id.*

²⁹ See *id.* at 16.

³⁰ See proposed Rule 4754(b)(6)(D). See also Rule 4754(b)(2)(A)–(F) (describing the methodology for determining the regular Nasdaq closing cross price).

³¹ For purposes of the LULD closing cross, the Exchange proposes to define “eligible interest” to have the same meaning as “close eligible interest” in Rule 4754(a), with the addition of any new orders with an eligible underlying order type and order attribute entered during the trading pause. See proposed Rule 4754(b)(6)(A)(i). See also Rule 4754(a)(1) (defining “close eligible interest” to mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC).

³² See proposed Rule 4754(b)(6)(D)(i). The Exchange states that proposed Rule 4754(b)(6)(D)(i) is similar to Rule 4754(b)(2)(A) (*i.e.*, maximizing the number of shares executed in the cross). See Amendment No. 1, *supra* note 4, at 16.

³³ See proposed Rule 4754(b)(6)(D)(ii). For purposes of the LULD closing cross, the Exchange proposes to define “imbalance” to mean the

Continued

¹¹ See Rule 4754(b)(6).

¹² See Amendment No. 1, *supra* note 4, at 4. The Exchange proposes to implement the proposed changes by the end of Q3 2021, and will provide prior notice in an Equity Trader Alert. See *id.*

¹³ See Rule 4754(b)(6)(A)(i) and (iii).

¹⁴ See Rule 4754(b)(6)(A)(iii).

¹⁵ In connection with eliminating extensions of the LULD closing cross, the Exchange proposes to remove Rule 4754(b)(6)(A)(iii), which currently describes extensions of the LULD closing cross, and parts of Rule 4754(b)(6)(C)(iii), which currently describe the handling of certain orders after 4:00 p.m. for purposes of the LULD closing cross.

¹⁶ See Rule 4120(c)(10) (describing the auction collars for reopening following an LULD trading pause).

¹⁷ See proposed Rule 4754(b)(6)(E)(i). The Exchange states that it would use the last widened auction collar in this scenario because a security that entered a trading pause prior to 3:50 p.m. would be subject to the Exchange’s reopening process in Rule 4120(c)(10), where the Exchange would halt the security for an initial five-minute period and extend the halt in five-minute

increments if the specified reopening criteria are not met, widening the relevant auction collar at the start of each five-minute extension. See Amendment No. 1, *supra* note 4, at 9 n.18.

¹⁸ See proposed Rule 4754(b)(6)(E)(ii). The Exchange states that this scenario would cover securities that entered a trading pause between 3:45 p.m. and 3:50 p.m., and because the Exchange does not extend the reopening process in Rule 4120(c)(10) or widen auction collars past 3:50 p.m., it would use the initial reopening auction collar. See Amendment No. 1, *supra* note 4, at 9–10 n.19.

¹⁹ See proposed Rule 4754(b)(6)(E)(iii). The Exchange states that it would use the LULD band that triggered the pause in this scenario because the Exchange does not conduct the LULD reopening process at or after 3:50 p.m. and therefore there are no reopening auction collars in this scenario. See Amendment No. 1, *supra* note 4, at 10 n.20.

²⁰ See Amendment No. 1, *supra* note 4, at 8.

²¹ See *id.* at 8–9.

²² See proposed Rule 4754(b)(6)(E). These threshold amounts, like the threshold amounts currently used for the regular Nasdaq closing cross, would be published on the Exchange’s public website. See Amendment No. 1, *supra* note 4, at 8.

than one such price exists, the LULD closing cross would occur at the entered price within the benchmark prices at which shares will remain unexecuted in the cross.³⁴ If no price within the benchmark prices would satisfy these conditions, then: (i) If an imbalance exists, the LULD closing cross would occur at a price equal to the upper (lower) benchmark price for a buy (sell) imbalance; and (ii) if no imbalance exists, the LULD closing cross would occur at a price that minimizes the distance from the last published upper band (lower band) for a Limit Up (Limit Down) trading pause.³⁵

Currently, Rule 4754(b)(6) provides that, in the event of an LULD closing cross, MOC, LOC, and IO orders intended for the closing cross entered into the system and place on the book prior to the trading pause will remain on the book to participate in the LULD closing cross, but these orders may not be modified or cancelled. Rule 4754(b)(6) also provides that, during the pause and prior to 4:00 p.m., new orders (other than MOC or LOC orders) may be entered, modified, and cancelled and may participate in the LULD closing cross. The Exchange now proposes to modify the handling of MOC, LOC, and IO orders such that they could be entered, modified, and cancelled pursuant to Rules 4702(b)(11), 4702(b)(12), and 4702(b)(13), respectively.³⁶ Therefore, as proposed, MOC, LOC, and IO orders could be entered, modified, and cancelled during the same time periods for an LULD closing cross as for a regular Nasdaq closing cross. However, unlike the regular Nasdaq closing cross where if the price of an IO order to buy (sell) is higher than (lower than) the highest bid (lowest offer) on the Nasdaq book, the price of the IO order will be modified

number of shares of buy or sell MOC or LOC orders or eligible interest that cannot be matched with other MOC, LOC, or IO orders or eligible interest at a particular price at any given time. See proposed Rule 4754(b)(6)(A)(ii). The Exchange states that proposed Rule 4754(b)(6)(D)(ii) is based on the same principle as Rule 4754(b)(2)(B) (*i.e.*, minimizing the number of shares that cannot be matched in the cross). See Amendment No. 1, *supra* note 4, at 17.

³⁴ See proposed Rule 4754(b)(6)(D)(iii). The Exchange states that proposed Rule 4754(b)(6)(D)(iii) is similar to Rule 4754(b)(2)(C). See Amendment No. 1, *supra* note 4, at 18.

³⁵ See proposed Rule 4754(b)(6)(D)(iv). The Exchange states that Rule 4754(b)(2)(D) uses the midpoint of the Nasdaq best bid and offer as the tiebreaker for the regular Nasdaq closing cross, whereas there would be no continuous market prior to the execution of the LULD closing cross and proposed Rule 4754(b)(6)(D)(iv) would better reflect current market forces and conditions for an LULD closing cross. See Amendment No. 1, *supra* note 4, at 18–19.

³⁶ See proposed Rule 4754(b)(6)(F)(ii).

repeatedly to equal the highest bid (lowest offer) on the Nasdaq book,³⁷ for purposes of LULD closing cross price selection, buy (sell) IO orders would be re-priced to one minimum price increment below (above) the LULD band that triggered the trading pause.³⁸

C. Imbalance Information

Currently, Rule 4754(b)(6)(B) provides that, in the event of an LULD closing cross, the Exchange continues disseminating the order imbalance indicator (“NOII”) every second until after hours trading begins. The Exchange proposes to amend this rule to also specify the dissemination of the early order imbalance indicator (“EOII”) before the LULD closing cross.³⁹ As with the regular Nasdaq closing cross, EOII would be disseminated every 10 seconds beginning at 3:50 p.m. until the NOII begins to disseminate, and the NOII would be disseminated every second beginning at 3:55 p.m. until market close.⁴⁰

Currently, Rule 4754(b)(6)(B) also provides that the near price, far price, and reference prices contained in the NOII all represent the price at which the LULD closing cross would execute should the cross conclude at that time. As proposed, the near clearing price⁴¹ and reference price contained in the EOII and NOII, as applicable, would represent the price at which the LULD closing cross would execute should the cross conclude at that time (*i.e.*, bounded by the benchmark prices),⁴² and the far clearing price would represent the price at which eligible interest, MOC, LOC, and IO orders would execute (*i.e.*, not bounded by the benchmark prices).⁴³

D. Other Changes

The Exchange proposes to specify in Rule 4754(b)(6) that the LULD closing cross process only applies to Nasdaq-listed securities, rather than all stocks.

³⁷ See Rule 4702(b)(13)(A).

³⁸ See proposed Rule 4754(b)(6)(F)(iii).

³⁹ See proposed Rule 4754(b)(6)(C).

⁴⁰ See *id.*; Amendment No. 1, *supra* note 4, at 21–22. See also Rule 4754(b)(1) (describing EOII and NOII dissemination for the regular Nasdaq closing cross).

⁴¹ The Exchange proposes to replace all references to the “near price” and “far price” with the “near clearing price” and “far clearing price” respectively to align with terminology used throughout Rule 4754. See Amendment No. 1, *supra* note 4, at 22.

⁴² See proposed Rule 4754(b)(6)(C); Amendment No. 1, *supra* note 4, at 22.

⁴³ See proposed Rule 4754(b)(6)(C); Amendment No. 1, *supra* note 4, at 22. The far clearing price would be different from the near clearing price and reference price to indicate that not all marketable orders can be filled within the benchmark prices. See Amendment No. 1, *supra* note 4, at 22.

The Exchange also proposes a conforming change in Rule 4754(b)(6)(B)(i) to clarify that the LULD closing cross applies when a trading pauses exists (rather than is triggered) at or after 3:50 p.m. and before 4:00 p.m. Finally, the Exchange proposes to update obsolete cross references in Rules 4756(c)(3)(B) and 4763(b) to Rule 4751.⁴⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴⁵ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,⁴⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed benchmark prices and other changes to the LULD closing cross would more closely align the LULD closing cross process with the regular Nasdaq closing cross process and would promote a more consistent experience for those that participate in the crosses. The Commission also believes that the differences between the proposed LULD closing cross process and the regular Nasdaq closing cross process are reasonably designed to reflect the differences in market conditions leading up to the crosses.

More specifically, the Commission believes that the proposed benchmark prices for the LULD closing cross would help ensure that the closing price of a security is reasonably related to current market conditions. The Commission also believes that the addition of benchmark prices would further harmonize the LULD closing cross process with the regular Nasdaq closing cross process, while reflecting market

⁴⁴ See Amendment No. 1, *supra* note 4, at 23.

⁴⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁶ 15 U.S.C. 78f(b)(5).

conditions for the security leading up to the LULD closing cross. In particular, the Commission believes that the proposed methodology for determining the benchmark prices would reflect that there is no continuous trading in the security and no Nasdaq best bid and offer based on continuous trading in the security during the pause leading up to the cross,⁴⁷ that the cross would occur following a period of increased volatility in the security,⁴⁸ and the direction of trading that triggered the pause in the security and the existence of buy or sell pressure in the security leading up to the cross.⁴⁹

The Commission also believes that the proposed methodology for determining the LULD closing cross price would reflect the proposed benchmark prices and allow for similar experiences for those that participate in the regular Nasdaq closing cross and the LULD closing cross. In addition, the Commission believes that the proposed methodology, including the proposed definitions of eligible interest and imbalance and the proposed treatment of IO orders, are reasonably designed to reflect market conditions leading up to the LULD closing cross, including that there is no continuous trading in the security and no Nasdaq best bid and offer based on continuous trading in the security leading up to the cross, and the existence of any buy or sell imbalance in the security leading up to the cross.

Further, the Commission believes that the proposal to eliminate extensions of the LULD closing cross past 4:00 p.m. would provide more certainty regarding the timing of the LULD closing cross and align that timing with the regular Nasdaq closing cross. The Commission

also believes that the proposed timing for entering, modifying, and cancelling MOC, LOC, and IO orders for the LULD closing cross would allow additional interest to participate in the cross and further align the LULD closing cross process with the regular Nasdaq closing cross process with respect to these orders.

Finally, the Commission believes that the proposal to specify the dissemination of EOII would provide transparency regarding the information that is disseminated in advance of the LULD closing cross.⁵⁰ Similarly, the Commission believes that the proposal to specify that the LULD closing cross only applies to Nasdaq-listed securities and clarify that the LULD closing cross applies when a trading pause exists (rather than is triggered) at or after 3:50 p.m. and before 4:00 p.m. would provide greater transparency regarding the LULD closing cross process. The Commission also believes that updating obsolete cross references in Rules 4756(c)(3)(B) and 4763(b) would provide greater clarity in the Exchange's rules.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2021-009 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-2021-009. 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-2021-009, and should be submitted on or before June 24, 2021.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange specified the dissemination of certain imbalance information before the LULD closing cross, clarified the process for calculating the LULD closing cross price and the benchmark prices, specified the treatment of IO orders for purposes of LULD closing cross price selection, provided additional explanation to support the proposal, specified the implementation date for the proposal, and made other clarifying, technical, and conforming changes. The Commission believes that the changes made in Amendment No. 1 do not raise any material or novel regulatory issues and they provide further clarity to and consistency within the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁵¹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

⁴⁷ As described above, the benchmark prices for the LULD closing cross would be calculated based on the reopening auction collars or the LULD bands, rather than the midpoint of the Nasdaq best bid and offer as is the case with the regular Nasdaq closing cross.

⁴⁸ As described above, the initial threshold amounts for determining the benchmark prices for the LULD closing cross (*i.e.*, the greater of \$1.00 or 10% for securities with a reference price greater than \$1.00, and \$0.50 for securities with a reference price equal to or less than \$1.00) may be greater than the current threshold amounts for determining the price range for the regular Nasdaq closing cross (*i.e.*, the greater of \$0.50 or 10%). As with the regular Nasdaq closing cross, Nasdaq management would be able to set and modify these threshold amounts from time to time upon prior notice to market participants.

⁴⁹ As described above, the threshold amounts for the LULD closing cross would be applied to the most recently expanded reopening auction collar (if the trading pause was extended before 3:50 p.m.) or in the direction of trading that caused the trading pause (if the trading pause was not extended before 3:50 p.m. or if the trading pause occurred at or after 3:50 p.m.), whereas the threshold amounts for the regular Nasdaq closing cross are applied to both the Nasdaq best bid and Nasdaq best offer.

⁵⁰ The Commission also believes that the proposed differences between the near clearing price and reference price, and the far clearing price, would reflect the addition of benchmark prices to the LULD closing cross.

⁵¹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵² that the proposed rule change (SR–NASDAQ–2021–009), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵³

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92053; File No. SR–NYSEArca–2021–43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fees and Charges

May 27, 2021.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b–4 thereunder,³ notice is hereby given that, on May 14, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to replace the monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities with a new pricing incentive for Lead Market Makers and ETP Holders registered as Market Makers. The Exchange proposes to implement the fee changes effective May 14, 2021. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of

the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to replace the monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities ⁴ with a new pricing incentive that is tied to meeting enhanced market quality metrics. The Exchange now proposes to provide financial incentives for Lead Market Makers (“LMMs”) ⁵ that are based on whether the LMM meets certain Performance Metrics (as described below). Specifically, the Exchange would provide incremental credits to LMMs based on how many Performance Metrics an LMM meets in each NYSE Arca-listed Security. The Exchange also proposes to make the additional credits available for ETP Holders registered as Market Maker (“Market Makers”).⁶ The Exchange believes that the proposed rule change would encourage LMMs and Market

Makers to maintain better market quality in NYSE Arca-listed Securities in which they are registered, including in lower volume securities.

The Exchange notes that its listing business operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or other factors at a particular venue to be insufficient or excessive. The proposed rule change reflects the current competitive pricing environment and is designed to incentivize market participants to participate as LMMs or Market Makers, and thereby, further enhance the market quality on all securities listed on the Exchange and encourage issuers to list new products on the Exchange.

The Exchange proposes to implement the fee changes effective May 14, 2021.⁷

Background

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁹ Indeed, equity trading is currently dispersed across 16

⁴ See Securities and Exchange Act Release No. 87978 (January 15, 2020), 85 FR 3727 (January 22, 2020) (SR–NYSEArca–2020–03).

⁵ The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

⁶ Pursuant to Rule 7.23–E(a)(1), all registered Market Makers, including LMMs, have an obligation to maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade. In addition, pursuant to Rule 7.24–E(b), LMMs are held to higher performance standards in the securities in which they are registered as LMM. LMMs can earn additional financial incentives for meeting the higher performance standards specified from time to time in the Fee Schedule. Only one LMM can be registered in a NYSE–Arca listed security, but that security can have an unlimited number of registered Market Makers. Market Makers can also be registered in securities that trade on an unlisted trading privileges basis on the Exchange.

⁷ The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR–NYSEArca–2021–33). SR–NYSEArca–2021–33 was subsequently withdrawn and replaced by this filing.

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (“Regulation NMS”).

⁹ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

⁵² *Id.*

⁵³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

exchanges,¹⁰ numerous alternative trading systems,¹¹ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.¹² Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.¹³

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

With this proposed rule change, the Exchange proposes to reorganize certain existing fees and credits and introduce new pricing that is tied to market quality metrics provided by LMMs and Market Makers on an ETP basis. In doing so, the Exchange proposes four new sections that would be applicable to LMM Transaction Fees and Credits. The proposed four sections, discussed below, would be:

- Section I. Definitions for purposes of LMM Transaction Fees and Credits
- Section II. LMM Base Fees and Credits per Share
- Section III. LMM Performance Metrics-based Incremental Base Credit Adjustments

• Section IV. Additional Tape B Credits for LMMs and Market Makers

Section I. Definitions for purposes of LMM Transaction Fees and Credits

In connection with the proposed rule change, the Exchange would add new Section I titled "Definitions for purposes of LMM Transaction Fees and Credits" that would set forth the following nine definitions:

1. "CADV" would mean the consolidated average daily volume in a security in the prior month.
2. "ETP" would mean Exchange Traded Products listed on NYSE Arca.
3. "ETP Price" would mean the average Official Closing Price¹⁴ in that ETP in the prior month.
4. "Less Active ETPs" would mean ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV.
5. "Leveraged ETP" would mean an ETP that tracks an underlying index by a ratio other than on a one-to-one basis.
6. "Maximum LMM Spread" would mean time-weighted average LMM spread (LMM Offer minus LMM Bid) divided by the average of the LMM Bid and LMM Offer, in basis points.
7. "Minimum LMM Shares within 1% of NBBO" would mean the average number of LMM shares quoted throughout the trading day that are within 1% of the National Best Bid and Best Offer divided by two.
8. "Minimum LMM Shares at the Core Open Auction within 1.5% of the Auction Reference Price" would mean the average of LMM buy shares and LMM sell shares for Limit Orders quoted within 1.5% of the Auction Reference Price¹⁵ divided by two.
9. "Minimum LMM Shares at the Closing Auction within 1% of the NBBO" would mean the average number of LMM buy shares and LMM sell shares for Limit Orders quoted within 1% of the National Best Bid and Best Offer before the end of Core Trading Hours¹⁶ divided by two.

¹⁴ With respect to equities traded on the Exchange, the term "Official Closing Price" means the reference price to determine the closing price in a security. See NYSE Arca Rule 1.1(l). NYSE Arca Rule 1.1(l) describes how the Official Closing Price is determined.

¹⁵ The term "Auction Reference Price" is defined in NYSE Arca Rule 7.35-E(a)(8)(A). NYSE Arca Rule 7.35-E(a)(8)(A) describes how the Auction Reference Price is determined.

¹⁶ With respect to equities traded on the Exchange, the term "Core Trading Hours" means the hours of 9:30 a.m. Eastern Time through 4:00 p.m. (Eastern Time) or such other hours as may be determined by the Exchange from time to time. See NYSE Arca Rule 1.1(j).

The Exchange proposes these definitions to use consistent terms throughout this section of the Fee Schedule relating to LMMs.

Section II. LMM Base Fees and Credits per Share

The Exchange proposes to add new Section II titled "LMM Base Fees and Credits per Share." The Exchange notes that the fees and credits in proposed Section II are current fees and credits. The Exchange proposes a non-substantive change to reorganize these current fees and credits in a table format without any change to the level of the fees and credits.

Specifically, the Exchange currently charges LMMs a base fee of \$0.0029 per share for orders that remove liquidity and provides the following base credits:

- \$0.0033 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month greater than 3,000,000 shares;
- \$0.0040 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month of between 1,000,000 and 3,000,000 shares; and
- \$0.0045 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month of less than 1,000,000 shares.

Additionally, LMMs are provided a credit of \$0.0030 per share for orders that provide undisplayed liquidity in Arca Only Orders¹⁷ in securities for which the LMM is registered as the LMM, and a credit of \$0.0015 per share for Non-Displayed Limit Orders that provide liquidity in securities for which the LMM is registered as the LMM. The Exchange also does not charge LMMs a fee for orders executed in the Closing Auction.

The Exchange proposes to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate. With respect to the current LMM fees and credits discussed above, the Exchange proposes a horizontal presentation in a table rather than the current vertical presentation. The proposed changes described above would be included in the new presentation under proposed

¹⁷ The "Arca Only Order" has been renamed as the "Non-Routable Limit Order." See Securities Exchange Act Release No. 83967 (August 28, 2018), 83 FR 44984 (September 4, 2018) (SR-NYSEArca-2018-61). Accordingly, the proposed new presentation would utilize the new name "Non-Routable Limit Orders" instead of "Arca Only Orders."

¹⁰ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmr/exchangesshtml.html>.

¹¹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

¹² See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹³ See *id.*

Section II titled LMM Base Fees and Credits per Share, without any substantive change to the rate or the

requirement to qualify for these existing fees and credits. The proposed changes

would appear as follows in the Fee Schedule:

ETP CADV	Credit for adding liquidity	Fee for removing liquidity	Credit for adding non-displayed limit orders	Credit for adding undisplayed liquidity in non-routable limit orders	Fee for orders in the closing auction
<1,000,000	(\$0.0045)	\$0.0029	(\$0.0015)	(\$0.0030)	No Fee.
1,000,000 to 3,000,000	(\$0.0040)	.....	.....	.....
>3,000,000	(\$0.0033)	.....	.....	.....

Section III. LMM Performance Metrics-Based Incremental Base Credit Adjustments

The Exchange proposes to adopt market quality metrics that LMMs would be required to meet to qualify for incremental credits. Proposed Section III titled “LMM Performance Metrics-based Incremental Base Credit Adjustments” would provide a table of Performance Metrics that LMMs would be required to meet to qualify for certain incremental credits. LMMs that meet the Performance Metrics would be entitled to enhanced credits based on the quality of the market provided by an LMM in an ETP assigned to the LMM.

The Exchange proposes to adopt the following four Performance Metrics that LMMs would be measured by:

1. Maximum LMM Spread. Maximum LMM Spread means time-weighted average LMM spread (LMM Offer minus LMM Bid) divided by the average of the LMM Bid and LMM Offer, in basis points;

2. Minimum LMM Shares within 1% of NBBO. Minimum LMM Shares within 1% of NBBO means the average number of LMM shares quoted throughout the trading day that are within 1% of the National Best Bid and Best Offer divided by two;

3. Minimum LMM Shares in Core Open Auction within 1.5% of Auction Reference Price. Minimum LMM Shares at the Core Open Auction within 1.5% of the Auction Reference Price means the average of LMM buy shares and LMM sell shares for Limit Orders

quoted within 1.5% of the Auction Reference Price divided by two; and

4. Minimum LMM Shares at the Closing Auction within 1% of the NBBO. Minimum LMM Shares at the Closing Auction within 1% of the NBBO means the average number of LMM buy shares and LMM sell shares for Limit Orders quoted within 1% of the National Best Bid and Best Offer before the end of Core Trading Hours divided by two.

As proposed, each ETP would be grouped based on its prior month CADV and its price. An LMM would be considered to have met a Performance Metric in an ETP assigned to the LMM in a billing month if it meets the following:

MONTHLY AVERAGE LMM PERFORMANCE METRICS

ETP CADV	ETP price	Maximum LMM spread (bps)	Minimum LMM shares within 1% of national BBO	Minimum LMM shares in core open auction within 1.5% of auction reference price	Minimum LMM shares at the closing auction within 1% of the national BBO
>1,000,000	>\$50	55	6,000	4,000	12,250
	\$25–\$50	45	20,000	8,500	14,250
	Under \$25	40	42,000	22,000	30,000
100,001–1,000,000	>\$50	35	2,500	2,500	3,250
	\$25–\$50	35	3,500	4,000	4,750
	Under \$25	65	10,000	5,750	7,250
10,000–100,000	>\$50	40	2,200	2,000	2,250
	\$25–\$50	55	2,400	2,050	2,500
	Under \$25	70	4,000	2,200	4,500
Under 10,000	>\$50	50	2,000	1,750	2,000
	\$25–\$50	60	3,000	1,800	3,000
	Under \$25	75	3,000	1,800	3,000

Under the proposal, the base credit earned by an LMM for Adding Displayed Liquidity (as provided in Section II above) in an assigned ETP would be adjusted based on the number of Performance Metrics met by the LMM in the billing month for each assigned ETP, as follows:

Numbers of performance metrics met	Incremental base credit adjustment per ETP	Incremental base credit adjustment per leveraged ETP
4	(\$0.0001)	(\$0.0001)
3	(0.00005)	(0.00005)
2	0.0000	0.0000
1	0.0001	0.0000
0	0.0002	0.0000

The Performance Metrics illustrated above would apply to all ETPs,

including Leveraged ETPs. However, for Leveraged ETPs, there would be no adjustment to the base credit payable to the LMM if the LMM meets 1 or 2 Performance Metrics or if the LMM does not meet any Performance Metrics. LMMs that are registered as the LMM in a Leveraged ETF would be able to earn an incremental credit of \$0.00005 per share if the LMM meets 3 of the 4 Performance Metrics, or earn an incremental credit of \$0.0001 per share

if the LMM meets all 4 Performance Metrics.

The following example illustrates how a LMM can earn an incremental credit by meeting the Performance Metrics. Assume an LMM is registered in an ETP that has a CADV of 500,000 shares and a price of \$30, both in the prior month. That LMM would currently be eligible for a base credit for adding of \$0.0045 per share.¹⁸ Given the profile of the ETP, *i.e.*, CADV of 500,000 shares and a price of \$30, the LMM would have to meet the following Performance Metrics to earn an incremental credit (as illustrated in the Performance Metrics table above):

- Maximum LMM Spread (“Spread”): 35 basis points (“bps”)
- Minimum LMM Shares within 1% of Last Bid and Offer (“Depth”): 3,500 shares
- Minimum LMM Shares at the Core Open Auction within 1.5% of the Auction Reference Price (“Open Depth”): 4,000 shares
- Minimum LMM Shares at the Closing Auction within 1% of the Last Bid & Offer (“Closing Depth”): 4,750 shares

Assume in the billing month, the LMM in this ETP had a Spread of 30 bps, Depth of 3,000 shares, Open Depth of 4,500 shares, and Closing Depth of 5,000 shares. The LMM in this example met 3 of the 4 Performance Metrics (Spread, Open Depth, and Closing Depth) but did not meet Depth. As a result, the LMM has qualified to earn an incremental credit of \$0.00005 per share, for a combined credit per share of \$0.00455.

The following example illustrates how a LMM registered as a LMM in a Leveraged ETP can earn an incremental credit. Assume the same LMM as in the example above was registered in a second ETP that is a Leveraged ETP that also has a CADV of 500,000 shares and a price of \$30, both in the prior month. The LMM would currently be eligible for a base credit for adding of \$0.0045 per share. In this example, the profile of the Leveraged ETP is the same as in the non-Leveraged ETP in the example above.

Assume in the billing month, the LMM in the Leveraged ETP had a Spread of 25 bps, Depth of 3,000 shares, Open Depth of 2,000 shares, and Closing Depth of 2,500 shares. The LMM in this example has met just 1 of the 4 Performance Metrics and therefore, would not earn any incremental credit. Since the credit payable to a LMM in a

Leveraged ETP would not be adjusted if the LMM meets only 1 or 2 Metrics, or does not meet any Performance Metrics, the LMM in this example would continue to receive the base credit of \$0.0045 per share. If the LMM had met at least 3 of the 4 Performance Metrics in the Leveraged ETP, the LMM would have qualified for an incremental credit of \$0.00005 per share, for a combined credit of \$0.00455 per share. And if the LMM had met all 4 Performance Metrics in the Leveraged ETP, the LMM would have qualified for an incremental credit of \$0.0001 per share, for a combined credit of \$0.0046 per share.

Section IV. Additional Tape B Credits for LMMs and Market Makers

The Exchange proposes to add new Section IV titled “Additional Tape B Credits for LMMs and Market Makers.” The Exchange notes that the additional credits in proposed Section IV for LMMs are current; the Exchange is not proposing any new additional credits for LMMs under Section IV with this proposed rule change.

As more fully described below, the Exchange proposes a non-substantive change to reorganize the presentation of the credits under proposed Section IV. The Exchange also proposes two changes with respect to the Section IV credits. First, the Exchange proposes that to qualify for the additional credits available under Section IV, LMMs would be required to meet at least two Performance Metrics per Less Active ETP assigned to the LMM. Second, the Exchange proposes to make additional credits available to Market Makers who meet the specified Performance Metrics.

Non-Substantive Change

The Exchange currently provides LMMs, and ETP Holders affiliated with such LMM, incremental credits for orders in Tape B Securities that provide displayed liquidity in securities for which they are registered as the LMM and in securities for which they are not registered as an LMM based on the number of securities that have a CADV in the prior calendar quarter of less than 100,000 shares, or 0.013% of Consolidated Tape B ADV, whichever is greater (“Less Active ETPs”).¹⁹

These additional credits are as follows:

- An additional credit of \$0.0004 per share if an LMM is registered as the LMM in at least 400 Less Active ETPs or at least 300 Less Active ETPs if the

LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV. This credit would appear in the proposed Less Active table under proposed Section IV as Tier 1 without any substantive change to the amount of the credit.

- An additional credit of \$0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 400 Less Active ETPs or in at least 200 but less than 300 Less Active ETPs if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV. This credit would appear in the proposed Less Active table under proposed Section IV as Tier 2 without any substantive change to the amount of the credit.

- An additional credit of \$0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETPs. This credit would appear in the proposed Less Active table under proposed Section IV as Tier 3 without any substantive change to the amount of the credit.

- An additional credit of \$0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETPs. This credit would appear in the proposed Less Active table under proposed Section IV as Tier 4 without any substantive change to the amount of the credit.

- An additional credit of \$0.00005 per share if an LMM is registered as the LMM in at least 50 but less than 75 Less Active ETPs. This credit would appear in the proposed Less Active table under proposed Section IV as Tier 5 without any substantive change to the amount of the credit.

As noted above, the Exchange proposes to reorganize the presentation of the incremental credits described above in a table rather than the current vertical presentation in order to enhance its clarity and transparency.

Performance Metrics-Based Tape B Credits

As noted above, the Exchange currently provides tier-based incremental credits to LMMs and to ETP Holders affiliated with the LMM that provide displayed liquidity in Tape B securities. A LMM can earn anywhere between \$0.00005 per share to \$0.0004 per share of incremental credits depending on the number of Less Active ETP Securities in which an LMM is registered as the LMM.

As proposed, LMMs would be able to earn an additional credit on all Tape B Securities if the LMM meets at least two Performance Metrics in each of the Less

¹⁸ Under proposed Section II. LMM Base Fees and Credits per Share, ETPs that have a CADV of less than 1,000,000 shares receive \$0.0045 per share credit for adding displayed liquidity.

¹⁹ The number of Less Active ETPs for the billing month is based on the number of Less Active ETPs in which an LMM is registered as the LMM on the average of the first and last business day of the previous month.

Active ETPs in which they are registered as the LMM.

The number of Less Active ETPs for a billing month would be calculated as the average number of Less Active ETPs in which an LMM is registered on the first and last business day of the previous month.

To determine which Less Active ETP Tier would apply to an LMM, the Exchange would count the number of Less Active ETPs assigned to that LMM, as follows:

Each Less Active ETP in which an LMM is registered and meets at least two Performance Metrics would count as one Less Active ETP. Each Less Active ETP that is a Leveraged ETP in which an LMM is registered would count as one Less Active ETP regardless of the number of Performance Metrics met.

The Exchange also proposes that Market Makers would be eligible to earn

this additional credit on all Tape B securities if:

- The Market Maker notifies the Exchange on or before the first trading day that the additional credit is available in a calendar month of which new Less Active ETPs for which the Market Maker is registered that it would be seeking to count towards or remove from qualifying for this additional credit in that month.

- The Market Maker cannot also be the registered LMM in a Less Active ETP that it is seeking to count to qualify for the additional credit as a Market Maker.

- Every two Less Active ETPs that a Market Maker identifies and meets at least two Performance Metrics will count as one Less Active ETP for purposes of determining the applicable additional credit.

- If an ETP Holder is both an LMM and a Market Maker in Less Active ETPs

and has notified the Exchange of Less Active ETPs that it seeking to count for the additional credit as a Market Maker, the number of Less Active ETPs calculated for the Market Maker above will be combined with the number of Less Active ETPs in which the LMM is registered.

The Exchange believes that offering this incentive program to Market Makers would promote the additional display of liquidity in Less Active ETPs that list and trade on the Exchange. The Exchange notes that Market Makers would need to meet Performance Metrics in more Less Active ETPs than the assigned LMMs in order to achieve the same level of additional credit.

The changes described above would be included under proposed new Section IV and would appear as follows on the Fee Schedule:

Less active ETP tiers	Number of less active ETPs per LMM/Market Maker	Additional credit on all Tape B Securities
Tier 5	50–74 ETPs	(\$0.00005)
Tier 4	75–99 ETPs	(0.0001)
Tier 3	100–199 ETPs	(0.0002)
Tier 2	200–399 ETPs, or 200–299 ETPs if the LMM or Market Maker and its affiliates add liquidity of at least 1.00% of US CADV.	(0.0003)
Tier 1	At Least 400 ETPs, or at least 300 ETPs if the LMM or Market Maker and its affiliates add liquidity of at least 1.00% of US CADV.	(0.0004)

The following example illustrates the applicability of the expanded eligibility of additional Tape B credits to LMMs and Market Makers that meet a certain number of Performance Metrics.

Assume a LMM is registered in 120 Less Active ETPs. Currently, that LMM would qualify for an additional credit of \$0.0002 per share for adding liquidity in all Tape B Securities under the Less Active ETP Tier 3 in the table above. Assume further that of those 120 Less Active ETPs, the LMM meets at least two Performance Metrics in 90 of those Less Active ETPs, and does not meet at least two Performance Metrics in the other 30 Less Active ETPs. The LMM in this example would qualify for Less Active ETP Tier 4 and would receive an incremental credit of \$0.0001 per share for adding liquidity on all Tape B Securities. If the LMM in this example seeks to qualify as a Market Maker in another 50 Less Active ETPs, and as a Market Maker, the LMM meets at least two Performance Metrics in 40 of its non-registered Less Active ETPs, then those 40 Less Active ETPs would count as 20 Less Active ETPs for a combined total number of Less Active ETPs of 110 Less Active ETPs (90 Less Active ETPs

as LMM + 20 Less Active ETPs as Market Maker). The LMM would then qualify for Less Active ETP Tier 3 and would receive an incremental credit of \$0.0002 per share for adding liquidity on all Tape B Securities.

The following example illustrates how a Market Maker that is not an LMM can receive the incremental credits. Assume a Market Maker notifies the Exchange that it is seeking to qualify in 180 Less Active ETPs. Assume further that the Market Maker meets at least 2 Performance Metrics in 160 Less Active ETPs, and does not meet at least 2 Performance Metrics in the other 20 Less Active ETPs, for a total of 80 Less Active ETPs since every two Less Active ETPs that a Market Maker identifies and meets at least two Performance Metrics count as one Less Active ETP for purposes of determining which Less Active ETP tier applies to the Market Maker. The Market Maker in this example would qualify under Less Active Tier 4 for an incremental credit of \$0.0001 per share for adding liquidity in all Tape B securities.

The Exchange believes the proposed rule change would enhance market quality on all NYSE Arca-listed

Securities by incentivizing LMMs and Market Makers to meet the Performance Metrics across all Less Active ETPs, which would support the quality of price discovery in such securities on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants. The Exchange believes that providing increased credits to LMMs and ETP Holders that are affiliated with a LMM that add liquidity in Tape B Securities to the Exchange could lead to more LMMs to register to quote and trade in Less Active ETP Securities. The Exchange believes the proposed financial incentives could also encourage competition in Tape B Securities quoted and traded on the Exchange.

The Exchange does not know how much order flow LMMs and Market Makers choose to route to other exchanges or to off-exchange venues. The proposed credits in NYSE Arca-listed Securities would be available to all LMMs and Market Makers that are registered in those securities and are subject to the obligations specified in Rule 7.23–E relating to Market Makers. There are currently seven LMMs that

would qualify for the incremental credits. Without having a view of their activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in more LMMs and Market Makers sending their orders in NYSE Arca-listed Securities to the Exchange to qualify for the existing credits or whether this proposed rule change would result in these members sending more of their orders in NYSE Arca-listed Securities to the Exchange to qualify for the proposed incremental credits. The Exchange cannot predict with certainty how many LMMs and Market Makers would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The proposed rule change is also intended to incentivize LMMs to increase auction liquidity in less liquid NYSE Arca-listed Securities to support price discovery in the Exchange's opening and closing auctions for the benefit of all market participants. The Exchange believes that the proposed rule change could lead to more LMMs to register in less liquid securities and encourage greater participation in the opening and closing auctions on the Exchange.

The Exchange believes the proposed rule change would also to provide superior market quality and price discovery for NYSE Arca-listed Securities, specifically securities that are less active, through a quoting size requirement that would promote liquidity in the opening and closing auction in such securities. The proposed rule change is intended to provide a more meaningful incentive to both LMMs and ETP Holders to provide liquidity in less active securities by providing financial incentives to the Exchange's members as long as they meet certain prescribed quoting criteria. The Exchange believes that a performance-driven incentive would encourage such members to provide meaningful quotes and size in less active securities listed and traded on the Exchange.

Additionally, for newly listed and low volume ETPs, the cost to a firm for making a market, such as holding inventory in the security, is often not fully offset by the revenue through rebates provided by the Exchange. In some cases, firms may even operate at a loss in new and low volume ETPs. The Exchange believes the proposed credits, which would compensate members as long as they meet the prescribed performance metrics, is a more

deterministic program from a member's perspective. The member would decide how many, if any, low volume securities it wants to provide tight and deep markets in. The more securities the member provides heightened quoting in, the more the member could collect in the form of a rebate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also notes that its ETP listing business operates in a highly-competitive market in which market participants, which includes LMMs and ETP Holders, as well as ETP issuers, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all ETPs listed on the Exchange.

The Proposed Fee Change is Reasonable

The Exchange believes that the proposal to adopt market quality-based incentives is a reasonable means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and the Exchange is not the only venue for listing ETPs. Competition in ETPs is further exacerbated by the fact that listings can and do transfer from one listing market to another. The proposed rule change is intended to help the Exchange compete as a listing venue for ETPs. Further, the Exchange notes that the proposed incentives are not transaction fees, nor are they fees paid

by participants to access the Exchange. Rather, the proposed rebates are based on achieving certain objective market quality metrics. The Exchange believes providing rebates that are based on the quality of the market in individual ETPs that generally have low volume will allow ETP Holders to anticipate their revenue and will incentivize them to provide tight and deep markets in those securities.

Given the novelty of the proposed rule change, the Exchange cannot be certain that LMMs and Market Makers will choose to actively compete for these incentives. For LMMs and Market Makers that do choose to actively participate by providing deep and tight markets in Less Active ETP Securities, the Exchange expects those members to receive payments comparable to what they currently receive, with the potential for additional upside when they meet the Performance Metrics in a greater number of less active securities. The Exchange believes the proposed credits, which would compensate LMMs and Market Makers as long as they meet the prescribed Performance Metrics, is also reasonable because it is a more deterministic program from an ETP Holder's perspective.

The Exchange believes the proposed rule change is intended to encourage LMMs and Market Makers to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes the proposed rule change is reasonable and appropriate in that the credits are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed incremental credits offered by the Exchange is similar to market quality incentive programs already in place on other markets, such as the Designated Liquidity Provider incentives on the Nasdaq Stock Market LLC ("Nasdaq"), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery in low volume exchange-traded products by quoting at the National Best Bid and Offer and adding liquidity in a minimum number of such securities. In return, Nasdaq provides the member with an incremental rebate.²² The Exchange believes that providing increased credits to LMMs and Market Makers that add liquidity in Tape B Securities to the Exchange is reasonable because the Exchange believes that by providing

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² See Equity 7 Pricing Schedule, Section 114. Market Quality Incentive Programs, at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_114_market_quality_incentive_programs.

increased rebates to such members, more of them will register to quote and trade in Less Active ETP Securities. The Exchange believes the proposed incremental credit for adding liquidity is also reasonable because it will encourage liquidity and competition in Tape B Securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed fee change will incentivize LMMs and Market Maker to register as either an LMM or Market Maker in Less Active ETP Securities and thus, add more liquidity in Tape B Securities to the benefit of all market participants.

The Exchange believes that providing additional credits to Market Makers that add liquidity in Less Active ETPs is reasonable because the Exchange believes that by providing such additional credits, more Market Makers would choose to register in Less Active ETP Securities on the Exchange, which the Exchange believes would benefit all market participants. As noted above, because Market Makers registered in a security must meet the quoting obligations specified in Rule 7.23-E, expanding eligibility to Market Makers to receive credits is a reasonable attempt to increase participation on the Exchange and provide an incentive for Market Makers to meet additional standards for their registered Less Active ETPs.

Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for LMMs and Market Makers from the substantial amounts of liquidity present on the Exchange. All participants would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes that eliminating the existing monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities is reasonable because those pricing incentives did not achieve their intended purpose of incentivizing LMMs and ETP Holders to send a greater number of their orders in Tape B Securities to the Exchange. The Exchange believes replacing the monthly rebate program and the ETF Incentive Program with pricing incentives tied to Performance Metrics discussed above will allow the Exchange to better maintain its competitive standing. On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable

attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

Finally, the Exchange believes the proposed non-substantive changes to relocate existing fees and credits into a table format is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency of the Fee Schedule, thereby reducing potential confusion.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is equitable because the proposal would provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes in Less Active ETP Securities. The Exchange further believes that the proposed incremental rebate is equitable because it is consistent with the market quality and competitive benefits associated with the fee program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange believes that it is equitable to offer increased rebates to LMMs and Market Makers as both are currently subject to obligations specified in Rule 7.23-E, which are not applicable to non-Market Maker ETP Holders, and they would be subject to additional requirements and obligations (such as meeting Performance Metrics) that other market participants are not.

The Exchange believes that the proposal to offer rebates tied to market quality metrics represents an equitable allocation of payments because LMMs and Market Makers would be required to not only meet their Rule 7.23-E obligations, but also meet prescribed quoting requirements in order to qualify for the payments, as described above. Where an LMM or Market Maker does not meet at least two Performance Metrics, that member will not receive any additional financial benefit. Further, all LMMs and Market Makers on the Exchange are eligible to participate and could do so by simply registering in a Less Active ETP and meeting the proposed market quality metrics. The Exchange has designed the proposed pricing incentives to be sustainable over the long-term and generally expects that payments made to LMMs and Market Makers will be comparable to payments the Exchange currently makes to its members and comparable to pricing incentives offered

by the Exchange's competitors. As such, the Exchange believes that the proposal represents an equitable allocation of dues, fees and credits.

The Exchange believes that eliminating the existing monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities is equitable because the Exchange is eliminating those pricing incentives for all participants.

The Proposed Fee Change is not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, LMMs and Market Makers are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to adopt incremental credits applicable to LMMs and Market Makers because both are already subject to additional obligations, as specified in Rule 7.23-E, and the proposed additional credits would be provided on an equal basis to all similarly situated participant provided each such participant meets the prescribed market quality metrics. If an LMM or Market Maker does not meet the required number of Performance Metrics, the member would not receive any incremental credit. Further, the Exchange believes the incremental credit would incentivize each of these participants to register in Less Active ETPs and send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed rule change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to offer an additional credit tied to meeting certain market quality requirements neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because LMMs and Market Makers already have increased obligations vis-à-vis non-Market Maker ETP Holders, as specified in Rule 7.23-E, and the proposed requirements would be applied to all similarly-situated LMMs and Market Maker equally. In addition, the proposed incentives for LMMs replace the existing incentive structure, which is already available only for LMMs. The Exchange does not believe it would be unfairly discriminatory to extend the availability of additional credits for

Tape B securities to Market Makers because Market Makers have obligations under Rule 7.23–E, and pursuant to the proposed change, would need to meet additional performance requirements in order to qualify for the additional credit.

The Exchange believes that the proposed rule change is not unfairly discriminatory because all LMMs and Market Makers that choose to qualify for the incremental credits would be required to meet a minimum number of Performance Metrics in order to receive the credits. Where a participant does not achieve a certain number of

Performance Metrics, it will not receive any incremental credits. Further, all LMMs and Market Makers on the Exchange are eligible to participate in the program and could do so by simply registering in Less Active ETPs and meeting a minimum number of Performance Metrics. The Exchange has designed the pricing incentives proposed herein to be sustainable over the long-term and generally expects that payments made to LMMs and Market Makers would be comparable to payments the Exchange currently makes to its LMMs and comparable to pricing incentives offered by the Exchange's competitors. As such, the Exchange believes that the proposal is not unfairly discriminatory.

The Exchange believes that eliminating the existing monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities is not unfairly discriminatory because the Exchange is eliminating both pricing incentives for all participants.

Finally, subject to their obligations specified in Rule 7.23–E, the submission of additional orders to the Exchange is optional for LMMs and Market Makers in that they could choose the level of trading activity on the Exchange. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²³ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes

that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for LMMs and ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁴

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed Performance Metrics-based incremental credit applicable to LMMs and Market Makers in Less Active ETPs in which they are registered would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs and Market Makers to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed pricing incentive would be applicable to all similarly-situated market participants that have obligations under Rule 7.23–E to meet specified obligations, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange. The Exchange believes the proposed adoption of Performance Metrics would enhance competition as it is intended to increase the Exchange's competitiveness in Less Active ETPs, and all LMMs and Market Makers would be able to participate on an equal basis. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders to maintain their competitive standing. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The Exchange also does not believe the proposed rule change to eliminate underutilized pricing incentives will impose any burden on intramarket competition because the proposed change would impact all LMMs and Market Makers uniformly.

Intermarket Competition. The Exchange operates in a highly

competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. The Exchange believes that the proposed rule change could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁵ of the Act and subparagraph (f)(2) of Rule 19b–4²⁶ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b–4(f)(2).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²⁴ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

²³ 15 U.S.C. 78f(b)(8).

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 No. SR-NYSEArca-2021-43 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 No. NYSEArca-2021-43. 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 No. NYSEArca-2021-43, and should be submitted on or before June 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11611 Filed 6-2-21; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-FMCSA-2021-0059]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Waste Management, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Waste Management, Inc.'s (Waste Management) application for an exemption to allow all of its 106 operating companies to replace the high-mounted brake lights on their owned and operated fleets of heavy-duty refuse and support trucks with red or amber brake-activated pulsating lamps positioned in the upper center position, or in an upper dual outboard position, in addition to the steady burning brake lamps required by the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: Comments must be received on or before July 6, 2021.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2021-0059 using any of the following methods:

- **Website:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.
- **Fax:** 1-202-493-2251.
- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- **Hand Delivery by Courier:** Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9

a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the "Privacy Act" heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Docket Operations in Room W12-140, U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, 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 Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory 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 www.dot.gov/privacy.

Public participation: The <http://www.regulations.gov> website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the "help" section of the <http://www.regulations.gov> website as well as the DOT's <http://docketsinfo.dot.gov> website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-0676, luke.loy@dot.gov.

SUPPLEMENTARY INFORMATION:

²⁸ 17 CFR 200.30-3(a)(12).

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0059), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to <https://www.regulations/documents/FMCSA-2021-0059>, click “Comment,” and type your comment into the text box in the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request. The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the

person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

III. Waste Management’s Application for Exemption

The FMCSRs require all exterior lamps (both required lamps and any additional lamps) to be steady-burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and commercial motor vehicles transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities. Waste Management has applied for an exemption from 49 CFR 393.25(e) to allow all of its 106 operating companies to replace the rear high-mounted brake lights with red or amber brake-activated pulsating lamps positioned in the upper center position, or in an upper dual outboard position, in addition to the steady burning brake lamps required by the FMCSRs. A copy of the exemption application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Waste Management’s application for an exemption from 49 CFR 393.25(e). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–11639 Filed 6–2–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2004–18885; FMCSA–2006–25246; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2008–0340; FMCSA–2008–0398; FMCSA–2009–0086; FMCSA–2009–0321; FMCSA–2010–0201; FMCSA–2010–0354; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2012–0278; FMCSA–2012–0279; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2012–0339; FMCSA–2013–0024; FMCSA–2013–0027; FMCSA–2014–0004; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2016–0029; FMCSA–2016–0207; FMCSA–2016–0209; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2018–0006; FMCSA–2018–0013; FMCSA–2018–0017; FMCSA–2018–0018; FMCSA–2019–0004; FMCSA–2019–0008; FMCSA–2019–0009]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 67 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before July 6, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2000–7363, Docket No. FMCSA–2000–7918, Docket No. FMCSA–2001–9258, Docket No. FMCSA–2002–12844, Docket No. FMCSA–2002–13411, Docket No. FMCSA–2003–14504, Docket No. FMCSA–2004–18885, Docket No. FMCSA–2006–25246, Docket No. FMCSA–2007–27515, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2008–0106, Docket No.

FMCSA-2008-0266, Docket No.
 FMCSA-2008-0292, Docket No.
 FMCSA-2008-0340, Docket No.
 FMCSA-2008-0398, Docket No.
 FMCSA-2009-0086, Docket No.
 FMCSA-2009-0321, Docket No.
 FMCSA-2010-0201, Docket No.
 FMCSA-2010-0354, Docket No.
 FMCSA-2011-0024, Docket No.
 FMCSA-2011-0057, Docket No.
 FMCSA-2011-0092, Docket No.
 FMCSA-2011-0102, Docket No.
 FMCSA-2012-0278, Docket No.
 FMCSA-2012-0279, Docket No.
 FMCSA-2012-0337, Docket No.
 FMCSA-2012-0338, Docket No.
 FMCSA-2012-0339, Docket No.
 FMCSA-2013-0024, Docket No.
 FMCSA-2013-0027, Docket No.
 FMCSA-2014-0004, Docket No.
 FMCSA-2014-0300, Docket No.
 FMCSA-2014-0301, Docket No.
 FMCSA-2014-0304, Docket No.
 FMCSA-2015-0048, Docket No.
 FMCSA-2015-0052, Docket No.
 FMCSA-2016-0029, Docket No.
 FMCSA-2016-0207, Docket No.
 FMCSA-2016-0209, Docket No.
 FMCSA-2016-0213, Docket No.
 FMCSA-2016-0214, Docket No.
 FMCSA-2016-0377, Docket No.
 FMCSA-2017-0014, Docket No.
 FMCSA-2017-0017, Docket No.
 FMCSA-2017-0018, Docket No.
 FMCSA-2018-0006, Docket No.
 FMCSA-2018-0013, Docket No.
 FMCSA-2018-0017, Docket No.
 FMCSA-2018-0018, Docket No.
 FMCSA-2019-0004, Docket No.
 FMCSA-2019-0008, or Docket No.
 FMCSA-2019-0009 using any of the following methods:

- *Federal eRulemaking Portal*: Go to www.regulations.gov/, insert the docket number, FMCSA-2000-7363, FMCSA-2000-7918, FMCSA-2001-9258, FMCSA-2002-12844, FMCSA-2002-13411, FMCSA-2003-14504, FMCSA-2004-18885, FMCSA-2006-25246, FMCSA-2007-27515, FMCSA-2007-27897, FMCSA-2008-0106, FMCSA-2008-0266, FMCSA-2008-0292, FMCSA-2008-0340, FMCSA-2008-0398, FMCSA-2009-0086, FMCSA-2009-0321, FMCSA-2010-0201, FMCSA-2010-0354, FMCSA-2011-0024, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0102, FMCSA-2012-0278, FMCSA-2012-0279, FMCSA-2012-0337, FMCSA-2012-0338, FMCSA-2012-0339, FMCSA-2013-0024, FMCSA-2013-0027, FMCSA-2014-0004, FMCSA-2014-0300, FMCSA-2014-0301, FMCSA-2014-0304, FMCSA-2015-0048, FMCSA-2015-0052, FMCSA-2016-0029, FMCSA-2016-0207, FMCSA-2016-0209, FMCSA-2016-

0213, FMCSA-2016-0214, FMCSA-2016-0377, FMCSA-2017-0014, FMCSA-2017-0017, FMCSA-2017-0018, FMCSA-2018-0006, FMCSA-2018-0013, FMCSA-2018-0017, FMCSA-2018-0018, FMCSA-2019-0004, FMCSA-2019-0008, or FMCSA-2019-0009 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click on the "Comment" button. Follow the online instructions for submitting comments.

- *Mail*: Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax*: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcamedical@dot.gov, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2000-7363; FMCSA-2000-7918; FMCSA-2001-9258; FMCSA-2002-12844; FMCSA-2002-13411; FMCSA-2003-14504; FMCSA-2004-18885; FMCSA-2006-25246; FMCSA-2007-27515; FMCSA-2007-27897; FMCSA-2008-0106; FMCSA-2008-0266; FMCSA-2008-0292; FMCSA-2008-0340; FMCSA-2008-0398; FMCSA-2009-0086; FMCSA-2009-0321; FMCSA-2010-0201; FMCSA-2010-0354; FMCSA-2011-0024; FMCSA-2011-0057; FMCSA-2011-0092; FMCSA-2011-0102; FMCSA-2012-0278; FMCSA-2012-0279; FMCSA-2012-0337; FMCSA-2012-0338; FMCSA-2012-0339; FMCSA-2013-0024; FMCSA-2013-0027; FMCSA-2014-0004;

FMCSA-2014-0300; FMCSA-2014-0301; FMCSA-2014-0304; FMCSA-2015-0048; FMCSA-2015-0052; FMCSA-2016-0029; FMCSA-2016-0207; FMCSA-2016-0209; FMCSA-2016-0213; FMCSA-2016-0214; FMCSA-2016-0377; FMCSA-2017-0014; FMCSA-2017-0017; FMCSA-2017-0018; FMCSA-2018-0006; FMCSA-2018-0013; FMCSA-2018-0017; FMCSA-2018-0018; FMCSA-2019-0004; FMCSA-2019-0008; FMCSA-2019-0009), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/, insert the docket number, FMCSA-2000-7363, FMCSA-2000-7918, FMCSA-2001-9258, FMCSA-2002-12844, FMCSA-2002-13411, FMCSA-2003-14504, FMCSA-2004-18885, FMCSA-2006-25246, FMCSA-2007-27515, FMCSA-2007-27897, FMCSA-2008-0106, FMCSA-2008-0266, FMCSA-2008-0292, FMCSA-2008-0340, FMCSA-2008-0398, FMCSA-2009-0086, FMCSA-2009-0321, FMCSA-2010-0201, FMCSA-2010-0354, FMCSA-2011-0024, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0102, FMCSA-2012-0278, FMCSA-2012-0279, FMCSA-2012-0337, FMCSA-2012-0338, FMCSA-2012-0339, FMCSA-2013-0024, FMCSA-2013-0027, FMCSA-2014-0004, FMCSA-2014-0300, FMCSA-2014-0301, FMCSA-2014-0304, FMCSA-2015-0048, FMCSA-2015-0052, FMCSA-2016-0029, FMCSA-2016-0207, FMCSA-2016-0209, FMCSA-2016-0213, FMCSA-2016-0214, FMCSA-2016-0377, FMCSA-2017-0014, FMCSA-2017-0017, FMCSA-2017-0018, FMCSA-2018-0006, FMCSA-2018-0013, FMCSA-2018-0017, FMCSA-2018-0018, FMCSA-2019-0004, FMCSA-2019-0008, or FMCSA-2019-0009 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

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C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without

edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 67 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 67 applicants has satisfied the renewal conditions for

obtaining an exemption from the vision standard (see 65 FR 45817, 65 FR 66286, 65 FR 77066, 66 FR 13825, 66 FR 17743, 66 FR 33990, 67 FR 68719, 67 FR 71610, 67 FR 76439, 68 FR 2629, 68 FR 10298, 68 FR 10300, 68 FR 19598, 68 FR 33570, 68 FR 35772, 69 FR 53493, 69 FR 62742, 69 FR 64810, 69 FR 71100, 70 FR 7545, 70 FR 7546, 70 FR 25878, 70 FR 33937, 71 FR 62148, 71 FR 66217, 72 FR 180, 72 FR 1054, 72 FR 7111, 72 FR 7812, 72 FR 9397, 72 FR 21313, 72 FR 28093, 72 FR 32703, 72 FR 32705, 72 FR 39879, 72 FR 52419, 73 FR 35194, 73 FR 51689, 73 FR 61922, 73 FR 61925, 73 FR 63047, 73 FR 63047, 73 FR 74565, 73 FR 75803, 74 FR 980, 74 FR 6209, 74 FR 6211, 74 FR 6212, 74 FR 6689, 74 FR 7097, 74 FR 15584, 74 FR 19267, 74 FR 20253, 74 FR 23472, 74 FR 26464, 74 FR 28094, 74 FR 41971, 75 FR 1835, 75 FR 9482, 75 FR 54958, 75 FR 59327, 75 FR 64396, 75 FR 64396, 75 FR 70078, 75 FR 72863, 75 FR 77949, 76 FR 2190, 76 FR 4413, 76 FR 4414, 76 FR 9859, 76 FR 9861, 76 FR 9865, 76 FR 17481, 76 FR 18824, 76 FR 21796, 76 FR 25766, 76 FR 28125, 76 FR 29022, 76 FR 29024, 76 FR 29026, 76 FR 32016, 76 FR 32017, 76 FR 34135, 76 FR 37885, 76 FR 44082, 76 FR 54530, 77 FR 10606, 77 FR 59248, 77 FR 60008, 77 FR 64582, 77 FR 64583, 77 FR 68200, 77 FR 68202, 77 FR 70534, 77 FR 71669, 77 FR 71671, 77 FR 74273, 77 FR 74731, 78 FR 798, 78 FR 1919, 78 FR 8689, 78 FR 9772, 78 FR 10250, 78 FR 11731, 78 FR 12811, 78 FR 12817, 78 FR 12822, 78 FR 16912, 78 FR 22596, 78 FR 24300, 78 FR 24798, 78 FR 29431, 78 FR 30954, 78 FR 32703, 78 FR 32708, 78 FR 34140, 78 FR 37270, 78 FR 46407, 78 FR 51268, 78 FR 78477, 79 FR 14328, 79 FR 18392, 79 FR 24298, 79 FR 29498, 79 FR 56104, 79 FR 56117, 79 FR 59357, 79 FR 65759, 79 FR 73686, 79 FR 73687, 80 FR 603, 80 FR 2473, 80 FR 3308, 80 FR 3723, 80 FR 5615, 80 FR 6162, 80 FR 7678, 80 FR 7679, 80 FR 8751, 80 FR 14223, 80 FR 15859, 80 FR 16502, 80 FR 18693, 80 FR 18696, 80 FR 20558, 80 FR 20559, 80 FR 20562, 80 FR 25766, 80 FR 25768, 80 FR 26139, 80 FR 29154, 80 FR 31635, 80 FR 31640, 80 FR 33009, 80 FR 33011, 80 FR 35699, 80 FR 36395, 80 FR 36398, 80 FR 48404, 80 FR 48409, 81 FR 20433, 81 FR 42054, 81 FR 66722, 81 FR 70248, 81 FR 70251, 81 FR 71173, 81 FR 80161, 81 FR 90046, 81 FR 96165, 81 FR 96178, 81 FR 96180, 82 FR 12678, 82 FR 13043, 82 FR 13045, 82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 17736, 82 FR 18949, 82 FR 18956, 82 FR 20962, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 26224, 82 FR 33542, 82 FR 35050, 82 FR 37499, 83 FR 6694, 83 FR 24571, 83 FR 28325, 83 FR 28335, 83 FR 34661, 83 FR 40648, 83 FR 45750, 83 FR 53724, 83 FR 53727, 83 FR 56137, 83 FR 56902, 84 FR 2311, 84 FR

2314, 84 FR 2326, 84 FR 2328, 84 FR 5550, 84 FR 12665, 84 FR 16320, 84 FR 16327, 84 FR 16333, 84 FR 21397, 84 FR 21401, 84 FR 23629, 84 FR 27688, 84 FR 47047, 84 FR 47057). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of July and are discussed below. As of July 22, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 65 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 45817, 65 FR 66286, 65 FR 77066, 66 FR 13825, 66 FR 17743, 66 FR 33990, 67 FR 68719, 67 FR 71610, 67 FR 76439, 68 FR 2629, 68 FR 10298, 68 FR 10300, 68 FR 19598, 68 FR 33570, 68 FR 35772, 69 FR 53493, 69 FR 62742, 69 FR 64810, 69 FR 71100, 70 FR 7545, 70 FR 7546, 70 FR 25878, 70 FR 33937, 71 FR 62148, 71 FR 66217, 72 FR 180, 72 FR 1054, 72 FR 7111, 72 FR 7812, 72 FR 9397, 72 FR 21313, 72 FR 28093, 72 FR 32703, 72 FR 32705, 72 FR 39879, 72 FR 52419, 73 FR 35194, 73 FR 51689, 73 FR 61922, 73 FR 61925, 73 FR 63047, 73 FR 63047, 73 FR 74565, 73 FR 75803, 74 FR 980, 74 FR 6209, 74 FR 6211, 74 FR 6212, 74 FR 6689, 74 FR 7097, 74 FR 15584, 74 FR 19267, 74 FR 20253, 74 FR 23472, 74 FR 26464, 74 FR 28094, 74 FR 41971, 75 FR 1835, 75 FR 9482, 75 FR 54958, 75 FR 59327, 75 FR 64396, 75 FR 64396, 75 FR 70078, 75 FR 72863, 75 FR 77949, 76 FR 2190, 76 FR 4413, 76 FR 4414, 76 FR 9859, 76 FR 9861, 76 FR 9865, 76 FR 17481, 76 FR 18824, 76 FR 21796, 76 FR 25766, 76 FR 28125, 76 FR 29022, 76 FR 29024, 76 FR 29026, 76 FR 32016, 76 FR 32017, 76 FR 34135, 76 FR 37885, 76 FR 44082, 76 FR 54530, 77 FR 10606, 77 FR 59248, 77 FR 60008, 77 FR 64582, 77 FR 64583, 77 FR 68200, 77 FR 68202, 77 FR 70534, 77 FR 71669, 77 FR 71671, 77 FR 74273, 77 FR

74731, 78 FR 798, 78 FR 1919, 78 FR 8689, 78 FR 9772, 78 FR 10250, 78 FR 11731, 78 FR 12811, 78 FR 12817, 78 FR 12822, 78 FR 16912, 78 FR 22596, 78 FR 24300, 78 FR 29431, 78 FR 30954, 78 FR 32703, 78 FR 32708, 78 FR 34140, 78 FR 37270, 78 FR 51268, 78 FR 78477, 79 FR 14328, 79 FR 18392, 79 FR 24298, 79 FR 29498, 79 FR 56104, 79 FR 56117, 79 FR 59357, 79 FR 65759, 79 FR 73686, 79 FR 73687, 80 FR 603, 80 FR 2473, 80 FR 3308, 80 FR 3723, 80 FR 6162, 80 FR 767, 80 FR 5615, 80 FR 7679, 80 FR 8751, 80 FR 14223, 80 FR 15859, 80 FR 16502, 80 FR 18693, 80 FR 18696, 80 FR 20558, 80 FR 20559, 80 FR 20562, 80 FR 25766, 80 FR 25768, 80 FR 26139, 80 FR 29154, 80 FR 31635, 80 FR 31640, 80 FR 33009, 80 FR 33011, 80 FR 36398, 80 FR 48409, 81 FR 20433, 81 FR 42054, 81 FR 66722, 81 FR 70248, 81 FR 70251, 81 FR 71173, 81 FR 80161, 81 FR 90046, 81 FR 96165, 81 FR 96178, 81 FR 96180, 82 FR 12678, 82 FR 13043, 82 FR 13045, 82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 17736, 82 FR 18949, 82 FR 18956, 82 FR 20962, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 26224, 82 FR 33542, 82 FR 35050, 82 FR 37499, 83 FR 6694, 83 FR 24571, 83 FR 28325, 83 FR 28335, 83 FR 34661, 83 FR 40648, 83 FR 45750, 83 FR 53724, 83 FR 53727, 83 FR 56137, 83 FR 56902, 84 FR 2311, 84 FR 2314, 84 FR 2326, 84 FR 2328, 84 FR 5550, 84 FR 12665, 84 FR 16320, 84 FR 16327, 84 FR 16333, 84 FR 21397, 84 FR 21401, 84 FR 23629, 84 FR 27688, 84 FR 47047, 84 FR 47057):

Charles H. Akers, Jr. (VA)
Sava A. Andjelich (IN)
Thomas J. Boss (IL)
Daniel M. Cannon (OR)
Toby L. Carson (TN)
John P. Catalano (NJ)
Jose S. Chavez (AZ)
Brett L. Condon (MD)
Stephen L. Cornish (MN)
Michael S. Crawford (IL)
Jose G. Cruz Romero (TX)
Stephen M. Currie (TX)
Dudley G. Diebold (CT)
Wayne L. Dorbert (PA)
Irvin L. Eaddy (SC)
Douglas Eamens (NY)
Matthew T. Eggers (IA)
Marc Enderson (ND)
Kelly L. Ewing (PA)
Breck L. Falcon (LA)
Jevont D. Fells (AL)
Raymundo Flores (TX)
Jeremy L. Fricke (ND)
James P. Gapinski (MN)
Dolan A. Gonzalez, Jr. (FL)
Peter D. Gouge (IA)
Michael D. Greene (VT)
Donald L. Hamrick (KS)
Zane G. Harvey, Jr. (VA)
Billy R. Holdman (IL)

James S. Hummel (PA)
Ronald D. Jackman II (NV)
Alan L. Johnston (IL)
Damian Klyza (NJ)
Alfred R. Knotts (PA)
Kevin R. Lambert (NC)
James W. Lappan (KS)
Thomas M. Leonard (PA)
Terry L. Lipscomb (AL)
Collin C. Longacre (PA)
Kenny Y. Louie (CA)
Phillip L. Mangen (OH)
Kenton D. McCullough (VA)
Anthony R. Melton (SC)
Joshua G. Millican (OH)
Stuart W. Penner (KS)
Patrick A. Piekola (WY)
Daniel A. Rau (NJ)
Donald G. Reed (FL)
Richard S. Rehbein (MN)
Menno H. Reiff (PA)
Jeffrey Ridenhour (AR)
Patrick W. Shea (MA)
Ranjodh Singh (CA)
Jeremichael Steele (NC)
Dustin N. Sullivan (MD)
Randall S. Surber (WV)
Thomas R. Test (VA)
Francisco J. Torres (PA)
Kevin W. Van Arsdol (CO)
Christopher A. Weidner (CT)
Gerald L. Wheeler (FL)
Don S. Williams (AL)
Michael T. Wimber (MT)
Rick L. Wood (PA)

The drivers were included in docket numbers FMCSA-2000-7363, FMCSA-2000-7918, FMCSA-2001-9258, FMCSA-2002-12844, FMCSA-2002-13411, FMCSA-2003-14504, FMCSA-2004-18885, FMCSA-2006-25246, FMCSA-2007-27515, FMCSA-2007-27897, FMCSA-2008-0106, FMCSA-2008-0266, FMCSA-2008-0292, FMCSA-2008-0340, FMCSA-2008-0398, FMCSA-2009-0086, FMCSA-2009-0321, FMCSA-2010-0201, FMCSA-2010-0354, FMCSA-2011-0024, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0102, FMCSA-2012-0278, FMCSA-2012-0279, FMCSA-2012-0337, FMCSA-2012-0338, FMCSA-2012-0339, FMCSA-2013-0024, FMCSA-2014-0004, FMCSA-2014-0300, FMCSA-2014-0301, FMCSA-2014-0304, FMCSA-2015-0048, FMCSA-2016-0029, FMCSA-2016-0207, FMCSA-2016-0209, FMCSA-2016-0213, FMCSA-2016-0214, FMCSA-2016-0377, FMCSA-2017-0014, FMCSA-2017-0017, FMCSA-2017-0018, FMCSA-2018-0006, FMCSA-2018-0013, FMCSA-2018-0017, FMCSA-2018-0018, FMCSA-2019-0004, FMCSA-2019-0008, and FMCSA-2019-0009. Their exemptions are applicable as of July 22, 2021, and will expire on July 22, 2023.

As of July 23, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 35699, 80 FR 48404, 82 FR 33542, 84 FR 47057):

Bradley J. Kearn (UT)

The driver was included in docket number FMCSA–2015–0052. The exemption is applicable as of July 23, 2021, and will expire on July 23, 2023.

As of July 31, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 24798, 78 FR 46407, 80 FR 36395, 82 FR 33542, 84 FR 47057): Edward Swaggerty, Jr. (OH)

The driver was included in docket number FMCSA–2013–0027. The exemption is applicable as of July 31, 2021, and will expire on July 31, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this

exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 67 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–11642 Filed 6–2–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: List of Data (A) and List of Data (B)

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 List of Data (A) and List of Data (B).

DATES: Written comments should be received on or before August 2, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or bruce.sharp@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Title: List of Data (A) and List of Data (B).

OMB Number: 1530–0061.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining acceptability of the companies applying for a Certificate of Authority to write or reinsure Federal surety bonds and/or gain recognition as an Admitted Reinsurer.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 150.

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: May 28, 2021.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2021–11675 Filed 6–2–21; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Election of Qualified Health Insurance for Health Coverage Tax Credit (HCTC)

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before July 6, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular

information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: State Election of Qualified Health Insurance for Health Coverage Tax Credit (HCTC).

OMB Control Number: 1545-1875.

Type of Review: Extension without change of a currently approved collection.

Description: Revenue Procedure 2004-12 informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Form: None.

Affected Public: State governments.

Estimated Number of Respondents: 51.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 51.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 26.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 28, 2021.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2021-11696 Filed 6-2-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

VA's Indian Health Service/Tribal Health Program Reimbursement Agreements Program—Pharmacy Reimbursement Rate for the Lower 48 States

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Tribal Consultation Session.

SUMMARY: VA, Veterans Health Administration (VHA) will facilitate a tribal consultation regarding VA's Indian Health Service/Tribal Health Program (IHS/THP) Reimbursement Agreements Program. VA is seeking input on adopting a pharmacy reimbursement rate for the lower 48 states.

DATES: Comments must be received by VA on or before July 5, 2021.

ADDRESSES: Comments may be submitted to tribalgovernmentconsultation@va.gov or by mail at Department of Veterans Affairs, Suite 915L, 810 Vermont Avenue NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Kara Hawthorne, IHS/THP Program Manager, VA Office of Community Care, at Tribal.Agreements@va.gov, or by telephone at 303-780-4826. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Utilizing the authorities found in 25 U.S.C. 1645(c), Sharing Arrangements with Federal Agencies, and 38 U.S.C. 8153, Sharing of Health-Care Resources, VA, IHS and Tribal health care providers have created the IHS/THP Reimbursement Agreements Program. This program provides a means for IHS and THP health facilities to receive reimbursement from VA for direct care services, including pharmaceuticals, provided to eligible American Indian/Alaska Native (AI/AN) Veterans. Currently, reimbursement agreements under this program state that VA will reimburse “actual costs” for pharmaceuticals. In implementing this requirement, VA has realized that this term, “actual costs,” may be ambiguous and has led to difficulties in administering the agreements in compliance with applicable laws. VA is considering replacing the term “actual cost” with a more recognizable and easily calculated rate. Selecting an industry standard pharmaceutical rate structure would benefit IHS/THP sites by making it easier to understand and predict the reimbursement rate by eliminating the need to calculate actual cost.

VA is proposing two distinct pharmacy payment rates for IHS and THP facilities. For IHS facilities, VA has collaborated with IHS to use the Federal Supply Schedule (FSS) or other established contract vehicles (*i.e.*, joint national drug contracts) pharmaceutical pricing as the proposed reimbursement rate, as most of their pharmaceuticals are purchased using the FSS contract or

other contract vehicles. The FSS contract and other contract vehicles are collectively referred to as the FSS rate. For those pharmaceuticals not available on FSS, or non-contracted drugs, claims will be paid based on the adopted rate that is agreed upon with THPs.

For THP facilities, VA is suggesting using one of two industry-standard pharmacy reimbursement methodologies. These proposed methodologies are: (1) Wholesale Acquisition Cost (WAC) plus dispensing fee and (2) Average Wholesale Price (AWP), minus discount, plus dispensing fee.

This written tribal consultation is seeking input on the preferred pharmacy reimbursement rate from the options above. VA suggests the following questions for response:

(1) For the rates for THP facilities, what is your preferred methodology, WAC plus dispensing fee, or (2) AWP, minus discount, plus dispensing fee.

(2) For the rates for THP facilities, if you identify AWP as the preferred method, what would you propose as the AWP discount percent rate for generic drugs and name brand/specialty drugs? How did you calculate or determine the proposed discount percent rate?

(3) For THP dispensing fee, VA proposes to adopt an amount in line with industry standard, which is generally less than \$1.00 per drug, to be applied to either selected rates (WAC or AWP). Do you agree with \$1.00 per drug for a dispensing fee? If not, what do you propose the dispensing fee should be? How did you calculate or determine the proposed dispensing fee?

(4) Do you have any comments on pharmacy reimbursement rates for IHS facilities and/or the related claims submission and reimbursement process?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 26, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2021-11624 Filed 6-2-21; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900–0219]****Agency Information Collection Activity: CHAMPVA Benefits—Application, Claim, Other Health Insurance, Potential Liability & Miscellaneous Expenses****AGENCY:** Veterans Health Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: Veterans Health Administration (VHA), 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 August 2, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to Janel.Keyes@va.gov. Please refer to “OMB Control No. 2900–0219” 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. 2900–0219” 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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA’s functions, including whether the

information will have practical utility; (2) the accuracy of VHA’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: CHAMPVA Benefits—Application, Claim, Other Health Insurance, Potential Liability & Miscellaneous Expenses.

OMB Control Number: 2900–0219.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract

This information collection includes several forms, as well as a review and appeal process, which are used to administer the Civilian Health And Medical Program of the Department of Veterans Affairs (CHAMPVA).

VA Form 10–10d: Application for CHAMPVA Benefits

VA Form 10–7959a: CHAMPVA Claim Form

VA Form 10–7959c: CHAMPVA Other Health Insurance (OHI) Certification

VA Form 10–7959d: CHAMPVA Potential Liability Claim

VA Form 10–7959e: VA Claim for Miscellaneous Expenses

Review and Appeal Process*Clinical Review*

a. VA Form 10–10d, Application for CHAMPVA Benefits, is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program in accordance with 38 U.S.C. 501 and 1781.

b. VA Form 10–7959a, CHAMPVA Claim Form, is used to adjudicate claims for CHAMPVA benefits in accordance with 38 U.S.C. 501 and 1781, and 10 U.S.C. 1079 and 1086. This information is required for accurate adjudication and processing of beneficiary submitted claims. The claim form is also instrumental in the detection and prosecution of fraud. In addition, the claim form is the only mechanism to obtain, on an interim basis, other health insurance (OHI) information.

c. VA Form 10–7959c, CHAMPVA Other Health Insurance (OHI) Certification, is used to systematically obtain OHI information and to correctly coordinate benefits among all liable

parties. Except for Medicaid and health insurance policies that are purchased exclusively for the purpose of supplementing CHAMPVA benefits, CHAMPVA is always the secondary payer of healthcare benefits (38 U.S.C. 501 and 1781, and 10 U.S.C. 1086).

d. VA Form 10–7959d, CHAMPVA Potential Liability Claim, provides basic information from which potential third party liability can be assessed. The Federal Medical Care Recovery Act (42 U.S.C. 2651–2653) mandates recovery of costs associated with healthcare services related to an injury/illness caused by a third party. Additional authority includes 38 U.S.C. 501; 38 CFR 1.900 *et seq.*; 10 U.S.C. 1079 and 1086; 42 U.S.C. 2651–2653; and Executive Order 9397.

e. VA Form 10–7959e, VA Claim for Miscellaneous Expenses, is used to adjudicate claims for certain children of Korea and/or Vietnam veterans authorized under 38 U.S.C., chapter 18, as amended by section 401, Public Law 106–419 and section 102, Public Law 108–183. VA’s medical regulations 38 CFR part 17 (17.900 through 17.905) establish regulations regarding provision of health care for certain children of Korea and Vietnam veterans and women Vietnam veterans’ children born with spina bifida and certain other covered birth defects. These regulations also specify the information to be included in requests for preauthorization and claims from approved health care providers.

f. Review and Appeal Process pertains to the approval of health care, or approval for payment relating to the provision of health care, under the Veteran Family Member Programs. The provisions of chapter 51 of 38 U.S.C. or 38 CFR 17.276 and 38 CFR 17.904 establish a review process regarding disagreements by an eligible beneficiary of a Veteran Family Member Program, provider, Veteran, or other representative of the Veteran or beneficiary with a determination concerning provision of health care or a health care provider’s disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination is required to submit such a request in writing. If such person or entity remains dissatisfied with the reconsideration determination, the person or entity is permitted to submit a written request for additional review.

g. Clinical Review pertains to the requirement of VHA to preauthorize certain medical services under 38 CFR 17.273 and 38 CFR 17.902. Clinical review determines if services are medically necessary and appropriate to allow under the Veteran Family Member

Programs. The person requesting the services must submit medical documentation or applicable supporting material for review.

Affected Public: Individuals and households.

Estimated Annual Burden: 34,548 total hours.

VA Form 10–10d—8,963 hours.

VA Form 10–7959a—9,167 hours.

VA Form 10–7959c—8,947 hours.

VA Form 10–7959d—239 hours.

VA Form 10–7959e—200 hours.

Review and Appeal Process—6,255 hours.

Clinical Review—777 hours.

Estimated Average Burden per Respondent:

VA Form 10–10d—10 minutes.

VA Form 10–7959a—10 minutes.

VA Form 10–7959c—10 minutes.

VA Form 10–7959d—7 minutes.

VA Form 10–7959e—15 minutes.

Review and Appeal Process—30 minutes.

Clinical Review—20 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 180,142 total.

VA Form 10–10d—53,775.

VA Form 10–7959a—55,000.

VA Form 10–7959c—53,680.

VA Form 10–7959d—2,045.

VA Form 10–7959e—800.

Review and Appeal Process—12,510.

Clinical Review—2,332.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–11618 Filed 6–2–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Tribal and Indian Affairs, Amended

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Office of Public and Intergovernmental Affairs (OPIA), Office of Tribal Government Relations (OTGR), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Tribal and Indian Affairs (“the Committee”).

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on June 16, 2021.

ADDRESSES: All nomination packages (Application, should be mailed to the

Office of Tribal Government Relations, 810 Vermont Ave. NW, Suite 915H (075), Washington, DC 20420 or email us at tribalgovernmentconsultation@va.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Birdwell and David “Clay” Ward, Office of Tribal Government Relations, 810 Vermont Ave. NW, Ste 915H (075), Washington, DC 20420, Telephone (202) 461–7400. A copy of the Committee charter can be obtained by contacting Mr. David “Clay” Ward or by accessing the website managed by OTGR at <https://www.va.gov/TRIBALGOVERNMENT/index.asp>.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include, but not limited to: (1) Identify for the Department evolving issues of relevance to Indian tribes, tribal organizations and Native American Veterans relating to programs and services of the Department;

(2) Propose clarifications, recommendations and solutions to address issues raised at tribal, regional and national levels, especially regarding any tribal consultation reports;

(3) Provide a forum for Indian tribes, tribal organizations, urban Indian organizations, Native Hawaiian organizations and the Department to discuss issues and proposals for changes to Department regulations, policies and procedures;

(4) Identify priorities and provide advice on appropriate strategies for tribal consultation and urban Indian organizations conferring on issues at the tribal, regional, or national levels;

(5) Ensure that pertinent issues are brought to the attention of Indian tribes, tribal organizations, urban Indian organizations and Native Hawaiian organizations in a timely manner, so that feedback can be obtained;

(6) Encourage the Secretary to work with other Federal agencies and Congress so that Native American Veterans are not denied the full benefit of their status as both Native Americans and Veterans;

(7) Highlight contributions of Native American Veterans in the Armed Forces;

(8) Make recommendations on the consultation policy of the Department on tribal matters;

(9) Support a process to develop an urban Indian organization confer policy to ensure the Secretary confers, to the maximum extent practicable, with urban Indian organizations; and

(10) With the Secretary’s written approval, conduct other duties as recommended by the Committee.

Authority: The Committee was established in accordance with section 7002 of Public Law 116–315 (H.R. 7105—Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020). In accordance with Public Law 116–315, the Committee provides advice and guidance to the Secretary of Veterans Affairs on all matters relating to Indian tribes, tribal organizations, Native Hawaiian organizations and Native American Veterans. The Committee serves in an advisory capacity and advises the Secretary on ways the Department can improve the programs and services of the Department to better serve Native American Veterans. Committee members make recommendations to the Secretary regarding such activities.

Membership Criteria: OTGR is requesting nominations for upcoming vacancies on the Committee. The Committee will be composed of 15 members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

(1) At least one member of each of the 12 service areas of the Indian Health Service is represented in the membership of the Committee nominated by Indian tribes or tribal organization.

(2) At least one member of the Committee represents the Native Hawaiian Veteran community nominated by a Native Hawaiian Organization.

(3) At least one member of the Committee represents urban Indian organizations nominated by a national urban Indian organization.

(4) Not fewer than half of the members are Veterans, unless the Secretary determines that an insufficient number of qualified Veterans were nominated.

(5) No member of the Committee may be an employee of the Federal Government.

In accordance with Public Law 116–315, the Secretary determines the number and terms of service for members of the Committee, which are appointed by the Secretary, except that a term of service of any such member may not exceed a term of two years. Additionally, a member may be reappointed for one additional term at the Secretary’s discretion.

Professional Qualifications: In addition to the criteria above, VA seeks—

(1) Diversity in professional and personal qualifications;

(2) Experience in military service and military deployments (please identify your Branch of Service and Rank);

(3) Current work with Veterans;

(4) Committee subject matter expertise; and

(5) Experience working in large and complex organizations.

Requirements for Nomination

Submission: Nominations should be typewritten (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) the nominee's curriculum vitae or resume, *not to exceed five pages* and (4) a summary of the nominee's experience and qualification relative to the *professional qualifications* criteria listed above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. All members will receive travel expenses and a per diem allowance in accordance with the Federal Travel Regulations for any travel made in connection with their duties as members of the Committee.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented and the Committee's function. Every effort is made to ensure that a broad representation of geographic areas, males & females, racial

and ethnic minority groups, and Veterans with disabilities are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: May 28, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021-11669 Filed 6-2-21; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for General Service
Fluorescent Lamps, Incandescent Reflector Lamps, and General Service
Incandescent Lamps; Proposed Rule

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 430****[EERE–2017–BT–TP–0011]****RIN 1904–AD85****Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (“DOE”) proposes to amend the test procedures for general service fluorescent lamps (“GSFLs”), incandescent reflector lamps (“IRLs”), and general service incandescent lamps (“GSILs”) to update to the latest versions of the referenced industry test standards and provide cites to specific sections of these standards; to clarify definitions, test conditions and methods, and measurement procedures; to clarify test frequency and inclusion of cathode power in measurements for GSFLs; to provide a test method for measuring color rendering index (“CRI”) of GSILs and IRLs and for measuring lifetime of IRLs; to allow manufacturers to make voluntary (optional) representations of GSFLs at high frequency settings; to revise the sampling requirements; and to align sampling and certification requirements with proposed test procedure terminology and with the Federal Trade Commission’s labeling program. DOE is seeking comment from interested parties on the proposal.

DATES:

Meeting: DOE will hold a webinar on Thursday, June 24, 2021, from 10:00 a.m. to 2:00 p.m.

Comments: DOE will accept comments, data, and information regarding this proposal no later than August 2, 2021. See section V, “Public Participation,” for details.

ADDRESSES: See section V, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar then it will be cancelled.

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may

submit comments, identified by docket number EERE–2017–BT–TP–0011, by email: Lamps2017TP0011@ee.doe.gov. Include the docket number EERE–2017–BT–TP–0011 or regulatory information number (“RIN”) 1904–AD85 in the subject line of the message.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the Federal eRulemaking Portal, email, postal mail, or hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses 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, comments, and other supporting documents/materials, is available for review at <https://www.regulations.gov>. All documents in the docket are listed in the <https://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 <https://www.regulations.gov/docket/EERE-2017-BT-TP-0011>. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, 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) 287–1943. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: Celia.Sher@hq.doe.gov.

For further information on how to submit a comment or review other

public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email:

ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: DOE proposes to maintain previously approved incorporation by references and to incorporate by reference the following industry test standards into 10 CFR part 430:

ANSI Standard C78.21–2011 (R2016), (“ANSI C78.21–2011 (R2016)”), “American National Standard for Electric Lamps—PAR and R Shapes,” approved August 23, 2016.

ANSI Standard C78.79–2014 (R2020), (“ANSI C78.79–2014 (R2020)”), “American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps,” approved January 17, 2020.

ANSI Standard C78.81, (“ANSI C78.81–2016”), “American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics,” approved June 29, 2016.

ANSI Standard C78.375A–2014 (R2020), (“ANSI C78.375A–2014 (R2020)”), “ANSI C78.375A–2014 (R2020) Revision of ANSI C78.375–2014, American National Standard for Electric Lamps—Fluorescent Lamps—Guide for Electrical Measures,” approved January 17, 2020.

ANSI Standard C78.901, (“ANSI C78.901–2016”), “American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics,” approved August 23, 2016.

ANSI/ANSI C81.61–2006, Revision of ANSI C81.61–2005, (“ANSI C81.61”), American National Standard for electrical lamp bases—Specifications for Bases (Caps) for Electric Lamps, approved August 25, 2006.

ANSI Standard C82.3, (“ANSI C82.3”) “American National Standard for “For Reference Lamp Ballasts for Fluorescent Lamps,” approved April 8, 2016.

IES Test Method LM–9, (“IES LM–9–20”) “ANSI/IES LM–9–2020—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps,” approved February 7, 2020.

IES Test Method LM–20, (“IES LM–20–20”) “ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps,” approved February 7, 2020.

IES Test Method LM–45, (“IES LM–45–20”) “ANSI/IES LM–45–20 Approved Method: Electrical and

Photometric Measurement of General Service Incandescent Filament Lamps,” approved February 7, 2020.

IES Test Method LM–49, (“IES LM–49”) “ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps,” approved February 7, 2020.

IES Test Method LM–54, (“IES LM–54”), “ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning,” approved February 7, 2020.

IES Test Method LM–58, (“IES LM–58”) “ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurements Methods for Lighting Sources,” approved February 7, 2020.

IES Test Method LM–78, (“IES LM–78”) “ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,” approved February 7, 2020.

CIE 15:2018, (“CIE 15:2018”) “Colorimetry, 4th Edition,” approved 2018.

Copies of ANSI C78.21, ANSI C78.79, ANSI C78.81, ANSI C78.375A, ANSI C78.901, ANSI C81.61, and ANSI C82.3 are available at <https://www.ansi.org> or <https://www.nema.org>. Copies of IES LM–20, IES LM–45, IES LM–49, IES LM–58, IES LM–54 and IES LM–78 can be obtained by going to <https://www.ies.org/store>. Copies of CIE 15:2018 can be obtained by going to <https://cie.co.at/publications>.

For a further discussion of these standards, see section IV.M.

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I. Authority and Background

General service fluorescent lamps (“GSFLs”), incandescent reflector lamps (“IRLs”), and general service incandescent lamps (“GSILs”) are included in the list of “covered products” for which the U.S. Department of Energy (“DOE”) is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(14)) The current DOE test procedures for GSFLs, IRLs, and GSILs appear at title 10 of the Code of Federal Regulations (“CFR”) part 430, subpart B, appendix R (“Appendix R”). The following sections discuss DOE’s authority to establish and amend test procedures for GSFLs, IRLs, and GSILs, as well as relevant background information regarding DOE’s proposed amendments to the test procedures for these products.

A. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include GSFLs, IRLs, and GSILs, the subject of this document. (42 U.S.C. 6292(a)(14))

The energy conservation program under EPCA 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. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers. (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (See 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended

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 B was redesignated Part A.

under this section 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))

Additionally, EPCA directs DOE to amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission ("IEC") Standard 62301³ and IEC Standard 62087⁴ as applicable. (42 U.S.C. 6295(gg)(2)(A))

EPCA, as codified, directs DOE to prescribe test procedures for fluorescent lamps and incandescent reflector lamps, taking into consideration the applicable standards of the Illuminating Engineering Society of North America ("IES") or the American National Standards Institute ("ANSI"). (42 U.S.C. 6293(b)(6)) Consideration of IES and ANSI standards aligns DOE test procedures with latest industry practices for testing electric lamps and therefore DOE also considers these industry test standards when prescribing test procedures for general service incandescent lamps.

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including GSFLs, IRLs, and GSILs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not 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 or period of use. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on his/her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days.⁵ In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this NOPR to satisfy the 7-year review requirement specified in EPCA.

B. Background

DOE's existing test procedures for GSFLs, IRLs and GSILs appear at Appendix R ("Uniform Test Method for Measuring Average Lamp Efficacy ("LE"), Color Rendering Index ("CRI"), and Correlated Color Temperature ("CCT") of Electric Lamps").

On September 28, 1994, DOE issued an interim final rule to add a new section in the CFR to establish test procedures for certain fluorescent and incandescent lamps. 59 FR 49468. The test procedures incorporated by reference a number of IES and ANSI standards. *Id.*

On May 29, 1997, DOE published a final rule adopting, with amendments,

the test procedures established in the September 1994 interim final rule. 62 FR 29222. This final rule (1) affirmed DOE's determination that the test procedures effectively measure lamp efficacy and CRI and are not unduly burdensome to conduct and (2) incorporated updates to the referenced IES and ANSI standards. *Id.*

On July 6, 2009, DOE published a final rule amending the test procedures for GSFLs, IRLs, and GSILs. 74 FR 31829. These amendments consisted largely of: (1) Referencing the most current versions of several lighting industry test standards incorporated by reference; (2) adopting certain technical changes and clarifications; and (3) expanding the test procedures to accommodate new classes of lamps to which coverage was extended by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). *Id.* The final rule also addressed the then recently established statutory requirement to expand test procedures to incorporate a measure of standby mode and off mode energy consumption and determined that, because these modes of energy consumption were not applicable to the lamps, an expansion of the test procedures was not necessary. *Id.* Shortly thereafter, DOE again amended the test procedures to adopt reference ballast settings necessary for the additional GSFLs for which DOE was establishing standards. 74 FR 34080, 34096 (July 14, 2009).

DOE most recently amended the test procedures for GSFLs and GSILs in a final rule published on January 27, 2012. 77 FR 4203. DOE updated several references to the industry test standards referenced in DOE's test procedures and established a lamp lifetime test method for GSILs. *Id.* In that final rule, DOE determined amendments to the existing test procedure for IRLs were not necessary. *Id.*

On August 8, 2017, DOE published in the **Federal Register** a request for information seeking comments on the current test procedures for GSFLs, IRLs, and GSILs. 82 FR 37031 ("August 2017 RFI"). In the August 2017 RFI, DOE requested comments, information and data regarding several issues, including (1) updates to the incorporated standards and test methods from IES and ANSI, (2) information and data to determine if high frequency operation would affect the measured value of efficacy for specific lamp types, (3) modifying the voltage requirements for incandescent lamps, and (4) the use of the intensity distribution curve method for total lumen output for IRLs, the peak lumen method for total lumen output for GSFLs and GSILs, and use of only

³ IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

⁴ IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

⁵ DOE has historically provided a 75-day comment period for test procedure NOPRs, consistent with the comment period requirement for technical regulations in the North American Free Trade Agreement, U.S.–Canada–Mexico ("NAFTA"), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. § 2576) (1993) ("NAFTA Implementation Act"); and Executive Order 12889, "Implementation of the North American Free Trade Agreement," 58 FR 69681 (Dec. 30, 1993). However, Congress repealed the NAFTA Implementation Act and has replaced NAFTA with the Agreement between the United States of America, the United Mexican States, and the United Canadian States ("USMCA"), Nov. 30, 2018, 134 Stat. 11, thereby rendering E.O. 12889 inoperable. Consequently, since the USMCA is consistent with EPCA's public comment period requirements and normally requires only a minimum comment period of 60 days for technical regulations, DOE now provides a 60-day public comment period for test procedure NOPRs.

the integrating sphere method for all lamps. *Id.*

DOE received comments in response to the August 2017 RFI from the interested parties listed in Table I.1.

TABLE I.1—AUGUST 2017 RFI WRITTEN COMMENTS

Commenter(s)	Reference in this NOPR	Commenter type
Anonymous	Anonymous	Private Citizens.
LEDVANCE	LEDVANCE	Manufacturer.
California Investor-Owned Utilities	CA IOUs	Utility.
National Electrical Manufacturers Association	NEMA	Industry Association.
Philips Lighting	Philips	Manufacturer.
Appliance Standards Awareness Project	ASAP	Efficiency Organization.

This document addresses information and comments received in response to the August 2017 RFI and proposes amendments to the test procedures for GSFLs, IRLs, and GSILs. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁶

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update 10 CFR 430.2, 10 CFR 430.3, and Appendix R as follows: (1) Update references to industry test standards to reflect current industry practices; (2) modify, add, and remove definitions to better align with the scope and test methods; (3) reference specific sections

within industry test standards for further clarity; (4) provide a test method for measuring CRI for incandescent lamps to support DOE requirements; and (5) provide a test method for measuring lifetime of incandescent reflector lamps to support the Federal Trade Commission's ("FTC's") labeling requirements. Additionally, DOE proposes to revise the sampling requirements and to modify language specifying sampling and certification requirements in 10 CFR 429.27 to improve readability and organization and to support the FTC's labeling program. Further, DOE proposes to simplify language describing test procedures for GSFLs, IRLs, and GSILs in 10 CFR 430.23(r) by removing unnecessary information. Finally, DOE

proposes to better align the terminology in the test procedures for GSFLs, IRLs, and GSILs with energy conservation standards codified in 10 CFR 430.32(n) and 10 CFR 430.32(x).

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of GSFLs, IRLs, or GSILs, or require retesting solely as a result of DOE's adoption of the proposed amendments to the test procedures, if made final. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. DOE's proposed actions are summarized in Table II.1 and addressed in detail in section III of this NOPR.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TP RELATIVE TO CURRENT TP

Current DOE TP	Proposed TP	Attribution
References lamp datasheets in the 2010 version of ANSI C78.81 and 2005 version of ANSI C78.901 to specify the appropriate reference ballast to use when testing a particular lamp.	Adopts newer versions of ANSI standards only for voluntary representations that would help DOE determine how standards can be adjusted to accommodate high frequency testing. DOE does not require certification to DOE of any voluntary representations.	Industry TP Update to ANSI C78.81 and C78.901.
References of ANSI C78.375, ANSI C82.3, IES LM–9, IES LM–58, IES LM–45, IES LM–49, IES LM–20, CIE 15.	Adopts latest versions of these referenced industry standards.	Industry TP Update.
Does not clearly state in all instances whether testing for GSFLs should be performed at low or high frequency and whether cathode power should be included.	Clarifies in all instances whether testing should be performed at low or high frequency and whether cathode power should be included.	Information needed to conduct testing.
Does not include a method for determining CRI of incandescent lamps.	Adds test method for measuring CRI for GSILs and IRLs.	Needed to comply with the statutory minimum CRI requirement for GSILs and IRLs.
Does not include a method for determining lifetime of incandescent reflector lamps.	Adds test method for measuring lifetime of incandescent reflector lamps.	Supports FTC labeling requirements.
Definitions of IRL types do not reference the latest industry standards.	Update definitions for BPAR, R20, ER, and BR incandescent reflector lamps and define PAR and R incandescent lamps with references to latest versions of ANSI C78.21–2011 (R2016) and ANSI C78.79–2014 (R2020), as appropriate.	Update definitions to reference latest industry standards.
Specifies only CRI to be measured from the same sample of units.	Specifies all metrics for all lamps be measured from the same sample of units.	Ensures different units are not selected for each metric.

⁶ The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to review test procedures for general service fluorescent lamps, incandescent reflector

lamps, and general service incandescent lamps (Docket No. EERE–2017–BT–TP–0011, which is maintained at <https://www.regulations.gov>). The references are arranged as follows: (commenter

name, comment docket ID number at page of that document).

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TP RELATIVE TO CURRENT TP—Continued

Current DOE TP	Proposed TP	Attribution
Requires testing a minimum of 21 lamps by selecting a minimum of three lamps from each month of production for a minimum of 7 out of a 12-month period.	Decreases the minimum number of lamps tested to be 10 instead of 21 and removes the requirement for lamps to be selected from at least 7 different months of a 12-month period.	Aligns sampling requirements with those of other lighting products (<i>i.e.</i> , integrated light-emitting diode [LED] lamps and compact fluorescent lamps [CFLs]).

III. Discussion

Although the August 2017 RFI requested comments, information and data regarding several specific issues, DOE welcomed written comments from the public on any subject within the scope of the document (including topics not raised in the RFI). In response to the August 2017 RFI, DOE received several general comments. One stakeholder stated that DOE should rescind many energy conservation standards as new reports indicate such regulations are redundant and increase costs, are hurtful to seniors and low-income groups, and do not protect the environment. (Anonymous, No. 4 at p. 1) Other stakeholders stated that regulations should be waived for the states of Texas and Louisiana, due to the destruction caused in these states by Hurricane Harvey. (Anonymous, No. 3 at p. 1; Anonymous, No. 2 at p. 1)

As stated in section I.A, DOE is publishing this NOPR to satisfy the 7-year review requirement specified in EPCA. This notice proposes updates to DOE test procedures to reflect current industry practices that are reasonably designed to produce test results which measure energy efficiency and energy use during a representative average use cycle or period of use, as determined by the Secretary, and are not unduly burdensome to conduct. The estimated costs of the proposed updates are discussed in section III.H of this document. The scope of this notice does not include granting waivers to test procedures. (See 10 CFR 430.27 for procedures to petition for waivers from test procedures.)

Philips provided another general comment that as a NEMA member, it supported any comments submitted by NEMA in response to the August 2017 RFI. (Philips, No. 8 at p. 2) CA IOUs, along with ASAP, commended DOE for reassessing the test procedures for GSFLs, IRLs, and GSILs. CA IOUs noted that, while updates to the test procedures would impact state and voluntary regulations, it would be to a lesser extent due to the proliferation of solid-state lighting (“SSL”) products. (CA IOUs, No. 6 at p. 1; ASAP, No. 9

at pp. 1–2) ASAP stated that, if updated test procedures resulted in a change in measured energy use that was not de minimis, DOE must modify the associated energy conservation standard. (ASAP, No. 9 at pp. 1–2)

DOE evaluates and discusses the impact of proposed amendments on measured values throughout this notice.

A. Scope of Applicability

DOE test procedures for GSFLs, IRLs, and GSILs are codified in Appendix R and associated sampling and certification requirements are codified in 10 CFR 429.27. The scope of this rulemaking is to review and amend, as applicable, the test procedures for GSFLs, IRLs, and GSILs and the associated sampling and certification requirements. DOE received comments regarding scope in response to the August 2017 RFI.

In two final rules, effective January 1, 2020, DOE revised the definitions of general service lamp (“GSL”) and GSIL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. 82 FR 7276; 82 FR 7322 (January 19, 2017) (“2017 GSL Definition Rules”). CA IOUs stated that DOE should acknowledge that its updated test methods will apply to the new GSIL definition, as defined by DOE on January 19, 2017. (CA IOUs, No. 6 at p. 1) As noted, the requirements specified in Appendix R and 10 CFR 429.27 apply to GSILs and IRLs as those terms are defined in 10 CFR 430.2.

NEMA commented that DOE should not require lifetime testing of plug-in CFLs on reference ballasts. (NEMA, No. 7 at p. 6) The scope of this notice does not include assessing test procedures for CFLs.

B. Incorporation by Reference of Industry Test Standards

The test conditions, methods, and measurements described in Appendix R reference several ANSI and IES standards. Several of the referenced industry test standards have been updated by industry since DOE last amended its test procedures. In the

August 2017 RFI DOE requested information on updating Appendix R to reference the updated versions of these standards. 82 FR 37031, 37033, 37034.

NEMA stated it appreciated DOE’s efforts to update current test procedures to reflect progress in related industry test standards and test procedures. NEMA anticipated no issues in updating to the current versions of standards (*i.e.*, industry test methods) unless it required retesting all currently certified products and noted this may be the case for certain standards related to GSFLs (see section 1 for more information). (NEMA, No. 7 at p. 1) CA IOUs also supported updating referenced industry test standards so that they are more relevant and consistent with products serving the same consumer utility. (CA IOUs, No. 6 at p. 1) ASAP added that industry test standards should be reviewed to ensure test results are reliable and accurate. (ASAP, No. 9 at pp. 1–2)

In this NOPR, DOE reviews the latest versions of industry test standards to identify differences compared to previous versions and assesses the impact of changes on measured values.

NEMA and LEDVANCE stated that, even following ANSI and IES standards, testing variations will occur and, therefore, the lighting industry requires acceptable measurement and laboratory tolerances when considering compliance with standards. Further, they added that DOE should reference the NEMA LSD–63⁷ standard which provides industry-standardized testing tolerances for lamps. (NEMA, No. 7 at pp. 5–6; LEDVANCE, No. 5 at p. 6) NEMA LSD–63 factors in long-term manufacturing data variability and inter-lab measurement bias to assess the validity of a sample of values in comparison to the rated value based on a population of lamps. DOE notes that these considerations can be useful when developing the appropriate minimum requirements in a standards rulemaking.

⁷ National Electrical Manufacturers Association, *A NEMA Lighting Systems Division Document LSD–63–2012- Measurement Methods and Performance Variation for Verification Testing of General Purpose Lamps and Systems*. Approved July 20, 2012.

DOE finds that its test methods provide repeatable and reproducible results for a single lamp and its sampling requirements in 10 CFR 429.27 account for variation in the sample by comparing the mean value against a confidence limit. Hence, DOE has tentatively concluded that its test procedures sufficiently address variation in lamp manufacturing and testing without the need to reference NEMA LSD-63. DOE notes that, if supported by test data, manufacturers can rate their product lower than the maximum allowed value or higher than

minimum allowed value per 10 CFR 429.27.

Table III.1 shows the industry test standards currently referenced in Appendix R, whether there is an updated version available, and whether DOE is proposing to update to the latest version. In addition, DOE is proposing to incorporate by reference IES LM-54-2020⁸ and IES LM-78-2020⁹ for Appendix R. The proposed updates to industry test standard references do not involve substantive changes to the test setup and methodology, but rather clarifications. DOE has tentatively determined that incorporation by

reference of the latest versions will better align DOE test procedures with industry practice and further increase the clarity of the test methods. DOE requests comment on incorporating by reference the updated versions of standards proposed in Table III.1 for Appendix R. DOE requests comments on incorporating by reference IES LM-54-2020 and IES LM-78-2020 for Appendix R. Each proposed industry test standard and associated comments and responses are discussed in the following sections.

TABLE III.1—INDUSTRY TEST STANDARDS REFERENCED IN APPENDIX R TO 10 CFR 430 SUBPART B

Industry test standard referenced in Appendix R	Updated version if available	Proposed for update
ANSI C78.375 version 1997 ¹⁰ (section 4.1.1 of Appendix R)	ANSI C78.375A version 2020 ¹¹	Proposed.
ANSI C78.81 version 2010 ¹² (section 4.1.1 of Appendix R) ..	ANSI C78.81 version 2016 ¹³	Proposed for voluntary representations.
ANSI C78.901 version 2005 ¹⁴ (section 4.1.1 of Appendix R)	ANSI C78.901 version 2016 ¹⁵	Proposed for voluntary representations.
ANSI C82.3 version 2002 ¹⁶ (section 4.1.1 of Appendix R)	ANSI C82.3 version 2016 ¹⁷	Proposed.
IES LM-9 version 2009 ¹⁸ (sections 2.1, 2.9, 3.1, 4.1.1, 4.4.1 of Appendix R).	IES LM-9 version 2020 ¹⁹	Proposed.
IESNA LM-58 version 1994 ²⁰ (sections 2.1, 4.4.1 of Appendix R).	IES LM-58 (retitled) version 2020 ²¹	Proposed.
IES LM-45 version 2009 ²² (sections 2.1, 2.9, 3.2, 4.2.1, 4.2.2 of Appendix R).	IES LM-45 version 2020 ²³	Proposed.
IESNA LM-49 version 2001 ²⁴ (section 4.2.3 of Appendix R)	IES LM-49 (retitled) version 2020 ²⁵	Proposed.
IESNA LM-20 version 1994 ²⁶ (sections 2.1, 2.9, 3.3, 4.3 of Appendix R).	IES LM-20 (retitled) version 2020 ²⁷	Proposed.
CIE 13.3 version 1995 ²⁸ (section 2.1, 4.4.1 of Appendix R) ..	No updated version available	N/A.
CIE 15 version 2004 ²⁹ (section 4.4.1 of Appendix R)	CIE 15 version 2018 ³⁰	Proposed.

⁸ Illuminating Engineering Society, *ANSI/IES LM-54-20 Approved Method: IES Guide to Lamp Seasoning*, Approved February 7, 2020.

⁹ Illuminating Engineering Society, *ANSI/IES LM-78-20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer*, Approved February 7, 2020.

¹⁰ American National Standards Institute, *ANSI C78.375-1997, Revision of ANSI C78.375-1991, American National Standard for electric lamps: Fluorescent Lamps Guide for Electrical Measurements*, Approved September 25, 1997.

¹¹ American National Standards Institute, *ANSI C78.375A-2014 (R2020) Revision of ANSI C78.375-2014, American National Standard for Electric Lamps-Fluorescent Lamps-Guide for Electrical Measures*, Approved January 17, 2020.

¹² American National Standards Institute, *ANSI ANSLG C78.81-2010 Revision of ANSI C78.81-2005, American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics*, Approved January 14, 2010.

¹³ American National Standards Institute, *ANSI C78.81-2016 American National Standard For Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics*, Approved June 29, 2016.

¹⁴ American National Standards Institute, *ANSI IEC C78.901-2005 Revision of ANSI C78.901-2001, American National Standards for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and*

Electrical Characteristics, Approved March 23, 2005.

¹⁵ American National Standards Institute, *ANSI/NEMA C78.901-2016 American National Standards for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics*, Approved August 23, 2016.

¹⁶ American National Standards Institute, *ANSI C82.3-2002 American National Standard For Lamp Ballasts—Reference Ballasts for Fluorescent Lamps*, Approved January 1, 2002.

¹⁷ American National Standards Institute, *ANSI C82.3-2016 American National Standard For Reference Lamp Ballasts for Fluorescent Lamps*, Approved April 8, 2016.

¹⁸ Illuminating Engineering Society of North America, *IES LM-9-09 IES Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps*, Approved January 31, 2009.

¹⁹ Illuminating Engineering Society, *ANSI/IES LM-9-2020—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps*, Approved February 7, 2020.

²⁰ Illuminating Engineering Society of North America, *LM-58 IESNA Guide to Spectroradiometric Measurements*, Approved December 3, 1994.

²¹ Illuminating Engineering Society, *ANSI/IES LM-58-20 Approved Method: Spectroradiometric Measurements Methods for Lighting Sources*, Approved February 7, 2020.

²² Illuminating Engineering Society, *IES LM-45-09 IES Approved Method for The Electrical and*

Photometric Measurement of General Service Incandescent Filament Lamps, Approved December 14, 2009.

²³ Illuminating Engineering Society, *ANSI/IES LM-45-20 Approved Method: Electrical and Photometric Measurement of General Service Incandescent Filament Lamps*, Approved February 7, 2020.

²⁴ Illuminating Engineering Society, *IES LM-49-12 Approved Method: Life Testing of Incandescent Filament Lamps*, Approved December 1, 2001.

²⁵ Illuminating Engineering Society, *ANSI/IES LM-49-20 Approved Method: Life Testing of Incandescent Filament Lamps*, Approved February 7, 2020.

²⁶ Illuminating Engineering Society of North America, *LM-20 IESNA Approved Method for Photometric Testing of Reflector-Type Lamps*, Approved December 3, 1994.

²⁷ Illuminating Engineering Society, *ANSI/IES LM-20-20 Approved Method: Photometry of Reflector Type Lamps*, Approved February 7, 2020.

²⁸ International Commission on Illumination, *Method of Measuring and Specifying Colour Rendering Properties of Light Sources*, Approved 1995.

²⁹ International Commission on Illumination, *Colorimetry, 3rd Edition*, Approved 2004.

³⁰ International Commission on Illumination, *Colorimetry, 4th Edition*, Approved 2018.

1. ANSI C78.375, ANSI C78.81, ANSI C78.901, and ANSI C82.3

Section 4.1.1 of Appendix R references industry test standards ANSI C78.375, ANSI C78.81, and ANSI C78.901 for the appropriate voltage and current conditions and ANSI C82.3 for the appropriate reference circuits in taking measurements of GSFLs.

ANSI C78.375 provides general guidance for taking measurements of electrical characteristics of fluorescent lamps. DOE reviewed changes in ANSI C78.375A–2020 relevant to specifications of voltage and current conditions. DOE identified that updates in ANSI C78.375A–2020 compared to its 1997 version included new references to industry test standards ANSI C78.81, ANSI C78.901, and ANSI C82.3 to determine the appropriate voltage and current to use in reference circuits. 82 FR 37031, 37034. Regarding updating DOE's test procedure to reference ANSI C78.375A–2014, NEMA and LEDVANCE stated they were not aware of any issues. (NEMA, No. 7 at pp. 2–3; LEDVANCE, No. 5 at p. 3) Because ANSI C78.81, ANSI C78.901, and ANSI C82.3 are already referenced by the DOE test procedure to determine the voltage and current to use in reference circuits, and DOE has determined (as described in the following paragraphs) that changes in the updated versions of these industry test standards will not affect final measured values, DOE has tentatively determined this update in ANSI C78.375A–2020 would not impact the current requirements of the DOE test procedure or change final measured values. Therefore, DOE proposes to update references from the 1997 version of ANSI C78.375 to the 2020 version in Appendix R.

Per section 4.1.1 of Appendix R, GSFLs must be operated by a reference ballast at an input voltage specified in the reference circuit as described in ANSI C82.3. ANSI C82.3 provides general design and operating characteristics for reference ballasts used to test fluorescent lamps. Compared to the 2002 version, the 2016 version of ANSI C82.3 contains updates regarding impedance tolerances, voltage regulation, and instrumentation for taking high frequency measurements. 82 FR 37031, 37034. Regarding updating DOE's test procedure to reference ANSI C82.3–2016, NEMA and LEDVANCE stated they were not aware of any issues. (NEMA, No. 7 at pp. 2–3; LEDVANCE, No. 5 at p. 3)

DOE identified the specific changes in the updated version of ANSI C82.3 to the impedance, frequency, and voltage requirements when operating a

reference ballast with a fluorescent lamp in high frequency conditions. First, the 2016 version of ANSI C82.3 no longer requires an impedance tolerance of 1 percent for currents between 50 and 115 percent of the calibration current. Second, the 2016 version of ANSI C82.3 removes frequency tolerances for operation with certain types of reference ballasts. Third, the 2016 version of ANSI C82.3 increases the power supply voltage tolerance from 0.2 percent to 1.0 percent. Although the 2016 version of ANSI C82.3 removes impedance tolerances at certain currents and the frequency tolerance and allows a wider range for power supply voltage tolerance, DOE's current test procedure requires reference ballasts to meet specific current, frequency, and voltage requirements and associated tolerances specified in the relevant lamp datasheets. Hence, if all requirements for reference ballasts in DOE's test procedures are satisfied, DOE has tentatively determined that changes in impedance, frequency, and voltage tolerances in ANSI C82.3 would not affect final measured values. DOE has tentatively determined updates in ANSI C82.3–2016 would not impact the current requirements of the DOE test procedure or change final measured values. Therefore, DOE proposes to update references from the 2002 version of ANSI C82.3 to the 2016 version in Appendix R.

Lamp data sheets with physical and electrical characteristics of fluorescent lamps are provided in ANSI C78.81 (double-ended lamps) and ANSI C78.901 (single-ended lamps). In the latest versions, ANSI C78.81–2016 and ANSI C78.901–2016, DOE has identified new lamp datasheets and updates to existing lamp datasheets for certain GSFLs. DOE proposes to maintain the current references to ANSI C78.81–2010 and ANSI C78.901–2005 for determining compliance and to add provisions for manufacturers to make additional voluntary representations based on high frequency testing using the updated lamp data sheets. A lamp data sheet provides the physical and electrical characteristics needed to operate a lamp appropriately, including starting method and the input voltage, current, and impedance of the reference ballast on which the lamp should be tested. For some lamps, the updated industry test standard now specifies only high frequency reference ballast settings, whereas previously low frequency settings were provided. Because cathode heat is not utilized at high frequency, the lamp efficacy would likely increase during high frequency

operation compared to low frequency operation. DOE's test procedure requires testing at low frequency unless only high frequency settings are provided. Hence the potential adoption of ANSI C78.81–2016 and ANSI C78.901–2016 could result in certain lamps that were previously tested at low frequency being tested at high frequency, negating the consideration of cathode heat. ANSI C78.81–2016 and/or ANSI C78.901–2016 remove low frequency reference ballast settings and provide only high frequency reference ballast settings for the following lamps: 32 Watt (“W”), 48-Inch T8 lamp; 32 W U-shaped lamp, 6-Inch Center T8 lamp; 31 W, U-shaped, 1–5/8 Inch Center T8 lamp; 59 W, 96-Inch T8, Single Pin Instant Start lamp; and 25 W, 28 W, and 30 W 48-Inch T8 lamps. Additionally, two new lamp datasheets were added providing only high frequency reference ballast settings for the following lamps: 30 W, U-shaped, 6-Inch Center T8 lamp and 54 W 96-Inch T8, Single Pin Instant Start lamp. 82 FR 37031, 37034.

NEMA noted that, although DOE stated in the August 2017 RFI that the updated version of ANSI C78.901 was 2014, a 2016 version was available. (In this notice, DOE's assessments of ANSI C78.901 are based on the 2016 version.) However, in general, NEMA, LEDVANCE, and Philips objected to adopting any updated versions of ANSI C78.901 or ANSI C78.81. NEMA, LEDVANCE, and Philips explained that testing fluorescent lamps at high frequency settings instead of low frequency settings would result in an apparent measured efficiency increase of approximately 5 to 10 percent. (NEMA, No. 7 at p. 3; LEDVANCE, No. 5 at p. 3; Philips, No. 8 at p. 2)

NEMA stated that current standards for GSFLs were based on the 2010 version of ANSI C78.81 and 2005 version of ANSI C78.901 currently referenced in Appendix R. NEMA and Philips asserted that testing lamps previously tested under low frequency settings at high frequency settings could allow non-compliant lamps to meet standards. (NEMA, No. 7 at p. 3; Philips, No. 8 at p. 2) NEMA stated that compliance with standards must remain linked to the test procedures on which the standards are based. (NEMA, No. 7 at p. 3) LEDVANCE asserted that, if DOE were to update to the latest versions of ANSI C78.81 and ANSI C78.901, it would also have to amend the applicable energy conservation standards for GSFLs and increasing these standards was unreasonable for a mature product already at maximum technology.

Additionally, LEDVANCE stated, because at high frequency settings the lamp is providing the same lumen output as at low frequency but at a lower system wattage, the efficacy increase would be misleading to the consumers, who associate higher efficacy with more lumens, ultimately causing consumer dissatisfaction. (LEDVANCE, No. 5 at p. 3)

NEMA and LEDVANCE added that changing the test procedure to reference high rather than low frequency settings would require retesting lamps, resulting in significant test burden for all manufacturers. LEDVANCE estimated that retesting a portfolio of T8 lamps could cost between \$100,000 to \$200,000, excluding test equipment purchases and certification costs. (NEMA, No. 7 at p. 3; LEDVANCE, No. 5 at p. 3)

DOE's assessment of ANSI C78.81–2016 and ANSI C78.901–2016 indicates that there has been a considerable shift to testing on high frequency settings for fluorescent lamps. Except for T12 lamps and a 51 W 8-foot single-pin T8 lamp, GSFLs with ANSI specifications have only high frequency reference ballast settings in the updated standards. This shift was also noted in the review of GSFL energy conservation standards updated in a final rule published January 26, 2015, and for which compliance was required beginning January 26, 2018. 80 FR 4042 (“2015 GSFL Rule”).

In response to the preliminary analysis preceding the 2015 GSFL Rule, NEMA stated that, because of the market shift to electronic high frequency ballasts, ANSI had drafted new standards for electrical and photometric characterization of GSFL T8 lamps that were based on high frequency rather than the former low frequency 60 Hz reference ballasts. NEMA further explained that these high frequency specifications would be published in 2013 at which point industry would begin characterizing its products using these high frequency specifications. NEMA recommended that DOE base its assessment of potential amendments to standards for GSFLs on the new ANSI high frequency standards. 79 FR 24068, 24096 (April 29, 2014). In response to the NOPR of the 2015 GSFL Rule, NEMA also raised several concerns with DOE's Compliance, Certification Management System (“CCMS”) database and the use of high frequency settings. NEMA stated that DOE's assessment of the CCMS data indicated the possibility that 4-foot medium bipin (“MBP”) reduced wattage lamps and 59 W and 54 W 8-foot single-pin slimline lamps (59 W to a lesser degree) are being tested

erroneously on high frequency settings. 80 FR 4071, 4072.

The updated ANSI standards were not available in time for the 2015 GSFL Rule to consider basing its analysis on high frequency specifications. Hence the 2015 GSFL Rule established efficacy levels based on ANSI wattages as specified in ANSI C78.81–2010 and ANSI C78.901–2004 and initial lumen outputs published in manufacturer catalogs.³¹

It would be to the benefit of the manufacturers and consumers to align DOE requirements to the latest industry requirements, providing one consistent method of assessing the efficacy of fluorescent lamps. DOE understands that the change in measured efficacy when testing on high frequency versus low frequency settings resulting from updated versions of ANSI C78.81 and ANSI C78.901 is not de minimis. Adoption of test procedures that reference the latest versions of ANSI C78.81 and ANSI C78.901 would impact compliance under the current GSFL energy conservation standards and require reassessment of the energy conservation standards based on measured values tested according to DOE test procedures using the updated industry test standards (e.g., ANSI C78.81–2016 and ANSI C78.901–2016).

Based on the impact to test results from testing using only high frequency settings as provided in ANSI C78.81–2016 and ANSI C78.901–2016, and the corresponding potential that products currently not compliant would meet the energy conservation standards if tested under these latest industry test standards, DOE proposes to maintain the references to the 2010 version of ANSI C78.81 and 2005 version of ANSI C78.901. This ensures that lamps are tested and certified for compliance according to settings upon which current minimum requirements for GSFLs were established. However, DOE also proposes that manufacturers can voluntarily make representations at the high frequency settings specified in the 2016 versions of ANSI C78.81 and ANSI C78.901 in accordance with test procedures specified in Appendix R and sampling requirements in 10 CFR 429.27. These values would not be used for compliance but would be in addition

³¹ At the time of the analysis, the dataset on DOE's certification database did not represent a comprehensive dataset on which to base an engineering analysis. DOE utilized catalog data to identify baseline products and develop initial efficacy levels. DOE then used available certification data to adjust the initial efficacy levels, if necessary, to ensure that the considered levels could be met based on the certification values submitted by manufacturers to demonstrate compliance with standards. 79 FR 24068, 24094.

to values obtained for compliance and used for determining if and how standards for GSFLs should be amended to accommodate testing at high frequency settings. As a best practice, an indication of high frequency operation should be provided with the voluntary representations. DOE proposes to incorporate by reference ANSI C78.81–2016 and ANSI C78.901–2016 for this purpose.

Also, ANSI C78.81–2016 includes updates to the reference ballast characteristics for input voltage and impedance while maintaining the current for the 86 W, 96-Inch T8 lamp. In the August 2017 RFI, DOE requested information on how these updated ballast characteristics would impact measured lamp efficacy. 82 FR 37031, 37034. LEDVANCE responded that for the 86 W, 96-Inch T8 lamp the impedance was changed simply to harmonize the impedance value across lamp types and to aid with starting. LEDVANCE further stated that changing the impedance or circuit voltage to maintain the same lamp current would not change any lamp characteristics. (LEDVANCE, No. 5 at p. 4)

DOE has preliminarily determined that changes to lamp characteristics of the 86 W, 96-Inch T8 lamp will not impact final measured values. However, as stated previously, due to updates that provide only high frequency settings for certain lamps, DOE is not proposing to incorporate ANSI C78.81–2016 for the purposes of testing to assess compliance with DOE's minimum requirements.

2. IES LM–58

Section 4.4.1 of Appendix R describes test methods for measuring CRI and CCT. It states that the required spectroradiometric measurement and characterization shall be conducted in accordance with IES LM–58.³² DOE's review indicated that key changes in IES LM–58–2013 compared to its 1994 version include: (1) Updates to definitions; (2) clarification updates regarding the characteristics of spectroradiometers and applicable detectors; and (3) additions of a new method called array spectrometry and a section on correction methods. In the August 2017 RFI DOE requested information on referencing the updated version of IES LM–58 and on the impact on measured values of using the new array spectrometry method. 82 FR 37031, 37034. NEMA and LEDVANCE stated that adoption of IES LM–58–2013 posed no known issues. They added

³² Note that the 1994 version of this standard was titled IESNA LM–58 but the 2013 version is titled IES LM–58.

that the IES ensures equivalent test results when adding new test procedures and, therefore, supported the array spectrometry method as an option. Additionally, NEMA and LEDVANCE pointed out that an addendum to IES LM-58-2013 had been published to make certain corrections to the initial version. (NEMA, No. 7 at p. 2; LEDVANCE, No. 5 at p. 4)

Since the publication of the August 2017 RFI, a 2020 version of IES LM-58 has been published. In this notice, DOE is proposing to update the currently referenced 1994 version of IES LM-58 to the 2020 version. Specifically, the 2020 and 2013 versions of IES LM-58 remove definitions for spectral irradiance, spectral radiance, and spectral radiant intensity; and add a definition for colorimeter. IES LM-58-2020 also removes the definition for bandwidth and replaces the term bandwidth with bandpass throughout the standard. IES LM-58-2020 continues to describe how to measure spectral irradiance, spectral radiance, and spectral radiant intensity, which are different ways of measuring radiant flux, and describe how to use bandpass (previously referred to as bandwidth) in detail. DOE has tentatively determined the term colorimeter, which is a basic instrument for measuring chromaticity, was likely added for completeness. IES LM-58-2020 also includes the new section on array spectrometry and adds further specificity in taking spectral power measurements. It specifies that the stray light for a good single-pass and double-pass monochromator to be respectively, less than 10^{-4} and 10^{-8} times than the maximum signal while the 1994 version specifies 10^{-3} and 10^{-6} . It also states that when the slit scattering function is not triangular, the scanning interval should be reduced to an integer fraction of the bandpass to reduce errors. DOE also evaluated the addendum to IES LM-58-2013 and found that it reverted bandwidth tolerance to that specified in the 1994 version of IES LM-58 and provided further guidance on determining bandwidth. The content of the addendum has been incorporated into IES LM-58-2020. DOE has tentatively determined that these additions are only clarifications and are already being adhered to by industry in practice. Similarly, the addition of a section on correction methods is only explicitly stating best practices likely already being followed by test laboratories when taking spectral power measurements. DOE has tentatively determined updates in IES LM-58-2020 would not change current requirements of the DOE test procedure or change

final measured values. Thus, DOE proposes to update references from the 1994 version of IES LM-58 to the 2020 version in 10 CFR 430.3 for Appendix R.

3. IES LM-45

Sections 3.2, 4.2.1, and 4.2.2 of Appendix R specify that for GSILs test conditions, methods, and measurements should be conducted in accordance with 2009 version of IES LM-45. IES LM-45 provides methods for taking electrical and photometric measurements of general service incandescent filament lamps. DOE's initial review indicated that changes in IES LM-45-2015, compared to its 2009 version, included clarification updates regarding the impact of lamp polarity on light output and changes to certain tolerances (e.g., impedance limits for instruments). 82 FR 37031, 37034. Regarding referencing the updated version of IES LM-45, NEMA and LEDVANCE stated that adoption of IES LM-45-2015 posed no known issues. (NEMA, No. 7 at pp. 2,4; LEDVANCE, No. 2 at p. 4)

Since the publication of the August 2017 RFI, a 2020 version of IES LM-45 has been published. In this notice, DOE is proposing to update the currently referenced 2009 version of IES LM-45 to the 2020 version. Specifically, DOE identified the following key changes in both the 2015 and 2020 versions of IES LM-45, compared to the currently referenced 2009 version: (1) Specifies testing with the same polarity connections; (2) increases impedance tolerance of current input from 10 milliohms to 20 milliohms; and (3) updates tolerances for detector used to measure lumens.

DOE has tentatively determined that added information on polarity connections in IES LM-45-2020 is only explicitly stating what is likely already practiced by test laboratories based on how measurements are taken in electrical circuit setups. DOE has tentatively concluded that the change in current input impedance tolerance for instrumentation is small and not discernable in the final measured values. Regarding updates to detector use, the 2020 version states each detector must have a relative spectral responsivity which approximates the luminosity function less than 3 percent while a 5 percent threshold is specified in the 2009 version. Additionally, the 2020 version states that the minimum distance of the detector is 10 times the lamp length to keep error less than 1 percent while 5 times the lamp length is specified in the 2009 version. DOE has tentatively concluded that these changes have been made to ensure

accuracy of measurement but do not substantively impact final measured values.

IES LM-45 references IES LM-54, the industry standard for lamp seasoning, with regards to seasoning lamps. Section 6.2 of IES LM-45-2020 updates its references of IES LM-54 from the 1999³³ version to the 2020 version. DOE has tentatively determined that referencing the 2020 version of IES LM-54 will not change final measured values and proposes to incorporate the standard for appendix R (see section 7). Because lamp seasoning is a necessary part of testing GSILs, DOE is proposing to incorporate by reference IES LM-54-2020 for appendix R and referencing section 6.2 of IES LM-45-2020 directly in its revisions to Appendix R (see section III.C.a). IES LM-45 also references IES LM-78, the industry standard for measurements in an integrating sphere, with regards to measurements using a photodetector and for detector sources of error. Section 7.0 of IES LM-45-2020 updates its references of IES LM-78, from the 2007 version³⁴ to the 2020 version. DOE has tentatively determined that referencing the 2020 version IES LM-78 will not change final measured values and proposes to incorporate the standard for appendix R (see section 8). Because DOE allows use of an integrating sphere to make necessary photometric measurements of GSILs, DOE is proposing to incorporate by reference IES LM-78-2020 for appendix R and referencing section 7.0 of IES LM-45-2020 directly in its revisions to Appendix R (see section III.C.b).

In summary, DOE has tentatively concluded that updates in IES LM-45-2020 would not change final measured values. Therefore, DOE proposes to update references from the 2009 version of IES LM-45 to the 2020 version in Appendix R.

4. IES LM-49

Section 4.2.3 of Appendix R specifies that lifetime testing of GSILs must be conducted in accordance with the 2001 version of IESNA LM-49. IESNA LM-49³⁵ provides test methods for measuring the lifetime of incandescent filament lamps. DOE's initial review indicated that key changes in IES LM-

³³ Illuminating Engineering Society of North America, *LM-54-99 IESNA Guide to Lamp Seasoning*, Approved May 10, 1999.

³⁴ Illuminating Engineering Society of America, *IESNA LM-78-07 IESNA Approved Method for Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer*. Approved January 28, 2007.

³⁵ Note that the 2001 version of this standard was titled IESNA LM-49 but the 2012 version is titled IES LM-49.

49–2012 compared to its 2001 version included: (1) Clarifications regarding input voltage, voltage regulation, lamp handling, wiring, and recording failures; (2) addition of instrument voltage tolerances; and (3) direction regarding the interval at which operation of lamps must be checked. 82 FR 37031, 37034. Regarding updating references to IES LM 49–2012, NEMA and LEDVANCE stated that adoption of IES LM–49–2012 posed no known issues. (NEMA, No. 7 at pp. 2,4; LEDVANCE, No. 2 at p. 5)

Since the publication of the August 2017 RFI, a 2020 version of IES LM–49 has been published. In this notice, DOE is proposing to update the currently referenced 2001 version of IES LM–45 to the 2020 version. The key changes DOE identified were in both the 2012 and 2020 versions of IES LM–49. Specifically, DOE identified revisions in IES LM–49–2020 that modify language to appropriately use root mean square (“RMS”) voltage and provide further specifications on test receptacles and lamp holders. The added instrument tolerances for the test voltage are the same as those specified in IES LM–45–2009. Because IES LM–45–2009 is the currently referenced standard for electrical and photometric measurements of incandescent lamps, the tolerances in this standard are likely already being followed for any test of an incandescent lamp. IES LM–49–2020 changes the interval for checking lamp failures from no more than 0.5 percent of rated life to 1 percent of rated life. This change continues to allow checking lamp failure at or less than 0.5 percent of rated life, and therefore would not require retesting. Further DOE finds that IES LM–49–2020 also specifies the recorded failure time should be the midpoint of the monitoring interval. This specification would add consistency to the execution of the test method. Further, because each interval is no more than a few minutes, the point within the interval at which the measurement is taken would not have a significant impact on the final measured value.

DOE has tentatively concluded that the updates in IES LM–49–2020 would not change final measured values. Therefore, DOE proposes to update references from the 2001 version of IES LM–49 to the 2020 version in Appendix R.

5. IES LM–20

Sections 3.3, 4.3.1, and 4.3.2 of Appendix R specify that, for IRLs, test conditions, methods, and measurements must be conducted in accordance with

IESNA LM–20–1994. IESNA LM–20³⁶ provides methods for taking photometric measurements of reflector-type lamps. DOE’s initial review indicated that IES LM–20–2013, compared to its 1994 version, included the addition of new definitions and changes to existing definitions. IES LM–20–2013 also included updates regarding characteristics of photometers, lamp stabilization, intensity distribution determination, among other topics; and changes to certain tolerances (e.g., allowable reflectivity in the integrated sphere). 82 FR 37031, 37035. Specifically, DOE identified the following key changes in IES LM–20–2013, compared to its 1994 version: (1) Updates to definitions; (2) updates regarding the integrating sphere method; (3) updates to referenced industry test standards regarding test conditions; and (4) inclusion of reference to stabilization procedures. Regarding updating references to IES LM–20–2013, NEMA and LEDVANCE stated that adoption of IES LM–20–2013 posed no known issues. (NEMA, No. 7 at pp. 2,4; LEDVANCE, No. 2 at p. 5; Philips, No. 8 at p. 2)

Since the publication of the August 2017 RFI, a 2020 version of IES LM–20 has been published. In this notice, DOE is proposing to update the currently referenced 1994 version of IES LM–20 to the 2020 version. DOE has tentatively determined that the updates identified in IES LM–20–2013 have been retained and no other key changes have been made in the 2020 version. Compared to the 2013 version, IES LM–20–2020 mainly updates references to other industry standards.

IES LM–20–2013 adds new definitions (e.g. extraneous light, undirected light) and makes minor updates to existing definitions (e.g. beam axis, central cone, stray light). The 2020 version maintains the definitions in IES LM–20–2013. DOE has tentatively determined these changes to definitions do not change the essential meaning of the terms or their usage in the test methods.

Section 8.0 of IES LM–20–2020 provides more updated information regarding minimizing errors when calibrating the integrating sphere and directly references IES LM–78–2020, the industry standard for measurements in an integrating sphere, for basic integrating sphere photometer calibration and measurements. Because DOE allows use of an integrating sphere to make necessary photometric

measurements of IRLs, DOE is proposing to incorporate by reference IES LM–78–2020 for Appendix R and referencing section 8.0 of IES LM–20–2020 directly in its revisions to Appendix R (see section III.C.b). Further IES LM–20 references IES LM–54, the industry standard for lamp seasoning, with regard to seasoning lamps. Section 6.0 of IES LM–20–2020 updates its references of IES LM–54 from the 1991³⁷ version to the 2020 version. DOE has tentatively determined that referencing the 2020 version of IES LM–54 will not change final measured values and proposes to incorporate the standard for Appendix R (see section 7). Because lamp seasoning is a necessary part of testing IRLs, DOE is proposing to incorporate by reference IES LM–54–2020 for Appendix R and to reference section 6.2 of IES LM–20–2020 directly in its revisions to Appendix R (see section III.C.a).

IES LM–20–2020 references IES LM–45–2020 for ambient temperature and instrumentation conditions and lamp connections and circuits while IES LM–20–1994 references IES LM–45–1991. Compared to the 1991 version, IES LM–45–2020 changed the temperature tolerance from ± 1 degree to ± 10 degrees. IES LM–45–2020 also states that maintaining temperature is not critical for incandescent filament lamps. Because incandescent filament lamps are not sensitive to small temperature changes, DOE has tentatively determined that the change in temperature tolerance would not impact final measured values. Additionally, IES LM–45–2020 omits the statement that instruments will have an accuracy of at least 0.25 percent, instead referencing instrument manuals and specifying instrumentation tolerances; tightens the DC supply voltage tolerance from 0.1 to 0.02 percent; provides specific impedance tolerances for supply voltages and currents; and specifies tolerances for detectors to measure lumens. DOE has tentatively concluded that test labs typically adhere to the specifications in instrument manuals as a best practice. Further the changes and addition of tolerances provide greater specificity in the calibration of instruments, increasing repeatability and reproducibility. DOE has tentatively concluded that these updates would not impact final measured values. IES LM–45–2020 also adds basic lamp connection and circuit information including circuit diagrams for AC and DC connections to a lamp. Because the

³⁶Note that the 1994 version of this standard was titled IESNA LM–20 but in the 2013 version titled IES LM–20.

³⁷Illuminating Engineering Society of North America, *LM–54 Lamp Seasoning*, Approved June 1991.

lamp to instrumentation connections for incandescent lamps are relatively simple, the circuit information and directions provided are likely already being followed by test laboratories to test IRLs.

IES LM-20-2020 also references IES LM-45-2020 for lamp stabilization procedures while IES LM-20-1994 only states that lamps should be seasoned to provide necessary stabilization. IES LM-45-2020 provides a method commonly used in industry for establishing lamp stability. The method requires determining the average percent difference of maximum and minimum measurements at several regular intervals and ensuring it is within a certain tolerance. Laboratories are likely already following a method like the one prescribed in IES LM-45-2020 to ensure stability of IRLs before taking measurements. Hence, DOE has tentatively concluded that the requirement of a specific stabilization method only explicitly references a procedure that is already being followed.

In summary, DOE has tentatively concluded that changes in IES LM-20-2020 would not change measured values. DOE proposes that manufacturers would not be required to retest and would be able to continue to rely upon test data previously conducted in accordance with the DOE test procedure. Hence, DOE proposes to update references from the 1994 version of IES LM-20 to the 2020 version in 10 CFR 430.3 for Appendix R.

6. IES LM-9

Sections 3.1, 4.1.1, and 4.4 of Appendix R specify that, for GSFLs, test conditions, methods, and measurements must be conducted in accordance with the 2009 version of IES LM-9. IES LM-9 provides methods for taking electrical and photometric measurements of fluorescent lamps. The latest version of the industry standard, IES LM-9-2020 was not available for analysis and requests for comment in the August 2017 RFI. DOE's initial review of this standard indicates no major changes in the 2020 version except for relevant updated references.

Section 6.2 of IES LM-9-2020 updates its reference of IES LM-54, the industry standard for lamp seasoning, from the 1999 version to 2020 version. DOE has tentatively determined that referencing the 2020 version of IES LM-54 will not change final measured values and proposes to incorporate the standard for Appendix R (see section 7). Because lamp seasoning is a necessary part of testing GSFLs, DOE is proposing to incorporate by reference IES LM-54-

2020 for appendix R and to reference section 6.2 of IES LM-9-2020 directly in its revisions to Appendix R (see section III.C.a). Section 7.0 of IES LM-9-2020 updates its references of IES LM-78 from the 2007 to the 2020 version. DOE has tentatively determined that referencing the 2020 version of IES LM-78 will not change final measured values and proposes to incorporate the standard for Appendix R (see section 7). Because DOE allows use of an integrating sphere to make necessary photometric measurements of GSFLs, DOE is proposing to incorporate by reference IES LM-78-2020 for Appendix R and referencing section 7.0 of IES LM-9-2020 directly in its revisions to Appendix R (see section III.C.b).

In summary, DOE has tentatively concluded that updates in IES LM-9-2020 would not change final measured values. Therefore, DOE proposes to update references from the 2009 version of IES LM-9 to the 2020 version in Appendix R.

7. IES LM-54

IES LM-54 is the industry standard for lamp seasoning. Appendix R currently references sections of IES LM-45-2009 and IES LM-9-2009 which reference IES LM-54-1999; and sections of IES LM-20-1994 which reference IES LM-54-1991. The 2020 versions of IES LM-45, IES LM-9, and IES LM-20 proposed for incorporation by reference for Appendix R in this notice have updated this reference to IES LM-54-2020. The latest version of the industry standard, IES LM-54-2020 was not available for analysis and requests for comment in the August 2017 RFI.

Compared to both the 1991 and 1999 versions, the 2020 version of IES LM-54 adds numerous new sections which codify best practices that labs are likely already following. The 2020 version adds a section on physical environment test conditions that covers topics such as keeping labs clean and within the ambient temperature range; not subjecting lamps to excessive vibration/shock; and using airflow to cool the seasoning area. The 2020 version also adds a section on electrical test conditions which includes instructions on frequency, voltage wave shape, and voltage regulation; basic lamp connection protocols; and setting up an adjacent ground for fluorescent lamps. Additionally, the 2020 version includes a new section on test preparation which addresses how to handle and mark lamps. Finally, the 2020 version adds a statement expressly stating that the orientation of the lamp during seasoning should be maintained for the entire test.

In this NOPR, DOE is proposing to specify in Appendix R that lamp orientation be maintained throughout testing, including seasoning and lamp handling between tests (see section 2 for further details) for all test methods in Appendix R. These specifications in IES LM-54-2020 are similar to test conditions in other industry lamp standards. DOE has tentatively determined that the additions in IES LM-54-2020 are industry best practices for taking lamp measurements, and therefore likely are already being followed by laboratories.

DOE also identified updates to specifications in the 1991 version. The 1991 version states normal seasoning is generally performed at rated voltage for a period of 0.5 to 1 percent of rated life. The 2020 version states normal seasoning refers to lamp operation at rated voltage for 0.5 percent of rated life. Because 0.5 percent was already part of the range, DOE has tentatively concluded that this change will negligibly impact the seasoning of the lamp. Additionally, compared to the 1991 version, IES LM-54-2020 provides new accelerated seasoning times for lamps with rated life of 100-499 hours and changes the accelerated seasoning time from 45 minutes to 30 minutes for lamps with lifetimes of 500-1000 hours. IES LM-54-2020 also provides equations to calculate more-precise estimates of accelerated seasoning time, which DOE understands to be minimum seasoning times. The 1991 version did not include these equations. These changes reflect a more precise assessment of accelerated seasoning time, requiring less seasoning for lamps with shorter lifetimes. DOE has tentatively concluded that these adjustments make the accelerated seasoning method more practical to follow and would negligibly impact the seasoning of the lamp.

8. IES LM-78

IES LM-78 is the industry standard for taking measurements in an integrating sphere. Appendix R currently reference sections of IES LM-45-2009 and IES LM-9-2009 which reference IES LM-78-2007. The 2020 versions of IES LM-45 and IES LM-9 proposed for incorporation by reference for Appendix R in this notice have updated this reference to IES LM-78-2020. The latest version of the industry standard, IES LM-78-2020 was not available for analysis and requests for comment in the August 2017 RFI.

DOE identified several changes in the 2020 version of IES LM-78 compared to the 2007 version. The 2020 version includes a discussion of spectral

measurements including a new section on taking measurements with a spectroradiometer within a sphere. IES LM-78-2020 also provides specific sections on 2π and 4π geometry. For 4π geometry the 2020 version states the total surface area of the lamp should be less than 2 percent of the total area of the sphere wall. Regarding instrumentation, the 2020 version states that detectors other than silicon photodiodes are not recommended. IES LM-78-2020 adds an explanation on using sphere angular response distribution function (“SRDF”) to assess sphere responsivity. Further the equation to compute luminous flux now includes subtraction of dark/stray light, a ratio of spectral mismatch correction factor to self-absorption factor, and the sphere angular non-uniformity correction factor. DOE has tentatively concluded that the additional information in IES LM-78-2020 is reflective of industry learning in making more accurate and consistent measurements using the integrating sphere but will not impact final measured values.

DOE also identified updates to specifications. The 2020 version states the sphere diameter be 1.5 times the length of a linear lamp whereas it was 2 times the length in the 2007 version. IES LM-78-2020 also states for the degree of the spectral match to the $V(\lambda)$ function, it is preferable that the value of the photometer be less than 3 percent whereas it was less than 5 percent in the 2007 version. Throughout the standard the term spatial luminous intensity is replaced with angular luminous intensity. Finally, the uncertainty analysis section has been condensed to a list of potential sources of errors and references to other industry standards for guidance. DOE has tentatively concluded that these updates are minimal and will not impact final measured values.

9. CIE 15

Section 4.4.1 of Appendix R states that for incandescent lamps CCT shall be determined in accordance with the 2004 version of CIE 15. CIE 15 provides the International Commission on Illumination’s recommendations concerning colorimetry (*i.e.*, the measurement of color). The latest version of the industry standard, CIE 15-2018 was not available for analysis and requests for comment in the August 2017 RFI. DOE’s initial review indicates that CIE 15-2018, compared to its 2004 version, adds specifications regarding the following: Standard observer data and cone-fundamental-based colorimetric observer data; indoor

daylight illuminant spectra; smoothed D illuminants; LED illuminants; and geometry specification of colorimetry. The latest version also makes updates to tables specifying spectral power distribution data and colorimetric data of illuminants. DOE has tentatively determined that the updates in CIE 15-2018 do not substantially change measurement of CCT for incandescent lamps and would not change final measured values. DOE requests comment on the impact on measured CCT values of incandescent lamps using CIE 15-2018 compared to the 2004 version of the standard.

C. Proposed Amendments to Appendix R

DOE proposes changes to Appendix R to improve the organization of the test procedures, further clarify test conditions and measurement steps, and cite specific sections of referenced industry test standards. Note that the proposed section references of industry test standards are based on the version of the standard proposed for adoption (see section III.B). Additionally, DOE proposes to remove references to rounding and sample size from Appendix R, as these requirements are addressed in 10 CFR 429.27, and also to remove references to minimum lifetime standards as these are provided in 10 CFR 430.32(x)(1)(iii)(A)–(B). DOE details these proposed changes to Appendix R in the following sections.

1. Definitions

DOE proposes to define certain new terms and modify certain existing terms in Appendix R. Specifically, DOE proposes to add “time to failure.” To support the test method in Appendix R for measuring lifetime of lamps that use incandescent technology, DOE proposes to define “time to failure” as the time elapsed between first use and the point at which the lamp ceases to produce measurable lumen output. This definition clarifies the time that must be measured to determine the lifetime of the lamp.

Additionally, DOE proposes four changes related to the definition of “lamp efficacy”: (1) To replace “lamp efficacy” with “initial lamp efficacy;” (2) to simplify this definition by referencing lamp efficacy as defined in 10 CFR 430.2; (3) to specify that the value is determined after the lamp is stabilized and seasoned; and (4) to remove references to rounding requirements, which are proposed to be addressed in 10 CFR 429.27 (see section 4 for details on DOE’s proposal to consolidate rounding requirements in 10 CFR 429.27). DOE also proposes to

replace “lamp lumen output” with “initial lumen output” and to specify that it is the initial lumen output measured after the lamp is stabilized and seasoned. Similarly, DOE proposes to replace “lamp electrical power input” with “initial input power” and to specify that it is the initial input power measured after the lamp is stabilized and seasoned. These proposed changes more accurately describe the values being determined and measured by the test methods in Appendix R.

DOE also proposes to remove the term “reference condition” because it is neither referenced in nor necessary for the test procedure. Additionally, DOE proposes to remove definitions for “ANSI Standard,” “CIE,” and “IESNA” in Appendix R because 10 CFR 430.3 contains the relevant terms. Further, DOE proposes to remove definitions for “CCT” and “CRI” which only reference the definitions in 10 CFR 430.2.

DOE also proposes to update section references to definitions in industry test standards to align with the proposed updated versions by changing references to section 2 of IES LM-58-1994 to be references to section 3 of IES LM-58-2020 and to delete the reference to Glossary of IES LM-45-2015 as it no longer exists in the 2020 version.

2. General Instructions

To improve the readability of and streamline the test methods in Appendix R, DOE proposes to add a “General Instructions” section to specify test practices applicable to all lamps covered by the appendix.

To ensure consistency in measurements, DOE proposes to include in the “General Instructions” section specifications regarding: (1) Conflicting requirements; (2) lamp orientation; (3) lamp breakage; and (4) rated voltage. First, DOE proposes that, where there is a conflict between requirements in referenced industry test standards and those in the appendix, the latter must take precedence. Second, DOE proposes that lamp orientation be maintained throughout testing, including seasoning and lamp handling between tests. Third, DOE proposes that, if a lamp breaks, becomes defective, fails to stabilize, exhibits abnormal behavior such as swirling³⁸ prior to the end of the seasoning period, or stops producing light, the lamp must be replaced with a new unit. DOE has tentatively concluded that these proposals only explicitly state best practices already being followed by labs for testing lamps,

³⁸ This term refers to the visual observation that a beam or line of light appears to be “swirling” or “spiraling” within a fluorescent tube lamp.

and would not change current requirements of the DOE test procedure.

Regarding instructions for rated voltage, in the August 2017 RFI, DOE noted that currently Appendix R requires that incandescent lamps be operated at the “rated voltage as defined in § 430.2.” This definition of “rated voltage with respect to incandescent lamps” references the term “design voltage,” also defined in 10 CFR 430.2. The terms “rated voltage with respect to incandescent lamps” and the associated “design voltage with respect to incandescent lamps” are defined as follows in 10 CFR 430.2:

Rated voltage with respect to incandescent lamps means:

(1) The design voltage if the design voltage is 115 V, 130 V or between 115 V and 130 V;

(2) 115 V if the design voltage is less than 115 V and greater than or equal to 100 V and the lamp can operate at 115 V; and

(3) 130 V if the design voltage is greater than 130 V and less than or equal to 150 V and the lamp can operate at 130 V.

Design voltage with respect to an incandescent lamp means:

(1) The voltage marked as the intended operating voltage;

(2) The mid-point of the voltage range if the lamp is marked with a voltage range; or

(3) 120 V if the lamp is not marked with a voltage or voltage range. 10 CFR 430.2.

DOE requested feedback on simplifying the test voltage requirements in these definitions and aligning them, to the extent possible, with DOE test procedure requirements for other lamp types such as CFLs and integrated LED lamps. Those test procedures require that CFLs and integrated LED lamps be tested at the voltage marked on the lamp as the intended operating voltage and if no voltage is marked to test at 120 volts (“V”); if multiple voltages are marked including 120 V to test at 120 V, and if multiple voltages are marked not including 120 V to test at the highest voltage. 82 FR 37031, 37035. DOE received several comments on modifying the required test voltage for incandescent lamps.

NEMA and LEDVANCE stated their support for simplifying the test voltage requirements for incandescent lamps with LEDVANCE adding that the requirement should also apply to IRLs. It is not clear whether NEMA intended to include IRLs in “incandescent lamps,” as NEMA did not specifically reference IRLs in its comments on test voltage requirements. Both parties

added that DOE’s considered changes to test voltage specifications in the August 2017 RFI would have little practical impact on products that meet standards stating that, while there is a reduction in efficiency when testing 130 V lamps at 120 V, there are no 130 V lamps on the market. (NEMA, No. 7 at p. 5; LEDVANCE, No. 5 at p. 5) Philips also posed no objections to modifying the required test voltage for incandescent lamps and referred to NEMA’s comment on the subject. (Philips, No. 8 at p. 3)

However, CA IOUs expressed concern regarding modifying the requirement for lamps to be tested at the marked voltage. CA IOUs noted that GSILs are defined as lamps operating at least partially within 110 to 130 volts and with a minimum light output of 310 lumens (232 lumens for modified spectrum). Further, the 2017 GSL Definition Rules specified GSLs, which include GSILs and IRLs, as lamps operating between 100 to 130 V with a minimum light output of 310 lumens. CA IOUs argued that testing at the labeled voltage could allow lamps to be tested at a lower voltage producing less than the minimum lumens to be considered GSLs. (CA IOUs, No. 6 at p. 2) ASAP stated that for incandescent lamps an increase in voltage will lead to higher lumens, and some manufacturers may choose to label their lamps at a lower voltage than for which it was designed to avoid the minimum lumen requirements of a GSL. In particular, ASAP expressed concerns regarding re-rating by manufacturers for incandescent lamps with medium screw bases. ASAP added that allowing manufacturers to test lamps at labeled voltages not used in real applications could yield results that are not representative of actual performance for the vast majority of consumers. Regarding aligning with the CFL and integrated LED lamp test procedures, ASAP stated that CFLs and integrated LED lamps are often designed to maintain uniform power consumption and brightness across a range of operating voltages and therefore can be tested at the voltage marked on the lamp. Further ASAP stated that the current definition of “rated voltage with respect to incandescent lamps” and the associated “design voltage” terminology in 10 CFR 430.2 provides sufficient flexibility to accommodate different types of incandescent lamps while avoiding loopholes. (ASAP, No. 9 at pp. 2–3)

Based on feedback in response to the August 2017 RFI and further review, modifying the test voltage requirements in Appendix R to align with DOE test procedure requirements for CFLs and

LED lamps would change the rated voltage for certain IRLs and potentially exclude them from the definition of IRL, which is defined as having a rated voltage or voltage range that lies at least partially in the range of 115 and 130 volts. Further, because energy conservation standards are in part determined by the rated voltage of the IRL, changes to rated voltage may subject lamps to different standards. Therefore, DOE proposes to maintain the current specifications for determining the test voltage of incandescent lamps as specified in the definition of “rated voltage with respect to incandescent lamps” in 10 CFR 430.2. DOE proposes to move this voltage specification currently codified as part of a definition to the “General Instructions” section of Appendix R to make it clear that it applies to GSIL and IRL test methods in Appendix R.

3. Test Method for Determining Initial Lamp Efficacy, CRI, and CCT

To improve the organization of the appendix, DOE proposes to create a section called “Test Method for Determining Initial Input Power, Initial Lumen Output, Initial Lamp Efficacy, CRI, and CCT” and include existing sections regarding these measurements as subsections.

a. Test Conditions and Setup

The test conditions and setup section of the test procedure provides specifications regarding the ambient, physical, and electrical conditions of the test setup. To convey this purpose DOE proposes to include the term “setup” in the title and modify the existing language to use the phrase “establish ambient, physical, and electrical conditions” consistently.

Additionally, for GSFLs, DOE proposes to move the specifications on appropriate voltage and current conditions and reference ballast settings from the “Test Methods and Measurements” section to “Test Conditions and Setup” as these requirements are part of the electrical conditions and setup that should be met prior to taking any measurements. Further as stated in section 1, DOE proposes to allow manufacturers to make voluntary representations for GSFLs that are based on high frequency reference ballast settings in the 2016 versions of ANSI C78.81 and ANSI C78.901. (These optional representations would be in addition to the required representations made in accordance with the DOE test procedure and would not be used to show compliance with minimum requirements.) In support of this testing,

DOE proposes that, for voluntary high-frequency measurements, lamps would be required to operate using high frequency reference ballast settings in ANSI C78.81–2016 and ANSI C78.901–2016. Voluntary representations are described in a new section 5.0 in Appendix R.

Further, DOE proposes to clarify existing instructions regarding operation on low versus high frequency reference ballast settings and the inclusion of cathode power in measurements. For any lamp with an ANSI datasheet, if the datasheet includes low frequency settings, the test would occur using low frequency settings and DOE proposes to clearly state when to include cathode power. For any lamp with an ANSI datasheet that does not include low frequency settings, the test would occur using high frequency settings and cathode power would not be included. For any lamp with no ANSI datasheet, DOE proposes to add text that clarifies

the frequency of operation and whether to include cathode power in calculations.

DOE proposes to specify that when operating at low frequency, cathode power must be included in the measurement if ANSI C78.81 or ANSI C78.901 classifies the circuit application as “rapid start.” If those industry test standards classify the circuit application as something other than “rapid start,” cathode power would not be included. DOE also proposes to specify that cathode power must not be included in measurements when operating at high frequency. DOE seeks comments on the usefulness of the proposed general clarification regarding cathode power for lamps found in ANSI C78.81 and ANSI C78.901 and any associated impacts on test burden.

Additionally, for lamps that do not have lamp data sheets in industry test standards, DOE provides reference ballast settings on which to test in

Appendix R. DOE obtained these reference ballast settings from existing lamp data sheets of industry test standards for the lamp type most similar to the lamp type not contained in the industry test standard. However, Appendix R only specifies the reference ballast settings and does not indicate whether the test must be done at low or high frequency or include cathode power. DOE proposes to specifically state whether lamp types not included in industry test standards must be tested at low or high frequency to clarify that manufacturers only need to conduct one test and to indicate the frequency at which that test must occur. DOE also proposes to specify for these lamps whether cathode power must be included in the measurements. DOE bases this proposal on how the lamp types most similar to the lamp type not contained in the industry test standard are tested. DOE proposes to specify the following:

TABLE III.2—PROPOSED FREQUENCY AND CATHODE POWER TEST SPECIFICATIONS FOR GSFLS

Lamp type	Test frequency	Test with cathode power?
4-foot medium bipin (T8, T10, T12)	Low	Yes.
2-foot U-shaped (T8 and T12)	Low	Yes.
8-foot slimline (T8 and T12)	Low	No.
8-foot high output (T12)	Low	Yes.
8-foot high output (T8)	High	No.
4-foot medium bipin standard output and high output (T5)	High	No.

DOE notes that if this proposal were finalized, DOE would expect manufacturers whose test data was not consistent with the specified cathode heat provisions would be required to retest. DOE seeks comments on the usefulness of the proposed clarification regarding the frequency of operation and inclusion of cathode power for lamps that do not have lamp data sheets in industry test standards and any associated impacts on test burden.

Appendix R currently references IES LM–9, IES LM–45, and IES LM–20 in their entirety for test conditions. DOE proposes to specify that ambient, physical, and electrical conditions be established as described in sections 4.0, 5.0, 6.1, 6.5 and 6.6 of IES LM–9 for GSFLs; sections 4.0, 5.0, 6.1, 6.3 and 6.4 in IES LM–45 for GSILs; and sections 4.0 and 5.0 of IES LM–20 for IRLs.

The proposed updates to test conditions and setup in Appendix R only reorganize or specify more exact industry reference to current specifications and would not change current requirements of the DOE test procedure.

b. Test Methods, Measurements, and Calculations

The section on test methods and measurements in the current Appendix R, in some cases, references industry test standards in their entirety. It also does not expressly state when to season and stabilize the lamps or take measurements or which measurements to take. DOE proposes to limit references of industry test standards to listed sections and to reorganize the section to provide a clear, step-by-step process of seasoning and stabilizing the lamp; taking the appropriate measurements of initial input power and initial lumen output; and making necessary calculations to determine values of initial lamp efficacy, CCT, and CRI.

Seasoning and Stabilization

DOE proposes to state explicitly that lamps must be seasoned and stabilized according to section 6.2 in IES LM–45 for GSILs and section 6.0 in IES LM–20 for IRLs. These proposed updates only specify more exact industry reference to current specifications and will not

change current requirements of the DOE test procedure.

In the August 2017 RFI, DOE requested information on the use of the “peak lumen method,” which is an alternative stabilization method referenced in IES LM–9, the industry test standard for non-CFL lamps that use fluorescent technology. 82 FR 37031, 37035. DOE received several comments on this method. NEMA and LEDVANCE explained that the peak lumen method is useful for lamps that have long stabilization times such as high output lamps. (NEMA, No. 7 at p. 5; LEDVANCE, No. 5 at p. 6) NEMA stated that, while the method is not used often since such lamps are not high volume, the method should be maintained because it improves throughput time in the laboratory. (NEMA, No. 7 at p. 5) LEDVANCE stated it did not employ the peak lumen method but had no objection to its use. (LEDVANCE, No. 5 at p. 6)

IES LM–9 states that through careful correlation tests it may be possible to relate peak to stabilized lumens by a constant that would be unique to each lamp type. IES LM–9 goes on to explain

that the measured peak lumens of a lamp can be multiplied by this correction factor to determine stabilized lumens. Although industry feedback indicates that it is not a popular method, the “peak lumen method” can improve throughput time in the laboratory. Therefore, DOE proposes to continue to allow the “peak lumen method” as an alternative stabilization method.

For GSFLs, DOE proposes to state that lamps must be seasoned and stabilized in accordance with sections 6.1, 6.2, 6.3, and 6.4 of IES LM–9. These proposed updates only specify the exact sections of an industry standard and would not change current requirements of the DOE test procedure.

Photometric Measurements

In the August 2017 RFI, DOE requested information on allowing only the integrating sphere method and no longer allowing the goniophotometer (the combination of a goniometer and photometer) method for taking photometric measurements of GSFLs, IRLs, and GSILs. 82 FR 37031, 37035. Additionally, DOE requested comments on how frequently the industry uses the average intensity distribution curve method, which is the calculation of total lumen output based on the intensity measurements taken using the goniophotometer method for determining lumen output of IRLs. DOE received several comments on these topics.

NEMA supported, and LEDVANCE did not object to, allowing the goniophotometer and average intensity distribution curve methods in addition to the integrating sphere method. NEMA preferred to maintain the option of testing with a goniometer³⁹ stating that it was a better method for testing IRLs and also provided flexibility when the integrating sphere was otherwise occupied. NEMA also stated that, while the average intensity distribution curve method is little-used, it should be maintained as an option. (NEMA, No. 7 at p. 5) LEDVANCE stated that, while it uses the integrating sphere method for testing and certifying all the lamps including IRLs, LEDVANCE had no objections to maintaining the goniophotometer as a test method option because of the flexibility it provided. LEDVANCE stated that, while it did not use the average intensity distribution curve method, it had no

objection to allowing it. (LEDVANCE, No. 5 at p. 6)

CA IOUs stated their belief that, because GSILs are defined to include GSILs, CFLs, and general service LED lamps and all three lamp types will be subject to the same standard DOE should strive to harmonize test methods, where possible. Because only the integrating sphere method is allowed for CFLs and integrated LED lamps, the CA IOUs expressed support for allowing only this method for measuring light output of GSFLs, IRLs, and GSILs. (CA IOUs, No. 6 at p. 2)

Because alternative methods of measurement may provide logistical flexibility, even though they are little-used, DOE proposes to continue to allow the average intensity distribution method for reflector lamps and goniophotometers for all lamps in addition to the integrating sphere method. Thus, the proposal makes no change to the current test procedure. DOE proposes to specify that initial lumen output measurements be taken in accordance with section 7.0 in IES LM–9 for GSFLs, section 7.0 in IES LM–45 for GSILs, and section 7.0 or 8.0 in IES LM–20 for IRLs.

Additionally, for reflector lamps, DOE proposes to require measuring initial lumen output rather than total forward lumens (as it is currently described in Appendix R). DOE most recently discussed measuring an IRL’s total forward lumens more than twenty years ago in a test procedure final rule published on May 29, 1997. 62 FR 29222, 29235. In that rulemaking proceeding, NEMA commented that the light output for IRLs should be measured as total forward lumens. 62 FR 29222, 29235. In a final rule published June 13, 1995, in response to a letter from NEMA containing a similar request for measurement in total forward lumens, the FTC amended its labeling requirements for IRLs to clarify “total forward lumens,” instead of lumens “at beam spread.” 60 FR 31077, 31079–31080. FTC concluded that light output disclosure should reflect useable light output reflected forward, and not merely forward light focused within the more narrow “beam spread” of the particular lamp. 60 FR 31077, 31080. Neither IES LM–20–2013 nor IESNA LM–20–1994 uses the term “forward lumens.” However, based on FTC’s amendment, DOE tentatively finds that, because a reflector lamp is designed to focus lumens in a specific direction rather than in all directions, the term “total forward lumens” has the same meaning as “initial lumen output.” To align terminology with other lamp test procedures (*i.e.*, GSFLs, GSILs, CFLs,

and LED lamps), DOE proposes to change the term “total forward lumens” to “initial lumen output” for IRLs in Appendix R.

Determining CRI and CCT

DOE proposes to include a test method for determining CRI for lamps that use incandescent technology. Because there is a minimum CRI requirement for GSILs (see 10 CFR 430.32(x)(1)), and manufacturers are required to certify CRI values for GSILs (see 10 CFR 429.27(b)(2)(iii)), DOE proposes to include a test method for determining CRI of GSILs in Appendix R. In addition, the Energy Independence and Security Act (“EISA”) of 2007 established a CRI requirement for IRLs.⁴⁰ Hence, DOE also proposes to include a test method for determining CRI of IRLs in Appendix R. Specifically, DOE proposes to require that CRI of GSILs be determined in accordance with section 7.4 in IES LM–45 and CIE 13.3 and that CRI of IRLs be determined in accordance with CIE 13.3. Because CIE 13.3 is the industry test standard for testing CRI of all lamps, CRI is likely already being measured in accordance with this standard. Hence, DOE has tentatively concluded that the proposed test method for CRI is only establishing procedures already being followed.

For GSFLs, Appendix R currently requires CRI to be determined in accordance with CIE 13.3. (Section 4.4.1 of Appendix R). For completeness, DOE proposes to state that, in addition to CIE 13.3, the CRI of GSFLs be determined in accordance with section 7.6 in IES LM–9.

Currently Appendix R requires CCT for GSFLs to be determined in accordance with IES LM–9, and CCT for incandescent lamps to be determined in accordance with CIE 15. *Id.* DOE proposes to require that CCT of GSFLs be determined in accordance with section 7.6 in IES LM–9 and CIE 15; CCT of GSILs be determined in accordance with section 7.4 in IES LM–45 and CIE 15; and CCT of IRLs be determined in accordance with CIE 15. Section 7.6 of IES LM–9 states that color measurements are based on chromaticity coordinates and CRI as defined by CIE standards.

⁴⁰ Section 321(a) of EISA 2007 established CRI requirements for lamps that are intended for a general service or general illumination application (whether incandescent or not); have a medium screw base or any other screw base not defined in ANSI C81.61–2006; are capable of being operated at a voltage at least partially within the range of 110 to 130 volts; and are manufactured or imported after December 31, 2011.

³⁹ Industry use the term goniophotometer and goniometer interchangeably, but both refer to the same method in which a large mirror attached to an arm-like construction is rotated around the light source (goniometer) and the light that is reflected is detected and measured by a photometer.

4. Test Methods, Measurements, and Calculations for Determining Time to Failure

To improve the organization of the appendix, DOE proposes to create a section called “Test Method for Determining Time to Failure for General Service Incandescent Lamps and Incandescent Reflector Lamps” and subsections, “Test Conditions and Setup,” and “Test Methods, Measurements, and Calculations.” To clarify the existing test method for determining the time to failure of GSILs and adopt the same test method for determining time to failure of IRLs, DOE proposes to include information on test conditions, seasoning and stabilization, and remove information not pertinent to determining the time to failure value of the lamp.

Currently Appendix R requires measuring lifetime of GSILs in accordance with IES LM–49 and does not provide a test procedure for measuring lifetime of IRLs. DOE proposes to measure lifetime of IRLs in accordance with IES LM–49 and use the same methods as for GSIL lifetime testing. To improve the clarity of the existing instructions for GSIL lifetime testing and the proposed instructions for IRL lifetime testing, DOE proposes to reference specific sections of the industry standards to execute the steps in determining lifetime for GSILs and IRLs. To specify the ambient, physical, and electrical conditions, DOE proposes to reference sections 4.0 and 5.0 of IES LM–49. DOE also proposes to specify that the lamps must be seasoned and stabilized and reference section 6.2 of IES LM–45 for these procedures. Also, as explained in section 1, DOE is proposing to replace “lifetime” with the term “time to failure,” which would be defined as the time elapsed between first use and the point at which the lamp ceases to produce measurable lumen output (see section 1). This provides more precision regarding the point at which measurements must be taken. Further, DOE proposes to require measuring “time to failure” in accordance with section 6.0 of IES LM–49 (see section 1). (DOE is also proposing to use the term “time to failure” to describe the represented value for lifetime; see section III.D). Additionally, because accelerated lifetime testing is described in section 6.4 of the latest version of IES LM–49 proposed for adoption in this notice, DOE proposes to update the existing reference to section 6.1 to be section 6.4 of IES LM–49 in the provision disallowing accelerated testing. Finally, because it relates to the standard rather

than the test procedure, DOE proposes to remove language stating that the lamp will be deemed to meet minimum rated lifetime standards if greater than 50 percent of the sample size meets the minimum rated lifetime from appendix R.

DOE has tentatively determined that these proposed updates would not change current requirements for testing lifetime of GSILs, as the updates only explicitly state certain steps of the referenced industry standard for determining time to failure for incandescent lamps and provide the associated section references to an industry test standard already incorporated by reference. DOE tentatively determines that because the proposed requirements for testing lifetime of IRLs reference IES LM–49, the industry standard for testing lifetime of incandescent lamps, they are not substantively different from those manufacturers are currently using to conduct this test.

5. References to Industry Test Standards

NEMA recommended DOE adopt industry test standards “without modification” because testing according to both modified industry test standards in DOE test procedures and to original industry test standards for other programs such as ENERGY STAR or the State of California’s standards increases burden. NEMA added that following a single test procedure for all these programs minimizes risk of errors. (NEMA, No. 7 at p. 2) Philips agreed, citing the test lab costs for setting up protocols for modified industry test standards and the potential of erroneously using the modified industry test standard to test a product for non-DOE purposes. (Philips, No. 8 at p. 2) LEDVANCE agreed, adding that adopting industry test standards without modification streamlines and simplifies testing requirements. (LEDVANCE, No. 5 at p. 6)

In this document, DOE is only updating referenced industry test standards to the latest versions and including more specific section references of these industry test standards. Further, the potential of adopting a test procedure that is different from other programs should not add to test burden for these lamp types. Because the ENERGY STAR program does not include lamps that operate on an external ballast, its test method would not apply to the GSFLs subject to DOE’s test procedures. ENERGY STAR also does not include

any incandescent lamp types.⁴¹ Manufacturers also do not need to conduct separate tests for California requirements because the California Energy Commission regulations refer to the DOE test procedures for testing general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamp types (see 20 California Code of Regulations 1604.42).

D. Amendments to 10 CFR 429.27, 10 CFR 429.33 and 10 CFR 430.2

DOE proposes to modify language in 10 CFR 429.27, which sets forth the sampling, certification, and rounding requirements for GSFLs, IRLs, and GSILs, to improve clarity and organization and ensure it supports the labeling requirements for lamps established by the FTC. DOE also proposes changes to definitions in 10 CFR 430.2 to align better with terminology proposed in Appendix R and 10 CFR part 429. Further, DOE proposes to separate each lamp type by creating two new sections in 10 CFR part 429. This will add clarity and allow DOE to treat represented values differently depending on the product. Although the paragraphs below describe changes to 10 CFR 429.27, the changes for each lamp type will appear in separate sections in 10 CFR part 429. DOE also proposes to revise 10 CFR 429.33 to replace references to 10 CFR 429.27 with references to the proposed, separate sections for each lamp type.

1. Definitions

To provide further clarity to the test procedure DOE is making several updates to definitions including revising the definition of “basic model,” references and definition of “rated,” and updating definitions of different IRL types.

Definitions of “Basic Model”

DOE proposes to update the definition of “basic model” in 10 CFR 430.2 to replace “lumens per watt (lm/W)” with “lamp efficacy.” This improves clarity by using the name of the metric instead of the unit of measure. Lamp efficacy is already defined elsewhere in 10 CFR

⁴¹ ENERGY STAR® Program Requirements Product Specification for Lamps (Light Bulbs) Eligibility Criteria Version 2.0. February 2016. <https://www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Lamps%20V2%20Revised%20Spec.pdf>.

⁴² California Code of Regulations. “Test Methods for Specific Applications.” [https://govt.westlaw.com/calregs/Document/I90BAEA80D44E11DEA95CA4428EC25FA0?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I90BAEA80D44E11DEA95CA4428EC25FA0?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

430.2 as being expressed in terms of lumens per watt.

Definitions and References of “Rated”

DOE proposes to replace references of “rated lumen output” and “rated lifetime” in 10 CFR 429.27 with, respectively, “initial lumen output” and “lifetime.” The term “rated” can lead to misunderstanding to the extent a reader interprets it as a standardized value rather than one that is determined through measurements. DOE requests comments on replacing “rated lumen output” and “rated lifetime” with, respectively, “initial lumen output” and “lifetime.”

The term “rated lifetime for general service incandescent lamps” is defined in 10 CFR 430.2 in relevant part as “the length of operating time of a sample of lamps,” as defined in 10 CFR 429.27, “between first use and failure of 50 percent of the sample size,” as determined in accordance with Appendix R. To align with proposed requirements in 10 CFR 429.27 for determining lifetime, DOE proposes to remove the term “rated.” Additionally, because the term “lifetime” rather than “lifetime for general service incandescent lamps” is used in 10 CFR 429.27, DOE also proposes to remove “for general service incandescent lamps.” DOE also proposes to modify the definition to “the length of operating time between first use and failure of 50 percent of the sample units (as specified in 10 CFR 429.27 of this chapter), determined in accordance with the test procedures described in Appendix R to subpart B of this part.”

“Rated wattage” for GSILs and IRLs is defined in 10 CFR 430.2 as the electrical power measured according to Appendix R. If there is no lamp datasheet for a type of GSFL in one of the referenced ANSI standards, “rated wattage” for GSFLs is defined as the electrical power of a lamp when measured according to the test procedures outlined in Appendix R. To align with 10 CFR 429.27, DOE proposes to clarify this definition by replacing the references to Appendix R with references to the relevant sections in 10 CFR part 429 and replacing “electrical power” with “initial input power.” DOE requests comments on the proposed definition of “lifetime” and modification to the definition of “rated wattage” in 10 CFR 430.2.

In the provisions for determining the represented value of rated wattage for GSFLs, GSILs, and IRLs, DOE proposes to change to “rated wattage” in any current references to “rated lamp wattage,” for consistency within 10 CFR part 429 and to conform to the relevant

term used in the energy conservation standards in 10 CFR 430.32.

Finally, in the provisions for determining the rated wattage of GSILs, DOE proposes to change how to determine the 95-percent upper confidence limit from using a two-tailed confidence interval to a one-tailed confidence interval. A two-tailed confidence interval test is typically utilized to determine whether a set of results could be either higher or lower while a one-tailed confidence interval test is typically utilized to determine whether a set of results are going in one specific direction (*i.e.*, either higher or lower). All represented values of lamp metrics required by DOE are either the greater of or lower of the mean or the upper/lower confidence limit of the results—depending on how the consumer may value that metric. (For example, where lower values are favored, such as wattage, the represented value is greater of the mean or upper confidence limit of the results.) Currently any represented value of rated wattage for a GSIL is the greater of the mean or the upper 95-percent confidence limit. Because DOE is interested in the greater value from the tested results for wattage, a one-tailed confidence interval rather than two-tailed confidence interval test is appropriate. The proposed change to a one-tailed confidence interval will also align the represented value determination of rated wattage of GSILs with all other represented value determinations of lamp metrics. DOE requests comment on its proposed changes to the provisions for determining the represented value of rated wattage for GSFLs, GSILs, and IRLs.

Definitions of IRL Types

On May 1, 2020 DOE published an RFI document seeking comments to inform its determination of whether the standards for IRLs need to be amended. 85 FR 25326. In response to the RFI, DOE received several comments on the definitions of different types of IRLs. CA IOUs recommended that DOE update the industry references in 10 CFR 430.2 for the definitions of bulged parabolic reflector (“BPAR”), reflector (“R”)20, elliptical reflector (“ER”), and bulged reflector (“BR”) lamps with the latest versions of ANSI C78.21–2011(R2016)⁴³ and ANSI C78.79–2014 (R2020)⁴⁴ to

⁴³ American National Standards Institute, *ANSI C78.21–2011(R2016) American National Standard for Incandescent Lamps—PAR and R Shapes*, Approved August 23, 2016.

⁴⁴ American National Standards Institute, *ANSI C78.79–2014(R2020) American National Standard for Electric Lamps—Nomenclature for Envelope*

ensure that the latest industry standards and definitions are reflected. (CA IOUs, No. 8 at p. 4) NEMA supported the use of ANSI C78.21–2011 (R2016) as the current industry reference for reflector shape lamps. NEMA stated that colored lamps, lamps designed for rough or vibration service applications, and lamps that are R20 short type should remain excluded from the IRL definition. (Docket No. EERE–2019–BT–STD–0030, NEMA, No. 6 at p. 2)

DOE agrees with CA IOUs and NEMA on updating the CFR references with the latest versions of the currently referenced industry standards. Therefore, in this notice, DOE proposes to update the definitions in 10 CFR 430.2 for the BPAR, R20, ER, and BR incandescent reflector lamps with references to the latest versions of the currently referenced industry standards. Additionally, DOE is proposing definitions for R and parabolic aluminized reflector (“PAR”) incandescent reflector lamps that reference ANSI C78.21–2011 (R2016). Accordingly, DOE proposes to incorporate by reference ANSI C78.21–2011 (R2016) and ANSI C78.79–2014 (R2020) for 10 CFR 430.2.

2. Sampling Requirements

DOE proposes certain clarifying and organizational modifications to the sampling provisions in 10 CFR 429.27(a). First, to be consistent with sampling requirement language for other lamp types (*i.e.*, CFLs and integrated LED lamps), DOE proposes to state explicitly that represented values and certified ratings must be determined in accordance with the sampling provisions described in 10 CFR part 429.

DOE also proposes to require using the same sample of units as the basis for representations for all metrics for each basic model.

DOE proposes to change the minimum sample size from 21 lamps to 10 lamps and to remove the requirement that a minimum of three lamps be selected from each month of production for a minimum of 7 out of a 12-month period. Removing the latter provision would reduce confusion and burden. First, the 12-month requirement has led to confusion among manufacturers who interpreted this to mean DOE requires re-testing every calendar year. Second, selecting a few sample units from multiple months of the year can be difficult to coordinate and execute. In particular, if a manufacturer does not initially know the number of months in

Shapes Intended for Use with Electric Lamps, Approved January 17, 2020.

which it will produce the basic model, it would need to reserve lamps from each production month and later decide how many to test. In light of these considerations, DOE proposes to remove this requirement and instead align the minimum number of sample units with the requirements for other lighting products. Reflecting this change, DOE also proposes to eliminate the requirement to identify the production months of sample units in 10 CFR 429.27(c) by providing the production date codes and accompanying decoding schemes for all test units. DOE does not believe this change would require manufacturers to retest products. Current certifications based on 21 lamps would meet the proposed requirement to base certification on a minimum of 10 units. However, manufacturers would likely choose to test fewer lamps when they certify new products and therefore save testing costs. The expected cost savings are described in section III.H. DOE requests comments on its proposal to reduce the minimum sample size and remove the requirement that a minimum of three lamps be selected from each month of production for a minimum of 7 months out of a 12-month period.

Because sample units would no longer have to be selected over a 12-month period, DOE is also proposing to remove the requirement in 10 CFR 429.12(e)(2) to submit an initial certification report prior to or concurrent with the distribution of a new basic model for GSFLs and IRLs. Instead, for GSFLs and IRLs, the complete certification report described in 10 CFR 429.12(b) would be required at that time. In addition, DOE expects that a manufacturer would complete the testing needed to submit a certification of compliance with standards prior to distribution in commerce, so a subsequent report would not be needed to reflect additional test results. DOE requests comments on its proposal to remove the submission of an initial certification report for GSFLs and IRLs.

3. Represented Value Determinations

DOE proposes to add specifications for determining the represented values of certain metrics. Under the FTC lighting facts labeling requirement, manufacturers of GSILs and IRLs are required to include on the lamp packaging basic and consistent information, including lumen output, wattage, life, CCT, and costs of annual energy consumption. 16 CFR 305.23(b) In support of FTC labeling requirements for GSILs and IRLs, DOE proposes adding determinations for the represented values of life (in years), estimated annual energy cost (in dollars

per year), CCT, wattage (for IRLs only), and initial lumen output (for IRLs only).

Specifically, DOE proposes represented values of life (in years) for GSILs and IRLs be determined by dividing the represented lifetime of these lamps as determined by DOE requirements in 10 CFR part 429 by the estimated annual operating hours as specified by FTC in 16 CFR 305.23(b)(3)(iii). To support this calculation, DOE proposes that lifetime for IRLs be determined as equal to or less than the median time to failure of the sample. DOE proposes represented values of estimated annual energy cost (in dollars per year) for GSILs and IRLs be determined in accordance with FTC requirements (*i.e.*, a usage rate of 3 hours per day, and 11 cents (\$0.11) per kWh) using the average initial wattage for the tested sample of lamps (see 16 CFR 305.23(b)(3)(ii)). DOE proposes the represented values of CCT for GSILs and IRLs be determined as the mean of the sample. Because consumers would favor a higher value for initial lumen output, DOE proposes represented values of initial lumen output for IRLs be determined as less than or equal to the lower of the mean or the lower confidence limit of the sample. DOE proposes the represented value of wattage for IRLs be determined as the mean of the sample. Because IRL wattage is used to determine which lamps are subject to DOE standards, the mean (average) of measured values is appropriate and confidence limits need not be applied.

Additionally, DOE's current test procedure for GSFLs includes measurement of wattage and CCT and in this notice DOE is proposing a test procedure for measuring CRI of IRLs (see section III.C.3). To support these test procedures, DOE proposes to provide instructions on determining the represented values for wattage and CCT of GSFLs and CRI for IRLs. Because consumers would favor a higher value for CRI, DOE proposes represented values of CRI for IRLs be determined as less than or equal to the lower of the mean or the lower confidence limit of the sample. DOE proposes the represented value of wattage and CCT for GSFLs be determined as the mean of the sample. Because GSFL wattage and CCT are used to determine which lamps are subject to DOE standards, the mean (average) of measured values is appropriate and confidence limits need not be applied.

Further, DOE is proposing revisions to the existing represented value determinations of initial lumen output for GSILs and CRI for GSFLs. DOE proposes to revise the current

instruction to average the measurements of lumen output for GSILs. Because GSIL energy conservation standards are based on initial lumen output and consumers would favor a higher value for this metric, DOE proposes the represented initial lumen output be less than or equal to the lower of the mean or the lower confidence limit. DOE proposes to revise the current instruction to apply the lower confidence limit to determine CRI for GSFLs. Because CRI can determine which lamps are subject to DOE standards, the mean (average) of measured values is appropriate and confidence limits need not be applied. DOE proposes the represented value of CRI for GSFLs to be determined as the mean of the sample.

Finally, DOE is proposing changes to clarify the determination of the represented value of lifetime for GSILs. DOE proposes to remove language stating that lifetime is the length of operating time between first use and failure of 50 percent of the sample size. Instead DOE proposes to state that the represented value of lifetime is equal to or less than the median time to failure of the sample. For an odd sample size, the median time to failure is simply the middle unit's time to failure. For an even sample size, it is the arithmetic mean of the time to failure of the two middle samples. DOE also proposes this clarified determination of represented value of lifetime for IRLs.

4. Reporting Requirements

In line with the proposed amendments to sampling requirements (see section III.D.2), DOE is proposing to remove the requirement to report production dates of units tested for GSFLs, IRLs, and GSILs. Additionally, DOE is proposing to clarify currently reported values for GSFLs, IRLs, and GSILs by removing "12-month average" from the description.

Further to align with the proposed method of referencing wattage (see section III.D.1), DOE is clarifying the description of "lamp wattage" so that it instead reads as "rated wattage" for GSFLs, IRLs, and GSILs. To align with proposed method of referencing lifetime (see section III.D.1), DOE is clarifying the description of "average minimum rated lifetime" so that it instead reads as "lifetime" for GSILs.

5. Rounding Requirements

For completeness and clarity, DOE proposes to specify rounding requirements for all represented values. DOE proposes to require rounding initial input power to the nearest tenth of a watt, initial lumen output to three

significant digits, CRI to the nearest whole number, and lifetime to the nearest whole hour. DOE proposes to modify the CCT rounding requirement to the nearest 100 Kelvin. Currently Appendix R requires rounding lamp efficacy to the nearest tenth of a lumen per watt and CCT to the nearest 10 Kelvin. These updates to rounding requirements align with other DOE lamp test procedures such as CFLs and integrated LED lamps, and DOE has tentatively determined they provide the necessary level of precision for evaluating compliance with the applicable metric(s).

DOE proposes to move the rounding requirements for lamp efficacy and CCT from Appendix R to part 429. DOE also proposes to consolidate all rounding provisions in a single paragraph in the relevant product-specific section in part 429, subpart B.

E. Amendments to 10 CFR 430.23(r)

Test procedures and measurements for GSFLs, IRLs, and GSILs are specified in 10 CFR 430.23(r). This section includes calculations and appropriate section references to Appendix R for determining annual energy consumption, lamp efficacy, CRI, and lifetime for GSFLs, GSILs, and IRLs, as applicable. Because calculations for determining these metrics are already established in Appendix R, DOE proposes to remove them from § 430.23(r). Additionally, DOE proposes to reference Appendix R in general rather than specifying sections, so that any future amendments to sections in Appendix R do not require changes in 10 CFR 430.23(r). Finally, DOE proposes to remove all references to annual energy consumption as this metric is not required by DOE. DOE proposes to replace the current language in 10 CFR 430.23(r) with a requirement to measure initial lumen output, initial input power, initial lamp efficacy, CRI, CCT, and time to failure in accordance with Appendix R.

F. Conforming Amendments to Energy Conservation Standard Text at 10 CFR 430.32

To avoid confusion and align with the proposed new terminology for Appendix R and 10 CFR 429.27, DOE proposes to modify certain terms related to the energy conservation standards for GSFLs, IRLs, and GSILs. The tables in 10 CFR 430.32(n)(6) and 10 CFR 430.32(x) provide the energy conservation standards for IRLs and GSILs, respectively, where the wattage terms are measured values. For IRLs, DOE proposes to change “rated lamp wattage” to be “rated wattage” in 10

CFR 430.32(n)(6). Also, in existing footnote 1 in the table in 10 CFR 430.32(n)(6), DOE proposes to specify the “P” in the minimum standard equation as “rated wattage” rather than “rated lamp wattage.” For GSILs, DOE proposes to change the term “maximum rate wattage” to “maximum rated wattage” in 10 CFR 430.32(x).

Further, for GSIL standards in 10 CFR 430.32(x), DOE proposes to remove the term “rated” from “rated lumen ranges” and add an explanatory footnote to use the measured initial lumen output to determine the applicable lumen range. Finally, DOE proposes to remove the term “rate” from “minimum rate lifetime” and add an explanatory footnote stating to use lifetime determined in accordance with 10 CFR 429.27 to assess compliance with this standard. The use of “initial lumen output” and “lifetime” aligns with the proposed terminology for Appendix R and 10 CFR 429.27. DOE tentatively finds that the proposed changes to terminology in GSFL, IRL and GSIL energy conservation standards do not change the existing requirements but only clarify how measured values relate to the requirements in § 430.32.

Additionally, DOE proposes to remove the lamp efficacy requirements for GSFLs manufactured after May 1, 1994, and November 1, 1995, and on or before July 14, 2012, listed in 10 CFR 430.32(n)(1) and for IRLs manufactured after November 1, 1995, and on or before July 14, 2012, listed in 10 CFR 430.32(n)(5). Eight years ago, new standards superseded these standards, and there are likely no units on the market to which they apply.

Finally, DOE proposes to change the subparagraph numbering in 10 CFR 430.32(x) as follows: 10 CFR 430.32(x)(1)(iii)(A) and (B) to respectively 10 CFR 430.32(x)(2) and (3); and subsequently renumber 10 CFR 430.32(x)(2) and (3) to 10 CFR 430.32(x)(4) and (5). This will reduce any confusion that standards under these subparagraphs are applicable only for lamps that fall under 10 CFR 430.32(x)(1)(iii).

G. Test Burden

DOE received several comments regarding the test burden resulting from updated test procedures for GSFLs, GSILs, and IRLs.

NEMA and LEDVANCE stated that to reduce test burden DOE should eliminate the annual sampling, testing, and reporting requirement for GSFL, GSIL, and IRL basic models and require only reporting to CCMS when products change, or are removed from or

introduced into the market. (NEMA, No. 7 at p. 6; LEDVANCE, No. 5 at p. 6)

DOE does not require manufacturers to retest a basic model annually. The initial test results used to generate a certified rating for a basic model remain valid as long as the basic model has not been modified from the tested design in a way that makes it less efficient or more consumptive, which would require a change to the certified rating. 10 CFR 429.12(e). If a manufacturer has modified a basic model in a way that makes it more efficient or less consumptive, new testing is required only if the manufacturer wishes to make representations of the new, more efficient rating. DOE does require that manufacturers report certified values for a basic model even if the previously submitted certified value has not changed and retesting is not required. See 10 CFR 429.12(a). Because this should only entail resubmitting existing documents, DOE has tentatively concluded that the test burden of this requirement is minimal.

NEMA, LEDVANCE, and Philips stated that amending test procedures will not induce manufacturers to undertake any innovation efforts for these products. NEMA and LEDVANCE added that any amendments to test procedures could increase, rather than decrease, test burden. LEDVANCE added that all its research and development is being conducted in SSL products. Along these lines, NEMA stated that DOE should carefully consider burden when determining whether to update test procedures for highly mature products. (NEMA, No. 7 at p. 6, LEDVANCE, No. 5 at p. 7; Philips, No. 8 at p. 3) CA IOUs stated that, where there are conflicts, inaccuracies or outdated references, DOE should make updates to test procedures as needed regardless of perceived test procedure burdens. CA IOUs asserted that test procedures should be comprehensive and reflect real-world usage or would become burdensome in the long-term, particularly as multiple product standards evolve such as the ENERGY STAR®, California Title 20 requirements, and California Title 24 requirements. (CA IOUs, No. 6 at pp. 1–2)

DOE’s proposed updates to its test procedures in Appendix R and associated sections to update references to industry test standards and to clarify the language and organization of the test procedures are not related to product innovation. DOE has tentatively determined that these proposed updates will not increase test burden. As discussed in section III.B, updates in the

latest versions of industry test standards do not substantively impact test methods. Further, in proposing language that clarifies definitions, test conditions, measurements/calculations, sampling, and certification requirements, DOE seeks to make the test procedures easier and clearer to follow. Additionally, DOE is providing test methods for measuring the CRI of incandescent lamps to support existing statutory requirements and for determining the lifetime of incandescent reflector lamps to support FTC labeling requirements. Written representations of these values are already required; CRI is a value reported for GSILs and life (in years) is required on FTC Lighting Facts labels. Finally, DOE is proposing to revise the sampling requirements such that fewer lamps need to be tested (see section III.D) which would result in cost savings for manufacturers as they certify new

products to DOE. DOE has tentatively concluded that the proposed amendments in this notice clarify existing test procedures and result in cost savings (see section III.H).

DOE requests comment on its tentative determination that its proposed updates for GSFLs, IRLs, and GSILs will not increase test burden because determining these values to ascertain compliance with applicable DOE standards or FTC labeling requirements is already required by regulation and/or statute.

H. Test Procedures Costs and Harmonization

1. Test Procedure Costs and Impacts

In this NOPR, DOE proposes to amend the existing test procedures for GSFLs, IRLs, and GSILs by updating to the latest versions of the referenced industry test standards and providing

cites to specific sections of these standards; providing further specifications for definitions, test conditions, test methods, and measurement procedures; clarifying test frequency and inclusion of cathode power in measurements; revising the sampling requirements; aligning sampling and certification requirements with proposed test procedure terminology; providing a test method for measuring the CRI of incandescent lamps and for measuring lifetime of incandescent reflector lamps; and allowing manufacturers to make voluntary (optional) representations of GSFLs at high frequency settings. DOE has tentatively determined that these proposed amendments to the GSFL, IRL, and GSIL test procedures, if finalized, would impact testing costs as shown in Table III.3 and Table III.4.

TABLE III.3—SUMMARY OF COST IMPACTS FOR GSFLS, IRLS, AND GSILS

Category	Present value (thousands 2016\$)	Discount rate (percent)
Cost Savings:		
Reduction in Testing Costs	\$8,472	3
	3,239	7
Total Net Cost Impacts:		
Total Net Cost Savings	(8,472)	3
	(3,239)	7

TABLE III.4—SUMMARY OF ANNUALIZED COST IMPACTS FOR GSFLS, IRLS, AND GSILS

Category	Annualized value (thousands 2016\$)	Discount rate (percent)
Annualized Cost Savings:		
Reduction in Testing Costs	\$254	3
	227	7
Total Net Annualized Cost Impacts:		
Total Net Cost Savings	(254)	3
	(227)	7

Further discussion of the cost impacts of the proposed test procedure amendments are presented in the following paragraphs.

The proposed amendments are primarily providing updates and clarifications for how to conduct the test procedure and do not add complexity to test conditions/setup or add test steps. For example, this notice adds references to specific sections of industry test standards to provide precise direction when conducting the test procedure. Proposed revisions to definitions and test conditions only clarify the test method. Further, the proposed reorganization and alignment of terminology among relevant sections of the CFR improves readability and provides clarity throughout the

sampling requirements, test procedure, and applicable energy conservation standards.

DOE is proposing to specify the frequency for testing and whether cathode heat is included in measurements. DOE's proposal reflects the stated direction in industry test standards referenced by the current test procedure and also standard industry practice as verified by product submissions in CCMS. Because DOE is specifying details that are already required or in use, DOE tentatively concludes that there are no costs incurred due to this proposal.

Although DOE notes that it has proposed a test method for measuring the CRI of incandescent lamps and measuring lifetime of incandescent

reflector lamps, testing for these metrics is already required by DOE, EISA 2007, or FTC. As such, manufacturers already conduct this test for covered products. The method of measuring CRI has not changed substantively in over 20 years (the referenced industry test standard was last updated in 1995) and therefore the method of measurement used by manufacturers is likely substantively similar to DOE's proposed method. Further, the data required for CRI can be gathered via an integrating sphere at the same time the sphere is used to measure lumen output. Thus, the data to determine CRI can be gathered while measuring a quantity that is used in a metric already reported to DOE (*i.e.*, lamp efficacy). Regarding lifetime, the FTC requires manufacturers to report

life (in years) of IRLs on its Lighting Facts label. The lifetime test method used in support of the Lighting Facts label is likely substantively similar to the method proposed by DOE. The industry test method that describes measuring the lifetime of incandescent filament lamps is IES-49. Although IES-49 was updated in 2012, DOE tentatively concluded in section 4 that changes in the updated version are only explicitly stating what is likely already practiced by test labs. Further, NEMA and LEDVANCE stated that the adoption of the updated standard posed no known issues. (NEMA, No. 7 at pp. 2, 4; LEDVANCE, No. 2 at p. 5) Therefore, because industry is already conducting tests for the CRI of incandescent lamps and the lifetime of incandescent reflector lamps and using methods that are substantively similar to the methods in this proposal, DOE concludes that there are no costs incurred due to these proposed test methods.

DOE is proposing to change the minimum sample size to 10 lamps instead of 21 lamps. Because current certifications already must be based on a sample size of more than 10 units, products currently certified to DOE would not have to be retested as a result of this change. However, manufacturers would be able to use the new sampling requirements, if made final, when new products are introduced and certified to DOE. Based on a review of submission dates for GSFL, IRL, and GSIL basic models in DOE's CCMS database, DOE determined the number of new model certifications for 2016–2018, the past three full years of certification. An average of 196 GSFL, 30 IRL, and 84 GSIL new models were certified over these years. The cost to test efficacy, CCT, and CRI at a third party laboratory is \$90 per unit for a GSFL and \$75 per unit for an IRL or GSIL. Based on feedback from laboratories, a reduction in sample size would not change costs for lifetime testing for GSILs. Thus, DOE estimates the annual savings for GSFLs due to reduced sample size requirements to be \$193,710, for IRLs \$24,475 and for GSILs \$69,025.

DOE did not include any administrative cost savings associated with the removal of the requirement that the sample include a minimum of three lamps from each month of production for a minimum of 7 out of the 12-month period. DOE requests comments from stakeholders on the magnitude of savings from such a change, if any.

DOE has also proposed to allow manufacturers to make voluntary representations of certain GSFLs. DOE proposes that manufacturers can voluntarily make representations at the

high frequency settings specified in the 2016 versions of ANSI C78.81 and ANSI C78.901 in accordance with test procedures specified in Appendix R and sampling requirements in 10 CFR 429.27. These values would not be used for compliance but rather would be in addition to values obtained for compliance and used for determining if and how standards for GSFLs should be amended to accommodate testing at high frequency settings. While this proposed test method is voluntary and would only be used for representations of efficacy at high frequency reference ballast settings, it is unclear how many manufacturers would use it to make representations. DOE requests comments, data, and information regarding what percent of industry may choose to make representations at these conditions.

DOE has initially determined that the proposed amendments discussed above would not require changes to the designs of GSFLs, IRLs, or GSILs, and that the proposed amendments would not impact the utility of such products or impact the availability of GSFL, IRL, or GSIL products. DOE expects that the proposed amendments would not impact the representations of GSFL, IRL, or GSIL energy efficiency. DOE expects that manufacturers would be able to rely on data generated under the current test procedure should the proposed amendments be finalized. As such, DOE does not expect retesting of GSFLs, IRLs, or GSILs would be required solely as a result of DOE's adoption of the proposed amendments to the test procedure.

DOE requests comment on its understanding of the estimated cost impact and its finding that manufacturers would experience cost savings associated with these proposed amendments.

2. Harmonization With Industry Test Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of appendix A of 10 CFR part 430 subpart C; see also 42 U.S.C. 6293(b)(3). In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

DOE is proposing to update to the latest versions of several industry test standards referenced in Appendix R. For the electrical and photometric measurements of GSFLs DOE is proposing to incorporate by reference IES LM-9–2020, ANSI C78.375A–2014 (R2020), ANSI C82.3–2016, ANSI C78.81–2016 (voluntary representations only) and ANSI C78.901–2016 (voluntary representations only). For the electrical and photometric measurements of IRLs, DOE is proposing to incorporate by reference IES LM-20–2020. For electrical and photometric measurements of GSILs, DOE is proposing to incorporate IES LM-45–2020 and for lifetime measurements of GSILs, IES LM-49–2020. For spectroradiometric measurements of GSFLs, IRLs, and GSILs, DOE is proposing to incorporate IES LM-58–2020. For CCT measurements for GSFLs, IRLs, and GSILs, DOE is proposing to incorporate CIE 15:2018. For seasoning instructions for GSFLs, IRLs, and GSILs, DOE is proposing to incorporate IES LM-54–2020. For integrated sphere measurements for GSILs and GSFLs, DOE is proposing to incorporate IES LM-78–2020. In addition to references to industry test standards, DOE is proposing the following general instructions: The DOE test procedure takes precedence when there are conflicting requirements between it and referenced industry test standards; the same lamp orientation should be maintained throughout testing; and defective lamps should be replaced with new units.

The industry test standards DOE proposes to incorporate by reference via amendments described in this notice are discussed in further detail in section II.B of this NOPR. DOE has tentatively determined that the proposed amendments in this notice are not unduly burdensome to conduct. DOE requests comments on the benefits and burdens of the proposed updates and additions to industry test standards referenced in the test procedure for GSFLs, IRLs, and GSILs.

1. Compliance Date

EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) If DOE were to publish amended test procedures, EPCA provides an allowance for individual manufacturers

to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the 180-day deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (“OMB”) has determined that test procedure rulemakings do not constitute “significant regulatory actions” 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.*, as amended by the *Small Business Regulatory Enforcement Fairness Act of 1996*) 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. Also, 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: <https://www.energy.gov/gc/office-general-counsel>.

DOE reviewed this proposed rule to amend the test procedures for GSFLs, GSILs, and IRLs under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

The Small Business Administration (“SBA”) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (“NAICS”).

GSFL, GSIL, and IRL manufacturers are classified under NAICS code 335110, electric lamp bulb and part manufacturing. The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this NAICS code. DOE conducted a focused inquiry into small business manufacturers of products covered by this rulemaking. DOE used DOE’s Compliance Certification Database to identify basic models of GSFLs, IRLs, and GSILs. DOE then used other publicly available data sources, such as California Energy Commission’s Modernized Appliance Efficiency Database System and company specific product literature, to create a list of companies that import or otherwise manufacture the GSFL, IRL, and GSIL models covered by this rulemaking. Using these sources, DOE identified a total of 20 distinct companies that import or manufacture GSFLs, IRLs, or GSILs in the United States.

DOE then reviewed these companies to determine whether the entities met the SBA’s definition of a “small business” as it relates to NAICS code 335110 and screened out any companies that do not offer products covered by this rulemaking, do not meet the definition of a “small business,” or are foreign owned and operated. DOE did not identify any small businesses that manufacture GSFLs, IRLs, or GSILs in the United States.

Because DOE identified no small businesses that manufacture GSFLs, IRLs, or GSILs in the United States, DOE tentatively concludes that the impacts of the test procedure amendments proposed in this NOPR would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA 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).

DOE requests comments on its tentative determination that there are no small businesses that manufacture GSFLs, IRLs, and GSILs in the United States.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of GSFLs, IRLs, and GSILs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including GSFLs, IRLs, and GSILs. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, Appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on 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 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 https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf. 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 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). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at <https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf>. 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 amend the test procedure for measuring the energy efficiency of GSFLs, IRLs, and GSILs 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 FTC concerning the impact of the commercial or industry test standards on competition.

The modifications to the test procedure for GSFLs, IRLs, and GSILs proposed in this document incorporate the following industry standards:

(1) ANSI Standard C78.21, “American National Standard for Electric Lamps—PAR and R Shapes,” 2011 (R2016);

(2) ANSI Standard C78.79, “American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps,” 2014 (R2020);

(3) ANSI C78.375A, “American National Standard for Electric Lamps—Fluorescent Lamps—Guide for Electrical Measures,” 2014 (R2020);

(4) ANSI Standard C78.81, “American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics,” 2016;

(5) ANSI Standard C78.901, “American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics,” 2016;

(6) ANSI/ANSI C81.61, “American National Standard for electrical lamp bases—Specifications for Bases (Caps) for Electric Lamps,” 2006;

(7) ANSI C82.3, “American National Standard for Lamp Ballasts—Reference Ballasts for Fluorescent Lamps,” 2016;

(8) IES Test Method LM–9, “ANSI/IES LM–9–2020—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps,” 2020;

(9) IES LM–20, “ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps,” 2020;

(10) IES LM–45, “ANSI/IES LM–45–20 Approved Method: Electrical and Photometric Measurement of General Service Incandescent Filament Lamps,” 2020;

(11) IES LM–49, “ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps,” 2020;

(12) IES Test Method LM–54, “ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning,” 2020;

(13) IES LM–58, “ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurements Methods for Lighting Sources,” 2020;

(14) IESNA LM–78, “ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,” 2020; and

(15) CIE 15:2018, “Colorimetry, 4th Edition,” 2018.

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 NOPR, DOE proposes to incorporate by reference the test standard published by ANSI, titled “ANSI C78.21–2011 (R2016) Revision of ANSI C78.21–2011, American National Standard for Incandescent Lamps—PAR and R Shapes,” ANSI Standard ANSI C78.21–2011 (R2016). ANSI C78.21–2011 (R2016) is an industry accepted test standard that provides physical and electrical characteristics of the group of incandescent lamps that have PAR and R bulb shapes. The test procedure proposed in this NOPR references sections of ANSI C78.21–2011 (R2016) for definitions of incandescent reflector lamps. ANSI C78.21–2011 (R2016) is readily available on ANSI’s website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test

standard published by ANSI, titled “ANSI C78.79–2014 (R2020) Revision of ANSI C78.79–2014, American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps,” ANSI Standard ANSI C78.79–2014 (R2020). ANSI C78.79–2014 (R2020) is an industry accepted test standard that describes a system of nomenclature that provides designations for envelope shapes used for all electric lamps. The test procedure proposed in this NOPR references sections of ANSI C78.79–2014 (R2020) for definitions of incandescent reflector lamps. ANSI C78.79–2014 (R2020) is readily available on ANSI’s website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test standard published by ANSI, titled “ANSI/ANSI C81.61–2006, Revision of ANSI C81.61–2005, American National Standard for electric lamp bases—Specifications for Bases (Caps) for Electric Lamps,” ANSI Standard C81.61–2006. ANSI C81.61–2006 is an industry accepted standard that sets forth the specification for bases (caps) used on electric lamps. The standard is currently used to specify GSILs with certain bases that are not subject to standards in 10 CFR 430.32. In this NOPR ANSI C81.61–2006 is being approved for use in 10 CFR 430.32. ANSI C81.61–2006 is readily available on ANSI’s website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test standard published by ANSI, titled “ANSI C78.375A–2014 (R2020) Revision of ANSI C78.375–2014, American National Standard for Electric Lamps-Fluorescent Lamps-Guide for Electrical Measures,” ANSI Standard C78.375A–2014 (R2020). ANSI C78.375A–2014 (R2020) is an industry accepted test standard that describes procedures for measuring the electrical characteristics of fluorescent lamps. The test procedure proposed in this NOPR references sections of ANSI C78.375A–2014 (R2020) for voltage and current conditions when testing performance of fluorescent lamps. ANSI C78.375A–2014 (R2020) is readily available on ANSI’s website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test standard published by ANSI, titled “American National Standard for Lamp Ballasts—Reference Ballasts for Fluorescent Lamps,” ANSI Standard C82.3–2016. ANSI C82.3 is an industry accepted standard that describes characteristics and requirements of

fluorescent lamp reference ballasts. The test procedure proposed in this NOPR references ANSI C82.3 for setting up the reference circuit when testing the performance of fluorescent lamps. ANSI C82.3 is readily available on ANSI's website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test standard published by ANSI, titled "American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics," ANSI Standard C78.81–2016. ANSI C78.81 is an industry accepted standard that provides electrical characteristics for double base fluorescent lamps and reference ballasts. The test procedure proposed in this NOPR references ANSI C78.81 for reference ballast settings to test the performance of fluorescent lamps using high frequency reference ballast settings for making voluntary representations to DOE. ANSI C78.81 is readily available on ANSI's website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test standard published by ANSI, titled "American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics," ANSI Standard C78.901–2016. ANSI C78.901 is an industry accepted standard that provides electrical characteristics for single base fluorescent lamps and reference ballasts. The test procedure proposed in this NOPR references ANSI C78.901 for reference ballast settings to test the performance of fluorescent lamps using high frequency reference ballast settings for making voluntary representations to DOE. ANSI C78.901 is readily available on ANSI's website at <https://webstore.ansi.org/>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IES, titled "ANSI/IES LM–9–2020—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps," IES Test Method LM–9. IES LM–9 is an industry accepted standard that describes methods for taking electrical and photometric measurements of fluorescent lamps. The test procedure proposed in this NOPR references IES LM–9 for testing the performance of general service fluorescent lamps. IES LM–9 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IES, titled "ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps," IES Test Method LM–20. IES LM–20 is an

industry accepted standard that describes methods for taking electrical and photometric measurements of reflector lamps. The test procedure proposed in this NOPR references IES LM–20 for testing the performance of incandescent reflector lamps. IES LM–20 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IES, titled "Approved Method: Electrical and Photometric Measurement of General Service Incandescent Filament Lamps," IES Test Method LM–45–2020. IES LM–45 is an industry accepted standard that describes methods for taking electrical and photometric measurements of general service incandescent filament lamps. The test procedure proposed in this NOPR references IES LM–45 for testing the performance of incandescent lamps. IES LM–45 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IES, titled "ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps," IES Test Method LM–49. IES LM–49 is an industry accepted standard that describes the method for determining the lifetime of an incandescent filament lamp. The test procedure proposed in this NOPR references IES LM–49 for testing the lifetime of incandescent lamps. IES LM–49 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IES, titled "ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurements Methods for Lighting Sources," IES Test Method LM–58. IES LM–58 is an industry accepted standard that describes methods for taking spectroradiometric measurements for light sources. The test procedure proposed in this NOPR references IES LM–58 for determining the CRI and CCT of fluorescent lamps and incandescent lamps and CRI of incandescent reflector lamps. IES LM–58 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IESNA, titled "ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer," IES Test Method LM–78. IES LM–78 is an industry accepted test standard that specifies a method for measuring lumen output in an

integrating sphere. The test procedure proposed in this NOPR references IES LM–20 for testing the performance of incandescent reflector lamps, which in turn references IES LM–78 for integrating sphere photometer calibration and measurements. IES LM–78 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by IES, titled "ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning," IES Test Method LM–54. IES LM–54 is an industry accepted test standard that specifies a method for seasoning lamps. The test procedure proposed in this NOPR references IES LM–9, IES LM–20, and IES LM–45 for testing the performance of respectively, GSFLs, IRLs, and GSILs, which in turn references IES LM–54 for seasoning lamps. IES LM–54 is readily available on IES's website at <https://www.ies.org/store>.

In this NOPR, DOE proposes to incorporate by reference the test method published by CIE, titled "Colorimetry, 4th edition," CIE 15:2018. CIE 15:2018 is an industry accepted test standard that specifies methods for taking color measurements. The test procedure proposed in this NOPR references CIE 15:2018 for testing CCT. CIE 15:2018 is readily available on CIE's website at <https://cie.co.at/publications>.

In this NOPR, DOE included proposed revisions to the regulatory text of § 430.32 that contained a reference to ANSI C78.3. That standard was previously approved for incorporation by reference; no changes are proposed.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar then it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=22. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to

make an oral presentation at the webinar. Such persons may submit to ApplianceStandardsQuestions@ee.doe.gov. Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar/public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification

of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. 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 proposed rule.

Submitting comments via https://www.regulations.gov. The <https://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 <https://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 <https://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 <https://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 <https://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 <https://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 on 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.

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. According 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).

E. 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:

(1) DOE requests comments on its proposal to incorporate by reference the latest versions of ANSI C78.375, ANSI C82.3, IES LM-58, IES LM-9, IES LM-45, IES LM-49, IES LM-20, IES LM-54, and IES LM-78, and CIE 15 for Appendix R. See section III.B.

(2) DOE requests comments on its proposal to maintain the currently referenced 2010 versions of ANSI C78.81 and ANSI C78.901 for purposes of demonstrating compliance with standards. DOE also requests comments on its proposal to allow manufacturers to make voluntary representations of certain GSFLs in accordance with the 2016 versions of ANSI C78.81 and ANSI C78.901. See section 1.

(3) DOE seeks comments on the usefulness of the proposed general clarifications regarding the frequency of operation and inclusion of cathode power and any associated impacts on test burden. DOE also seeks comments on whether the proposed changes are perceived as affecting the compliance of an existing product.

(4) DOE requests comment on its proposed definitions for "time to failure," "initial lamp efficacy," "initial lumen output," "initial input power," and updates to definitions of IRL lamp shapes and removal of definitions for "CCT," "CRI," "ANSI Standard," "CIE," and "IESNA." See section 1.

(5) DOE requests comments on its proposed general instructions regarding conflicting requirements, lamp orientation, and lamp breakage. See section 2.

(6) DOE requests comments on its proposed section references in IES LM-9, IES LM-20, and IES LM-45 for establishing ambient, physical, and electrical conditions; and seasoning and stabilization. See section III.C.a.

(7) DOE requests comments on its proposed industry test standard references for measuring CCT and CRI. See section III.C.b.

(8) DOE requests comments on its proposed section references in IES LM-49 for establishing ambient, physical, and electrical conditions and measuring time to failure; and its proposed section

references in IES LM-45 for seasoning and stabilization. See section 4.

(9) DOE requests comments on its proposed rounding requirements for initial input power, initial lumen output, CRI, CCT, and lifetime. See section 4.

(10) DOE requests comment on its tentative determination that its proposed updates for GSFLs, IRLs, and GSILs will not increase test burden because determining these values to ascertain compliance with applicable DOE standards or FTC labeling requirements is already required by regulation and/or statute.

(11) DOE requests comments on its proposed changes in 10 CFR 430.32 to align terminology with test procedures for GSFLs, IRLs, and GSILs. See section III.D.

(12) DOE seeks comment on its proposal to base the 95 percent upper confidence limit determination for input power on the one-tail rather than the two-tail confidence interval. See section III.D.

(13) DOE requests comments on replacing "rated lumen output" and "rated lifetime" with respectively, "initial lumen output" and "lifetime." See section III.D.

(14) DOE requests comments on its proposed modifications to definitions for "lifetime" and "rated wattage." See section III.D.

(15) DOE requests comments on its proposal to reduce the minimum sample size from 21 to 10 and remove the requirement that a minimum of three lamps be selected from each month of production for a minimum of 7 months out of a 12-month period. See section III.D.

(16) DOE requests comments on its proposal to remove initial certification report submissions for GSFLs and IRLs. See section II.D.

(17) DOE requests comments from stakeholders on the magnitude of cost savings, if any, from removing the requirement that the sample include a minimum of three lamps from each month of production for a minimum of 7 out of the 12-month period. See section III.H.

(18) DOE requests comments, data, and information regarding what percent of industry may choose to make representations using high frequency ballast settings. See section III.H.

(19) DOE requests comment on its understanding of the estimated impact and its finding that manufacturers would experience cost savings associated with these proposed amendments. See section III.H.

(20) DOE requests comments on its tentative determination that there are no

small businesses that manufacture GSFLs, IRLs, and GSILs in the United States. See section IV.B.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 5, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting 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 May 7, 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 430 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.

§ 429.11 [Amended]

- 2. Amend § 429.11 by:
- a. Removing, “429.62” and adding in its place “429.66” in paragraph (a); and
- b. Removing, “429.65” and adding in its place “429.66” in paragraph (b)(1).

§ 429.12 [Amended]

- 3. Amend § 429.12 by:
- a. Removing paragraph (e)(2); and
- b. Redesignating paragraph (e)(3) as (e)(2).
- 4. Revise § 429.27 to read as follows:

§ 429.27 General service incandescent lamps.

(a) *Determination of Represented Value.* Manufacturers must determine represented values, which include certified ratings, for each basic model by testing in accordance with the following sampling provisions.

(1) Units to be tested. (i) When testing, use a sample comprised of production units. The same sample of units must be tested and used as the basis for representations for initial lumen output, rated wattage, color rendering index

(CRI), correlated color temperature (CCT), and lifetime.

(ii) For each basic model, randomly select and test a sample of sufficient size, but not less than 10 units, to ensure that—

(A) Represented values of initial lumen output and CRI are less than or equal to the lower of:

(1) The arithmetic mean of the sample:

Or,

(2) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95} \left(\frac{s}{\sqrt{n}} \right)$$

And \bar{x} is the sample mean; s is the sample standard deviation; n is the number of

samples; and $t_{.95}$ is the t statistic for a 95% one-tailed confidence interval with $n-1$

degrees of freedom (from Appendix A).

(B) Represented values of rated wattage are greater than or equal to the higher of:

(1) The arithmetic mean of the sample:

Or,

(2) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.03, where:

$$UCL = \bar{x} + t_{.95} \left(\frac{s}{\sqrt{n}} \right)$$

and \bar{x} is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{.95}$ is the t statistic for a 95% one-tailed confidence interval with $n-1$ degrees of freedom (from Appendix A to this subpart).

(2) Any represented values of measures of energy efficiency or energy consumption for all individual models represented by a given basic model must be the same.

(3) Represented values of CCT must be equal to the arithmetic mean of the sample.

(4) Represented values of lifetime must be equal to or less than the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units (or the value of the middle sample unit if there are an odd number of units) when the measured values are sorted in value order).

(5) Calculate represented values of life (in years) by dividing the represented lifetime of these lamps as determined in paragraph (a)(4) of this section by the

estimated annual operating hours as specified in 16 CFR 305.23(b)(3)(iii).

(6) Represented values of the estimated annual energy cost, expressed in dollars per year, must be the product of the rated wattage in kilowatts, an electricity cost rate as specified in 16 CFR 305.23(b)(1)(ii), and an estimated average annual use as specified in 16 CFR 305.23(b)(1)(ii).

(b) *Certification reports.* (1) The requirements of § 429.12 apply to general service incandescent lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, rated wattage in watts (W), the lifetime in hours, and CRI.

(c) *Rounding Requirements.*

(1) Round rated wattage to the nearest tenth of a watt.

(2) Round initial lumen output to three significant digits.

(3) Round CCT to the nearest 100 kelvin (K).

(4) Round CRI to the nearest whole number.

(5) Round lifetime to the nearest whole hour.

(6) Round life (in years) to the nearest tenth.

(7) Round annual energy cost to the nearest cent.

§ 429.33 [Amended]

- 5. Amend § 429.33 by:
- a. Removing paragraph (a)(2); and

■ b. Redesignating paragraph (a)(3) as (a)(2).

■ c. Removing “§ 429.27” in newly redesignated paragraph (a)(2)(i)(B), and adding “§ 429.66” in its place; and

■ d. Removing “§ 429.27” in newly redesignated paragraph (a)(2)(i)(C), and adding “§ 429.27, § 429.38, or § 429.40, as applicable,” in its place.

■ 6. Add § 429.38 to read as follows:

§ 429.38 Incandescent reflector lamps.

(a) *Determination of Represented Value.* Manufacturers must determine represented values, which include the certified ratings, for each basic model, in accordance with the following sampling provisions.

(1) Units to be tested. (i) When testing, use a sample comprised of production units. The same sample of units must be tested and used as the basis for representations for initial lumen output, rated wattage, lamp efficacy, color rendering index (CRI), lifetime, and correlated color temperature (CCT).

(ii) For each basic model, randomly select and test a sample of sufficient size, but not less than 10 units, to ensure that represented values of average lamp efficacy, CRI, and initial lumen output are less than or equal to the lower of:

(A) The arithmetic mean of the sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

And \bar{x} is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n-1$ degrees of freedom (from Appendix A).

(2) Any represented values of measures of energy efficiency or energy consumption for all individual models represented by a given basic model must be the same.

(3) Represented values of CCT and rated wattage must be equal to the arithmetic mean of the sample.

(4) Represented values of lifetime must be equal to or less than the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units (or the value of the middle sample unit if there are an odd number of units) when the measured values are sorted in value order).

(5) Calculate represented values of life (in years) by dividing the represented lifetime of these lamps as determined in paragraph (a)(4) of this section by the estimated annual operating hours as specified in 16 CFR 305.23(b)(3)(iii).

(6) Represented values of the estimated annual energy cost, expressed in dollars per year, must be the product of the rated wattage in kilowatts, an electricity cost rate as specified in 16 CFR 305.23(b)(1)(ii), and an estimated average annual use as specified in 16 CFR 305.23(b)(1)(ii).

(b) *Certification reports.* (1) The requirements of § 429.12 apply to incandescent reflector lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, average lamp efficacy in lumens per watt (lm/W), and rated wattage in watts (W).

(c) *Rounding Requirements.*

(1) Round rated wattage to the nearest tenth of a watt.

(2) Round initial lumen output to three significant digits.

(3) Round average lamp efficacy to the nearest tenth of a lumen per watt.

(4) Round CCT to the nearest 100 kelvin (K).

(5) Round CRI to the nearest whole number.

(6) Round lifetime to the nearest whole hour.

(7) Round life (in years) to the nearest tenth.

(8) Round annual energy cost to the nearest cent.

■ 7. Add § 429.66 to read as follows:

§ 429.66 General service fluorescent lamps.

(a) *Determination of Represented Value.* Manufacturers must determine represented values, which include certified ratings, for each basic model by testing, in accordance with the following sampling provisions.

(1) Units to be tested. (i) When testing, use a sample comprised of production units. The same sample of units must be tested and used as the basis for representations for rated wattage, average lamp efficacy, color rendering index (CRI), and correlated color temperature (CCT).

(ii) For each basic model, randomly select and test a sample of sufficient size, but not less than 10 units, to ensure that represented values of average lamp efficacy are less than or equal to the lower of:

(A) The arithmetic mean of the sample:

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

And \bar{x} is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n-1$ degrees of freedom (from Appendix A).

(2) Any represented values of measures of energy efficiency or energy consumption for all individual models represented by a given basic model must be the same.

(3) Represented values of CCT, CRI and rated wattage must be equal to the arithmetic mean of the sample.

(b) *Certification reports.* (1) The requirements of § 429.12 apply to general service fluorescent lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification

number or other approved identification assigned by the ILAC accreditation body, average lamp efficacy in lumens per watt (lm/W), rated wattage in watts (W), CCT in Kelvin (K), and CRI.

(c) *Rounding Requirements.*

(1) Round rated wattage to the nearest tenth of a watt.

(2) Round average lamp efficacy to the nearest tenth of a lumen per watt.

(3) Round CCT to the nearest 100 kelvin (K).

(4) Round CRI to the nearest whole number.

§ 429.102 [Amended]

■ 8. Amend § 429.102 by removing “429.62” and adding in its place “429.66” in paragraph (a)(1).

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 9. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C.6291–6309; 28 U.S.C. 2461 note.

■ 10. Amend § 430.2 by:

■ a. Revising the definition of “Basic model” introductory paragraph (1);

■ b. Revising the definitions of “BPAR incandescent reflector lamp,” “BR incandescent reflector lamp,” “ER incandescent reflector lamp,” and “R20 incandescent reflector lamp”;

■ c. Adding in alphabetical order the definitions of “Lifetime,” “PAR incandescent reflector lamp,” and “R incandescent reflector lamp”;

■ d. Removing the definition of “Rated lifetime for general service incandescent lamps”; and

■ e. Revising the definition of “Rated wattage”, paragraphs (1)(iii) and (2), and adding paragraph (3).

The additions and revisions read as follows:

§ 430.2 Definitions.

* * * * *

Basic model * * *

(1) With respect to general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps: Lamps that have essentially identical light output and electrical characteristics—including lamp efficacy and color rendering index (CRI).

* * * * *

BPAR incandescent reflector lamp means a reflector lamp as shown in figure C78.21–278 on page 28 of ANSI C78.21–2011 (R2016) (incorporated by reference; see § 430.3).

BR incandescent reflector lamp means a reflector lamp that has a bulged section below the bulb’s major diameter and above its approximate base line as shown in Figure 1 (RB) on page 6 of ANSI C78.79–2014 (R2020). A BR30 lamp has a lamp wattage of 85 or less than 66 and a BR40 lamp has a lamp wattage of 120 or less.

* * * * *

ER incandescent reflector lamp means a reflector lamp that has an elliptical section below the major diameter of the bulb and above the approximate baseline of the bulb, as shown in Figure 1 (RE) on page 6 of ANSI C78.79–2014 (R2020) (incorporated by reference; see § 430.3) and product space drawings shown in ANSI C78.21–2011 (R2016) (incorporated by reference; see § 430.3).

* * * * *

Lifetime with respect to an incandescent lamp means the length of operating time between first use and failure of 50 percent of the sample units (as specified in 10 CFR 429.27 and 429.38 of this chapter), determined in accordance with the test procedures described in appendix R to subpart B of this part.

* * * * *

PAR incandescent reflector lamp means a reflector lamp formed by the

sealing together during the lamp-making process of a pressed glass parabolic section and a pressed lens section as shown in Figure 1 (PAR) on page 5 of ANSI C78.79–2014 (R2020), (incorporated by reference; see § 430.3). The pressed lens section may be either plain or configured.

* * * * *

R incandescent reflector lamp means a reflector lamp that includes a parabolic or elliptical section below the major diameter as shown in Figure 1 (R) on page 5 of ANSI C78.79–2014 (R2020).

R20 incandescent reflector lamp means an R incandescent reflector lamp that has a face diameter of approximately 2.5 inches, as shown in Figure C78.21–254 on page 16 of ANSI C78.21–2011 (R2016) (incorporated by reference; see § 430.3).

* * * * *

Rated wattage means:

(1) * * *

(iii) If the lamp is neither listed in one of the ANSI standards referenced in paragraph (1)(i) of this definition, nor a residential straight-shaped lamp, a represented value of electrical power for a basic model, determined according to 10 CFR 429.66 of this chapter, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

(2) With respect to general service incandescent lamps, a represented value of electrical power for a basic model, determined according to 10 CFR 429.27 of this chapter, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

(3) With respect to incandescent reflector lamps, a represented value of electrical power for a basic model, determined according to 10 CFR 429.38 of this chapter, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

* * * * *

■ 11. Amend § 430.3 by:

■ a. Revising paragraphs (e)(3) and (4), and (7);

■ b. Removing the words “IBR approved for § 430.2”, and adding in their place “IBR approved for § 430.2 and § 430.32” in paragraph (e)(14);

■ c. Removing paragraph (e)(17) and redesignating paragraphs (e)(18) through (e)(26) as follows:

Old paragraph	New paragraph
(e)(18)	(e)(17).
(e)(19)	(e)(18).
(e)(20)	(e)(19).
(e)(21)	(e)(20).
(e)(22)	(e)(21).

Old paragraph	New paragraph
(e)(23)	(e)(22).
(e)(24)	(e)(23).
(e)(25)	(e)(24).
(e)(26)	(e)(25).

■ d. Removing the words “appendix Q”, and adding in their place “appendices Q and R” in paragraphs (e)(6), (e)(11) and newly redesignated (e)(17);

■ e. Revising Note 1 to Paragraph (e);

■ f. Removing the words “appendices R and W”, and adding in their place “appendix W” in paragraph (l)(2);

■ g. Adding new paragraph (l)(3);

■ h. Removing the words “appendices R, V, and V1” and adding in their place “appendices V and V1” in paragraph (p)(2);

■ i. Redesignating paragraphs (p)(4) through (20) as follows;

Old paragraph	New paragraph
(p)(4)	(p)(5).
(p)(5)	(p)(7).
(p)(7)	(p)(9).
(p)(9)	(p)(10).
(p)(10)	(p)(11).
(p)(11) through (15) ..	(p)(13) through (17).
(p)(16) through (20) ..	(p)(19) through (23)).

■ j. Adding new paragraph (p)(4);

■ k. Revising newly redesignated paragraphs (p)(7), (9), (10);

■ l. Adding new paragraph (p)(12);

■ m. Revising newly redesignated paragraph (p)(13); and

■ n. Adding new paragraph (p)(18).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(e) * * *

(3) ANSI C78.21–2011 (R2016), (“ANSI C78.21–2011 (R2016)”), American National Standard for Electric Lamps—PAR and R Shapes, approved August 23, 2016; IBR approved for § 430.2 to subpart B.

(4) ANSI C78.79–2014 (R2020), (“ANSI C78.79–2014 (R2020)”), American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps, approved January 17, 2020; IBR approved for § 430.2.

* * * * *

(7) ANSI C78.375A–2014 (R2020) Revision of ANSI C78.375–2014, (“ANSI C78.375A”) American National Standard for Electric Lamps—Fluorescent Lamps—Guide for Electrical Measures, approved January 17, 2020; IBR approved for appendix R to subpart B.

* * * * *

Note 1 to paragraph (e): The standards referenced in paragraphs (e)(6), (8), (11), (15),

(16), (17), (18), and (20) of this section were all published by National Electrical Manufacturers Association (NEMA) and are also available from National Electrical Manufacturers Association, 1300 North 17th Street, Suite 900, Rosslyn, Virginia 22209, <https://www.nema.org/Standards/Pages/default.aspx>.

* * * * *

(l) * * *

(3) CIE 15:2018 (“CIE 15:2018”), Technical Report: Colorimetry, 4th edition, 2018, ISBN 978 3 902842 13 8; IBR approved for appendix R to subpart B.

* * * * *

(p) * * *

(4) IES LM–9–2020, (“IES LM–9–20”), ANSI/IES LM–9–2020—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps, approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(7) IES LM–20–2020, (“IES LM–20–20”), ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps, approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(9) IES LM–45–2020, (“IES LM–45–20”), ANSI/IES LM–45–20 Approved Method: Electrical and Photometric Measurement of General Service Incandescent Filament Lamps, approved February 7, 2020; IBR approved for appendix R to subpart B.

(10) IES LM–49–2020, (“IES LM–49–20”), ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps, approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(12) IES LM–54–2020, (“IES LM–54–20”), ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning, approved February 7, 2020; IBR approved for appendix R to subpart B.

(13) IES LM–58–2020, (“IES LM–58–20”) ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurements Methods for Lighting Sources; approved February 7, 2020, IBR approved for appendix R to subpart B.

* * * * *

(18) IES LM–78–2020, (“IES LM–78–20”) ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,” approved February 7, 2020, IBR approved for appendix R to subpart B.

* * * * *

■ 12. Revise § 430.23 paragraph (r) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(r) *General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.* Measure initial lumen output, initial input power, initial lamp efficacy, color rendering index (CRI), correlated color temperature (CCT), and time to failure of GSFLs, IRLs, and GSILs, as applicable, in accordance with appendix R of this subpart.

* * * * *

■ 13. Appendix R to subpart B of part 430 is revised to read as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Electrical and Photometric Characteristics of General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

Note: After [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and prior to [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] any representations with respect to energy use or efficiency of general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps must be in accordance with the results of testing pursuant to this Appendix or the test procedures as they appeared in Appendix R to Subpart B or Part 430 revised as of January 1, 2021. On or after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], any representations, including certifications of compliance for lamps subject to any energy conservation standard, made with respect to the energy use or efficiency of general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps must be made in accordance with the results of testing pursuant to this appendix.

1. *Scope:* This appendix specifies the test methods required for determining the electrical and photometric performance characteristics of general service fluorescent lamps (GSFLs), incandescent reflector lamps (IRLs), and general service incandescent lamps (GSILs).

2. Definitions

2.1 To the extent that definitions in the referenced IES and CIE standards do not conflict with the DOE definitions, the definitions specified in section 3.0 of IES LM–9–20 (incorporated by reference; see § 430.3), section 3.0 of IES LM–20–20 (incorporated by reference; see § 430.3), section 3.0 of IES LM–45–20 (incorporated by reference; see § 430.3), section 3.0 of IES LM–58–20 (incorporated by reference; see § 430.3), Appendix 1 of CIE 13.3, and CIE 15:2018 (incorporated by reference; see § 430.3) apply in this Appendix.

2.2 *Initial input power* means the input power to the lamp, measured at the end of the lamp seasoning and stabilization.

2.3 *Initial lamp efficacy* means the lamp efficacy (as defined in § 430.2), measured at the end of the lamp seasoning and stabilization.

2.4 *Initial lumen output* means the lumen output of the lamp, measured at the end of the lamp seasoning and stabilization.

2.5 *Time to failure* means the time elapsed between first use and the point at which the lamp ceases to produce measurable lumen output.

3. General Instructions

1 When there is a conflict, the language of the test procedure in this appendix takes precedence over any materials incorporated by reference.

3.2 Maintain lamp operating orientation throughout seasoning and testing, including storage and handling between tests.

3.3 If a lamp breaks, becomes defective, fails to stabilize, exhibits abnormal behavior (such as swirling), or stops producing light prior to the end of the seasoning period, replace the lamp with a new unit. However, if a lamp exhibits one of the conditions listed in the previous sentence only after the seasoning period ends, include the lamp's measurements in the sample. 3.4 Operate GSILs and IRLs at the rated voltage for incandescent lamps as defined in 10 CFR 430.2.

4. Test Method for Determining Initial Input Power, Initial Lumen Output, Initial Lamp Efficacy, CRI, and CCT

4.1 Test Conditions and Setup

4.1.1 General Service Fluorescent Lamps

4.1.1.1 Establish ambient, physical, and electrical conditions in accordance with sections (and corresponding subsections) 4.0, 5.0, 6.1, 6.5, and 6.6 of IES LM–9–20. 4.1.1.2 Operate each lamp at the appropriate voltage and current conditions as described in ANSI C78.375A (incorporated by reference; see § 430.3) and in either ANSI C78.81 (incorporated by reference; see § 430.3) or ANSI C78.901 (incorporated by reference; see § 430.3). Operate each lamp using the appropriate reference ballast at input voltage specified by the reference circuit as described in ANSI C82.3 (incorporated by reference; see § 430.3). If, for a lamp, both low-frequency and high-frequency reference ballast settings are included in ANSI C78.81 or ANSI C78.901, operate the lamp using the low-frequency reference ballast. When testing with low-frequency reference ballast settings, include cathode power only if the circuit application of the lamp is specified as rapid start in ANSI C78.81 or ANSI C78.901. When testing with high-frequency reference ballast settings, do not include cathode power in the measurement. For any lamp not listed in ANSI C78.81 or ANSI C78.901, operate the lamp using the following reference ballast settings:

4.1.1.2.1 For 4-Foot medium bi-pin lamps, use the following reference ballast settings:

(a) T10 or T12 lamps: 236 volts, 0.43 amps, and 439 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 2.0 W. Cathode characteristics for low resistance (at 3.6V): 9.6 ohms (objective), 7.0 ohms (minimum). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min, 4.0 V max (limits

during operation); 9.6 ohms \pm 0.1 ohm (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(b) T8 lamps: 300 volts, 0.265 amps, and 910 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 1.7 W. Cathode characteristics for low resistance (at 3.6 V): 12.0 \pm 2.0 ohms; 4.75 \pm 0.50 (Rh/Rc ratio). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min; 4.4 V max (limits during operation); 11.0 ohms \pm 0.1 ohms (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

4.1.1.2.2 For 2-Foot U-shaped lamps, use the following reference ballast settings:

(a) T12 lamps: 236 volts, 0.430 amps, and 439 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 2.0 W. Cathode characteristics for low resistance (at 3.6V): 9.6 ohms (objective), 7.0 ohms (minimum). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min, 4.0 V max (limits during operation); 9.6 ohms \pm 0.1 ohm (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(b) T8 lamps: 300 volts, 0.265 amps, and 910 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 1.7 W. Cathode characteristics for low resistance (at 3.6 V): 11.0 ohms (objective); 8.0 ohms (minimum). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min; 4.4 V max (limits during operation); 11.0 ohms \pm 0.1 ohms (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

4.1.1.2.3 For 8-foot slimline lamps, use the following reference ballast settings:

(a) T12 lamps: 625 volts, 0.425 amps, and 1280 ohms, at low frequency (60 Hz) and without cathode power.

(b) T8 lamps: 625 volts, 0.260 amps, and 1960 ohms, at low frequency (60 Hz) and without cathode power.

4.1.1.2.4 For 8-foot high output lamps, use the following reference ballast settings:

(a) T12 lamps: 400 volts, 0.800 amps, and 415 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 7.0 W. Cathode characteristics for low resistance (at 3.6 V): 3.2 ohms (objective); 2.5 ohms (minimum). Cathode heat requirements for rapid start: 3.6 V (nominal); 3.0 V min, 4.0 V max (limits during operation); 3.2 ohms \pm 0.05 ohm (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(b) T8 lamps: 450 volts, 0.395 amps, and 595 ohms, at high frequency (25 kHz) and without cathode power.

4.1.1.2.5 For 4-foot miniature bipin standard output or high output lamps, use the following reference ballast settings:

(a) *Standard Output*: 329 volts, 0.170 amps, and 950 ohms, at high frequency (25 kHz) and without cathode power.

(b) *High Output*: 235 volts, 0.460 amps, and 255 ohms, at high frequency (25 kHz) and without cathode power in measurement.

4.1.2 *General Service Incandescent Lamps*: Establish ambient, physical, and electrical conditions in accordance with sections (and corresponding subsections) 4.0, 5.0, 6.1, 6.3 and 6.4 in IES LM-45-20.

4.1.3 *Incandescent Reflector Lamps*: Establish ambient, physical, and electrical conditions in accordance with sections (and corresponding subsections) 4.0 and 5.0 in IES LM-20-20.

4.2. *Test Methods, Measurements, and Calculations*

Multiply all lumen measurements made with instruments calibrated to the devalued NIST lumen after January 1, 1996, by 1.011.

4.2.1 *General Service Fluorescent Lamps*

4.2.1.1 Season and stabilize lamps according to sections (and corresponding subsections) 6.1, 6.2, 6.3, and 6.4 of IES LM-9-20, including reference to IES LM-54-20.

4.2.1.2 Measure the initial input power (in watts).

4.2.1.3 Measure initial lumen output in accordance with section 7.0 (and corresponding subsections) of IES LM-9-20, including reference to IES LM-78-20.

4.2.1.4 Calculate initial lamp efficacy by dividing the measured initial lumen output by the measured initial input power.

4.2.1.5 Calculate CRI as specified in section 7.6 of IES LM-9-20 and CIE 13.3. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM-58-20.

4.2.1.6 Calculate CCT as specified in section 7.6 of IES LM-9-20 and CIE 15:2018 (incorporated by reference; see § 430.3). Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM-58-20.

4.2.2 *General Service Incandescent Lamps*

4.2.2.1 Season and stabilize lamps according to section (and corresponding subsections) 6.2 of IES LM-45-20, including reference to IES LM-54-20.

4.2.2.2 Measure the initial input power (in watts).

4.2.2.3 Measure initial lumen output in accordance with section (and corresponding subsections) 7.0 of IES LM-45-20, including reference to IES LM-78-20.

4.2.2.4 Calculate initial lamp efficacy by dividing the measured initial lumen output by the measured initial input power.

4.2.2.5 Calculate CRI as specified in section 7.4 of IES LM-45-20 and CIE 13.3. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM-58-20.

4.2.2.6 Calculate CCT as specified in section 7.4 of IES LM-45-20 and CIE 15:2018. The required spectroradiometric measurement and characterization shall be conducted in accordance with the methods set forth in IES LM-58-20.

4.2.3 *Incandescent Reflector Lamps*

4.2.3.1 Season and stabilize lamps in accordance with section (and corresponding subsections) 6.0 of IES LM-20-20 (incorporated by reference; see § 430.3), including reference to IES LM-54-20.

4.2.3.2 Measure the initial input power (in watts).

4.2.3.3 Measure initial lumen output in accordance with sections (and corresponding subsections) 7.0 or 8.0 of IES LM-20-20, including reference to IES LM-78-20. When

measuring in accordance with section 8.0, exclude undirected light using the method specified in section 8.2.

4.2.3.4 Calculate initial lamp efficacy by dividing the measured initial lumen output by the measured initial input power.

4.2.3.5 Calculate CRI as specified in CIE 13.3. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM-58-20.

4.2.3.6 Calculate CCT as specified in CIE 15:2018. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM-58-20.

5. *Test Method for Voluntary Representations for General Service Fluorescent Lamps*

Follow sections 1.0 through 4.0 of this appendix to make voluntary representations only for GSFLs that have high frequency reference ballast settings in ANSI C78.81-2016 and ANSI C78.901-2016 (incorporated by reference; see § 430.3). Where ANSI C78.81 and ANSI C78.901 are referenced in the preceding sections, use ANSI C78.81-2016 and ANSI C78.901-2016 instead. Operate lamps using high frequency reference ballast settings and without cathode power. Voluntary representations must be in addition to, and not in place of, a representation in accordance with sections 1.0 to 4.0 for GSFLs. As a best practice, an indication of high frequency operation should be provided with the voluntary representations.

6. *Test Method for Determining Time to Failure for General Service Incandescent Lamps and Incandescent Reflector Lamps*

6.1 *Test Conditions and Setup*. Establish ambient, physical, and electrical conditions as described in sections 4.0 and 5.0 of IES LM-49-20 (incorporated by reference; see § 430.3).

6.2 *Test Methods, Measurements, and Calculations*

6.2.1 Season and stabilize lamps according to section 6.2 of IES LM-45-20 for GSILs and in accordance with section (and corresponding subsections) 6.0 of IES LM-20-20 for IRLs.

6.2.2 Measure the time to failure as specified in section 6.4 of IES LM-49-20 and based on the lamp's operating time, expressed in hours, not including any off time.

6.3 Accelerated lifetime testing is not allowed; disregard the second paragraph of section 6.4 of IES LM-49-20.

■ 14. Amend § 430.32 by revising paragraphs (n) and (x) to read as follows:

§ 430.32 *Energy and water conservation standards and their compliance dates.*

* * * * *

(n) *General service fluorescent lamps and incandescent reflector lamps.* (1) Each of the following general service fluorescent lamps manufactured after the effective dates specified in the table must meet or exceed the following CRI standards:

Lamp type	Nominal lamp watts *	Minimum CRI	Effective date
4-foot medium bipin	>35 W	69	Nov. 1, 1995.
	≤35 W	45	Nov. 1, 1995.
2-foot U-shaped	>35 W	69	Nov. 1, 1995.
	≤ 35 W	45	Nov. 1, 1995.
8-foot slimline	>65 W	69	May 1, 1994.
	≤65 W	45	May 1, 1994.
8-foot high output	>100 W	69	May 1, 1994.
	≤100 W	45	May 1, 1994.

* Nominal lamp watts means the wattage at which a fluorescent lamp is designed to operate. 42 U.S.C. 6291(29)(H).

(2) The standards described in paragraph (n)(1) of this section do not apply to:

(i) Any 4-foot medium bipin lamp or 2-foot U-shaped lamp with a rated wattage less than 28 watts;

(ii) Any 8-foot high output lamp not defined in ANSI C78.81 (incorporated

by reference; see § 430.3) or related supplements, or not 0.800 nominal amperes; or

(iii) Any 8-foot slimline lamp not defined in ANSI C78.3 (incorporated by reference; see § 430.3).

(3) Each of the following general service fluorescent lamps manufactured

on or after January 26, 2018, shall meet or exceed the following lamp efficacy standards shown in the table:

Lamp type	Correlated color temperature	Minimum average lamp efficacy lm/W
4-foot medium bipin lamps (straight-shaped lamp with medium bipin base, nominal overall length of 48 inches, and rated wattage of 25 or more).	≤4,500K	92.4
	>4,500K and ≤7,000K	88.7
2-foot U-shaped lamps (U-shaped lamp with medium bipin base, nominal overall length between 22 and 25 inches, and rated wattage of 25 or more).	≤4,500K	85.0
	>4,500K and ≤7,000K	83.3
8-foot slimline lamps (instant start lamp with single pin base, nominal overall length of 96 inches, and rated wattage of 49 or more).	≤4,500K	97.0
	>4,500K and ≤7,000K	93.0
8-foot high output lamps (rapid start lamp with recessed double contact base, nominal overall length of 96 inches).	≤4,500K	92.0
	>4,500K and ≤7,000K	88.0
4-foot miniature bipin standard output lamps (straight-shaped lamp with miniature bipin base, nominal overall length between 45 and 48 inches, and rated wattage of 25 or more).	≤4,500K	95.0
	>4,500K and ≤7,000K	89.3
4-foot miniature bipin high output lamps (straight-shaped lamp with miniature bipin base, nominal overall length between 45 and 48 inches, and rated wattage of 44 or more).	≤4,500K	82.7
	>4,500K and ≤7,000K	76.9

Rated wattage is defined with respect to fluorescent lamps and general service fluorescent lamps in § 430.2.

(4) Each of the following incandescent reflector lamps manufactured after July

14, 2012, must meet or exceed the lamp efficacy standards shown in the table:

Rated wattage	Lamp spectrum	Lamp diameter inches	Rated voltage of lamp	Minimum average lamp efficacy lm/W
40–205	Standard Spectrum	>2.5	≥125 V <125 V	6.8*P ^{0.27} 5.9*P ^{0.27}
		≤2.5	≥125 V <125 V	5.7*P ^{0.2} 5.0*P ^{0.27}
40–205	Modified Spectrum	>2.5	≥125 V <125 V	5.8*P ^{0.27} 5.0*P ^{0.27}
		≤2.5	≥125 V <125 V	4.9*P ^{0.27} 4.2*P ^{0.27}

Note 1: P is equal to the rated wattage, in watts.

Note 2: Standard Spectrum means any incandescent reflector lamp that does not meet the definition of modified spectrum in § 430.2.

(5) The standards specified in this section do not apply to the following types of incandescent reflector lamps:

(i) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps;

(ii) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps; or

(iii) R20 incandescent reflector lamps rated 45 watts or less.

* * * * *

(x) *General service incandescent lamps, intermediate base incandescent*

lamps and candelabra base incandescent lamps.

(1) The energy conservation standards in this paragraph apply to general service incandescent lamps:

(i) Intended for a general service or general illumination application (whether incandescent or not);

(ii) Has a medium screw base or any other screw base not defined in ANSI C81.61 (incorporated by reference; see § 430.3); and

(iii) Is capable of being operated at a voltage at least partially within the range of 110 to 130 volts.

(2) General service incandescent lamps manufactured after the effective dates specified in the tables below, except as described in paragraph (x)(3) of this section, shall have a color rendering index greater than or equal to 80 and shall have rated wattage no greater than and lifetime no less than the values shown in the table below:

GENERAL SERVICE INCANDESCENT LAMPS

Lumen ranges *	Maximum rated wattage	Minimum lifetime ** (hrs)	Effective date
1490–2600	72	1,000	1/1/2012
1050–1489	53	1,000	1/1/2013
750–1049	43	1,000	1/1/2014
310–749	29	1,000	1/1/2014

* Use measured initial lumen output to determine the applicable lumen range.

** Use lifetime determined in accordance with 10 CFR 429.27 to determine compliance with this standard.

(3) Modified spectrum general service incandescent lamps manufactured after the effective dates specified shall have

a color rendering index greater than or equal to 75 and shall have a rated wattage no greater than and lifetime no

less than the values shown in the table below:

MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

Lumen ranges *	Maximum rated wattage	Minimum lifetime ** (hrs)	Effective date
1118–1950	72	1,000	1/1/2012
788–1117	53	1,000	1/1/2013
563–787	43	1,000	1/1/2014
232–562	29	1,000	1/1/2014

* Use measured initial lumen output to determine the applicable lumen range.

** Use lifetime determined in accordance with 10 CFR 429.27 to determine compliance with this standard.

(4) Each candelabra base incandescent lamp shall not exceed 60 rated watts.

(5) Each intermediate base incandescent lamp shall not exceed 40 rated watts.

* * * * *

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Part III

The President

Proclamation 10218—Prayer for Peace, Memorial Day, 2021
Order of May 28, 2021—Sequestration Order for Fiscal Year 2022
Pursuant to Section 251A of the Balanced Budget and Emergency Deficit
Control Act, as Amended

Presidential Documents

Title 3—

Proclamation 10218 of May 28, 2021

The President

Prayer for Peace, Memorial Day, 2021

By the President of the United States of America

A Proclamation

On Memorial Day, we honor and reflect upon the courage, integrity, and selfless dedication of the members of our Armed Forces who have made the greatest sacrifice in service to our Nation. Whether in the waters of the Pacific, on the beachheads of Europe, in the deserts of the Middle East, or in the mountains of Afghanistan, American service members have given their lives to uphold our Constitution and to defend the safety and freedoms of our citizens. These patriots embody the best of the American spirit. They put themselves on the line for our shared values—for duty, honor, country—and they paid the ultimate price. Our Nation can never fully repay the debt we owe to our fallen heroes and their families.

Jill and I know what it means to have a child serving in a war zone—the ever-present concern for your loved one and their fellow service members. Today and every day, we ask God to protect our troops. We also recognize the tremendous loss endured by America's Gold Star families—the families of military members who died in conflict. We have a sacred obligation as a Nation to support those families and to always honor the memories of their loved ones.

That is the vow we make each year on Memorial Day. Our Nation will never forget the courage and patriotism demonstrated by the countless women and men who laid down their lives so that we may continue to pursue a more perfect Union and to protect the unalienable rights Americans hold dear. They came from every part of the country, of every background and belief, united by a shared belief in our uniquely American creed—that all people are created equal. We will honor their legacy by continuing our work to live up to that commitment and to advance the values they lived and died to defend. We will continue to fight for equity and inclusion in our country and institutions, and ensure every qualified American who is willing to serve our country—regardless of race, religion, gender identity, sexual orientation, or background—has a fair and equal opportunity to do so.

We will continue to honor our fallen service members through the actions of a new generation who volunteer to serve in uniform, who anchor our military to our democratic values, and who stand ready to deter aggression from our enemies and, if required, fight and defend our Nation. Today—as we keep true to the memory of our fallen heroes—we will endeavor to meet their legacy and once more lead the world through the power of our example and not just the example of our power.

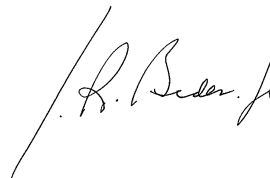
As our Nation's service members continue to risk their lives to protect our homeland and thwart our enemies, we must not lose sight of our desire for enduring peace. Every day, countless Americans pray and work for peace so that we may one day live in a world where American patriots need not make the ultimate sacrifice, and where all people live in freedom and prosperity. As a Nation, we are grateful to the brave members of our Armed Services—both past and present—who have forged the legacy for that possibility.

In honor and recognition of all of our fallen service members, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested that the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer and reflection. The Congress, by Public Law 106-579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim Memorial Day, May 31, 2021, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time when people might unite in prayer and reflection. I urge the press, radio, television, and all other information media to cooperate in this observance. I further ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I request the Governors of the United States and its Territories, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of May, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

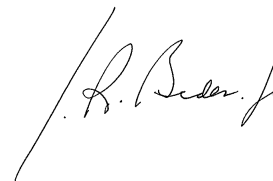
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Order of May 28, 2021

Sequestration Order for Fiscal Year 2022 Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended

By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act (the “Act”), as amended, 2 U.S.C. 901a, I hereby order that, on October 1, 2021, direct spending budgetary resources for fiscal year 2022 in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of May 28, 2021.

All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget’s report of May 28, 2021, prepared pursuant to section 251A(9) of the Act.



THE WHITE HOUSE,
May 28, 2021.

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Vol. 86, No. 105

Thursday, June 3, 2021

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