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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 275

**[FNS–2018–0043]**

**RIN 0584–AE64**

## Supplemental Nutrition Assistance Program: Non-Discretionary Quality Control Provisions of Title IV of the Agricultural Improvement Act of 2018; Correction

**AGENCY:** Food and Nutrition Service (FNS), Department of Agriculture (USDA).

**ACTION:** Correcting amendment and extension of comment period for interim final rule.

**SUMMARY:** This document contains a correction to an interim final rule published in the **Federal Register** on Friday, August 13, 2021. The rule codifies statutory requirements enacted by the Agriculture Improvement Act of 2018. This document also extends the comment period for the interim final rule.

**DATES:**

*Effective date:* The correction is effective September 2, 2021.

*Comment date:* The comment period for the interim final rule published August 13, 2021 (86 FR 44575), is extended. Written comments on the interim final rule must be received on or before November 1, 2021 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on the interim final rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Stephanie Proska, Branch Chief, Quality Control Branch, Program Accountability and Administration Division; Food and Nutrition Service; 1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314.
- *Email:* Send comments to *SNAPQCReform@usda.gov.* Include Docket ID Number FNS–2018–0043, ''SNAP: Non-Discretionary QC provisions of Title IV of PL 115–334'' in the subject line of the message.
- All written comments submitted in response to the interim final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephanie Proska, Food and Nutrition Service, 1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314, via phone at (703) 305–2437 or email at *SNAPQCReform@usda.gov.*

**SUPPLEMENTARY INFORMATION:** In an interim final rule published on Friday, August 13, 2021 (86 FR 44575), amendatory instruction 8b incorrectly called for revising paragraph (b) in § 275.21. It should have instructed a revision to paragraph (b) introductory text. This led to the erroneous removal of paragraphs (b)(1) through (4). In addition, the preamble of the interim final rule discussed amending paragraph (b)(1) to update language associated with State agencies submitting ''edited findings'' for the FNS Form–380–1 and FNS Form 245 and to update outdated language regarding the technology used for submitting findings to FNS. However, the amendatory text for these changes were erroneously excluded from the published rule. Therefore, this document makes a correcting amendment to § 275.21(b) to restore and revise the text for paragraph (b)(1) and restore the erroneously lost regulatory text for paragraphs (b)(2) through (4). All other regulatory provisions in the August 13, 2021, interim final rule remain unchanged. This document also extends the comment period for the interim final rule until November 1, 2021 to provide the public ample time to consider these amendments.

### List of Subjects in 7 CFR Part 275

Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 275 is corrected by making the following correcting amendment:

## PART 275—PERFORMANCE REPORTING SYSTEM

■ 1. The authority citation for part 275 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. Section 275.21 is amended by adding paragraphs (b)(1) through (4) to read as follows:

**§ 275.21 Quality control review reports.**

* * * * *

(b) * * *

(1) The State agency shall utilize SNAPQCS, FNS' automated, web-based QC System, to report all required QC forms, supporting evidence, and information necessary to understand the disposition and final findings for active and negative sampled cases to FNS. Upon State agency request, FNS will consider approval of any technical changes in the review results after they have been reported to FNS.

(2) The State agency shall have at least 115 days from the end of the sample month to dispose of and report the findings of all cases selected in a sample month. FNS may grant additional time as warranted upon request by a State agency for cause shown to complete and dispose of individual cases.

(3) The State agency shall supply the FNS Regional Office with individual household case records and the pertinent information contained in the individual case records, or legible copies of that material, as well as legible hard copies of individual Forms FNS–380, FNS–380–1, and FNS–245 or other FNS-approved report forms, within 10 days of receipt of a request for such information.

(4) For each case that remains pending 115 days after the end of the sample month, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FNS extends the time frames in paragraph

(b)(2) of this section, this date will be extended accordingly. If FNS determines that the report in the first sentence of this paragraph (b)(4) does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FNS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of administrative funds in accordance with the provisions of § 276.4.

* * * * *

**Cynthia Long,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2021–18743 Filed 9–1–21; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. FDA–2018–C–4117]**

## Listing of Color Additives Exempt From Certification; Butterfly Pea Flower Extract

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of an aqueous extract of butterfly pea flower (*Clitoria ternatea*) as a color additive in various food categories at levels consistent with good manufacturing practice. We are taking this action in response to a color additive petition (CAP) submitted by Exponent, Inc., on behalf of Sensient Colors, LLC (Sensient).

**DATES:** This rule is effective October 5, 2021. See section X for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the final rule by October 4, 2021.

**ADDRESSES:** You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before October 4, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 4, 2021. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic objections in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov*.
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–C–4117 for ''Listing of Color Additives Exempt From Certification; Butterfly Pea Flower Extract.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Stephen DiFranco, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–2710.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

In a notification published in the **Federal Register** of November 13, 2018 (83 FR 56258), we announced that we filed a color additive petition (CAP 8C0313) submitted by Sensient Colors, LLC, c/o Exponent, Inc., 1150 Connecticut Avenue NW, Suite 1100, Washington, DC 20036. The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73), ''Listing of Color Additives Exempt from Certification,'' to provide for the safe use of an aqueous extract of butterfly pea flower (*Clitoria ternatea*) as a color

additive in: (1) Alcoholic beverages (liquor, liqueurs, and flavored alcoholic beverages); [1] (2) ready-to-drink non-alcoholic beverages; (3) liquid coffee creamers (dairy and non-dairy); (4) ice cream and frozen dairy desserts; (5) fruit preparation in yogurt; (6) chewing gum; (7) coated nuts; (8) hard candy; and (9) soft candy, at levels consistent with good manufacturing practice (GMP).

The petition describes butterfly pea flower extract as a dark blue water-soluble extract derived from the flower petals of *Clitoria ternatea.*

## II. Background

The color additive that is subject of this petition is the dark blue liquid produced through the water extraction of the dried flower petals of *Clitoria ternatea,* commonly known as the butterfly pea plant. Butterfly pea flower extract contains 42 to 62 percent water, 22 to 43 percent carbohydrates, and 8 to 12 percent proteins. The principal coloring components in butterfly pea flower extract are anthocyanins, mainly delphinidin derivatives. The extract also contains flavonols, mainly quercetin and kaempferol derivatives as minor components. These anthocyanins and flavonols are naturally present in various fruits and vegetables commonly consumed in the U.S. diet (Ref. 1).

The color additive is manufactured by sourcing dried flowers of *Clitoria ternatea.* An infusion is prepared by adding demineralized water to the flower petals, which is separated from the plant mass via filtration. The butterfly pea flower extract is further processed by ultrafiltration to remove any residues of plant products greater than 2,500 daltons (Da). The extract is then concentrated to a standardized liquid with an anthocyanin content of approximately 2 percent and pasteurized. Citric acid may be added to control the pH of the extract (Ref. 2).

The petitioner proposed specifications for butterfly pea flower extract of less than 1 milligram per kilogram (mg/kg) (1 part per million (ppm)) of arsenic, less than 1 mg/kg (1 ppm) of cadmium, less than 1 mg/kg (1 ppm) of lead, and less than 1 mg/kg (1 ppm) of mercury, and pH $3.75 \pm 0.75$ in the butterfly pea flower extract. Upon consideration of the data in the petition and other information available to FDA, we amended the proposed specification for pH to not less than 3.0 and not more than 4.5 at 25 °C (Ref. 2).

The petitioner manufactures the extract starting with butterfly pea flowers grown without the use of added pesticide substances. The petition provides data to support its assertion that no detectable levels of 340 substances commonly used as pesticide are found in the finished extract. The flowers were analyzed using the California Department of Food and Agriculture multi-residue pesticide analysis (Ref. 3).

Currently, there are no residual pesticide tolerance levels for *Clitoria ternatea* codified by the U.S. Environmental Protection Agency in 40 CFR part 180. In cases where no tolerance levels are set, the allowable residual pesticide levels that may remain on the raw agricultural commodity are zero (40 CFR 180.5). Under section 402(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(2)(B)), food is adulterated if it bears or contains pesticide chemical residue that is unsafe within the meaning of section 408(a) of the FD&C Act (21 U.S.C. 346a(a)).

## III. Safety Evaluation

Under section 721(b)(4) of the FD&C Act (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a proposed use unless the data and information available to FDA establish that the color additive is safe for that use. Our color additive regulations at 21 CFR 70.3(i) define ''safe'' to mean that there is convincing evidence establishing with reasonable certainty that no harm will result from the intended use of the color additive.

To determine whether a color additive is safe under the general safety clause, the FD&C Act requires FDA to conduct a fair evaluation of the available data and consider, among other relevant factors: (1) Probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food, drugs or devices, or cosmetics because of the use of the additive; (2) cumulative effect, if any, of such additive in the diet of man or animals, taking into account chemically or pharmacologically related substance or substances in such diet; and (3) safety factors recognized by experts ''as appropriate for the use of animal experimentation data'' (see section 721(b)(5)(A) through (C) of the FD&C Act).

As part of our safety evaluation to establish with reasonable certainty that a color additive is not harmful under its intended conditions of use, we consider the additive's manufacturing and stability; the projected human dietary exposure to the additive and any impurities resulting from the petitioned use of the additive; the additive's toxicological data; and other relevant information (such as published literature) available to us.

## IV. Safety of Petitioned Use of the Color Additive

### *A. Exposure Estimate*

The petitioner requested that butterfly pea flower extract be permitted at levels consistent with GMP and provided the maximum use levels for the color additive, representing GMP, for each proposed food use (Ref. 4). The petitioner used food consumption data from the 2011–2014 National Health and Nutrition Examination Survey (NHANES) to estimate exposure to butterfly pea flower extract from the proposed uses. Upon further clarification of the proposed uses to include all alcoholic beverages (Ref. 5), we amended the petitioner's exposure estimate to include all alcoholic beverages (Ref. 4).

Using food consumption data from the 2011–2014 NHANES, we estimated the eaters-only exposure to butterfly pea flower extract to be 198 milligrams per person per day (198 mg/p/d) at the mean and 453 mg/p/d at the 90th percentile for the U.S. population aged 2 years and older and 56 mg/p/d at the mean and 118 mg/p/d at the 90th percentile for children 2 to 5 years of age (Ref. 4).

The petition indicated that butterfly pea flower extract could contain up to 2 percent anthocyanins (by weight). Assuming a maximum of 2 percent, we estimated the dietary exposure to anthocyanins from the proposed uses to be 4 mg/p/d at the mean and 9 mg/p/d at the 90th percentile for the U.S. population 2 years of age and older (Ref. 4). Because delphinidin was stated to be the principal anthocyanin in butterfly pea flower extract, the exposure to anthocyanins represents the exposure to delphinidin from the proposed uses of butterfly pea flower extract.

Similarly, we estimated the dietary exposure to quercetin resulting from the proposed uses of butterfly pea flower extract. The petition indicates that butterfly pea flower contains approximately 3 percent (by weight) of flavonols, which are comprised of various quercetin and kaempferol derivatives. We conservatively presumed that all the flavonols present in butterfly pea flower extract were present as quercetin (see below) and estimated quercetin exposure to be 6 mg/p/d at the mean and 14 mg/p/d at the 90th percentile for the U.S. population 2 years of age and older (Ref. 4).

[1] The proposed scope was subsequently amended to include all alcoholic beverages.

*B. Toxicological Considerations*

To establish that butterfly pea flower extract is safe for use as a color additive for the proposed uses, the petitioner used a weight-of-evidence approach based on: (1) Toxicological information about the extract's major coloring component, delphinidin, including a 2013 European Food Safety Authority (EFSA) review of anthocyanins (Ref. 6); (2) a 28-day subacute range finding feeding study in rats; (3) a 90-day feeding study in rats; (4) a bacterial reverse mutation test and an in vitro micronucleous test addressing possible mutagenicity and genotoxicity of butterfly pea flower extract; (5) an in vivo somatic mutation and recombination test conducted on the unprocessed butterfly pea flower parts; (6) in vivo genotoxicity data from published literature on anthothyanins (including delphinidin) and flavonol components (Refs. 7 and 8); (7) clinical human studies of anthocyanins (including delphinidin) and spray-dried butterfly pea flower extract; (8) clinical studies of quercetin and kaempferol, the primary flavonols present; (9) a proteomic assessment of butterfly pea flower extract aimed at establishing that cyclotides found in the tissues of *Clitoria ternatea* are not present in the butterfly pea flower extract; and (10) an allergenicity assessment of butterfly pea flower extract.

We reviewed the oral toxicity studies and agree with the petitioner's conclusions that the no observed adverse effect level in the 90-day study is the highest dose tested (3,500 mg/kg/d of butterfly pea flower extract), which is nearly 500-fold of the 90th percentile daily exposure for U.S. population 2 years and older (Ref. 9). While chronic studies were not provided by the petitioner nor available from the published literature, we believe that chronic toxicity from the intended use of butterfly pea flower extract is unlikely because: (1) We did not identify any potential toxicity effects associated with the use of either butterfly pea flower extract or its anthocyanins and flavonol components from literature that warrant further chronic toxicity studies (Refs. 9 and 10); (2) the systemic oral absorption of anthocyanins and flavonols is generally low (Ref. 9); (3) there are available human clinical studies indicating that the main anthocyanins and flavonol components of butterfly pea flower extract are well tolerated in humans (Ref. 9); and (4) anthocyanins and flavonols are naturally present and widely distributed in many plants used as food, and the exposures to anthocyanins and flavonols from the use of butterfly pea flower extract were estimated to be comparable or lower than the exposure from a typical diet (Ref. 11).

We also did not find any scientific data suggesting reproductive or developmental toxicity; moreover, the genotoxicity studies demonstrate that butterfly pea flower extract is non-mutagenic and non-genotoxic (Ref. 9).

Based on the totality of evidence and a weight of evidence analysis that considered the lack of overall genotoxicity, mode of action, and the level of exposure, we conclude that butterfly pea flower extract is not likely to pose a carcinogenic risk to humans at its intended use levels (Refs. 9 and 10).

Among the available relevant clinical studies, one study of butterfly pea flower extract indicated no acute adverse effect at doses up to 2 grams per person. Other clinical studies, using either anthocyanins or flavonols, suggested tolerance at doses much higher than the exposure level from the consumption of butterfly pea flower extract under the intended condition of use (Ref. 9).

The petitioner provided analytical evidence demonstrating that the cyclotides identified in butterfly pea flower petals were not detected in the butterfly pea flower extract. Therefore, there is no toxicity concern for cyclotides from the consumption of the extract (Ref. 9).

Although there is no evidence in the scientific literature specifically suggesting that either *Clitoria ternatea* flowers or the coloring component delphinidin is associated with allergic or hypersensitive reactions, we note that butterfly pea flower extract contains 8 to 12 percent protein by weight. To address the allergenicity potential of butterfly pea flower extract, the petitioner provided bioinformatic analyses of the 193 protein sequences of *Clitoria ternatea* identified in the National Center for Biotechnology Information protein database. These protein sequences were compared for similarity with the known allergenic protein sequences collected in the AllergenOnline database (Ref. 12). The analysis revealed five protein sequence matches (defined as 35 percent or higher identity over an 80-amino-acid sliding window); however, these proteins are expected to be over 5,000 Da and not likely to pass through the 2,500 Da ultrafiltration system used in the manufacturing process. To mitigate the possible risk that allergenic proteins and other large peptides might pose, our regulation at 21 CFR 73.69(a)(1) requires that the aqueous extract used to produce the color additive undergo ultrafiltration. We agree with the petitioner that the totality of the evidence supports the conclusion that it is extremely unlikely that the proteins in butterfly pea flower extract could act as allergens (Ref. 9).

## V. Conclusion

Based on the data and information in the petition and other available relevant information, we conclude that the petitioned use of butterfly pea flower extract as a color additive in: Alcoholic beverages, sport and energy drinks, flavored or carbonated water, fruit drinks (including smoothies and grain drinks), carbonated soft drinks (fruit-flavored or juice, ginger ale, and root beer), fruit and vegetable juice, nutritional beverages, chewing gum, teas, coated nuts, liquid coffee creamers (dairy and non-dairy), ice cream and frozen dairy desserts, hard candy, dairy and non-dairy drinks, fruit preparations in yogurts, and soft candy is safe, provided the amount of butterfly pea flower extract does not exceed levels consistent with good manufacturing practice.

We further conclude that this color additive will achieve its intended technical effect and is suitable for the petitioned use. Therefore, we are amending the color additive regulations in part 73 to provide for the safe use of this color additive as set forth in this document. In addition, based on the factors in 21 CFR 71.20(b), we conclude that batch certification of butterfly pea flower extract is not necessary to protect the public health.

## VI. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

## VII. Analysis of Environmental Impact

As stated in the November 13, 2018, **Federal Register** notification of filing, the petitioner claimed that this action is categorically excluded under § 25.32(k) (21 CFR 25.32(k)) because butterfly pea flower extract would be added directly to food and is intended to remain in the food through ingestion by consumers and is not intended to replace macronutrients in food. We further stated that if FDA determines a categorical exclusion applies, neither an environmental assessment nor an

environmental impact statement is required. We did not receive any new information or comments regarding this claim of categorical exclusion. We considered the petitioner's claim of categorical exclusion and determined that this action is categorically excluded under § 25.32(k). Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## IX. Section 301(ll) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) to (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this color additive. Accordingly, this final rule should not be construed to be a statement that a food containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all color additive final rules that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

## X. Objections

This rule is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.* We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

## XI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.


1. *Wu, X., G. R. Beecher, J. M. Holden, et al., ''Concentrations of Anthocyanins in Common Foods in the United States and Estimation of Normal Consumption.'' *Journal of Agricultural and Food Chemistry,* 54: 4069–4075, 2006.

2. *Memorandum from B. Petigara Harp, Color Technology Branch, Division of Color Certification and Technology, Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition (CFSAN), FDA, to S. DiFranco, Division of Food Ingredients (DFI), Office of Food Additive Safety (OFAS), CFSAN, FDA, June 4, 2021.

3. Lee, S. M., M. L. Papathakis, H–M. C. Feng, et al., ''Multipesticide Residue Method for Fruits and Vegetables: California Department of Food and Agriculture.'' *Fresenius' Journal of Analytical Chemistry,* 339, 376–383, 1991.

4. *Memorandum from D. Doell, Chemistry Review Team, DFI, OFAS, CFSAN, FDA, to S. DiFranco, DFI, OFAS, CFSAN, FDA, June 7, 2021.

5. *Memorandum of Teleconference from S. DiFranco, Regulatory Review Team, DFI, OFAS, CFSAN, FDA, to the file, April 7, 2020.

6. *EFSA, ''Scientific Opinion on the Re-evaluation of Anthocyanins (E163) as a Food Additive.'' *EFSA Journal,* 11(4): 3145, 2013.

7. *NTP, ''Toxicology and Carcinogenesis Studies of Quercetin (CAS No. 117–39–5) in F344 Rats (Feed Studies).'' NTP Technical Report Series, No. 409, 1992.

8. Hard, G. C., J. C. Seeley, L. J. Betz, et al., ''Re-evaluation of the Kidney Tumors and Renal Histopathology Occurring in a 2-Year Rat Carcinogenicity Bioassay of Quercetin.'' *Food and Chemical Toxicology,* 45: 600–608, 2007.

9. *Memorandum from Y. Zang, Toxicology Review Team, DFI, OFAS, CFSAN, FDA, to S. DiFranco, DFI, OFAS, CFSAN, FDA, June 9, 2021.

10. *Memorandum from S. Mog and S. Francke to Y. Zang. Pathology Consultation Review on Renal Neoplasms in Male F344 rats from National Toxicology Program Technical Report (NTP TR 409) on Quercetin in F344/N Rats (feed studies), October 31, 2019.

11. *USDA. ''Table 1a. Flavonoids from Food and Beverages: Mean Intake (standard error) per Individuals, by Gender and Age, in the United States, What We Eat in America.'' NHANES 2007–2010, 2016.

12. Goodman R. E., M. Ebisawa, F. Ferreira, et al., ''AllergenOnline: A Peer-reviewed, Curated Allergen Database to Assess Novel Food Proteins for Potential Cross-reactivity.'' *Molecular Nutrition and Food Research,* 60(5):1183–1198, 2016.


## List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, 21 CFR part 73 is amended as follows:

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

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

**Authority:** 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Add § 73.69 to subpart A to read as follows:

### § 73.69 Butterfly pea flower extract.

(a) *Identity.* (1) The color additive butterfly pea flower extract is a dark blue liquid prepared by the aqueous extraction of dried butterfly pea flowers from *Clitoria ternatea.* The extract is further processed by ultrafiltration to remove residues of plant products, followed by concentration and pasteurization. Citric acid may be used to control the pH. The color additive

contains anthocyanins as the principal coloring component.

(2) Color additive mixtures for food use made with butterfly pea flower extract may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Butterfly pea flower extract must conform to the following specifications and must be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

(1) pH, not less than 3.0 and not more than 4.5 at 25 °C.

(2) Lead, not more than 1 milligram per kilogram (mg/kg) (1 part per million (ppm)).

(3) Arsenic, not more than 1 mg/kg (1 ppm).

(4) Mercury, not more than 1 mg/kg (1 ppm).

(5) Cadmium, not more than 1 mg/kg (1 ppm).

(c) *Uses and restrictions.* Butterfly pea flower extract may be safely used for coloring alcoholic beverages, sport and energy drinks, flavored or carbonated water, fruit drinks (including smoothies and grain drinks), carbonated soft drinks (fruit-flavored or juice, ginger ale, and root beer), fruit and vegetable juice, nutritional beverages, chewing gum, teas, coated nuts, liquid coffee creamers (dairy and non-dairy), ice cream and frozen dairy desserts, hard candy, dairy and non-dairy drinks, fruit preparations in yogurts, and soft candy in amounts consistent with good manufacturing practice, except that it may not be used for coloring foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act, unless the use of added color is authorized by such standards.

(d) *Labeling requirements.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes must conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act.

Dated: August 30, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–18995 Filed 9–1–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2021–0426]**

**RIN 1625–AA00**

## Special Local Regulation; Swim for Special Operations Forces; San Diego Bay, San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending its special local regulations for recurring marine parades, regattas, and other events in Southern California Annual Marine Events for the San Diego Captain of the Port Zone. This final rule will add one new recurring special local regulation. This action is necessary to provide for the safety of life on the navigable waters during the event. This final rule will restrict vessel traffic in the designated areas during the events unless authorized by the Captain of the Port San Diego or a designated representative.

**DATES:** This rule is effective September 2, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0426 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard; telephone 619–278–7656, email *MarineEventsSD@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 Information and Regulatory History

On April 8, 2021, The Honor Foundation notified the Coast Guard that it will be hosting the Honor Foundation Swim for Special Operations Forces annually on a Saturday during the month of September. The regulated area would cover all navigable waters of the San Diego Bay, beginning at Glorietta Bay, continuing to Tidelands Park before proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum.

In response, on July 2, 2021 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Swim for Special Operations Forces; San Diego Bay, San Diego, CA (86 FR 35240). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this annual marine event. During the comment period that ended August 2, 2021 we received one comment.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The Captain of the Port San Diego (COTP) has determined that potential hazards associated with the Honor Foundation Swim for Special Operations Forces annually on a Saturday during the month of September will present a safety of life concern on navigatable waters. The purpose of this rule is to ensure safety of life on the navigable waters in the safety zone before, during, and after the scheduled event. For the reasons stated above, we are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because enforcement of this safety zone is necessary to protect swimmers and vessels from the dangers associated with the swim race events planned for a Saturday in September 2021.

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

As noted above, we received one comment on the NPRM published July 2, 2021. The commentor proposed a method for intercepting and impounding vessels entering the safety zone. The Coast Guard was not proposing to spcecify how on scene representatives must handle situations where vessels enter the safety zone in this rulemaking. The purpose of this rulemaking is to establish the reoccurring annual safety zone and its location. The Coast Guard has existing regulations and policies that cover enforcement and this rulemaking does not intend to deviate from those practices. Accordingly, no changes to the regulatory text were made in response to this comment.

There is one nonsubstantive change in the regulatory text from the proposed rule to remove a typographical error, ''SS'', in the event type.

This rule establishes a safety zone annually on a Saturday in September. The safety zone will cover all waters of San Diego Bay, from surface to bottom, beginning at Glorietta Bay, continuing to Tidelands Park, proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation, which would impact a small-designated area of the San Diego Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the areas, and the rule would allow vessels to seek permission to enter the areas.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area that would prohibit persons and vessels from transiting the regulated area during the swim event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### *G. Protest Activities*

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

## List of Subjects in 33 CFR Part 100

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. In § 100.1101, amend table 1 to § 100.1101, by adding an entry for ''16. Swim for Special Operations Forces; San Diego Bay, San Diego, CA'' to read as follows:

**§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.**

TABLE 1 TO § 100.1101

* * * * * * *

| 16. Swim for Special Operations Forces; San Diego Bay, San Diego, CA | |
|---|---|
| Sponsor | The Honor Foundation. |
| Event Description | Swim race. |
| Date | Saturday in September. |
| Location | San Diego Bay, CA. |
| Regulated Area | All waters of San Diego Bay, from surface to bottom, beginning at Glorietta Bay, continuing to Tidelands Park, proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum. |

* * * * *

Dated: August 27, 2021.

**T.J. Barelli,**

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

[FR Doc. 2021–18955 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2021–0653]**

**RIN 1625–AA08**

## Special Local Regulation; Lighthouse Musicfest, Huntington Bay, Long Island, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation of certain navigable waters of Huntington Bay, Long Island, NY, for the Lighthouse Musicfest marine event. This action is necessary to provide the safety of life on these navigable waters during the event scheduled for Saturday, September 4, 2021. This rule will allow the Coast Guard to prohibit vessel traffic in the vicinity of the event and establishes mooring areas and a speed restriction in the designated zone.

**DATES:** This rule is effective from 9:30 a.m. through 7:30 p.m. on Saturday, September 4, 2021 with a rain date effective from 9:30 a.m. through 7:30 p.m. on Sunday, September 5, 2021. The rule will only be subject to enforcement from 9:30 a.m. through 7:30 p.m. on September 4, 2021, unless the event is delayed because of weather conditions in which case it may be subject to enforcement those same hours on September 5, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0653 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Chris Gibson, Waterways Management Division, U.S. Coast Guard; telephone 203–468–4565, email *Chris.A.Gibson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The event sponsor was late in submitting the marine event application. This late submission did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the effective date. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of waterway users. Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of spectators and those involved in the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary special local regulation must be established on September 4, 2021 to ensure the safety of spectators and vessels during the event.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that extra and unusual hazards exists for persons or vessels operating within the waters of Huntington Bay, Long Island, NY with the Lighthouse Musicfest marine event. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulated area during the Lighthouse Musicfest marine event.

## IV. Discussion of the Rule

The COTP is establishing two mooring areas and one no wake zone for this temporary special local regulation to restrict vessel traffic for the safety of persons and property. The special local regulation will cover certain navigable waters of Huntington Bay, Long Island, NY from 9:30 a.m. through 7:30 p.m. on Saturday, September 4, 2021 with a rain date effective from 9:30 a.m. through 7:30 p.m. on Sunday, September 5, 2021. The rule only be subject to enforcement from 9:30 a.m. through 7:30 p.m. on September 4, 2021, unless the event is delayed because of weather conditions in which case it may be subject to enforcement those same hours on September 5, 2021. The temporary special local regulation will cover speciifc waters of Huntington Bay, NY.

The Lloyd Harbor mooring area, will start at the Huntington Lighthouse, NY, in position at 40°54′38″ N, 073°25′52″ W; then southwest to a point in position at 40°54′28.47″ N, 073°26′17.59″ W; then west along the coast of West Neck to a point in position at 40°54′46.32″ N, 073°26′56.25″ W; then north to a point in position at 40°54′56.24″ N, 073°26′56.24″ W; then east along Lloyd Neck to a point in position at 40°54′49.78″ N, 073°26′8.51″ W; then north-northeast along the coast of Lloyd Neck to a point in position at 40°55′5.58″ N, 073°25′50.22″ W; and then to point of origin at Huntington Lighthouse, NY in position at 40°54′38″ N, 073°25′52″ W (NAD 83).

The East of Channel mooring area, will start at the point in position at 40°54′23.21″ N, 073°25′35.55″ W; then west along the coast of Wincoma, NY to a point in position at 40°54′23″ N, 073°25′55.7″ W; then northeast to a point in position at 40°54′37.7″ N, 073°25′42.4″ W; then southeast to a point in position at 40°54′34.4″ N, 073°25′29.4″ W; and then to point of origin in position at 40°54′23.21″ N, 073°25′35.55″ W (NAD 83).

The Slow-No Wake Zone will start at the point in position at 40°55′38.77″ N, 073°25′45.96″ W; then southeast to a point in position 40°54′51.44″ N, 073°24′17.76″ W; then south-southwest to a point in position at 40°54′17.65″ N, 073°24′23.71″ W; then west along the coast of the Village of Huntington Bay and Wincoma, NY to a point in position at 40°54′23″ N, 073°25′55.7″ W; then west-northwest to a point in position at 40°54′27.12″ N, 073°26′26.85″ W; then north-northwest to a point in position at 40°54′49.78″ N, 073°26′8.51″ W; and then north along the coast of Lloyd Neck to the point of origin at position at 40°55′38.77″ N, 073°25′45.96″ W (NAD 83). People are advised to visit *www.huntingtonlighthouse.org/music_fest* to get visual chartlet of the temporary special local regulation.

The regulated area is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the Lighthouse Musicfest marine event. No vessel or person will be permitted to anchor, moor, or loiter outside of the established mooring areas. All persons and vessels within the regulated area are subject to a ''Slow-No Wake'' speed limit. Vessels within the SLR may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the regulation be such that it creates a danger of injury to persons or damage to vessels or structures of any kind unless specified by the COTP or their designated representative.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on size, location, and duration and time-of-day of the special local regulation. This rule involves a special local regulation lasting approximately 10 hours and impacting waters of Huntington Bay, Long Island, NY. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the SLR and the rule would allow vessels to seek permission to transit the regulated area. Vessel traffic would also be able to request permission from the COTP or a designated representative to enter the regulated area.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary special local regulation lasting from 9:30 a.m. through 7:30 p.m. on September 4, 2021 that will restrict movement in Huntington Bay, Long Island, NY for the duration of the marine event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 100**

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T01–0653 to read as follows:

**§ 100.T01–0653 Special Local Regulation; Lighthouse Musicfest, Huntington Bay, Long Island, NY.**

(a) *Regulated Area.* The regulations in this section apply to the following area: Waters of Huntington Bay, Long Island NY. No persons or vessels may anchor, moor, or loiter unless in the designated mooring areas specified below.

(1) *The Lloyd Harbor Mooring Area.* Beginning at the Huntington Lighthouse, NY in position at 40°54′38″ N, 073°25′52″ W; then southwest to a point in position at 40°54′28.47″ N, 073°26′17.59″ W; then west along the coast of West Neck to a point in position at 40°54′46.32″ N, 073°26′56.25″ W; then north to a point in position at 40°54′56.24″ N, 073°26′56.24″ W; then east along Lloyd Neck to a point in position at 40°54′49.78″ N, 073°26′8.51″ W; then north-northeast along the coast of Lloyd Neck to a point in position at 40°55′5.58″ N, 073°25′50.22″ W; and then to point of origin at Huntington Lighthouse, NY in position at 40°54′38″ N, 073°25′52″ W.

(2) *The East of Channel Mooring Area.* Beginning at the point in position at 40°54′23.21″ N, 073°25′35.55″ W; then west along the coast of Wincoma, NY to a point in position at 40°54′23″ N, 073°25′55.7″ W; then northeast to a point in position at 40°54′37.7″ N, 073°25′42.4″ W; then southeast to a point in position at 40°54′34.4″ N, 073°25′29.4″ W; and then to point of origin in position at 40°54′23.21″ N, 073°25′35.55″ W.

(3) *Slow-No Wake Area.* Beginning at the point in position at 40°55′38.77″ N, 073°25′45.96″ W; then southeast to a point in position 40°54′51.44″ N, 073°24′17.76″ W; then south-southwest to a point in position at 40°54′17.65″ N, 073°24′23.71″ W; then west along the coast of the Village of Huntington Bay and Wincoma, NY to a point in position at 40°54′23″ N, 073°25′55.7″ W; then west-northwest to a point in position at 40°54′27.12″ N, 073°26′26.85″ W; then north-northwest to a point in position at 40°54′49.78″ N, 073°26′8.51″ W; and then north along the coast of Lloyd Neck to the point of origin at position at 40°55′38.77″ N, 073°25′45.96″ W. All coordinates are approximate and are based on datum NAD 1983.

(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 Long Island Sound (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* (1) All persons and vessels are prohibited from anchoring, mooring, or loitering outside the designated mooring areas and are subject to a ''Slow-No Wake'' speed limit. Vessels within the regulated area described in paragraph (a)(3) of this section may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the ''Slow-No Wake'' area be such that it creates a danger of injury to persons or damage to vessels or structures unless specified by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the Designated Representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Long Island Sound Command Center at (203) 468–4401. Those persons in the regulated area must comply with all lawful orders or directions given to them by the COTP or the Designated Representative.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 7:30 p.m. on September 4, 2021 with a rain date that may be enforced from 9:30 a.m. to 7:30 p.m. on September 5, 2021. A Broadcast Notice to Mariners will let persons know the actual date of the enforcement period.

Dated: August 27, 2021.

**E.J. Van Camp,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. 2021–19014 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2021–0219]**

**RIN 1625–AA00**

## Safety Zone; Seagull Bridge, Quinnipiac River, Hamden, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters within a 25-yard radius of any foundation, support, stanchion, pier or abutment of the Seagull Bridge located on the Quinnipiac River, Hamden, CT. The safety zone is needed to protect personnel and property from potential hazards created by falling debris. Vessels or persons are prohibited from entering the zone unless specifically authorized by the Captain of the Port Long Island Sound or a designated representative.

**DATES:** This temporary interim rule is effective without actual notice from September 2, 2021 through September 30, 2021. For the purposes of enforcement, actual notice will be used from April 29, 2021, until September 2, 2021.

Comments and related material must be received by the Coast Guard on or before October 4, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0219 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.

To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0219 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this temporary interim rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary interim rule, call or email Lieutenant Jennifer L. Sheehy, Waterways Management Chief, U.S. Coast Guard; telephone 203–468–4432, email *Jennifer.L.Sheehy@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

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E. Unfunded Mandates Reform Act
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G. Protest Activities

### I. Public Participation and Request for Comments

The Coast Guard views 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. Your comment can help us amend this regulation so that it provides a better solution to the problem we seek to address. We may issue a temporary final rule or other appropriate document in response to your comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this temporary interim rule for alternate instructions. Documents mentioned in this temporary interim rule as being available in the docket, and all public comments, will be available 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 temporary interim rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you visit the online docket and sign up for email alerts, you will be notified when comments are posted.

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

We do not plan to hold a public meeting but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

### II. Table of Abbreviations

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

### III. Background Information and Regulatory History

This rulemaking establishes a temporary safety zone for the waters around the Seagull Bridge, Quinnipiac River, Hamden, CT. On April 1, 2021, the Coast Guard received notice of debris falling from the Seagull Bridge and that the bridge is displaying signs of failure; thus creating a hazardous situation. As a temporary interim rule, this will allow the Coast Guard to expeditiously establish a safety zone, while also providing time to complete a structural analysis of the Seagull Bridge.

If we determine that changes to the temporary interim rule are necessary, the Coast Guard will publish a temporary final rule or other appropriate document.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this temporary interim rule because doing so would be impracticable and contrary to the public interest. Publishing an NPRM and delaying the effective date of this rule to await public comment is contrary to the safety zone's intended objective, since immediate action is needed to protect persons and property from the potential falling debris from the Seagull Bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Due

to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property, and the environment. Therefore, a 30-day notice is impracticable. Delaying the effective date of this temporary interim rule would be contrary to the public interest because immediate action is needed to protect persons and vessels from the potential safety hazards associated with the Seagull Bridge.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

## IV. Legal Authority and Need for the Temporary Interim Rule

The Coast Guard is issuing this temporary interim rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that potential hazards associated with falling debris from the bridge structure would be a safety concern for anyone within a 25-yard radius of the Seagull Bridge. This temporary interim rule is needed to protect personnel and property in the navigable waters around the safety zone from the potential safety hazards associated with the Seagull Bridge.

## V. Discussion of the Temporary Interim Rule

This temporary interim rule establishes a temporary safety zone from April 29, 2021 through September 30, 2021, or until the safety zone is rescinded. The safety zone will cover all navigable waters 25-yards around the Seagull Bridge located on the Quinnipiac River, Hamden, CT, at 41°20′09.8″ N, 072°53′19.7″ W. The duration of the safety zone is intended to protect personnel and property within these navigable waters. All vessels or persons will be prohibited to enter the safety zone without obtaining permission from the COTP or a designated representative.

## VI. Regulatory Analyses

We developed this temporary interim 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 temporary interim rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This temporary safety zone will temporarily restrict navigation in the 25-yards around the Seagull Bridge from April 29, 2021 through September 30, 2021. This temporary interim rule allows persons or vessels to seek permission to enter the safety zone. Additionally, the Coast Guard will notify the public of the enforcement of this temporary interim rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners to increase public awareness of this safety zone.

### *B. Impact on Small Entities*

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary interim rule. If the temporary interim 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 temporary interim rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This temporary interim 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 temporary interim 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 temporary interim 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 temporary interim 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 temporary interim rule will not result in such an expenditure, we do discuss the effects of this temporary interim rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this temporary interim 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 temporary interim rule involves a temporary safety zone lasting until September 30, 2021 that will prohibit entry into 25-yards around the Seagull Bridge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination will be produced. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

Accordingly, the Coast Guard amends 33 CFR part 165 as follows:

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

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

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

■ 2. Add § 165.T01–0219 to read as follows:

**§ 165.T01–0219 Safety Zone; Quinnipiac River, Hamden, CT.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Quinnipiac River within a 25-yard radius of any foundation, support, stanchion, pier or abutment of the Seagull Bridge.

(b) *Definition.* 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 Long Island Sound (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP Sector Long Island Sound at 203–468–4401 (Sector Long Island Sound Command Center) or the designated representative via VHF channel 16 to obtain permission to do so. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced until September 30, 2021, or until the COTP determines that the safety zone is no longer necessary.

Dated: April 29, 2021.

**Eva Van Camp,**

*Capt, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. 2021–18926 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2021–0700]**

**RIN 1625–AA00**

## Safety Zones; Delaware River Dredging, Marcus Hook, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing temporary safety zones on the waters of the Delaware River in portions of Marcus Hook Range and Anchorage 7 off Marcus Hook Range. The safety zones will temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while maintenance dredging is being conducted within the Delaware River. The safety zones are needed to protect personnel, vessels and the marine environment from hazards created by dredging operations. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the COTP or his designated representatives.

**DATES:** This interim rule is effective without actual notice from September 2, 2021 through November 2, 2021. For the purposes of enforcement, actual notice will be used from August 31, 2021, through September 2, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0700 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

You may submit comments identified by docket number USCG–2021–0700 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Edmund Ofalt, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271–4889, email *Edmund.J.Ofalt@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 Information and Regulatory History

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for dredging operations. The rule must be in force by August 31, 2021, to serve its purpose of ensuring the safety of the public from hazards associated with dredging operations such as submerged and floating pipeline, booster pumps, head

sections and vessels with a restricted ability to maneuver.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with dredging operations in these locations.

Due to the length of time this temporary rule will be in effect, we are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the rule are necessary we will publish a subsequent rulemaking document in the **Federal Register**.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with dredging operations. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment within a 250-yard radius of dredging operations and all associated pipeline and equipment.

## IV. Discussion of the Rule

This rule establishes safety zones from August 31, 2021, through November 2, 2021. The safety zones are necessary to facilitate annual maintenance dredging of the Delaware River in the vicinity of Marcus Hook Range and Anchorage 7 off Marcus Hook Range (as described in 33 CFR 110.157(a)(8)). Dredging will most likely be conducted with the dredge ESSEX, though other dredges may be used, along with associated dredge pipeline and boosters. The pipeline consists of a combination of floating hoses immediately behind the dredge and submerged pipeline leading to upland disposal areas. Due to the hazards related to dredging operations, the associated pipeline and the location of submerged pipeline, safety zones are being established in the following areas:

(1) Safety zone one includes all navigable waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, and all related dredge equipment when the dredge is operating in Marcus Hook Range, and Anchorage 7. This safety zone is being established for the duration of the maintenance project. Vessels requesting to transit the safety zone must contact the dredge on VHF channel 13 or 16 at least 1 hour prior to arrival to arrange safe passage. At least one side of the main navigational channel will be kept clear for safe passage of vessels in the vicinity of the safety zone. At no time will the entire main navigational channel be closed to vessel traffic. Vessels should avoid meeting in these areas where one side of the main navigational channel is open and proceed per this rule and the Rules of the Road (33 CFR subchapter E).

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8). Vessels wishing to anchor in Anchorage 7 off Marcus Hook Range while this rule is in effect must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. Vessels requesting permission to anchor within Anchorage 7 off Marcus Hook must be at least 650 feet in overall length. The COTP will permit, at minimum, only one vessel to anchor at a time on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage by the COTP for the required inspection. Vessels are encouraged to use Anchorage 9 near the entrance to Mantua Creek, Anchorage 10 at Naval Base, Philadelphia, and Anchorage 6 off Deepwater Point Range as alternative anchorages.

Preference is being given to vessels at least 650 feet in length in the Anchorage 7 while this rule is in effect because vessels of this size are limited in their ability to utilize other anchorages due to draft. The depth of Anchorage 7 provides an acceptable depth for large vessels to bunker and stage for facility arrival. Smaller vessels maintain a host of other options to include, but are not limited to Anchorage 9 and 10 as recommended above.

Entry into, transiting, or anchoring within safety zone one is prohibited unless vessels obtain permission from the COTP or make satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). The COTP may issue updates regarding the vessel and equipment being utilized for these dredging operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on size, location, duration, and traffic management of the safety zones. The safety zones will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic. At least one side of the main navigational channel will be open for vessels to transit at all times. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic can transit the area safely.

Although this regulation will restrict access to regulated areas, the effect of this rule will not be significant because there are a number of alternate anchorages available for vessels to anchor. Furthermore, vessels may transit through the safety zones with the permission of the COTP or make satisfactory passing arrangements with the dredge ESSEX, or other dredge(s) that may be used in accordance with this rule and the Rules of the Road (33 CFR subchapter E). The Coast Guard will notify the maritime public about the safety zones through maritime advisories, allowing mariners to alter their plans accordingly.

### *B. Impact on Small Entities*

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

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones to protect waterway users that would prohibit entry within 250 yards of dredging operations and will close only one side of the main navigation channel. Vessels can request permission to enter the channel. It is 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 Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

## VI. Public Participation and Request for Comments

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

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG- 2021–0700 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

**List of Subjects in 33 CFR Part 165**

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

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

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

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

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

■ 2. Add § 165.T05–0700, to read as follows:

### § 165.T05–0700 Safety Zones, Delaware River Dredging; Marcus Hook, PA

(a) *Location.* The following areas are safety zones:

(1) Safety zone one includes all waters within 250 yards of the dredge displaying lights and shapes for vessels restricted in ability to maneuver as described in 33 CFR 83.27, as well as all

related dredge equipment, while the dredge is operating in Marcus Hook Range. For enforcement purposes Marcus Hook Range includes all navigable waters of the Delaware River shoreline to shoreline, bound by a line drawn perpendicular to the center line of the channel at the farthest upriver point of the range to a line drawn perpendicular to the center line of the channel at the farthest downriver point of the range.

(2) Safety zone two includes all the waters of Anchorage 7 off Marcus Hook Range, as described in 33 CFR 110.157(a)(8) and depicted on U. S. Nautical Chart 12312.

(b) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Entry into or transiting within the safety zone one is prohibited unless vessels obtain permission from the Captain of the Port via VHF–FM channel 16 or 215–271–4807, or make satisfactory passing arrangements via VHF–FM channel 13 or 16 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). Vessels requesting to transit shall contact the operating dredge via VHF–FM channel 13 or 16 at least 1 hour prior to arrival.

(2) Vessels desiring to anchor in safety zone two, Anchorage 7 off Marcus Hook Range, must obtain permission from the COTP at least 24 hours in advance by calling (215) 271–4807. The COTP will permit, at minimum, one vessel at a time to anchor on a ''first-come, first-served'' basis. Vessels will only be allowed to anchor for a 12 hour period. Vessels that require an examination by the Public Health Service, Customs, or Immigration authorities will be directed to an anchorage for the required inspection by the COTP.

(3) Vessels desiring to anchor in safety zone two, Anchorage 7 off Marcus Hook Range, must be at least 650 feet in length overall.

(4) This section applies to all vessels except those engaged in the following operations: enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by federal, state and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This rule will be enforced from August 31, 2021, through November 2, 2020, unless cancelled earlier by the Captain of the Port.

Dated: August 30, 2020.

**Leon McClain, Jr.,**

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

[FR Doc. 2021–19015 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2021–0690]**

**RIN 1625–AA00**

## Safety Zone; Kanawha River, Charleston, WV

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of the Kanawha River from mile marker 58.1 to mile marker 59.1. This temporary safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards associated with the Live on the Levee fireworks display. Entry into this safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective from 9:30 p.m. through 10 p.m. on September 3, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0690 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Jonathan Braddy, Marine Safety Unit Huntington, U. S. Coast Guard; telephone 304–733–0198, email *STL-SMB-MSUHuntington-WWM@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 Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable to publish an NPRM because we must establish this safety zone by September 03, 2021, and we lack sufficient time to provide reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is necessary to protect persons, vessels and the marine environment from the potential hazards associated with the fireworks display.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with a fireworks display taking place over this section of the Kanawha River will be a safety concern for anyone within a one-mile stretch of the waterway. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the scheduled fireworks display.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone for the Live on the Levee fireworks display from 9:30 p.m. until 10 p.m. on September 3, 2021. The safety zone covers all navigable waters of the Kanawha River from mile marker (MM) 58.1 to MM 59.1, in Charleston, WV. The duration of this safety zone is intended to protect persons, vessels, and the marine environment in these

navigable waters during the fireworks display.

No vessel or person is permitted to enter this safety zone without obtaining permission from the COTP or a designated representative. A 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 Sector Ohio Valley. To seek permission to enter, contact the COTP or designated representative via radio on channel 16 or by telephone at 1–800–253–7465. If permission is granted, all persons and vessels shall transit at their slowest safe speed and comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of any changes in the date and times of enforcement through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Safety Marine Information Broadcasts (SMIBs), as appropriate.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), 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, and duration of the temporary safety zone. This rule involves a temporary safety zone lasting thirty minutes that will prohibit entry on a one-mile stretch of the Kanawha River on one evening. Moreover, the Coast Guard will issue a BNMs via VHF–FM marine channel 16 about the safety zone, and the rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *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 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting thirty minutes that will prohibit entry on a one-mile stretch of the Kanawha River on one evening. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER**

**INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

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

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

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

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

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

■ 2. Add § 165.T08–0690 to read as follows:

**§ 165.T08–0690 Safety Zone; Kanawha River, Charleston, WV.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Kanawha River from mile marker (MM) 58.1 to MM 59.1.

(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 Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Enforcement period.* This section will be enforced from 9:30 p.m. through 10 p.m. on September 3, 2021.

(d) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. No vessel or person is permitted to enter this safety zone without obtaining permission from the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by via radio on channel 16 or by telephone at 1–800–253–7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Informational broadcast.* The COTP or a designated representative will inform the public of any changes in the date and times of enforcement through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Safety Marine Information Broadcasts (SMIBs), as appropriate.

Dated: August 27, 2021.

**A.M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2021–18954 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9 and 721

**[EPA–HQ–OPPT–2019–0359; FRL–7486–01–OCSPP]**

**RIN 2070–AB27**

## Significant New Use Rules on Certain Chemical Substances (19–2.F)

*Correction*

In rule document 2021–17388, appearing on pages 46123–46133, in the issue of Wednesday, August 18, 2021, make the following corrections to eliminate a duplicate entry for section 721.11301:

**§ 721.11301 [Corrected]**

■ 1. On page 46128, in the second column, delete lines 35–68.

■ 2. On the same page, in the third column, delete lines 1–4.

[FR Doc. C1–2021–17388 Filed 9–1–21; 8:45 am]

**BILLING CODE 1301–00–PD**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2021–0358; FRL–8686–02–R3]**

## Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standards Second Maintenance Plan for the Greene County Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision pertains to the Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Greene County, Pennsylvania area (Greene County Area). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on October 4, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0358. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2108. Mr. Yarina can also be reached via electronic mail at *Yarina.Adam@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 13, 2021, (86 FR 36673), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the Greene County Area through April 20, 2029, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on February 25, 2020.

### II. Summary of SIP Revision and EPA Analysis

On March 19, 2009 (74 FR 11671, effective April 20, 2009), EPA approved a redesignation request and maintenance plan from PADEP for the Greene County Area. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management*

*District* v. *EPA,*[1] the D.C. Circuit held that this requirement cannot be waived for areas—like the Greene County Area—that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.[2] PADEP's February 25, 2020 submittal fulfills Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the July 13, 2021 NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing that the area's design value[3] is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated PADEP's February 25, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements and proposed approval of the LMP for the Greene County Area as a revision to the Pennsylvania SIP.

Other specific requirements of PADEP's February 25, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

## III. Final Action

EPA is approving PADEP's second maintenance plan for the Greene County Area for the 1997 ozone NAAQS as a revision to the Pennsylvania SIP.

[1] 882 F.3d 1138 (D.C. Cir. 2018).

[2] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

[3] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving PADEP's second maintenance plan for the Greene County Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: August 27, 2021.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry ''Second Maintenance Plan for the State College 1997 8-Hour Ozone Nonattainment Area'' at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(e) * * *

(1) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * * | * * | * | * * | * |
| Second Maintenance Plan for the State College 1997 8-Hour Ozone Nonattainment Area. | Greene County Area ..... | 2/25/20 | 9/2/21, [insert **Federal Register** citation]. | The Greene County area consists solely of Greene County. |

* * * * *

[FR Doc. 2021–19016 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2021–0176; FRL–8759–02–R9]**

### Air Plan Approval; California; Imperial County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Imperial County Air Pollution Control District (ICAPCD or ''District'') portion of the California State Implementation Plan (SIP). The revision concerns emissions of volatile organic compounds (VOCs) from gasoline transfers at bulk gasoline terminals storage. We are approving a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on October 4, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0176. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.*

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

**Table of Contents**

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

## I. Proposed Action

On May 10, 2021 (86 FR 24835), the EPA proposed to approve the following rule into the California SIP.

| Local agency | Rule # | Rule title | Revised | Submitted |
|---|---|---|---|---|
| ICAPCD ..... | 415 | Transfer and Storage of Gasoline ..... | 11/03/2020 | 02/19/2021 |

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

## III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The November 3, 2020, version of Rule 415 will replace the previously approved version of this rule in the SIP.

## IV. Incorporation by Reference

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

## V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 26, 2021.

**Elizabeth Adams,**

*Acting Regional Administrator, Region IX.*

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(332)(i)(A)(*5*) and (c)(562)to read as follows:

**§ 52.220 Identification of plan-in part.**

* * * * *

(c) * * *

(332) * * *

(i) * * *

(A) * * *

(*5*) Previously approved on February 22, 2005 in paragraph (c)(332)(i)(A)(*2*) of this section and now deleted with replacement in (c)(562)(i)(A)(*1*), Rule 415, ''Transfer and Storage of Gasoline,'' amended on May 18, 2004.

* * * * *

(562) Amended regulations for the following APCDs were submitted on February 19, 2021 by the Governor's designee as an attachment to a letter dated February 18, 2021.

(i) *Incorporation by reference.* (A) Imperial County Air Pollution Control District. (*1*) Rule 415, ''Transfer and Storage of Gasoline,'' amended on November 3, 2020.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

[FR Doc. 2021–18887 Filed 9–1–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R02–OAR–2020–0613; FRL–8928–02–R2]**

## Approval and Promulgation of Implementation Plans; New Jersey and New York; 1997 Ozone Attainment Demonstrations for the NY-NJ-CT Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the ozone attainment portions of the State Implementation Plan (SIP) submitted by the states of New Jersey and New York to meet the Clean Air Act (CAA) requirements for attaining the 1997 8-hour ozone national ambient air quality standard (NAAQS). Specifically, the EPA is approving New Jersey's and New York's demonstrations of attainment of the 1997 8-hour ozone NAAQS for their portions of the New York-Northern New Jersey-Long Island NY-NJ-CT Moderate 1997 8-hour ozone nonattainment area (hereafter, the NY-NJ-CT area or the NY-NJ-CT nonattainment area). This action is being taken under the Clean Air Act.

**DATES:** This final rule is effective on October 4, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2020–0613. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are

available electronically through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Omar Hammad, Air Planning Section, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3347.

**SUPPLEMENTARY INFORMATION:** The Supplementary Information section is arranged as follows:

**Table of Contents**

I. Background and Purpose
II. Summary of Action and Comments Received
III. Final Action
IV. Statutory and Executive Order Reviews

## I. Background and Purpose

On June 21, 2021 (86 FR 32363) and June 24, 2021 (86 FR 33154) [1] the Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) for New Jersey and New York. In that proposed rulemaking action, the EPA proposed to approve a portion of New Jersey's and New York's SIP revision submitted on January 2, 2018 and November 13, 2017 respectively, for attainment of the 1997 84 parts per billion (ppb) 8-hour ozone National Ambient Air Quality Standards (NAAQS). New Jersey and New York previously submitted attainment demonstrations for the 1997 84 ppb 8-hour ozone standard which were approved by the EPA. 78 FR 9596 (February 11, 2013). On June 18, 2012, the EPA issued a Clean Data Determination (CDD) for the 1997 84 ppb 8-hour ozone standard for the NY-NJ-CT area based on the attainment demonstrations submitted by the two States. 77 FR 36163 (March 26, 2012). However, on May 4, 2016, EPA rescinded the CDD since the EPA determined that areas within the NY-NJ-CT area exceeded the 1997 84 ppb standard based on 2010–2012 monitoring data. 81 FR 26697 (May 4, 2016). The EPA simultaneously issued a SIP Call for the affected states within the nonattainment area to address the 1997 84 ppb 8-hour ozone standard. The SIP revisions submitted by New Jersey and New York address the attainment demonstration requirements of the May 4, 2016 SIP Call. The EPA's review of this material indicates that ambient air quality monitors within the NY-NJ-CT area are attaining the 1997 ozone NAAQS.

[1] The proposed rule was published twice due to a clerical error.

## II. Summary of Action and Comments Received

As discussed in the proposed rule at 86 FR 32363, June 21, 2021, and at 86 FR 33154, June 24, 2021, the EPA reviewed the photochemical grid modeling used by New Jersey and New York in their SIP submittal to demonstrate attainment of the 1997 ozone NAAQS and determined that the modeling meets the EPA's guidelines and is acceptable to the EPA. Air quality monitoring data for 2014–2016 and certified data for 2017, 2018 and 2019 in the NY-NJ-CT area and the subsequent design values for 2015–2017, 2016–2018 and 2017–2019 also demonstrate attainment of the 1997 8-hour ozone standard throughout the NY-NJ-CT area. The purpose of the attainment demonstration is to demonstrate how, through enforceable and approvable emission reductions, an area will meet the standard by the attainment date. All necessary ozone control measures have already been adopted, submitted, approved and implemented. Also discussed in further detail in the proposed rulemaking and based on: (1) The States following the EPA's modeling guidance, (2) the modeled attainment of 1997 standard, (3) the air quality monitoring data for 2014–2016, 2015–2017, 2016–2018, 2017–2019, and (4) the implemented SIP-approved control measures, the EPA is approving the New Jersey and New York attainment demonstrations for the 1997 ozone NAAQS for their portions of the NY-NJ-CT area.

Other specific requirements of an attainment demonstration and the rationale for the EPA's proposed action is explained in more detail in the NPRM. The EPA did not receive any comments during the comment period.

## III. Final Action

The EPA is approving the attainment demonstration for the New Jersey and New York portions of the NY-NJ-CT nonattainment area for the 1997 ozone NAAQS. This rulemaking addresses the EPA's obligations to act on New Jersey's January 2, 2018 and New York's November 13, 2017 SIP revision for the 1997 ozone NAAQS.

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking action, pertaining to New York's and New Jersey's 1997 8-hour ozone attainment demonstration submissions is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Particulate matter, Volatile Organic Compounds.

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

Dated: August 27, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, Region 2*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart FF—New Jersey

■ 2. In § 52.1570 the table in paragraph (e) is amended by adding the entry for ''1997 8-hour Ozone—Attainment Demonstration'' at the end of the table to read as follows:

**§ 52.1570 Identification of plan.**

* * * * *

(e) * * *

EPA–APPROVED NEW JERSEY NONREGULATORY AND QUASI–REGULATORY PROVISIONS

| SIP element | Applicable geographic or nonattainment area | New Jersey submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 1997 8-hour Ozone—Attainment Demonstration. | New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area. | 1/2/2018 | 9/2/2021, [Insert **Federal Register** page citation]. | • Full approval.<br>• This action addresses the attainment demonstration requirements of the May 4, 2016 SIP Call (81 FR 26697). |

■ 3. § 52.1582 is amended by adding paragraph (r) to read as follows:

**§ 52.1582 Control strategy and regulations: Ozone.**

* * * * *

(r) The 1997 8-hour ozone attainment demonstration for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area included in New Jersey's January 2, 2018 State Implementation Plan revision is approved and satisfies the requirements of section 182 of the Clean Air Act.

### Subpart HH—New York

■ 4. In § 52.1670 the table in paragraph (e) is amended by adding the following entry ''1997 8-hour Ozone—Attainment Demonstration'' at the end of the table to read as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(e) * * *

EPA–APPROVED NEW YORK NONREGULATORY AND QUASI–REGULATORY PROVISIONS

| Action/SIP element | Applicable geographic or nonattainment area | New York submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 1997 8-hour Ozone—Attainment Demonstration. | New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area. | 11/13/2017 | 9/2/2021, [Insert **Federal Register** page citation]. | • Full approval.<br>• This action addresses the attainment demonstration requirements of the May 4, 2016 SIP Call (81 FR 26697). |

■ 5. § 52.1683 is amended by adding new paragraph (t) to read as follows:

**§ 52.1683 Control strategy: Ozone.**

* * * * *

(t) The 1997 8-hour ozone attainment demonstration for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area included in New York's November 13, 2017 State Implementation Plan revision is approved and satisfies the

requirements of section 182 of the Clean Air Act.

[FR Doc. 2021–18983 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R02–OAR–2020–0301; FRL–8907–02–R2]**

## Approval and Promulgation of Implementation Plans; New York; Infrastructure Requirements for the 2015 Ozone National Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submitted by the State of New York to demonstrate that the State meets the requirements of certain sections of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Standards (NAAQS).

**DATES:** This final rule is effective on October 4, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2020–0301. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Edward J. Linky, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3764, or by email at *Linky.Edward@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

### Table of Contents

I. What is the background for this action?
II. What comments were received in response to the EPA's proposed action?
III. What action is the EPA taking?
IV. Statutory and Executive Order Reviews

### I. What is the background for this action?

Section 110(a) of the CAA requires each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA. On July 1, 2021 (86 FR 35034), the EPA published a Notice of Proposed Rulemaking that proposed to approve elements of the SIP submission from the State of New York, submitted to EPA on September 25, 2018 and July 10, 2019, as demonstrating that the State had the necessary authority and resources to implement the infrastructure requirements of the 2015 ozone NAAQS. As explained in the proposal, the EPA is not addressing section 110(a)(2)(I) in this action, as Part D plans for nonattainment areas are subject to a different submission schedule than infrastructure SIPs, and the EPA will take action on Part D plans when submitted through a separate process. As also explained in the proposal, the EPA is not addressing the visibility portion of 110(a)(2)(J), as there are no new visibility protection obligations under the 2015 Ozone NAAQS. Additionally, as explained in the proposal, the EPA will act on section 110(a)(2)(D)(i)(I) (commonly referred to as prongs 1 and 2) in a separate notice at a later date.

### II. What comments were received in response to the EPA's proposed action?

EPA did not receive any comments on the proposed approval of New York's 2015 Infrastructure Plan revisions published July 1, 2021 (86 FR 35034).

### III. What action is the EPA taking?

The EPA is approving New York's September 25, 2018 and July 10, 2019, SIP revisions as meeting the requirements of section 110(a)(1) and (2) infrastructure requirements of the CAA for the 2015 ozone NAAQS, with the exception of CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: August 27, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, Region 2.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart HH—New York

■ 2. In § 52.1670, the table in paragraph (e) is amended by adding entries for ''Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS'' and ''Section 110(a)(2)(G) Infrastructure Requirements for the 2015 ozone NAAQS'' at the end of the table to read as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(e) * * *

EPA–Approved New York Nonregulatory and Quasi–Regulatory Provision

| Action/SIP element | Applicable geographic or nonattainment area | New York submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * | * | * | * * |
| Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS. | Statewide | 09/25/2018 | 9/2/2021, [insert **Federal Register** citation]. | Full approval. This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (H), (J), (K), (L), (M). |
| Section 110(a)(2)(G) Infrastructure Requirements for the 2015 Ozone NAAQS. | Statewide | 07/10/2019 | 9/2/2021, [insert **Federal Register** citation]. | Full approval. |

[FR Doc. 2021–18989 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

**[EPA–R07–UST–2021–0345; FRL–8775–02–R7]**

### Kansas: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Kansas's Underground Storage Tank (UST) program submitted by the Kansas Department of Health and Environment (KDHE). This action also codifies EPA's approval of Kansas's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

**DATES:** This rule is effective November 1, 2021, unless EPA receives adverse comment by October 4, 2021. If EPA receives adverse comments, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of November 1, 2021, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: mance.cassandra@epa.gov.*

*Instructions:* Direct your comments to Docket ID No. EPA–R07–UST–2021–0345. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the document for assistance.

*Docket:* All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information might not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *www.regulations.gov.*

*IBR and supporting material:* You can view and copy the documents that form the basis for this codification and associated publicly available materials either through *www.regulations.gov* or by contacting Cassandra Mance at (913) 551–7355 or *mance.cassandra@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 7 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need access to material indexed but not provided in the docket.

**FOR FURTHER INFORMATION CONTACT:** Cassandra Mance, Tanks, Toxics, and Pesticides Branch, Land, Chemical, and Redevelopment Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; (913) 551–7355; *mance.cassandra@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Approval of Revisions to Kansas's Underground Storage Tank Program

### *A. Why are revisions to state programs necessary?*

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

### *B. What decisions has the EPA made in this rule?*

On February 11, 2021, in accordance with 40 CFR 281.51(a), Kansas submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Kansas's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. We have reviewed the State Application and determined that the revisions to Kansas's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Kansas program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Kansas final approval to operate its UST program with the changes described in the program revision application and as outlined below in section I.G. of this document.

### *C. What is the effect of this approval decision?*

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Kansas and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

### *D. Why is EPA using a direct final rule?*

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an opportunity for public comment now.

### *E. What happens if the EPA receives comments that oppose this action?*

Along with this direct final rule, the EPA is publishing a separate document in the ''Proposed Rules'' section of this issue of the **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

### *F. For what has Kansas previously been approved?*

On June 6, 1994, the EPA finalized a rule approving the UST program, effective July 6, 1994, to operate in lieu of the Federal program. On September 27, 1994, effective November 28, 1994, the EPA codified the approved Kansas program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

### *G. What changes are we approving with this action?*

On February 11, 2021, in accordance with 40 CFR 281.51(a), Kansas submitted a complete application for final approval of its UST program revisions adopted on July 6, 2020. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Kansas's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Kansas final approval for the following program changes:

| Required Federal element | Implementing State authority |
|---|---|
| 40 CFR 281.30, New UST Systems and Notification | KAR 28–44 Sections 13; 14; 16; 17(a); 17(c); 19; 23; and 31. |
| 40 CFR 281.31, Upgrading Existing UST Systems | KAR 28–44 Sections 16(a)–(b) and 31. |
| 40 CFR 281.32, General Operating Requirements | KAR 28–44 Sections 19 and 23. |
| 40 CFR 281.33, Release Detection | KAR 28–44 Sections 23 and 31. |
| 40 CFR 281.34, Release Reporting, Investigation, and Confirmation | KAR 28–44 Section 24. |
| 40 CFR 281.35, Release Response and Corrective Action | KAR 28–44 Section 25. |
| 40 CFR 281.36, Out-of-service Systems and Closure | KAR 28–44 Sections 26 and 31. |
| 40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum. | KAR 28–44 Section 27. |
| 40 CFR 281.39, Operator Training | KAR 28–44 Section 30. |
| 40 CFR 281.41, Legal Authorities for Enforcement Response | KAR 28–44 Section 12. |

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The KDHE has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Kansas Statutes Annotated, Chapter 65, Article 34, Section 100 *et seq.,* and Kansas Administrative Regulations, Chapter 28, Article 44.

*H. Where are the revised rules different from the Federal rules?*

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law pursuant to 40 CFR 281.12(a)(3)(ii):

Kansas statutes and regulations include references to the aboveground storage tank program, which is broader in scope than the Federal program. KSA 65–34 Sections 105(a)(2), 105(a)(13), 106(a), 118, 129, and 130; KAR 28–44 Section 29.

Agreements between the secretary and local governments or agencies to act as the secretary's agent in order to carry out provisions of the Kansas Storage Tank Act are broader in scope than the Federal program. KSA 65–34 Section112.

Kansas statutory provisions related to the petroleum storage tank release trust funds, environmental assurance fee, and storage tank fee fund are broader in scope than the Federal program. KSA 65–34 Sections 114, 117, 119–125, and 128.

Kansas statutory provisions related to the third-party liability insurance plan and severability are broader in scope than the Federal program. KSA 65–34 Sections 126 and 127.

Kansas statutory provisions related to the UST redevelopment fund are broader in scope. KSA 65–34 Sections 131–134.

Each person installing, removing, or testing a UST or UST system must be licensed in Kansas, submit nonrefundable initial licensing and annual renewal fees, and may have a license suspended or revoked if the requirements are not met. KSA 65–34 Sections 105(a)(8), 105(a)(11), 105(a)(12), 110, and 111; KAR 28–44 Sections 12(c), 12(d), 20, 21, and 22.

Each owner must obtain an installation or modification permit from the department before installing or modifying a UST or UST system and submit an installation application fee. KSA 65–34 Sections 105(a)(10) and 106; KAR 28–44 Sections 12(d) and 15.

Each owner of a UST must submit a registration fee and an annual operating fee for each tank. If an owner fails to submit the completed registration notification form or secure an annual operating permit within the state-specified timeframe, the owner will be assessed penalty fees. KSA 65–34 Section 105(a)(10); KAR 28–44 Sections 12(d), 17(b), 17(c) as it applies to penalty fees, 17(d), 17(e), and 17(f).

Any owner or operator of a nonregulated tank may register that tank with the department for the purpose of qualifying the owner or operator to participate in the petroleum storage tank release trust funds. KAR 28–44 Section 18.

More Stringent Provisions

The following regulatory requirements are considered more stringent than the federal program, and on approval, they become part of the federally approved program and are federally enforceable pursuant to 40 CFR 281.12(a)(3)(i):

UST systems with impressed current cathodic protection systems must be inspected every 30 days to ensure the equipment is running properly. KAR 28–44 Section 19(a)(2).

In addition to the recordkeeping requirements listed at 40 CFR 280.34(b), owners and operators of UST systems shall also maintain records on the drop tickets for the preceding 12 months. Kansas defines drop tickets as a bill of lading, invoice, or similar document that reflects fuel delivery by a petroleum transport company to a specific facility and includes the deliverer's name, the delivery date, and the quantity delivered. KAR 28–44 Sections 14(c)(1) and 19(a)(8)(B)(iii).

Only field-constructed tanks and airport hydrant fuel distribution systems can use vapor monitoring as an approved leak detection method. KAR 28–44 Section 23(e).

Groundwater monitoring is not an approved leak detection method. KAR 28–44 Section 23(f).

Within 15 days of permanent closure, each owner or operator shall ensure that each contractor submits a completed permanent tank abandonment form to the department. KAR 28–44 Section 26(a)(3)(C).

No comparable exam is accepted for operator training. KAR 28–44 Section 30(a)(1)(A).

Each Class A operator of a facility or group of facilities shall reside or be stationed within four hours of each managed facility to respond to emergencies as needed. KAR 28–44 Section 30(a)(1)(C).

## II. Codification

*A. What is codification?*

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the

scope of the approved program in each state.

*B. What is the history of codification of Kansas's UST program?*

EPA incorporated by reference the KDHE approved UST program effective November 28, 1994 (59 FR 186; September 27, 1994). In this document, EPA is revising 40 CFR 282.66 to include the approved revisions.

*C. What codification decisions have we made in this rule?*

*Incorporation by reference:* In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the federally approved Kansas UST program described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, this document generally available through *www.regulations.gov* or by contacting the EPA Region 7 contact listed in the **ADDRESSES** section of this preamble.

The purpose of this **Federal Register** document is to codify Kansas's approved UST program. The codification reflects the State program that would be in effect at the time EPA's approved revisions to the Kansas UST program addressed in this direct final rule become final. The document incorporates by reference Kansas's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Kansas program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Kansas program.

EPA is incorporating by reference the Kansas approved UST program in 40 CFR 282.66. Section 282.66(d)(1)(i) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.66 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

*D. What is the effect of Kansas's codification on enforcement?*

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Kansas procedural and enforcement authorities. Section 282.66(d)(1)(ii) of 40 CFR lists those approved Kansas authorities that would fall into this category.

*E. What State provisions are not part of the codification?*

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. Section 281.12(a)(3)(ii) of 40 CFR states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of federal enforcement in part 282. Section 282.66(d)(1)(iii) lists for reference and clarity the Kansas statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

## III. Statutory and Executive Order Reviews

This action only applies to Kansas's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

*B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

*C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*D. Executive Order 13132: Federalism*

This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

*E. Executive Order 13045: Services of Children From Environmental Health and Safety Risks*

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

*G. National Technology Transfer and Advancement Act*

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

*I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

*J. Executive Order 12988: Civil Justice Reform*

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will be effective November 1, 2021 because it is a direct final rule.

**Authority:** This rule is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

**List of Subjects in 40 CFR Part 282**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: August 24, 2021.

**Edward H. Chu,**

*Acting Regional Administrator, EPA Region 7.*

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

## PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.66 to read as follows:

### § 282.66 Kansas State-Administered Program.

(a) *History of the approval of Kansas's program.* The State of Kansas is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Kansas Department of Health and Environment, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Kansas program on June 6, 1994, and it was effective on July 6, 1994. A subsequent program revision application was approved by EPA and became effective on November 1, 2021.

(b) *Enforcement authority.* Kansas has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retaining program approval.* To retain program approval, Kansas must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If Kansas obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final program approval.* Kansas has final approval for the following elements of its program application originally submitted to EPA and approved on June 6, 1994 and effective July 6, 1994, and the program revision application approved by EPA, effective on November 1, 2021.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Kansas regulations and statutes that are incorporated by reference in this paragraph from the Kansas Department of Health and Environment website at: *www.kdheks.gov/tanks/regs.html* or the KDHE Storage Tank Section, 1000 SW Jackson, Suite 410, Topeka, KS 66612; Phone number: (785) 296–1678. You may inspect all approved material at the EPA Region 7 Office, 11201 Renner Boulevard, Lenexa, KS 66219; Phone Number: (913) 551–7355; or the National Archives and Records Administration (NARA), Email: *fedreg.legal@nara.gov,* website: *https://*

*www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) EPA-Approved Kansas Statutory Requirements Applicable to the Underground Storage Tank Program, July 2015.

(B) EPA-Approved Kansas Regulatory Requirements Applicable to the Underground Storage Tank Program, July 2020.

(ii) *Legal basis.* EPA evaluated the following statutes, which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference for enforcement purposes and do not replace Federal authorities: Kansas Statutes Annotated, Chapter 65, Public Health, Article 34, Kansas Storage Tank Act, Sections: 108—Enforcement of act: Duties of owner or operator; records, reports, documents, other information; 109—Unlawful acts: penalties; and 113—Civil penalties and remedies for violations.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference in this section for enforcement purposes:

(A) Kansas Statutes Annotated, Chapter 65, Public Health, Article 34, Kansas Storage Tank Act, Sections: 105(a)(2) and 105(a)(13) as they apply to aboveground storage tanks; 105(a)(8) as it applies to tank tightness tester qualifications; 105(a)(10) as it applies to registration and permit fees; 105(a)(11) and 105(a)(12) as they apply to licensing tank installers and/or contractors and fees for these licenses; 106 as it applies to aboveground storage tanks and permits to construct, install, or modify storage tanks; 110 as it applies to licensing tank installers and contractors; 111 as it applies to suspension of licenses; 112 as it applies to agreements between secretary and local governments; 114 as it applies to the underground petroleum storage tank release trust fund; 117 as it applies to the environmental assurance fee; 118 as it applies to corrective action for aboveground storage tanks; 119–125 as they apply to the petroleum storage tank release trust funds; 126 and 127 as they apply to the third party liability insurance plan; 128 as it applies to the storage tank fee fund; 129 and 130 as they apply to the aboveground petroleum storage tank release trust fund; 131–134 and 139 as they apply to the UST redevelopment fund.

(B) Kansas Department of Health and Environment Permanent Administrative Regulations, Chapter 28, Article 44, Petroleum Products Storage Tanks, Sections: 12(c) as it applies to the suspension and revocation of licenses; 12(d) as it applies to fee payments; 15 as it applies to underground storage tank installation or modification permits and the fees for these permits; 17(b)–(f) as they apply to the fees for underground storage tank registration and annual operating permits and the associated penalties; 18 as it applies to registration of non-regulated underground storage tanks; 20–22 as they apply to licensing underground storage tank contractors, installers, testers, and removers, fees for these licenses, and the suspension or revocation of tester licenses; 29 as it applies to aboveground storage tanks.

(2) *Statement of legal authority.* The ''Attorney General's Letter of Certification'', signed by the Kansas Attorney General on August 23, 1993, and December 4, 2020, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Adequate Enforcement Procedures'' submitted as part of the original application on July 2, 1992, and as part of the program revision application on February 11, 2021, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on July 2, 1992, and as part of the program revision application on February 11, 2021, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 7 and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on March 25, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by revising the entry for ''Kansas'' to read as follows:

**Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations**

* * * * *

*Kansas*

(a) The statutory provisions include Kansas Statutes Annotated, 2015; Chapter 65, Public Health; Article 34, Solid and Hazardous Waste; Section 100 *et seq.,* Kansas Storage Tank Act:

Section 100 Statement of legislative findings

Section 101 Citation of Act

Section 102 Definitions

Section 103 Exceptions to application of Act

Section 104 Notification to department of tank's existence

Section 105 Rules and regulations, except for 65–34, 105 (a)(2), the following words in (a)(8), ''including determination of the qualifications of persons performing or offering to perform such testing,'' (a)(10), (a)(11), (a)(12) and the following words in (a)(13), ''and aboveground storage tanks in existence on July 1, 1992'' and ''and aboveground storage tanks placed in service prior to July 1, 1992''

Section 106 Permit to construct, install, modify, or operate storage tank, except the following words in the title and (a), ''construct, install, modify or'' and ''and any aboveground storage tank registered with the department on July 1, 1992,''

Section 107 Evidence of financial responsibility required; limitation of liability

Section 115 Liability for costs of corrective action

Section 118 Corrective action; duties of owners and operators; duties of Secretary; consent agreement; contents, except for the following words in (b), ''or from the aboveground fund, if the release was from an aboveground petroleum storage tank.'' and ''or from the aboveground fund, if the release was from an aboveground petroleum storage tank.''

Section 135 Underground storage tank operators, training program, requirements

Section 138 Underground storage tank systems; secondary containment

(b) The regulatory provisions include Kansas Administrative Regulations, 2020; Chapter 28, Department of Health and Environment; Article 44, Petroleum Products Storage Tanks:

Section 12 General provisions, except (c) and (d)

Section 13 Program scope and interim prohibition

Section 14 Definitions

Section 16 Underground storage tank systems: Design, construction, installation, modification, and notification

Section 17 Underground storage tank registration and operating permit, except (b), the following words in (c), ''be assessed a penalty fee of $50.00 for each tank if the owner fails to'', (d), (e), and (f)

Section 19 General operating requirements

Section 23 Release detection

Section 24 Release reporting, investigation, and confirmation

Section 25 Release response and corrective action for UST systems
Section 26 Out-of-service UST systems and closure
Section 27 Financial responsibility
Section 30 Operating training and requirements
Section 31 UST systems with field-constructed tanks and airport hydrant fuel distribution systems

* * * * *

[FR Doc. 2021–18914 Filed 9–1–21; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 210210–0018]**

**RTID 0648–XB388**

## Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Western and Central Regulatory Areas of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of ''other rockfish'' in the Western and Central Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2021 total allowable catch of ''other rockfish'' in the Western and Central Regulatory Areas of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), August 30, 2021, through 2400 hours, A.l.t., December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The 2021 total allowable catch (TAC) of ''other rockfish'' in the Western and Central Regulatory Areas of the GOA is 940 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish of the GOA (86 FR 10184, February 19, 2021).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2021 ''other rockfish'' TAC in the Western and Central Regulatory Areas of the GOA will soon be reached. Therefore, NMFS is requiring that ''other rockfish'' in the Western and Central Regulatory Areas of the GOA be treated as prohibited species in accordance with § 679.21(b), as described under § 679.21(a), for the remainder of the year, except other rockfish species in the Western and Central Regulatory Areas of the GOA caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j).

### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting retention of ''other rockfish'' in the Western and Central Regulatory Areas of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 26, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18990 Filed 8–30–21; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 210210–0018; RTID 0648–XB321]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2021 Pacific cod total allowable catch apportioned to catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2021, through 2400 hours, A.l.t., December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Allyson Olds, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2021 Pacific cod total allowable catch (TAC) apportioned to catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 680 metric tons (mt), as established by the final 2021 and 2022 harvest specifications for groundfish of the GOA (86 FR 10184, February 19, 2021).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region,

NMFS (Regional Administrator) has determined that the 2021 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 580 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels greater than or equal to 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 27, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18987 Filed 8–31–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 210210–0018; RTID 0648–XB233]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Western Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2021 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2021, through 2400 hours, A.l.t., December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Allyson Olds, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2021 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA is 2,071 metric tons (mt), as established by the final 2021 and 2022 harvest specifications for groundfish of the GOA (86 FR 10184, February 19, 2021).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2021 Pacific cod TAC apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,871 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 27, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18986 Filed 8–31–21; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 86, No. 168
Thursday, September 2, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[EERE–2019–BT–TP–0021]**

**RIN 1904–AE75**

## Energy Conservation Program: Test Procedures for Consumer Products; Early Assessment Review; Faucets and Showerheads

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

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Energy (''DOE'') is undertaking an early assessment review to determine whether to proceed with a rulemaking to amend the test procedures for faucets and showerheads. Specifically, through this request for information (''RFI''), DOE seeks comment on the applicable consensus-based test procedures for measuring the water use of faucets and showerheads and whether such industry produces results that measure water use during a representative average use cycle or period of use for faucets and showerheads, and are not unduly burdensome to conduct. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI) as well as the submission of data and other relevant information concerning this early assessment review.

**DATES:** Written comments and information are requested and will be accepted on or before October 4, 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: *FaucetShowerhead2019TP0021@ee.doe.gov.* Include ''Energy Conservation Program: Test Procedures for Consumer Products; Early Assessment Review; Faucets and Showerheads'' and docket number EERE–2019–BT–TP–0021 and/or RIN number 1904–AE75 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

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 corona virus (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.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

*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 *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=40&action=viewcurrent* and *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=2&action=viewlive.* The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. 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:**

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## I. Introduction

DOE established an early assessment review process to conduct a more focused analysis that would allow DOE to determine, based on statutory criteria, whether an amended test procedure is warranted. This RFI requests information and data regarding whether amended test procedures would more accurately and fully comply with the requirement that the test procedures produce results that measure water use during a representative average use cycle or period of use for faucets and showerheads, and not be unduly burdensome to conduct. To inform interested parties and to facilitate this process, DOE has identified several issues associated with the currently applicable test procedures on which DOE is interested in receiving comment.

Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for an

amended test procedure. If DOE were to make an initial determination that an amended test procedure would more accurately or fully comply with statutory requirements, or DOE's analysis were to be inconclusive, DOE would undertake a rulemaking to issue an amended the test procedure. If, however, DOE were to make an initial determination based upon available evidence that an amended test procedure would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that an amended test procedure is not warranted.

*A. Authority and Background*

The Energy Policy and Conservation Act of 1975, as amended (''EPCA'') [1], among other things, authorizes DOE to regulate the energy efficiency or water use of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA establishes the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency or water use. These products include faucets and showerheads, the subjects of this RFI. (42 U.S.C. 6292(a)(15) and (16))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards,[3] and (4) certification and enforcement procedures. Relevant provisions of the Act 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)

Federal energy efficiency and water use requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

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 water use of those 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))

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 requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use, water 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)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

EPCA directs that the test procedures for faucets and showerheads are to be the test procedures specified in American Society of Mechanical Engineers (ASME) Standard A112.18.1M–1989, ''Plumbing Fixture Fittings.'' (42 U.S.C. 6293(b)(7)(A)) EPCA further directs that, if the test procedure requirements of ASME A112.18.1M–1989 are revised at any time and approved by the American National Standards Institute (ANSI), DOE must amend the Federal test procedures to conform to the revised ASME standard, unless DOE determines by rule that to do so would not meet the requirements of EPCA that the test procedures be reasonably designed to produce test results which measure water use during a representative average use cycle as determined by DOE, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(7)(B); 42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including faucets and showerheads, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to be reasonably designed to produce test results that reflect water use and estimated operating costs during a representative average use cycle or period of use and not to be unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on his 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. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. *Id.* 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 or water use or energy efficiency of the type (or class) of covered products involved. *Id.* If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

DOE's test procedures for faucets and showerheads are prescribed at 10 CFR 430.23(s) and (t), respectively, and 10 CFR part 430 subpart B appendix S (''Appendix S''). In addition, DOE regulations reiterate statutory standards for faucets and showerheads. 10 CFR 430.32(o) and (p). DOE is publishing this RFI to collect data and information to inform its decision in response to revisions to the ASME standard and pursuant to the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A) and 42 U.S.C. 6293(b)(7)(B))

*B. Rulemaking History*

DOE's current test procedures for faucets and showerheads are codified at 10 CFR 430.23(s) and (t), respectively, and Appendix S. DOE initially established test procedures for faucets and showerheads in a final rule published on March 18, 1998, which referenced ASME A112.18.1M–1989, ''Plumbing Fixture Fittings,'' incorporated by reference into 10 CFR part 430, then the most recent revision of that industry standard. 63 FR 13308.

DOE last amended the test procedures for faucets and showerheads on October 23, 2013 (''October 2013 Final Rule''). 78 FR 62970. In that final rule, DOE incorporated by reference ASME A112.18.1–2012, ''Plumbing Supply Fixtures'' as part of the test procedures for faucets and showerheads. 78 FR 62970, 62982. Since then, the 2012 version of the ASME standard was re-

[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.

[3] The term ''energy conservation standard'' includes water use standards for showerheads, faucets, water closets, and urinals. (42 U.S.C. 6291(6)(A))

affirmed in 2017, and then updated in 2018 to ASME A112.18.1–2018, ''Plumbing Supply Fixtures,'' which is the current version of the industry standard.

On December 16, 2020, DOE published a final rule amending the definition for ''showerhead'' and adopted definitions for ''body spray'' and ''safety showerhead.'' 85 FR 81341 (''December 2020 Final Rule''). DOE amended the regulatory definition for ''showerhead'' to incorporate the definition from the most recent standard developed by ASME, such that the term means ''an accessory to a supply fitting for spraying onto a bather, typically from an overhead position.'' 85 FR 81341, 81342, 81359. Under the December 2020 Final Rule, DOE interpreted the term ''showerhead'' such that each showerhead in a product containing multiple showerheads is considered separately for purposes of determining compliance with the 2.5 gallon per minute (''gpm'') standard established in EPCA. 85 FR 81341, 81342. In the December 2020 Final Rule, DOE adopted a definition for ''body spray'', such that the term means ''a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.'' 85 FR 81341, 81359. DOE also established a definition for ''safety shower showerhead'' meaning ''a showerhead designed to meet the requirements of the International Equipment Safety association (''ISEA'') standard ISEA Z358.1, *American National Standard for Emergency Eyewash and Shower Equipment.*'' *Id.*

On July 22, 2021, DOE published a notice of proposed rulemaking (''NOPR'') in which it proposed to withdraw the definition of ''showerhead'' adopted in the December 2020 Final Rule, reinstate the definition of ''showerhead'' from the October 2013 Final Rule, and withdraw the interpretation from the December 2020 Final Rule. 86 FR 38594 (''July 2021 NOPR''). As proposed, the term ''showerhead'' would be redefined as ''a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.'' 86 FR 38594, 38607. DOE explained that it considered that water conservation is a more important purpose of EPCA than consistency with ASME (with which DOE has no statutory obligation to align its definition). 86 FR 38594, 38597. DOE also proposed to withdraw the definition of ''body spray,'' explaining that the definition is inconsistent with the express purpose of EPCA to conserve water and does not best address the relationship between body sprays and showerheads. 86 FR 38594, 38603. DOE did not propose any changes to the definition of ''safety shower showerhead'' in the July 2021 NOPR. 86 FR 38594, 38603–38604.

## II. Request for Information

In the following sections, DOE has identified a variety of issues on which it seeks input to determine whether the current version of the applicable industry test procedure for faucets and showerheads would comply with the requirements in EPCA that test procedures be reasonably designed to produce test results which reflect energy and water use during a representative average use cycle or period of use, without being unduly burdensome to conduct (42 U.S.C. 6293(b)(3)).

Additionally, DOE has identified a variety of issues on which it seeks input to determine whether, and if so how, amended test procedures for faucets and showerheads would more accurately or fully comply with the requirements in EPCA that test procedures be reasonably designed to produce test results which reflect water use during a representative average use cycle or period of use, without being unduly burdensome to conduct (42 U.S.C. 6293(b)(3)).

### *A. Scope*

#### 1. Faucets

EPCA and DOE regulations define ''faucet'' as ''a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.'' (42 U.S.C. 6291(31)(E); 10 CFR 430.2. This definition defines the scope of the term by reference to the categories of faucets contained within in it (*e.g.,* kitchen faucet), but does not define the word ''faucet'' as that word is used in the ''faucet'' definition. Both ASME A112.18.1–2012 and ASME A112.18.1–2018 define a ''faucet'' as a ''terminal fitting'', which in turn is defined as ''a device that controls and guides the flow of water.'' DOE requests comment on the term ''faucet'' as defined in ASME A112.18.1–2018 and whether further detail is warranted for DOE's regulatory definitions.

With regards to kitchen faucets specifically, DOE's review of the market suggests that there are a variety of terminal fittings available on the market that are marketed for installation in a kitchen. Certain of these products are explicitly marketed as ''kitchen faucets.'' Other products marketed for installation in the kitchen are characterized in the market as ''low-pressure water dispensers'' and ''pot fillers,'' and appear to be within the scope of the statutory term ''faucet.'' In the following discussion, DOE describes its understanding of these products and seeks comment and information from interested parties regarding such products. Throughout this discussion, DOE uses the term ''conventional kitchen faucet'' to refer to products explicitly marketed as kitchen faucets and for which the current DOE test procedure and water conservation standards apply, and to distinguish from products that may also be ''kitchen faucets'' but that may not be within the scope of the current test procedure.

ASME A112.18.1–2018 added a definition for ''low-pressure water dispenser'' and defines the term as ''a terminal fitting located downstream of a pressure reducing valve that dispenses drinking hot water above 71 °C (160 °F) or cold water or both at a pressure of 105 kPa (15 psi) or less.'' As discussed previously, ASME A112.18.1–2018 defines faucet as ''a terminal fitting''. The reference to ''terminal fitting'' in the industry definition of ''low-pressure water dispenser'' indicates that ASME A112.18.1–2018 classifies such products as a subset of faucets. DOE does not define ''low-pressure water dispenser'' and does not reference the term in the DOE test procedure for faucets. Based on DOE's market research, such products on the market may also be referred to as ''beverage faucets,'' ''drinking water faucets,'' or ''hot/cold water dispensers''. DOE understands that the key differences between low-pressure water dispensers and conventional kitchen faucets are that low-pressure water dispensers operate at lower water pressures (by definition) and are used for the purpose of gently filling a relatively small vessel (*e.g.,* a glass). Particularly because of the lower water pressure, such products would not be effective at certain tasks that could otherwise be performed by a conventional kitchen faucet (*e.g.,* washing dishes) and for which the ultimate purpose is something other than to fill a relatively small vessel with water.

The DOE water conservation standard for faucets specifies that water use must be ''measured at a flowing water pressure of 60 pounds per square inch [('psi')],'' 10 CFR 430.32(o). The same conditions are specified in section 5.4.2.3.1 of ASME A112.18.1–2012 (referenced at section 2.a of Appendix S). However, for testing low-pressure water dispensers, section 5.4.2.3.1 of ASME A112.18.1–2018 specifies a maximum flow for low-pressure water dispensers—*i.e.,* 15 ± 1 psi. This

specification was added to ASME A112.18.1–2018 and was not specified in ASME A112.18.1–2012, which is currently referenced in Appendix S. Accordingly, the water pressure specified in 10 CFR 430.32(o) for testing faucets does not accommodate testing low-pressure water dispensers. Therefore, although low-pressure water dispensers appear to meet the DOE definition of a faucet, there is currently no applicable DOE test procedure for testing low-pressure water dispensers.[4]

Other terminal fittings used in the kitchen, such as pot fillers, may also warrant differentiation from currently regulated kitchen faucets. ASME A112.18.1–2018 does not define pot fillers, nor does the current DOE test procedure. Based on DOE's market research, the key differences between products described as ''pot fillers'' and conventional kitchen faucets are that pot fillers are typically installed over a range or cooktop (rather than over a sink), plumbed only to the cold water supply, and are used for the purpose of filling a large vessel (*e.g.,* a stock pot) with a volume of water in the location where it will be heated (which avoids the need to move the pot from the sink to the stove once filled with water). In applications where a pot filler is not installed over a sink, it could only be used to fill a vessel with water, given the lack of access to a drain. Pot fillers typically have higher flow rates than conventional kitchen faucets, which allow for filling large cooking vessels in a shorter period of time than could be achieved with a regulated kitchen faucet.[5]

For both low-pressure water dispensers and pot fillers (as DOE has described such products in this discussion), DOE understands that the primary function of such products is to fill a vessel with water (*e.g.,* a glass or a cooking vessel). Given this function, the amount of water provided by such products during consumer use would be dependent on the volume of the vessel, independent of the flow rate of the product. As such, a test procedure that would measure the flow rate of such products would not provide meaningful information in terms of reducing the amount of water used. Moreover, establishing water conservation standards for such products in terms of a maximum flow rate (gpm) would not be expected to result in any water savings because the volume of water provided by such products would be dictated by the vessel to be filled as opposed to the flow rate. Furthermore, establishing water conservation standards could diminish the usefulness of such products by increasing the amount of time required to fill a vessel with a particular volume of water.

DOE did not consider pot fillers and low-pressure water dispensers when establishing the current test procedure and standards for faucets. As stated, EPCA directs DOE to base the Federal test procedure on ASME A112.18.1, which did not include provisions for testing low-pressure water dispensers until the latest revision (2018) and continues to not define or include provisions specific to pot fillers. In establishing the current DOE test procedure, DOE did not consider products that may be faucets but that were not subject to the statutorily referenced industry standard. Therefore, the current test procedure in Appendix S and standards at 10 CFR 430.32(o) for faucets do not apply to low-pressure water dispensers or pot fillers. To the extent that such products are not subject to the DOE test procedure, such products are also excluded from coverage under the energy conservation standards.

Issue 1: DOE requests comment on the term ''faucet'' as defined in ASME A112.18.1–2018 and whether further detail is warranted for DOE's regulatory definitions.

Issue 2: DOE requests comment on its understanding of ''low-pressure water dispensers'' and ''pot fillers'' as a subset of faucets, specifically kitchen faucets.

Issue 3: DOE requests comment on whether any changes should be made to DOE's definition of ''faucet'' to differentiate products such as low-pressure water dispensers and pot fillers from conventional ''kitchen faucets.''

Issue 4: DOE requests comment on whether the Department should incorporate into the Federal regulations definitions of low-pressure water dispenser, pot filler, or any other types of products that meet the definition of a faucet. If other faucet types should be defined, DOE requests comment on specific physical (or operational, or other) characteristics that could be used to differentiate such products from currently regulated faucets.

Issue 5: DOE requests comment on whether DOE should expand the scope of its test procedures for faucets to include provisions for testing low-pressure water dispensers, pot fillers, or any other types of faucets.

Issue 6: DOE requests comment on its understanding of the primary purpose of low-pressure water dispensers and pot fillers (*i.e.,* to fill a vessel with water), and on its assertion that establishing test procedures and water conservation standards for such products would not result in any water savings.

2. Showerheads

As previously noted, DOE regulations currently define ''showerhead'' as ''any showerhead (including a handheld showerhead) other than a safety showerhead. DOE interprets the term 'showerhead' to mean an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.'' 10 CFR 430.2. Pursuant to the requirements of EPCA, DOE seeks input on any updates to the showerheads scope and definitions from the latest ASME industry standard, ASME A112.18.1–2018.

ASME A112.18.1–2018 added new definitions for ''hand-held shower'' and ''rain shower.'' ASME defines a ''hand-held shower'' as ''a showerhead that can be held or fixed in place for spraying water onto a bather and that is connected to a flexible hose.'' ASME A112.18.1–2018 defines a ''rain shower'' as ''a showerhead designed to be mounted directly over the bather with the spray face parallel to the floor. Note: The showerhead can be mounted directly from the ceiling or on an extended shower arm.''

Currently, DOE defines the term ''hand-held showerhead'' as ''a showerhead that can be held or fixed in place for the purpose of spraying water onto a bather and that is connected to a flexible hose.'' 10 CFR 430.2. Considering that the DOE definition is almost identical to the definition in the ASME industry standard, DOE tentatively concludes that there is no reason to make any updates to this definition at this time.

While DOE's regulations do not currently define the term ''rain shower'', the existing and proposed definition of ''showerhead'' covers rain showers. ASME A112.18.1–2018, section 5.12.3, includes a new definition for rain shower in light of the standard's new spray force requirements specific to rain showers. Considering the DOE test procedure includes a showerhead test procedure for only maximum water consumption and not spray force, DOE tentatively concludes that there is no reason to include the term and definition for rain shower at this time, and seeks comment on that tentative conclusion.

[4] As such, the standards currently prescribed for faucets at 10 CFR 430.32(o) do not apply to low-pressure water dispensers.

[5] For example, filling a 10 gallon stock pot with a kitchen faucet would require approximately 5 minutes at a flow rate of 2.2 gpm (the current flow rate standard established for kitchen faucets). Filling the same stock pot with a pot filler instead would require approximately 2.5 minutes at a flow rate of 4 gpm (using an example flow rate for a pot filler).

Issue 7: DOE requests comment on whether DOE should include the term ''rain shower'' and a definition of the term in its regulations.

Issue 8: DOE requests comment on whether any changes to current definitions related to the faucet and showerhead test procedure beyond those discussed in this RFI (other than with regard to the issues raised in the July 2021 NOPR) should be considered. DOE requests comment on the potential impact to the scope of the Federal test procedure from any changes to the definitions, should DOE incorporate them. DOE also requests comment on whether any potential changes to the definitions would impact the repeatability and reproducibility of the test procedure or the representativeness of its results.

*B. Updates to Industry Standard*

In addition to the revised definitions described previously, ASME A112.18.1–2018 includes the following changes in comparison to the 2012 version incorporated into 10 CFR part 430: (1) A new requirement in section 5.4.2.3.1 specifying a lower water pressure for testing low-pressure water dispensers compared to the 60 ± 1 psi water pressure used to test faucets; (2) a clarification in section 5.4.2.3.2 that ''hand showers'' are ''hand-held'' showers; and (3) updates to Table 1, including adding a low-pressure water dispenser maximum flow rate level and removing a note to refer to clause 4.11.1 for the showerhead minimum flow rate requirement.[6] however, ASME A112.18.1–2018 specifies a lower water pressure—*i.e.,* 105 ± 7 kPa (15 ± 1 psi).

Issue 9: DOE requests comment on the maximum water use test method for low-pressure water dispensers, as detailed in section 5.4.2.3.1 of ASME A112.18.1–2018. DOE requests comment and data, if available, on the water pressure under which low-pressure water dispensers typically operate in the field, and the extent to which the specified water pressure of 105 ± 7 kPa (15 ± 1 psi) is representative of actual use.

Issue 10: DOE also welcomes detailed information on the nature and extent of any testing cost or burden that would be associated with conducting the test for low-pressure water dispensers as specified in ASME A112.18.1–2018, as compared to the current DOE test procedure.

As discussed previously, ASME A112.18.1–2018 also provides a clarification in section 5.4.2.3.2 that ''hand showers'' are ''hand-held'' showers. DOE tentatively concludes that the update in ASME A112.18.1–2018 changing the term ''hand shower'' to ''hand-held shower'' is an insignificant clarification. Finally, the updates to Table 1 regarding the maximum flow rate for low-pressure water dispensers and minimum flow rate for showerheads relate to the water conservation standards and are therefore beyond the scope of the test procedures. (DOE adopted the statutory maximum water use standards for faucets and showerheads in 10 CFR 430.32(o) and (p).)

DOE also notes that ASME A112.18.1–2018 does not contain any updates to the water consumption test method for showerheads.

*C. Showerhead Test Procedure*

In the December 2020 Final Rule, DOE maintained the test procedure for showerheads. DOE stated that the existing test procedure remains applicable to shower heads as defined by that final rule and that if issues arise where the existing test procedure does not produce a representative measurement of water use of a particular showerhead product, the manufacturer can seek a waiver from DOE pursuant to DOE regulations at 10 CFR 430.27. 85 FR 81341, 81351. DOE also noted that EPCA requires DOE to consider on a periodic basis whether test procedures for a covered product should be amended (under 42 U.S.C 6293). *Id.*

As noted, DOE has proposed to withdraw the definition of ''showerhead'' adopted in the December 2020 Final Rule, reinstate the definition of ''showerhead'' from the October 2013 Final Rule, and withdraw the interpretation from the December 2020 Final Rule. DOE also proposes to withdraw the definition of ''body spray.'' 86 FR 38594, 38603.

Issue 11: DOE requests comment on whether the existing test procedure for showerheads needs to be amended based on DOE's amended definition for showerhead (*i.e.,* the definition adopted in the December 2020 Final Rule). If so, DOE requests comment on the proposed amendments in the August 2020 NOPR, or on other test methods that would produce a representative measurement of water use. DOE also requests comment on whether the existing test procedure for showerheads would need to be amended were DOE to finalize the definition of showerhead proposed in the July 2021 NOPR (*i.e.,* the definition from the October 2013 Final Rule). If so, DOE requests comments and information on what amendments would be needed and why.

## III. Submission of Comments

DOE invites all interested parties to submit in writing by October 4, 2021, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for faucets and showerheads. These comments and information will aid in the development of a test procedure NOPR for faucets and showerheads if DOE determines that amended test procedures may be appropriate for these products.

*Submitting comments via www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Following this instruction, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed

[6] DOE notes that ASME A112.18.1–2018 also contains several updates to specifications and test methods for commercial prerinse spray valves, which are not discussed in this RFI.

simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information 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, or other information to DOE. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* 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).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

**Signing Authority**

This document of the Department of Energy was signed on August 27, 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 August 27, 2021.

**Treena V. Garrett,**

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

[FR Doc. 2021–18882 Filed 9–1–21; 8:45 am]

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## DEPARTMENT OF ENERGY

## 10 CFR Part 431

**[EERE–2021–BT–STD–0018]**

**RIN 1904–AE54**

## Energy Conservation Program: Energy Conservation Standards for Certain Commercial and Industrial Equipment; Early Assessment Review; Commercial and Industrial Pumps

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

**ACTION:** Extension of public comment period.

**SUMMARY:** On August 9, 2021, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') undertaking an early assessment review for amended energy conservation standards for commercial and industrial pumps (''pumps''). The RFI provided an opportunity for submitting written comments, data, and information by September 8, 2021. DOE received requests from Grundfos and Pentair on August 10, 2021 and August 12, 2021, respectively, asking DOE to extend the public comment period for 60 days until November 8, 2021. Additionally, DOE received requests from the Hydraulic Institute (''HI''), and a group of California Investor-Owned Utilities (''CA IOUs''), comprised of Pacific Gas and Electric Company, San Diego Gas and Electric and Southern California Edison, on August 12, 2021 and August 13, 2021, respectively, asking DOE to extend the public comment period for 30 days until October 8, 2021. DOE has reviewed these requests and is granting an extension of the public comment period to allow public comments to be submitted until October 8, 2021.

**DATES:** The comment period for the RFI published on August 9, 2021 (86 FR 43430) is extended. DOE will accept comments, data, and information regarding this RFI received no later than October 8, 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, identified by docket number EERE–2021–BT–STD–0018, by email to *Pumps2021STD0018@ee.doe.gov.*

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-0018.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Dommu, 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 August 9, 2021, DOE published a RFI undertaking an early assessment review for amended energy conservation standards for pumps to determine whether to amend applicable energy conservation standards. Specifically, DOE is seeking data and information to evaluate whether amended energy conservation standards would result in a significant savings of energy; be technologically feasible; and be economically justified. 86 FR 43430. Interested parties in the matter, Grundfos (on August 10, 2021), HI (on August 12, 2021), Pentair (on August 12, 2021), and CA IOUs (on August 13, 2021), requested an extension of the public comment period for the RFI. (Grundfos, No. 2 at p. 1; HI, No. 3 at p. 1; Pentair., No. 4 at p. 1; CA IOUs, No. 5, at p. 1).[1] Grundos, HI, and Pentair commented that the extension is necessary to allow ample time to provide adequate comments on the issues identified. (Grundfos, No. 2 at p. 1; HI, No. 3 at p. 1; Pentair., No. 4 at p. 1) The CA IOUs noted that a data set of pump performance data was being complied by the Northwest Energy Efficiency Alliance (''NEEA'') and additional time was necessary to analyze and review the NEEA dataset. (CA IOUs, No. 5, at p. 1)

DOE has reviewed the requests 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 an early assessment review to determine whether to amend energy conservation standards for pumps. Based on the information received in response to this RFI, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard. If DOE makes an initial determination that a new or amended energy conservation standard would satisfy the applicable statutory criteria or DOE's analysis is inconclusive, DOE would undertake the preliminary stages of a rulemaking to issue a new or amended energy conservation standard. If DOE makes an initial determination based upon available evidence that a new or amended energy conservation standard would not meet the applicable statutory criteria, DOE will engage in notice and comment rulemaking before issuing a final determination that new or amended energy conservation standards are not warranted. As such, DOE has determined that an extension of 30 days is sufficient for this preliminary stage. Therefore, DOE is extending the comment period until October 8, 2021.

## Signing Authority

This document of the Department of Energy was signed on August 27, 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 August 27, 2021.

**Treena V. Garrett,**

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

[FR Doc. 2021–18885 Filed 9–1–21; 8:45 am]

**BILLING CODE 6450–01–P**

[1] The parenthetical reference provides a reference for information located in DOE's rulemaking docket. (Docket No. EERE–2021–BT–STD–0018, which is maintained at *www.regulations.gov/#!docketDetail;D=EERE-2021-BT-STD-0018*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

**[Docket No. DEA–737]**

### Schedules of Controlled Substances: Placement of Methiopropamine in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Drug Enforcement Administration proposes placing *N*-methyl-1-(thiophen-2-yl)propan-2-amine (methiopropamine), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) or propose to handle methiopropamine.

**DATES:** Comments must be submitted electronically or postmarked on or before October 4, 2021.

Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing, together with a written statement of position on the matters of

fact and law asserted in the hearing, must be received on or before October 4, 2021.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–737'' on all electronic and written correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration (DEA) encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

• *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

**SUPPLEMENTARY INFORMATION:**

## Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. The Drug Enforcement Administration (DEA) will make them available, unless reasonable cause is given, for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

DEA will make available publicly in redacted form comments containing personal identifying information or confidential business information identified as directed above. If a comment has so much confidential business information that it cannot be redacted effectively, all or part of that comment may not be made available publicly. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified, as directed above, as confidential as directed above.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

## Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. 21 CFR 1316.47(a). Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be sent to DEA using the address information provided above.

## Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2–4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS (Secretary) did not consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control. Pursuant to 21 U.S.C. 811(a)(1), the Attorney General, by rule, may add to such a schedule any drug or other substance, if he finds that such drug or other substance has a potential

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the Controlled Substances Act, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of DEA. 28 CFR 0.100.

**Background**

Methiopropamine is a central nervous stimulant and is structurally related to the schedule II stimulants methamphetamine and amphetamine. On April 21, 2017, the Secretary-General of the United Nations advised the Secretary of State of the United States that during its 60th session, on March 16, 2017, the Commission on Narcotic Drugs voted to place *N*-methyl-1-(thiophen-2-yl)propan-2-amine (methiopropamine) in Schedule II of the 1971 Convention (CND Dec/60/8). Because the procedures in 21 U.S.C. 811(d)(3) and (4) for consultation and issuance of a temporary order for methiopropamine, discussed in the above legal authority section, were not followed, DEA is utilizing the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) to control methiopropamine. Such scheduling would satisfy the United States' international obligations.

Article 2, paragraph 7(b), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to Schedule II of the 1971 Convention. Pursuant to the 1971 Convention, the United States must require licenses for the manufacture, export and import, and distribution of methiopropamine. This license requirement is accomplished by the CSA's registration requirement as set forth in 21 U.S.C. 822, 823, 957, 958 and in accordance with 21 CFR parts 1301 and 1312. In addition, the United States must adhere to specific export and import provisions set forth in the 1971 Convention. This requirement is accomplished by the CSA's export and import provisions established in 21 U.S.C. 952, 953, 957, 958 and in accordance with 21 CFR part 1312. Likewise, under Article 13, paragraphs 1 and 2, of the 1971 Convention, a party to the 1971 Convention may notify through the UN Secretary-General another party that it prohibits the importation of a substance in Schedule II, III, or IV of the 1971 Convention. If such notice is presented to the United States, the United States shall take measures to ensure that the named substance is not exported to the notifying country. This requirement is also accomplished by the CSA's export provisions mentioned above. Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) In regard to each substance in Schedule I and II of the 1971 Convention, quantities manufactured in, exported to, and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in Schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (3) in regard to each substance in Schedule II–IV of the 1971 Convention, quantities used for the manufacture of non-psychotropic substances or products. Lastly, under Article 2 of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. Persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal action; therefore, the United States complies with this provision.

DEA notes that there are differences between the schedules of substances in the 1971 Convention and the CSA. The CSA has five schedules (schedules I–V) with specific criteria set forth for each schedule. Schedule I is the only possible schedule in which a drug or other substance may be placed if it has high potential for abuse and no currently accepted medical use in treatment in the United States. See 21 U.S.C. 812(b). In contrast, the 1971 Convention has four schedules (Schedules I–IV) but does not have specific criteria for each schedule. The 1971 Convention simply defines its four schedules, in Article 1, to mean the correspondingly numbered lists of psychotropic substances annexed to the Convention, and altered in accordance with Article 2.

**Proposed Determination To Schedule Methiopropamine**

On November 20, 2018, DEA requested HHS conduct a scientific and medical evaluation and recommend whether methiopropamine should be controlled under the CSA. On August 27, 2020 (dated August 25, 2020), HHS provided DEA a scientific and medical evaluation entitled ''Basis for the recommendation to control methiopropamine and its salts in schedule I of the Controlled Substance Act'' and a scheduling recommendation. Pursuant to 21 U.S.C. 811(b), following consideration of the eight-factors and findings related to the substance's abuse potential, legitimate medical use, safety, and dependence liability, HHS recommended that methiopropamine be controlled in schedule I of the CSA under 21 U.S.C. 812(b). Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data and conducted its own eight-factor analysis in accordance with 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its proposed scheduling action. Please note that both DEA and HHS eight-factor analyses are available in their entirety under the tab ''Supporting Documents'' of the public docket of this rulemaking action at *http://www.regulations.gov,* under docket number ''DEA–737.''

1. *The Drug's Actual or Relative Potential for Abuse:* The term ''abuse'' is not defined in the CSA. However, the legislative history of the CSA suggests that DEA consider the following criteria when determining whether a particular drug or substance has a potential for abuse: [2]

(a) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

(b) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

(c) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(d) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Both DEA and HHS eight-factor analyses found that methiopropamine has abuse potential associated with its abilities to produce psychoactive effects that are similar to those produced by schedule II stimulants such as amphetamine and methamphetamine

[2] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

that have a high potential for abuse. In particular, the responses in humans to methiopropamine are stimulant-like and include tachycardia, anxiety, insomnia, perspiration, and hallucination.

Methiopropamine has no approved medical uses in the United States. Because this substance is not an approved drug product, a practitioner may not legally prescribe it, and it cannot be dispensed to an individual. The use of this substance without medical advice leads to the conclusion that this stimulant is being abused for its psychoactive properties.

Reports from public health and law enforcement suggest that this substance is being abused and taken in amounts sufficient to create a hazard to an individual's health. This hazard is evidenced by deaths, representing a safety issue for those in the community. Further, methiopropamine was first identified in the National Forensic Laboratory Information System (NFLIS) [3] database in 2011; a September 29, 2020 query of this database for methiopropamine reports indicated a total of 128 such reports through 2018 from 19 states by participating federal, state, and local forensic laboratories. Consequently, the data indicate that methiopropamine is being abused, and it presents safety hazards to the health of individuals who consume it due to its stimulant properties, making it a hazard to the safety of the community.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* As described by HHS, studies show that methiopropamine produces pharmacological effects that are similar to those produced by schedule II substances such as amphetamine and methamphetamine. Similar to these schedule II substances, methiopropamine binds to monoamine transporters for dopamine and norepinephrine and blocks the uptake of these neurotransmitters at their transporters. However, methiopropamine does not have an affinity for serotonin transporters or a significant effect on serotonin transporter activity. Behavioral studies in animals demonstrate that methiopropamine produces locomotor behavior similar to those of amphetamine and methamphetamine. Self-reports by methiopropamine users demonstrate that methiopropamine produces classic stimulant-like effects, including euphoria, psychological and psychomotor stimulation, insomnia, anxiety, panic attacks, and an increased heart rate. Overall, these data indicate that methiopropamine produces pharmacological effects and stimulant-like behaviors that are similar to those of schedule II substances amphetamine and methamphetamine.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Methiopropamine is structurally similar to the schedule II substances methamphetamine and amphetamine. Specifically, methiopropamine is a thiophene analog of methamphetamine.

Self-reports by methiopropamine users in 2020 suggest that the pharmacokinetics of the drug following insufflation are rapid, with the onset of effects occurring five to ten minutes after administration. Methiopropamine reaches its maximum concentration at approximately thirty to sixty minutes later, with a duration of action that can persist for two to four hours. Limited studies identify nor-methiopropamine as the main metabolite found in bodily fluids.

Neither DEA nor HHS is aware of any currently accepted medical use for methiopropamine. According to HHS's August 2020 scientific and medical evaluation and scheduling recommendation, the Food and Drug Administration (FDA) has not approved a marketing application for a drug product containing methiopropamine for any therapeutic indication, nor is HHS aware of any reports of clinical studies or claims of an accepted medical use for methiopropamine in the United States.

Although no evidence suggests that methiopropamine has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, all of the following must be demonstrated: The drug's chemistry is known and reproducible; there are adequate safety studies; there are adequate and well-controlled studies proving efficacy; the drug is accepted by qualified experts; and the scientific evidence is widely available. 57 FR 10499 (1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994). Based on this analysis, methiopropamine has no currently accepted medical use in the United States. Furthermore, DEA has not found any references regarding clinical testing of methiopropamine in the scientific and medical literature. Taken together with HHS's conclusion, DEA finds that there is no legitimate medical use for methiopropamine in the United States.

4. *History and Current Pattern of Abuse:* As described by DEA and HHS, methiopropamine is a stimulant and is structurally and pharmacologically similar to the schedule II substances methamphetamine and amphetamine. Methiopropamine has been trafficked and abused in North America and Europe since its first report of abuse in 2011. In addition, methiopropamine has been identified in law enforcement seizures in the United States since 2011 through 2018. Thus, methiopropamine abuse occurs worldwide.

5. *Scope, Duration and Significance of Abuse:* Forensic laboratories have confirmed the presence of methiopropamine in drug exhibits received from state, local, and federal law enforcement agencies. Law enforcement data show that methiopropamine first appeared in the illicit drug market in 2011 with four encounters. Overall, from 2011 through 2018, NFLIS registered 128 reports from federal, state and local forensic laboratories identifying this substance in drug-related exhibits from 19 states. Thus, methiopropamine abuse is widespread.

6. *What, if Any, Risk There Is to the Public Health:* Based on the review of both HHS and DEA, public health risks of methiopropamine result from its ability to induce stimulant-like responses, which may lead to adverse events that include psychological and cognitive impairment. In addition, methiopropamine has been involved, with one or more other substances, in 14 deaths in the United Kingdom from 2012 to 2016, with methiopropamine being the sole contributing substance in one death in Australia in 2015. Thus, the public health risks associated with methiopropamine are confirmed by the pharmacological profile along with the fatalities associated with methiopropamine.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, the psychic or physiological dependence liability of methiopropamine is demonstrated by its positive abuse-related studies in animals and reported stimulant effects in humans. The results from two behavioral locomotor studies in 2016 demonstrate that methiopropamine produced behavioral effects similar to

[3] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle more than 96% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011.

those of substances with stimulant effects such as amphetamine and methamphetamine. Furthermore, according to self-reports of drug users in 2020, methiopropamine has been abused for its stimulant properties. In addition, DEA notes that because methiopropamine shares pharmacological properties with schedule II stimulant substances such as amphetamine and methamphetamine, methiopropamine likely has a dependence profile similar to these substances, which are known to cause substance dependence.

In summary, data suggests that methiopropamine produces behavioral effects in animals and humans similar to those of schedule II stimulants. Although there are no clinical studies evaluating dependence liabilities specific for methiopropamine, the pharmacological profile of this substance suggests that it possesses dependence liabilities qualitatively similar to schedule II substances such as amphetamine and methamphetamine.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Methiopropamine is not an immediate precursor of any controlled substance under the CSA as defined by 21 U.S.C 802(23).

*Conclusion:* After considering the scientific and medical evaluation conducted by HHS, HHS's scheduling recommendation, and DEA's own eight-factor analysis, DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of methiopropamine. As such, DEA hereby proposes to permanently schedule methiopropamine as a schedule I controlled substance under the CSA.

## Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Administrator, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

### *1. Methiopropamine Has a High Potential for Abuse*

Methiopropamine, similar to the schedule II stimulants amphetamine and methamphetamine, is a stimulant with a high potential for abuse. In animals, behavioral locomotor studies show that methiopropamine produces stimulation similar to that of methamphetamine. As HHS mentions, methiopropamine abuse in humans has been reported in at least 16 countries, including North America and Europe. Additionally, typical stimulant effects such as euphoria, psychomotor stimulation, and anxiety have been described from self-reports of methiopropamine abusers. These effects are similar to those of schedule II stimulant such as methamphetamine and amphetamine. These data collectively indicate that methiopropamine has a high potential for abuse similar to other substances in schedule II such as amphetamine and methamphetamine.

### *2. Methiopropamine Currently Has No Accepted Medical Use in Treatment in the United States*

According to HHS, FDA has not approved a marketing application for a drug product containing methiopropamine for any therapeutic indication. As HHS states, there are also no clinical studies or petitioners that claim an accepted medical use in the United States. In addition, as discussed above in the Factor 3 analysis, methiopropamine does not satisfy DEA's five-part test for having a currently accepted medical use in treatment in the United States.

### *3. There Is a Lack of Accepted Safety for Use of Methiopropamine Under Medical Supervision*

Currently, methiopropamine does not have an accepted medical use as noted by HHS. Because methiopropamine has no approved medical use in treatment in the United States and has not been investigated as a new drug, its safety for use under medical supervision has not been determined. Thus, there is a lack of accepted safety for use of methiopropamine under medical supervision.

Although the first finding shows methiopropamine to have similar effects to schedule II substances such as amphetamine and methamphetamine, it bears reiterating that there is only one possible schedule in the CSA—schedule I—to place methiopropamine since it has no currently accepted medical use in treatment in the United States. See the background section for additional discussion.

Based on these findings, the Administrator concludes that methiopropamine (chemical name: *N*-methyl-1-(thiophen-2-yl)propan-2-amine), including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1). More precisely, because of its stimulant-like effects, DEA is proposing to place methiopropamine in 21 CFR 1308.11(f) (the stimulants category of schedule I). As such, the proposed control of methiopropamine includes the substance as well as its salts, isomers, and salts of isomers.

## Requirements for Handling Methiopropamine

If this rule is finalized as proposed, methiopropamine would become subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following (as of the effective date of the planned final scheduling action):

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) methiopropamine, or who desires to handle methiopropamine, is required to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312 as of the effective date of a final scheduling action. Any person who currently handles methiopropamine, and is not registered with DEA, would need to submit an application for registration and may not continue to handle methiopropamine as of the effective date of a final scheduling action, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender all quantities of currently held methiopropamine or to transfer all quantities of currently held methiopropamine to a person registered with DEA before the effective date of a final scheduling action, in accordance with all applicable Federal, State, local, and tribal laws. As of the effective date of a final scheduling action, methiopropamine would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Methiopropamine would be subject to schedule I security requirements and would need to be

handled and stored pursuant to 21 U.S.C. 821, 823, 871(b) and in accordance with 21 CFR 1301.71–1301.93 as of the effective date of a final scheduling action. Non-practitioners handling methiopropamine would also need to comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of methiopropamine would need to be in compliance with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302 as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture methiopropamine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of methiopropamine on the effective date of a final scheduling action would be required to take an inventory of methiopropamine on hand at that time, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA to handle methiopropamine on or after the effective date of a final scheduling action would be required to have an initial inventory of all stocks of controlled substances (including methiopropamine) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including methiopropamine) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports with respect to methiopropamine pursuant to 21 U.S.C. 827 and 958(e) and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding methiopropamine to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes methiopropamine would be required to comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305, as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of methiopropamine would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312, as of the effective date of a final scheduling action.

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

## Regulatory Analyses

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

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

*Executive Order 12988, Civil Justice Reform*

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

*Executive Order 13132, Federalism*

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

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

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

*Regulatory Flexibility Act*

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance methiopropamine (chemical name: *N*-methyl-1-(thiophen-2-yl)propan-2-amine), including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle, methiopropamine.

According to HHS, methiopropamine has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for methiopropamine in the United States. Therefore, DEA estimates that no United States entity currently handles methiopropamine and does not expect any United States entity to handle methiopropamine in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule if finalized. As such, the proposed rule will not have a significant effect on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521.

**List of Subjects in 21 CFR Part 1308**

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

For the reasons set out above, DEA proposes to further amend 21 CFR part 1308, which we proposed to amend on August 11, 2021 at 86 FR 43983, as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by redesignating paragraph (f)(9) through (f)(11) as (f)(10) through (f)(12) and adding new paragraph (f)(9) to read as follows:

**§ 1308.1 Schedule I.**

* * * * *

(f) * * *

(9) Methiopropamine (*N*-methyl-1-(thiophen-2-yl)propan-2-amine) ..... 1478

* * * * *

**Anne Milgram,**

*Administrator.*

[FR Doc. 2021–18843 Filed 9–1–21; 8:45 am]

**BILLING CODE 4410–09–P**

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 223

**[Docket No. 2021–4]**

## Small Claims Procedures for Library and Archives Opt-Outs and Class Actions

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding the procedures for libraries and archives to opt out of proceedings before the Copyright Claims Board (''CCB'') and the procedures for a party before the CCB with respect to a class action proceeding, under the Copyright Alternative in Small-Claims Enforcement Act of 2020. The Office invites public comments on this proposed rule.

**DATES:** Comments on the proposed rule must be made in writing and received by the U.S. Copyright Office no later than 11:59 p.m. EDT on October 4, 2021.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/case-act-implementation/library-opt-out.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Kevin. R. Amer, Acting General Counsel and Associate Register of Copyrights, by email at *kamer@copyright.gov,* or John R. Riley, Assistant General Counsel, by email at *jril@copyright.gov.* Each can be contacted by telephone at (202) 707–8350.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Copyright Alternative in Small-Claims Enforcement (''CASE'') Act of 2020 [1] directs the Copyright Office to establish the Copyright Claims Board (''CCB'' or ''Board''), a voluntary tribunal within the Office comprised of three Copyright Claims Officers who have the authority to render determinations on certain copyright disputes with a low economic value. This notice of proposed rulemaking is being issued subsequent to a notification of inquiry (''NOI'') published in the **Federal Register** on March 26, 2021, which describes in detail the legislative background and regulatory scope of the present rulemaking proceeding.[2] The Office assumes the reader's familiarity with that document.

[1] Public Law 116–260, sec. 212, 134 Stat. 1182, 2176 (2020).

[2] 86 FR 16156, 16161 (Mar. 26, 2021). Comments received in response to the March 26, 2021 NOI are available at *https://www.regulations.gov/document/COLC-2021-0001-0001/comment.* References to these comments are by party name (abbreviated where appropriate), followed by ''Initial NOI Comments'' or ''Reply NOI Comments,'' as appropriate.

#### *A. Library and Archives Opt Out*

The CASE Act directs the Register of Copyrights to ''establish regulations allowing for a library or archives that does not wish to participate in proceedings before the Copyright Claims Board to preemptively opt out of such proceedings.'' [3] The Office must also ''compile and maintain a publicly available list of the libraries and archives that have successfully opted out of proceedings.'' [4] In promulgating these regulations, the Register cannot ''charge a library or archives a fee to preemptively opt out of proceedings'' or ''require a library or archives to renew a decision to preemptively opt out of proceedings.'' [5]

For the purposes of this provision, the statute defines ''library'' and ''archives'' as ''any library or archives, respectively, that qualifies for the limitations on exclusive rights under section 108 [of title 17].'' [6] Section 108 provides exemptions to libraries and archives from liability for infringement for specified uses of copyrighted works.[7] For an institution to qualify for those exemptions, ''the collections of the library or archives [must be] . . . open to the public, or . . . available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized

[3] 17 U.S.C. 1506(aa)(1).

[4] *Id.* at 1506(aa)(2)(B).

[5] *Id.* at 1506(aa)(3)(A).

[6] *Id.* at 1506(aa)(3)(B). The CASE Act's legislative history does not discuss the library and archives opt-out provision. *See generally* S. Rep. No. 116–105 (2019); H.R. Rep. No. 116–252 (2019). Note, the CASE Act's legislative history cited is for S. 1273, 116th Cong. (2019) and H.R. 2426, 116th Cong. (2019), the CASE Act of 2019, bills largely identical to the CASE Act of 2020, with the notable exception that these earlier bills did not contain the libraries and archives opt-out provision.

[7] 17 U.S.C. 108.

field.'' [8] The Copyright Act of 1976's House Report provides further guidance as to entities intended to be covered by section 108:

> Under [section 108], a purely commercial enterprise could not establish a collection of copyrighted works, call itself a library or archive, and engage in for-profit reproduction and distribution of photocopies. Similarly, it would not be possible for a non-profit institution, by means of contractual arrangements with a commercial copying enterprise, to authorize the enterprise to carry out copying and distribution functions that would be exempt if conducted by the non-profit institution itself.[9]

The House Report also notes that there may be factual questions as to whether libraries or archives ''within industrial, profitmaking, or proprietary institutions'' would qualify for the section 108 exemptions.[10]

In the NOI, the Office requested input on issues related to this opt-out provision, including whether the Office should require proof or a certification that a library or archives qualifies for the opt-out provision; which entities, principals, or agents should be allowed to opt out on behalf of a library or archives; how the opt-out provision would apply to library or archives employees; and various transparency and functionality considerations related to publication of the opt-out list.[11]

1. Proof or Certification Requirement

The NOI asked ''whether a library or archive should be required to prove or certify its qualification for the limitations on exclusive rights under 17 U.S.C. 108, and thus for the blanket opt-out provisions, and how to address circumstances where a library or archives ceases qualifying.'' [12] In comments submitted in response, parties representing libraries and archives generally opposed any requirement that these entities be required to ''prove'' that they qualify for the opt-out provision, although some supported a provision allowing such an entity to self-certify that it qualifies.[13] University Information Policy Officers and the University of Michigan Library stated that libraries and archives should not be required to certify their eligibility to submit a preemptive blanket opt-out notice.[14] AALL suggested that a self-certification approach ''would meet the intent of Congress, which created the preemptive opt out for libraries and archives to provide an efficient and streamlined system for these organizations and to help them avoid the burdensome administrative requirements of repeated opt outs.'' [15] LCA initially stated a library should only have to ''assert'' that it qualifies for the preemptive opt-out,[16] but subsequently suggested that self-certification would be preferred to a ''legal conclusion by a government agency that could influence a court's assessment concerning a library's qualification for section 108.'' [17]

Others suggested that an entity that preemptively opts out of CCB proceedings should be required to submit a formal affidavit or declaration ''certifying its limitations on exclusive rights under 17 U.S.C 108,'' [18] potentially under penalty of perjury.[19] The Copyright Alliance et al. argued that Congress granted libraries and archives ''a unique and narrow exception'' to preemptively opt out of CCB proceedings, but in doing so ''expressly limited the ability to blanket opt out to [libraries or archives] that qualify for the limitations on exclusive rights under section 108.'' [20] They voiced concern that ''[t]o allow entities to 'self-certify' would be to open the blanket opt out to any entity claiming to be a 'library' or 'archive' regardless of whether the entity rightfully qualifies under the law.'' [21]

AIPLA, AMI, and Copyright Alliance et al. proposed creating a Copyright Office or CCB procedure, separate from a CCB infringement proceeding, to review the qualifying status of a library or archives for the preemptive opt-out.[22] AIPLA recommended that ''anyone, including members of the public not bringing a CCB claim, should be permitted to challenge whether a Library or Archive qualifies [for the preemptive opt-out].'' [23] Both AIPLA and the Copyright Alliance et al. proposed that the Office could charge a fee for its review, with AIPLA suggesting that the fee would be ''paid by the challenger if the CCB finds the Library or Archive still qualifies, and by the Library or Archive if it is found not to comply.'' [24] Finally, the Copyright Alliance et al. proposed an additional mechanism to address any circumstance where a federal court ''determines that [an] entity does not qualify for the section 108 exceptions.'' [25] In such a case, the court or the entity would be directed to notify the Copyright Office of that determination, so that it can ''reconsider the blanket opt-out after giving the [library or archive] an opportunity to defend its status.'' [26]

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[8] *Id.* at 108(a).

[9] H.R. Rep. No. 94–1476 at 74.

[10] *Id.*

[11] 86 FR 16156, 16161 (Mar. 26, 2021).

[12] *Id.*

[13] Am. Ass'n of L. Libraries (''AALL'') NOI Initial Comments at 1–2; Univ. of Mich. Library NOI Initial Comments at 4–5.

[14] Univ. of Mich. Library NOI Initial Comments at 4–5 (''Libraries and archives that would like to file a blanket opt-out notice should be able to do so without needing to certify or prove their eligibility for uses authorized by [section] 108.''); Univ. Infor. Pol'y Officers NOI Reply Comments at 1 (''libraries and archives should not be required to certify their eligibility in order to submit a preemptive blanket opt-out''); *see also* Library Copyright All. (''LCA'') NOI Initial Comments at 1 (''it should be sufficient for the library merely to assert that it meets the statutory definition''). *But see* LCA NOI Reply Comments at 2 (contemplating a preemptive opt out by ''certification'').

[15] AALL NOI Initial Comments at 1–2; *see also* Anthony Davis Jr. & Katherine Luce NOI Initial Comments at 2 (''If there is any approval or certification process, it should not be onerous.'').

[16] LCA NOI Initial Comments at 1.

[17] LCA NOI Reply Comments at 2.

[18] Ben Vient NOI Initial Comments at 3 (suggesting that ''[t]o the extent that a Library or Archive wishes to keep its opt-out current with the CCB, it is the responsibility of the Library or Archive to have an Affidavit or Declaration with its current Director on file with the CCB'').

[19] Am. Intell. Prop. L. Ass'n (''AIPLA'') NOI Initial Comments at 4; Copyright Alliance, Am. Photographic Artists, Am. Soc'y for Collective Rights Licensing, Am. Soc'y of Media Photographers, The Authors Guild, CreativeFuture, Digital Media Licensing Ass'n, Graphic Artists Guild, Indep. Book Pubs. Ass'n, Music Creators N. Am., Nat'l Music Council of the United States, Nat'l Press Photographers Ass'n, N. Am. Nature Photography Ass'n, Prof. Photographers of Am., Recording Academy, Screen Actors Guild-Am. Fed. of Television and Radio Artists, Soc'y of Composers & Lyricists, Songwriters Guild of Am. & Songwriters of N. Am. (''Copyright Alliance et al.'') NOI Initial Comments at 20; Science Fiction and Fantasy Writers of Am. NOI Reply Comments at 2 (agreeing that ''a library or archive should make its declaration under penalty of perjury''); *see also* Ass'n of Medical Illustrators (''AMI'') NOI Initial Comments at 2 (''AMI strongly believes that [library and archives] proof and certification should be a requirement in implementing regulations'' and ''that the pre-emptive opt-out is not available to companies that are not eligible for Internal Revenue Code of 501[(c)(3)] treatment.'').

[20] Copyright Alliance et al. NOI Reply Comments at 12–13.

[21] *Id.*

[22] AIPLA NOI Initial Comments at 4 (''If the CCB determines that a Library or Archive does not qualify, the Library or Archive should be permitted to appeal the decision for a fee.''); Copyright Alliance et al. NOI Initial Comments at 20 (same); *see* AMI NOI Initial Comments at 2 (''Library/Archive opt-outs should be open to public comment and granted for 2-year terms then must reapply (using the 1201 exemption to prohibition on of circumvention process as a potential model).''); Univ. of Mich. Library NOI Initial Comments at 4–5 (''If a challenge is later brought concerning the library or archive's status, the library or archive should be required to attest that they meet the requirements of [section] 108(a)(2).'').

[23] AIPLA NOI Initial Comments at 4.

[24] *Id.;* Copyright Alliance et al. NOI Initial Comments at 20 (''If it is determined that a [library or archives] does not qualify, the [library or archives] should be permitted to request that the Board reconsider the decision for a fee (the statute only precludes a fee to apply not to request reconsideration when the application is denied).'').

[25] Copyright Alliance et al. NOI Initial Comments at 20; *see* Copyright Alliance et al. NOI Reply Comments at 14–15 (same); AIPLA NOI Initial Comments at 4 (same).

[26] Copyright Alliance et al. NOI Initial Comments at 20; *see* Copyright Alliance et al. NOI Reply

LCA did not support such a proceeding and suggested that, if a claimant wishes to bring a claim against a library or archives that it believes is ineligible for the preemptive opt out, ''it can file a claim against the library [or archives] with the CCB, indicating that the library [or archives] does not meet the [statutory] requirements.'' [27] At that point, the CCB would review the claim to determine ''[i]f the claimant has pled facts sufficient to indicate that the library no longer is eligible for the preemptive opt-out,'' and then the library or archives would be served with a notice and given the opportunity to either ''demonstrate that it still meets the requirements of section 108(a)(2), and thus that its preemptive opt-out is still valid,'' or ''opt out of that specific proceeding before the CCB.'' [28]

While taking no position on any process for a library or archives to ''claim status . . . for purposes of a blanket opt-out,'' the Motion Picture Association (''MPA''), Recording Industry Association of America (''RIAA''), and Software and Information Industry Association (''SIIA'') asked that the Office make clear that ''an entity's status as a library or archive for the purposes of opting out under CCB does not constitute a determination of that entity's status, and may not be cited as such, in any other context, including in any federal court litigation in which that entity is a party.'' [29]

The Office appreciates parties' comments on this issue and proposes that any library or archives that wishes to take advantage of the statutory preemptive opt-out option must submit a self-certification that it ''qualifies for the limitations on exclusive rights under section 108.'' [30] In doing so, the Office is seeking to balance the statutory goals of ensuring that *only* libraries and archives are eligible for a preemptive opt-out, but also that any such entities are not overly burdened in effecting that election. The proposed rule also requires that any library or archives that has been found by a federal court not to qualify for the section 108 exemptions report this information to the CCB.

The Office will accept the facts stated in the opt-out submission unless they are implausible or conflict with sources of information that are known to the Office or the general public.[31] If the Office believes, based on such information, that the entity does not qualify, it will communicate to the submitter that it does not intend to add the entity to the preemptive opt-out list, or that it intends to remove the entity from the list. The Office will then allow the submitter to provide evidence supporting the entity's eligibility for the exemption. If, after reviewing the submitter's response, the Office determines that the entity does not qualify, the entity will not be added to, or will be removed from, the opt-out list. If the Office determines that the entity does qualify, it will be added to, or remain on, the opt-out list. Either determination will constitute final agency action under the Administrative Procedure Act.[32]

With respect to the requests to allow third-party challenges to an institution's eligibility for the preemptive opt-out, the Office does not believe it is necessary to establish a procedure for such objections that is separate from the CCB's adjudication of individual cases. Such a process would seem an inefficient use of CCB resources, as it could require the Board to resolve disputes over an institution's status before any claim involving that entity has been made. As LCA notes, a party seeking to bring a claim against a library or archives that it believes is improperly on the opt-out list may file the claim with the CCB and include the basis for that conclusion in its statement of material facts. If, during its review of the claim for compliance, the CCB determines that the claimant has alleged facts sufficient to support the conclusion that the entity is ineligible, and the claim is otherwise compliant, the claimant will be instructed to proceed with service on the respondent. The respondent may then include in its response any information to demonstrate that it is in fact eligible, or may simply opt out of that specific proceeding. This process is reflected in the proposed rule.

2. Persons Allowed To Opt Out on Behalf of a Library or Archives

The NOI noted the ''prevalence of libraries and archives being located within larger entities, including but not limited to colleges and universities or municipalities,'' and asked for comments ''addressing which entities, principals, or agents may opt out on behalf of a library or archive, as well as any associated certifications.'' [33] In response, LCA suggested that Office regulations ''should allow the preemptive opt-out to be exercised by any person with the authority to take legally binding actions on behalf of the library in connection to litigation.'' [34] In its view, ''[b]ecause some institutions have many different libraries, an official with the appropriate authority should be able in a single process to exercise a preemptive opt-out with respect to all the eligible libraries within the institution.'' [35] Other commenters suggested that those with the authority to opt out on behalf of a library or archives could include a university agent (*e.g.,* a dean or associate dean) or a law firm.[36] In contrast, AMI contended that ''a blanket, institutional opt-out should not be permitted'' for institutions or entities containing multiple archives.[37] It argued that ''[o]therwise, a complainant could have wasted money and time on bringing an action only to have it thrown out because of ignorance of institutional affiliation of the infringer.'' [38]

The Copyright Alliance et al. suggested that ''[w]here a [library or archives] is a part of a larger entity or municipality, such that the [library or archives] itself does not have standing to act as a Claimant or Counterclaimant on its own, only the larger entity or municipality should be allowed to request the blanket opt-out on behalf of the [library or archives].'' [39] They reasoned that ''[b]ecause the blanket opt-out could have major implications on an entity's exposure to liability, only the larger entity should be allowed to make that decision.'' [40]

The Office generally agrees with LCA's suggestion that the authority to exercise the preemptive opt-out option should belong to any person with the authority to take legally binding actions

Comments at 14–15 (same); AIPLA NOI Initial Comments at 4 (same).

[27] LCA NOI Reply Comments at 2.

[28] *Id.*

[29] MPA, RIAA & SIIA NOI Reply Comments at 10. LCA agreed that any status determination by the CCB should not be treated as conclusive in other contexts. LCA NOI Reply Comments at 1–2.

[30] 17 U.S.C. 1506(aa)(4); *see also* Copyright Alliance et al. NOI Reply Comments at 13 n.7 (opposing ''comments suggesting that the CCB adopt a definition of 'libraries and archives' other than the definition articulated in the statute''). *But see* Authors Alliance NOI Initial Comments at 5–6 (''[W]e support a broad definition of 'libraries and archives' which encompasses public libraries, academic libraries, and other institutions serving the essential functions of preservation and sharing of knowledge and culture.'').

[31] *See* U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 309.2 (3d ed. 2021) (noting the Office's similar approach regarding registration materials).

[32] 5 U.S.C. 704 (''[F]inal agency action for which there is no other adequate remedy in a court [is] subject to judicial review.'').

[33] 86 FR at 16161.

[34] LCA NOI Initial Comments at 2.

[35] *Id.*

[36] AALL NOI Initial Comments at 2; Anthony Davis Jr. & Katherine Luce NOI Initial Comments at 2.

[37] AMI NOI Initial Comments at 2.

[38] *Id.*

[39] Copyright Alliance et al. NOI Initial Comments at 20.

[40] *Id.* at 20–21.

on behalf of the library or archives in connection with litigation. The proposed rule incorporates this approach. Further, the Office does not see a reason to restrict the ability of an institution to submit a preemptive opt-out election for multiple libraries or archives that are the part of the same institution in a ''blanket'' fashion, as the use of separate submissions would be inefficient. Any preemptive opt-out election involving multiple libraries or archives, however, should separately identify the individual libraries or archives to be covered by the submission, as opposed to providing a collective description such as ''all university libraries.''

3. Transparency and Functionality Considerations

The NOI also asked for input ''related to transparency and functionality considerations with respect to its publication of the list of libraries and archives that have opted out.'' [41] Commenters generally agreed that the list of libraries and archives that have preemptively opted out of participating in CCB proceedings should be made publicly available online.[42] The Office agrees, and accordingly the list will be maintained on the Board's website.

4. Application of the Opt-Out Provision to Persons in the Course of Their Employment

Finally, the NOI asked parties to comment on whether the Office ''should include a regulatory provision that specifies that this opt out extends to employees operating in the course of their employment.'' [43] Commenters representing libraries and archives supported such a rule, while others, including AIPLA and the Copyright Alliance et al., were opposed.

Several library representatives, including AALL, LCA, the University of Illinois Library, and the University of Michigan Library, advocated for regulatory language specifying that the preemptive opt-out extends to employees operating in the course of their employment.[44] As the University of Illinois Library argued, ''[t]o provide a blanket opt out provision to libraries yet potentially hold employees liable when working within the scope of their employment would be to eviscerate the opt out provision as the work of libraries is conducted by its employees, not by the entity itself.'' [45] AALL and the University of Illinois Library also argued that such a rule would be consistent with section 108,[46] which extends the statutory exemption for libraries and archives to ''any of [the library or archives'] employees acting within the scope of their employment.'' [47]

In further support of this approach, LCA argued that Copyright Claims Attorneys, who are required to review new claims to ensure that they comply with the statute and regulations, would be able ''to determine from the claim's statement of material facts whether the respondent is a library employee acting with the scope of her employment.'' [48] It argued that such a determination would be no less burdensome ''than to determine whether the respondent is a library that has preemptively opted-out of CCB proceedings, a Federal or State governmental entity,'' or ''a person or entity residing outside of the United States''—all of which have to be determined by the CCB before a claimant is allowed to proceed with a claim.[49] LCA also contended that ''[a]n employee's failure to opt out inevitably would result in the library becoming enmeshed in the CCB proceeding on behalf of the employee, contrary to Congressional intent.'' [50]

The Copyright Alliance et al. opposed extending the libraries and archives opt-out provision to employees acting within the scope of their employment, arguing that ''[w]hether an employee is operating within the course/scope of their employment is a question of fact that would need to be determined by the CCB.'' [51] In their view, ''[i]f a claim is brought against an individual, and it is determined that the claim should have been brought against a [library or archive] that has elected to blanket opt-out, the claim should be dismissed.'' [52] AIPLA added that ''[d]eciding whether to extend a blanket opt out to employees would require the CCB to determine *ex parte* whether employees were operating in the course of their employment,'' which would ''undermine the adversarial process and increase the burden on the CCB.'' [53] Both AIPLA and the Copyright Alliance et al. noted that individuals who are potentially acting within the scope of their employment have the option to opt out of any CCB proceeding themselves.[54] AMI similarly stated that it did not support regulations that would ''shield [a library or archive] employee from liability for actions taken in the course of employment, but not authorized or otherwise sanctioned by the employer [who opted out of the CCB process].'' [55]

The Office appreciates libraries' and archives' concerns that excluding individual employees from the blanket opt-out could hamper the effectiveness of that option by allowing parties to assert claims against such individuals when claims against the institution are unavailable. Such a rule, however, seemingly appears inconsistent with principles of agency law and would require a broad interpretation of the statutory text. While it is generally true that an employer may be liable for the actions of employees taken within the scope of their employment,[56] the Office does not understand that principle to mean that suits against the employee individually are precluded in such circumstances. Rather, as a general rule, ''[u]nless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.'' [57] Moreover, the CASE Act expressly offers the preemptive opt-out option to ''a library or archives,'' but does not mention employees.[58] The

[41] 86 FR at 16161.

[42] AIPLA NOI Initial Comments at 5; Copyright Alliance et al. NOI Initial Comments at 21; LCA NOI Initial Comments at 2.

[43] 86 FR at 16161.

[44] LCA NOI Reply Comments at 3; Univ. Information Policy Officers NOI Reply Comments at 1; AALL NOI Initial Comments at 2; Anonymous II NOI Initial Comments at 1; Anthony Davis Jr. & Katherine Luce NOI Initial Comments at 2; LCA NOI Initial Comments at 3; Univ. of Ill. Library NOI Initial Comments at 2; Univ. of Mich. Library NOI Initial Comments at 5; *see also* Science Fiction and Fantasy Writers of Am. NOI Reply Comments at 2 (noting ''no major objection to such a provision, so long as care is taken to ensure that employees are in fact acting within the proper scope of their employment and within the limits of 17 U.S.C. 108'').

[45] Univ. of Ill. Library NOI Initial Comments at 2.

[46] AALL NOI Initial Comments at 2 (citing 17 U.S.C. 108); Univ. of Ill. Library NOI Initial Comments at 2 (citing 17 U.S.C. 108(a)).

[47] 17 U.S.C. 108(a).

[48] LCA NOI Reply Comments at 3.

[49] *Id.* (citing 17 U.S.C. 1504(d)(3)–(4)).

[50] *Id.*

[51] Copyright Alliance et al. NOI Initial Comments at 21.

[52] *Id.*

[53] AIPLA NOI Initial Comments at 5.

[54] *Id.* at 5; Copyright Alliance et al. NOI Reply Comments at 14.

[55] AMI NOI Initial Comments at 2.

[56] *See, e.g.,* Alan Latman & William S. Tager, *Study No. 25: Liability of Innocent Infringers of Copyrights* 145 (1958) (''The normal agency rule that a[n] [employer] is liable for [the employee's] wrongful acts committed within the scope of employment has been considered applicable to copyright infringement.''), *reprinted in* Subcomm. on Patents, Trademarks, and Copyrights, S. Comm. on the Judiciary, 86th Cong., Copyright Law Revision: Studies 22–25 135 (Comm. Print 1960); *see also, e.g., Lowry's Reports, Inc.* v. *Legg Mason, Inc.,* 271 F. Supp. 2d 737, 746 (D. Md. 2003) (holding that employer was potentially liable for the infringing conduct of its employee-agent).

[57] *Restatement (Third) of Agency* sec. 7.01 (Am. Law. Inst. 2006).

[58] 17 U.S.C. 1506(aa)(1).

proposed rule accordingly does not include such a provision.

Some commenters further requested that the Office promulgate a regulation expanding the statutory opt-out provision to a library's larger institution,[59] such as a university, or to that larger institution's students, staff, adjunct, and faculty.[60] For the same reasons just noted, however, such a rule is inconsistent with the statute's express limitation of this option to libraries and archives.[61]

5. Other Proposals

Commenters asked the Office to promulgate certain additional rules related to participation by libraries and archives. First, some commenters requested that the Office consider including regulations allowing a library or archives to revoke or rescind its preemptive opt-out election.[62] As LCA explained, ''[a] library should not forever be excluded from the CCB process because it exercises a preemptive opt-out at one point in time.'' [63] The Copyright Alliance et al. opposed this proposal.[64] As an alternative, they suggested that the Office could create a ''two-tiered system,'' with the first tier allowing for permanent opt outs and the second tier requiring recertification of the institution's opt-out decision ''on an annual basis.'' [65] In their view, this approach ''would have the additional benefit of acting as a routine 'audit' to ensure that [libraries or archives] taking advantage of the blanket opt-out continue to meet the qualifications for section 108.'' [66]

The Office generally agrees that a library's or archives' opt-out election should not be irreversible. Indeed, permitting such an institution to rescind an opt-out would help advance the statutory goal of encouraging participation in the CCB system. The proposed rule accordingly provides that a library or archives may rescind a preemptive opt-out election by providing written notification of such intent to the CCB. To avoid potential abuses and to limit the impact on CCB resources, the proposed rule provides that an institution may make no more than one such rescission per calendar year.

In addition, two commenters proposed rules to address errors and abuses involving the opt-out process. LCA urged the Office to establish procedures to address circumstances where a Copyright Claims Attorney erroneously allows a claim to proceed against a library.[67] Verizon proposed regulations to ''deter those who repeatedly abuse the opt-out process,'' including the ability ''to impose monetary fines on bad faith filers'' and ''the ability to ban such parties from future use of the CCB process.'' [68] While these suggestions are related to the preemptive opt-out provisions for libraries and archives, they are more appropriately considered in future CASE Act rulemakings addressing errors in and abuses of CCB procedures generally.

*B. Class Actions*

A CCB proceeding does not have any effect on a class action proceeding in federal district court.[69] If, however, a party in an active CCB proceeding ''receives notice of a pending or putative class action, arising out of the same transaction or occurrence'' as the claim at issue before the CCB, the CASE Act provides that party with two choices.[70] The party must either ''opt out of the class action, in accordance with regulations established by the Register,'' or seek dismissal of the CCB proceeding in writing.[71] In the NOI, the Office asked for public comment on ''any issues that should be considered relating to regulations governing dismissal or opt-outs related to class action proceedings, including specific proposed regulatory language.'' [72]

Two parties provided comments on this issue. The Copyright Alliance et al. suggested that ''[i]f a party receives notice of a class action and wishes to dismiss the case before the CCB, the regulations should require that party to notify the CCB and the other parties to the case within 10 business days following receipt of the class action notice.'' [73] The MPA, RIAA, and SIAA did not suggest a specific time period, but suggested that ''a party learning of a class action during the pendency of a proceeding and wishing to exercise a class-action opt-out should be required to do so promptly after learning of the class action.'' [74] The MPA, RIAA, and SIIA also voiced concerns that a delayed opt out decision ''risks wasting effort and expense by the litigants and the CCB, and the amount of wasted effort and expense increases with the passage of time.'' [75]

The Office has proposed a fourteen-day period for a party to either opt out of the class action or to seek dismissal of the CCB proceeding. If a party chooses to opt out of the class action, he or she must file written notice of that intent with the CCB within fourteen days after filing such notice with the court. The proposed rule authorizes the Board to extend these time periods for good cause.

**List of Subjects in 37 CFR Part 223**

Copyright, Claims.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Office proposes to amend Chapter II, Subchapter B, of title 37 Code of Federal Regulations to read as follows:

**SUBCHAPTER B—COPYRIGHT CLAIMS BOARD AND PROCEDURES**

■ 1. The heading of Subchapter B is revised to read as set forth above.
■ 2. Part 223 is added to read as follows:

**PART 223—OPT-OUT PROVISIONS**

Sec.
223.1 [Reserved]
223.2 Libraries and archives opt-out procedures.
223.3 Class action opt-out procedures.

**Authority:** 17 U.S.C. 702, 1510.

**§ 223.1 [Reserved]**

**§ 223.2 Libraries and archives opt-out procedures.**

(a) *Opt-out notification.* (1) A library or archives that wishes to preemptively opt out of participating in Copyright Claims Board proceedings under 17 U.S.C. 1506(aa) may do so by submitting written notification to the Copyright Claims Board. The notification shall include a signed certification under penalty of perjury that the library or archives qualifies for the limitations on exclusive rights under section 108 of title 17.

(2) The submission described in paragraph (a)(1) of this section shall list the name and physical address of each

[59] LCA NOI Initial Comments at 3.

[60] Anonymous II NOI Initial Comments at 1.

[61] 17 U.S.C. 1506(aa)(1); *see also* 86 FR at 16161 (''Congress did not establish a blanket opt-out for any entities other than libraries and archives, and in that case, it did so expressly by statute. This suggests that the Office lacks authority to adopt other blanket opt-outs by regulation.'' (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012); *Lindh* v. *Murphy,* 521 U.S. 320, 330 (1997))).

[62] Anthony Davis Jr. & Katherine Luce NOI Initial Comments at 2; CCIA & IA NOI Initial Comments at 4; LCA NOI Initial Comments at 3.

[63] LCA NOI Initial Comments at 3.

[64] Copyright Alliance et al. NOI Reply Comments at 12–13.

[65] *Id.* at 13.

[66] *Id.*

[67] LCA NOI Reply Comments at 4.

[68] Verizon NOI Initial Comments at 3–4.

[69] 17 U.S.C. 1507(b).

[70] *Id.* at 1506(q)(3).

[71] *Id.* at 1507(b)(2); 1506(q)(3).

[72] 86 FR at 16161.

[73] Copyright Alliance et al. NOI Initial Comments at 21.

[74] MPA, RIAA & SIIA NOI Initial Comments at 9.

[75] *Id.*

library or archives to which the preemptive opt out applies and shall be signed by a person with the authority described in paragraph (c) of this section. The library or archives must also provide a point of contact for future correspondence, including phone number, mailing address, and email address and shall notify the Copyright Claims Board if this information changes.

(3) The Copyright Claims Board will accept the facts stated in the submission described in paragraphs (a)(1) and (2) of this section, unless they are implausible or conflict with sources of information that are known to the Copyright Claims Board or the general public.

(4) If a federal court determines that an entity described in paragraph (a)(1) of this section does not qualify for the limitations on exclusive rights under section 108 of title 17, that entity must inform the Copyright Claims Board of that determination and submit a copy of the relevant order or opinion, if any, within fourteen days after the determination is issued.

(5) A library or archives may rescind its preemptive opt-out election under this section, such that it may participate in Copyright Claims Board proceedings, by providing written notification to the Copyright Claims Board in accordance with such instructions as are provided on the Copyright Claims Board website. A library or archives may submit no more than one such rescission notification per calendar year.

(6) The notification described in paragraph (a)(1) of this section shall be submitted to the Copyright Claims Board in accordance with such instructions as are provided on the Copyright Claims Board website.

(b) *Review of eligibility.* (1) The Copyright Claims Board will maintain on its website a public list of libraries and archives that have preemptively opted out of Copyright Claims Board proceedings pursuant to paragraph (a) of this section. If the Register determines pursuant to paragraph (a)(3) of this section that an entity does not qualify for the preemptive opt-out provision, the Office will communicate to the point of contact described in paragraph (a)(2) of this section that it does not intend to add the entity to the public list, or that it intends to remove the entity from that list, and will allow the entity to provide evidence supporting its qualification for the exemption within thirty days. If the entity fails to respond, or if, after reviewing the entity's response, the Register determines that the entity does not qualify for the limitations on exclusive rights under section 108 of title 17, the entity will be not be added to, or will be removed from, the public list. If the Register determines that the entity qualifies for the limitations on exclusive rights under section 108 of title 17, the entity will be added to, or remain on, the libraries and archives preemptive opt-out list. This provision does not limit the Office's ability to request additional information from the point of contact listed pursuant to paragraph (a)(2) of this section.

(2) A party seeking to assert a claim under this section against a library or archives that it believes is improperly included on the public list described in paragraph (b)(1) of this section may file the claim with the Copyright Claims Board pursuant to 17 U.S.C. 1506(e) and applicable regulations. The claimant must include in its statement of material facts allegations sufficient to support that belief. If the Copyright Claims Board determines, as part of its review of the claim pursuant to 17 U.S.C. 1506(f), that the claimant has alleged facts sufficient to support the conclusion that the library or archives is ineligible for the preemptive opt-out, and the claim is otherwise complaint, the claimant will be instructed to proceed with service of the claim. The respondent may include in its response any factual statements in support of its eligibility.

(3) Any determination made under paragraph (b)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(c) *Authority.* Any person with the authority to take legally binding actions on behalf of a library or archives in connection with litigation may submit a notification under paragraph (a) of this section.

(d) *Multiple libraries and archives in a single submission.* A notification under paragraph (a) of this section may include multiple libraries or archives in the same submission if each library or archives is listed separately in the submission and the submitter has the authority described under paragraph (c) of this section to submit the notification on behalf of all libraries and archives included in the submission.

**§ 223.3 Class action opt-out procedures.**

(a) *Opt-out or dismissal procedures.* Any party to an active proceeding before the Copyright Claims Board who receives notice of a pending or putative class action, arising out of the same transaction or occurrence as the proceeding before the Copyright Claims Board, in which the party is a class member, shall either opt out of the class action or seek written dismissal of the proceeding before Copyright Claims Board within fourteen days of receiving notice of the pending class action. If a party seeks written dismissal of the proceeding before Copyright Claims Board, upon notice to all claimants and counterclaimants, the Copyright Claims Board shall dismiss the proceeding without prejudice.

(b) *Filing requirement.* A copy of the notice indicating a party's intent to opt out of a class action proceeding must be filed with the Copyright Claims Board within fourteen days after the filing of the notice with the court.

(c) *Timing.* The time periods provided in paragraphs (a) and (b) of this section may be extended by the Copyright Claims Board for good cause shown.

Dated: August 24, 2021.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

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**BILLING CODE 1410–30–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R10–OAR–2020–0648; FRL–8787–01–R10]**

## Air Plan Approval; AK; Eagle River Second 10-Year $PM_{10}$ Limited Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the Eagle River, Alaska (AK) limited maintenance plan (LMP) submitted on November 10, 2020, by the Alaska Department of Environmental Conservation (ADEC or ''the State''). This plan addresses the second 10-year maintenance period after redesignation for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$). An LMP is used to meet Clean Air Act (CAA) requirements for formerly designated nonattainment areas that meet certain qualification criteria. The EPA is proposing to determine that Alaska's submittal meets the CAA requirements. The plan relies upon control measures contained in the first 10-year maintenance plan and the determination that the Eagle River area currently monitors $PM_{10}$ levels well below the $PM_{10}$ National Ambient Air Quality Standards (NAAQS or ''the standard'').

**DATES:** Comments must be received on or before October 4, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2020–0648, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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 FURTHER INFORMATION CONTACT:** Christi Duboiski, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (360) 753–9081, or *duboiski.christi@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we'', ''us'' or ''our'' is used, it means the EPA.

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## I. Background

On August 7, 1987, the EPA designated the Community of Eagle River (Eagle River) as a $PM_{10}$ nonattainment area (NAA) due to measured violations of the 24-hour $PM_{10}$ NAAQS (52 FR 29383). The notice announcing the designation upon enactment of the 1990 CAA Amendments was published on March 15, 1991 (56 FR 11101). On November 6, 1991, the Eagle River NAA was subsequently classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA (56 FR 56694). After Eagle River was designated nonattainment for $PM_{10}$, ADEC and the Municipality of Anchorage (MOA) worked with Eagle River to develop a plan to bring the area into attainment no later than December 31, 1994. The State submitted the plan to the EPA on October 15, 1991, as a moderate $PM_{10}$ State Implementation Plan (SIP) under section 189(a) of the CAA. The primary control measure that the plan relied on was a comprehensive road paving program throughout the Eagle River NAA. The EPA took final action to approve the State's moderate $PM_{10}$ SIP on August 13, 1993 (58 FR 43084).

On September 29, 2010, the State requested that the EPA redesignate the Eagle River NAA to attainment for $PM_{10}$ and submitted the Eagle River first 10-year $PM_{10}$ LMP to the EPA for approval. On October 19, 2010, the EPA determined that the Eagle River NAA had attained the $PM_{10}$ NAAQS by the applicable attainment date of December 31, 1994 (75 FR 64162). On January 7, 2013, the EPA took direct final action to approve the first 10-year LMP submitted by the State for the Eagle River NAA and concurrently redesignated the area to attainment for the $PM_{10}$ NAAQS (78 FR 900).

## II. Limited Maintenance Plan Option for $PM_{10}$ Areas

### *A. Requirements for the Limited Maintenance Plan Option*

Section 175A of the CAA sets forth the elements of a maintenance plan. Under section 175A, a state must submit a plan to demonstrate continued attainment of the applicable NAAQS for at least 10 years after an area is redesignated to attainment. Eight years into the first maintenance period, the state must submit a second maintenance plan demonstrating that the area will continue to attain for the following 10-year period. On September 4, 1992, the EPA issued guidance on the content of a maintenance plan (Memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (Calcagni Memo)).[1] The Calcagni Memo states that a maintenance plan should include the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

On August 9, 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain moderate $PM_{10}$ nonattainment areas (see Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas'' (LMP Option Memo).[2] The LMP Option memo contains a statistical demonstration states can use to show that areas are meeting certain air quality criteria with a high degree of probability, and therefore will maintain the standard 10 years into the future. By providing this statistical demonstration, the EPA can consider the maintenance demonstration requirement of the CAA to be satisfied for the moderate $PM_{10}$ nonattainment area meeting this air quality criteria. If the tests described in section IV of the LMP Option memo are met, the EPA will treat that as a demonstration that the area will maintain the NAAQS. Consequently, it follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary.

To qualify for the LMP option, a State must demonstrate that the area meets the following criteria. First, the area should have attained the $PM_{10}$ NAAQS. Second, the most recent five years of air quality data at all monitors in the area, called the 24-hour average design value, should be at or below 98 micrograms per cubic meter ($\mu g/m^3$). Third, the State should expect only limited growth in on-road motor vehicle $PM_{10}$ emissions and should have passed a motor vehicle regional emissions analysis test. Lastly, the LMP Option Memo identifies core provisions that must be included in all limited maintenance plans. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-

[1] The Memorandum from the EPA's Air Quality Management Division Director to EPA Regional Air Directors entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' dated September 4, 1992 (Calcagni Memo) can be found at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19920904_calcagni_process_redesignation_guidance.pdf.*

[2] The ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas'' Memo outlines the criteria for development of a $PM_{10}$ limited maintenance plan and can be found at *https://www.epa.gov/sites/production/files/2016-06/documents/2001lmp-pm10.pdf.*

approved air quality monitoring network, and contingency provisions.

*B. Conformity Under the Limited Maintenance Plan Option*

The transportation conformity rule and the general conformity rule (set forth in the Code of Federal Regulations (CFR) at 40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While the EPA's LMP option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without conforming to an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the $PM_{10}$ NAAQS would result. For transportation conformity purposes, the EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in 40 CFR 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

While areas with maintenance plans approved under the LMP option are not subject to the budget test (see 40 CFR 93.109(e)), the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that:

a. Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

b. transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

c. the MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

d. conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

e. the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

f. projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

g. project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

If the EPA approves the second 10-year LMP, the Eagle River maintenance area will continue to be exempt from performing a regional emissions analysis but must meet project-level conformity analyses as well as the transportation conformity criteria described above.

## III. Review of the State's Submittal

*A. Qualifying for the Limited Maintenance Plan Option*

As discussed in Section II.A. of this preamble, the LMP Option Memo outlines the requirements for an area to qualify for an LMP. First, the area should be attaining the $PM_{10}$ NAAQS. The $PM_{10}$ NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m$^3$ is equal to or less than one (40 CFR 50.6). The Eagle River area continues to attain the standard for $PM_{10}$ despite exceedances of the standard for the 24-hour average concentration in 2010, 2013 and 2019. We have evaluated the most recent ambient air quality data for the 24-hour $PM_{10}$ NAAQS and determined that the Eagle River area continues to attain the standard with the number of annual exceedances equal to 0.4 for the period 2018 through 2020. Table 1 of this preamble shows the 24-hour maximum $PM_{10}$ concentrations measured at the Parkgate monitoring site from 2010–2020, which are consistently below the NAAQS.

TABLE 1—PARKGATE 24-HOUR MAXIMUM $PM_{10}$ CONCENTRATIONS 2010–2020

| Year | 24-hour max µg/m$^3$ | 2nd highest 24-hour µg/m$^3$ | Number of days exceeding NAAQS |
|---|---|---|---|
| 2010 | 207 | 92 | 1 |
| 2011 | 108 | 70 | 0 |
| 2012 | 81 | 77 | 0 |
| 2013 | 174 | 78 | 1 |
| 2014 | 111 | 109 | 0 |
| 2015 | 90 | 70 | 0 |
| 2016 | 110 | 105 | 0 |
| 2017 | 63 | 59 | 0 |
| 2018 | 62 | 61 | 0 |
| 2019 | 168 | 79 | 1 |
| 2020 | 56 | 45 | 0 |

Second, the 24-hour average design value for the most recent five years of monitoring data must be at or below the critical design value of 98 µg/m$^3$ for the $PM_{10}$ NAAQS. The critical design value is a margin of safety in which an area has a one in ten probability of exceeding the NAAQS. The 5-year average design value for Eagle River, based on $PM_{10}$ monitoring data from 2014 through 2018, is 96 µg/m$^3$. In addition, the EPA also calculated the 5-year average design value for Eagle River based on $PM_{10}$ monitoring data from 2016 through 2020 and found the most conservative design value estimate to be 93.4 µg/m$^3$, which is below the critical design value of 98 µg/m$^3$. The EPA's attainment and average design value evaluation used to determine if the area qualifies for the LMP option is included in the docket for this action. The EPA reviewed the data and methodology provided by the State and the most recent 5-year average design value and finds that the Eagle River area's 5-year average design value is below the critical design value of 98

μg/m³ outlined in the LMP Option Memo. Therefore, the EPA finds that the Eagle River area meets the design value criteria outlined in the LMP options memo.

Third, the area must meet the motor vehicle regional emissions analysis test described in the LMP Option Memo. The State submitted an analysis showing that growth in on-road mobile $PM_{10}$ emissions sources was minimal and would not threaten the assumption of maintenance that underlies the LMP policy. Using the EPA's methodology, the State calculated total projected growth in on-road motor vehicle $PM_{10}$ emissions through 2033 (the end of the 20-year maintenance period) for the Eagle River area. This calculation is derived using Attachment B of the EPA's LMP Option Memo, where the projected percentage increase in vehicle miles traveled over the next ten years ($VMT_{pi}$) is multiplied by the on-road mobile portion of the attainment year inventory ($DV_{mv}$), including re-entrained road dust. This test is met when ($VMT_{pi} \times DV_{mv}$) plus the design value for the most recent five years of quality assured data is below the margin of safety (MOS) for the relevant $PM_{10}$ standard in μg/m³ for a given area. This MOS value can be 98 μg/m³ or a site-specific value computed from data collected at the site of interest using methods outlined in Attachment A of the LMP Option Memo. The computed site-specific MOS selected for the Parkgate monitoring site in Eagle River is 125.7 μg/m³ (the critical design value for all the empirical data). See the Eagle River LMP, Section III.D.2.5 and associated appendix, placed in the docket for this action, for details of this computation. The motor vehicle regional emissions analysis test results of 109.6 μg/m³, when adjusted for growth, are below the calculated site-specific critical design value, or MOS, of 125.7 μg/m³. The EPA has reviewed the calculations in the State's Eagle River LMP submittal and proposes to find that the area meets the motor vehicle regional emissions analysis test.

As described above, the Eagle River $PM_{10}$ maintenance area meets the qualification criteria set forth in the LMP Option Memo and accordingly qualifies for the LMP option. To ensure these requirements continue to be met, the State commits to evaluate monitoring data annually to ensure the area continues to qualify for the LMP option. However, if after performing the annual recalculation of the area's average design value in a given year, the State determines that the area no longer qualifies for the LMP, the State will take action to attempt to reduce $PM_{10}$ concentrations enough for the area to requalify for the LMP. One possible approach the State may take is to implement a contingency measure found in its SIP. See Section III.D.2.10 of the State's submittal, placed in the docket for this action, for a description of the contingency measures. If the attempt to reduce $PM_{10}$ concentrations fails, or if it succeeds but in future years it becomes necessary again to address increasing $PM_{10}$ concentrations in the area, the area will no longer qualify for the LMP option.

*B. Attainment Inventory*

Pursuant to the LMP Option Memo, the State's submission should include an emissions inventory, which can be used to demonstrate attainment of the relevant NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP option. The State should review its inventory every three years to ensure emissions growth is incorporated in the inventory if necessary.

Alaska's Eagle River $PM_{10}$ LMP includes an emissions inventory, with a base year of 2017. In the past, the highest $PM_{10}$ concentrations have typically occurred during spring break-up and fall freeze-up. For this reason, the emissions inventories reflect conditions and activity levels (*e.g.,* amount of silt loading on roads and residential wood heating rates) that commonly occur during these two times of the year. The same assumptions and methods used to develop the first 10-year LMP were used to develop the 2017 base year $PM_{10}$ emissions inventory for the second 10-year LMP and are described in detail in the Appendix to III.D.2.6 of the Eagle River LMP submittal in the docket for this action. The 2017 base year represents the most recent emissions inventory data available, is representative of the level of emissions during a period of time used to calculate the area is attaining the NAAQS, and is consistent with the data used to determine applicability of the LMP option (*i.e.,* having no violations of the NAAQS during the five-year period used to calculate the design value).

Unlike the first 10-year LMP, where five sources of $PM_{10}$ emissions were identified and inventoried, the second 10-year LMP inventoried six sources as shown in Table 2 of this preamble. The first 10-year LMP assumed emissions from non-road equipment were zero, however, the second 10-year LMP calculated these emissions to be less than 1% of the 2017 emissions inventory. The most significant of the $PM_{10}$ emission sources for the Eagle River area are still paved road dust, windblown dust, and residential wood combustion. Like the emission inventory prepared for the first 10-year LMP, unpaved roads emissions are not included in the inventory for the second 10-year LMP. This is because since 2007, all the unpaved roads in Eagle River have been paved with either hot asphalt paving or surfaced with recycled asphalt product.

TABLE 2—2017 EMISSIONS INVENTORY IN TONS/DAY AND % OF TOTAL EMISSIONS

| Source category | Spring break-up (March, April) (tons/day) (percent) | Fall freeze-up (October, November) (tons/day) (percent) |
|---|---|---|
| Paved Roads | 3.71 (56.3) | 1.06 (48.6) |
| Wind-blown Dust from Paved Roads, Parking Lots and Un-Vegetated Areas | 2.48 (37.6) | 0.73 (33.4) |
| Fireplaces and Wood Stoves | 0.35 (5.31) | 0.35 (16.0) |
| Natural Gas Combustion | 0.009 (0.13) | 0.009 (0.41) |
| Exhaust, Tire and Brake Wear Emissions | | |
| from Motor Vehicles | 0.026 (0.39) | 0.027 (1.23) |
| Non-Road Equipment Emissions | 0.0135 (0.20) | 0.0132 (0.60) |
| Total | 6.58 (100) | 2.18 (100) |

In accordance with the LMP Option Memo, all controls relied on to demonstrate attainment and continued maintenance will remain in place (*e.g.,* the required paved road improvements for non-rural, residential properties in the Municipality of Anchorage).[3] Efforts by the Municipality of Anchorage (MOA) to pave all streets except those in low density residential areas was the primary $PM_{10}$ mitigation program in Eagle River that lead to significant reduction in $PM_{10}$ emissions. By 2007 all 22 miles of local gravel roads were paved with either traditional hot asphalt paving or surfaced with recycled asphalt product (RAP). The MOA is committed to continued maintenance of these roads, and the MOA and the Alaska Department of Transportation and Public Facilities are committed to maintaining sand specifications that allow no more than 2% fines or silt allowed in winter traction sand. ADEC asserts that no additional control measures are necessary to maintain the NAAQS.

The submittal meets the EPA guidance for purposes of an attainment emissions inventory, and the emissions inventory data supports the State's conclusions that the existing control measures will continue to protect and maintain the $PM_{10}$ NAAQS.

*C. Air Quality Monitoring Network*

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. From 1985 until present, Alaska has operated a $PM_{10}$ monitor at the Parkgate Business Center (Parkgate monitor) in the Eagle River NAA. The Parkgate monitor was sited and maintained in accordance with Federal siting and design criteria in 40 CFR part 58, and in consultation with the EPA Region 10. On June 26, 2020, ADEC submitted the 2020 Annual Monitoring Network Plan that the EPA approved on January 25, 2021. ADEC's network plan and the EPA's approval letter are included in the docket for this action.

The State commits to continued operation of at least one EPA-approved $PM_{10}$ monitoring site in the Eagle River maintenance area through the end of the maintenance planning period, 2033, and will continue to operate the monitor consistent with the EPA-approved ADEC annual network plan in order to meet the EPA requirements at 40 CFR part 58.

*D. Verification of Continued Attainment*

The level of the $PM_{10}$ NAAQS is 150 $\mu g/m^3$, 24-hour average concentration. The NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (40 CFR 50.6). As stated in Section III.D. of this preamble, ADEC commits to continue to operate a regulatory monitoring network in accordance with 40 CFR part 58. In addition, ADEC commits to verifying continued attainment of the $PM_{10}$ standard through the maintenance plan period with the operation of an appropriate $PM_{10}$ monitoring network. In developing the second 10-year maintenance plan, ADEC evaluated the most recent three years of complete, quality-assured data for the Eagle River NAA (2017 through 2019) to verify continued attainment of the standard.

*E. Contingency Provisions*

The CAA section 175A states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS, which may occur after redesignation of the area to attainment. As explained in the LMP Option Memo and the Calcagni Memo, these contingency provisions are an enforceable part of the federally approved SIP. The maintenance plan should clearly identify the events that would ''trigger'' the adoption and implementation of a contingency provision, the contingency provision(s) that would be adopted and implemented, and the schedule indicating the time frame by which the State would adopt and implement the provision(s). The LMP Option Memo and the Calcagni Memo state that the EPA will determine the adequacy of a contingency plan on a case-by-case basis. At a minimum, it must require that the state implement all measures contained in the CAA part D nonattainment plan for the area prior to redesignation.

In the Eagle River $PM_{10}$ LMP, ADEC included maintenance plan contingency provisions to ensure the area continues to meet the $PM_{10}$ NAAQS. The Eagle River LMP describes a process and a timeline to identify, evaluate and select the appropriate contingency measure(s) from a list of measures in the event of a quality assured violation of the $PM_{10}$ NAAQS. The contingency measures that may be implemented to reduce emissions are listed in Section III.D.2.10 of the Eagle River LMP in the docket for this action. Within 30 days following a violation of the $PM_{10}$ NAAQS, the MOA will convene an assessment team to evaluate the events contributing to the violation and identify control measure(s) that appropriately address the source(s) and circumstances causing the violation. Within 120 days of the violation, the assessment team will prepare a report that identifies the cause or causes of the violation and recommend appropriate measures for mitigating future violations. The report will be presented to the Anchorage Metropolitan Area Transportation Solutions Policy Committee for review and adoption and will then be forwarded to ADEC for approval.

The EPA proposes to determine that the contingency provisions submitted in the Eagle River $PM_{10}$ LMP are adequate to meet CAA section 175A requirements and the contingency provisions as outlined in the LMP Option Memo.

## IV. Proposed Action

The EPA is proposing to approve the second 10-year $PM_{10}$ limited maintenance plan for Eagle River submitted by the State of Alaska.[4] The EPA's review of the air quality data for the Eagle River area indicates that the area continues to show attainment of the $PM_{10}$ NAAQS and meets all the LMP requirements as described in this action. If finalized, the EPA's approval of this LMP will satisfy the section 175A CAA requirements for the second 10-year period for the Eagle River $PM_{10}$ area.

## VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

[3] The control measures are fully implemented and continue to apply after the SIP commitment was fulfilled. The Anchorage Municipal Code (AMC) Title 21 was reorganized and recodified, State effective January 1, 2014. The AMC Title 21section that requires paved road improvements for non-rural, residential properties in the MOA can be found in Section 21.08.050.

[4] We intend to address the remainder of the November 10, 2020 State of Alaska SIP submission (the Juneau, Mendenhall Valley Second 10-year $PM_{10}$ LMP, the 2019 Emission Limit Control Measures, and the 2019 Adoption by Reference Updates and Standard Permit Conditions) in separate EPA actions.

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 25, 2021.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 2021–18844 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 282

**[EPA–R07–UST–2021–0345; FRL–8775–01–R7]**

## Kansas: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Kansas's Underground Storage Tank (UST) program submitted by the Kansas Department of Health and Environment (KDHE). This action is based on the EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of Kansas's State program and incorporate by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

**DATES:** Comments on this proposed rule must be received on or before October 4, 2021.

**ADDRESSES:** Submit comments, identified by EPA–R07–UST–2021–0345, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: mance.cassandra@epa.gov.*

*Instructions:* Direct your comments to Docket ID No. EPA–R07–UST–2021–0345. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the document for assistance. You can view and copy the documents that form the basis for this codification and associated publicly available materials either through *www.regulations.gov* or by contacting Cassandra Mance at (913) 551–7355 or *mance.cassandra@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 7 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need access to material indexed but not provided in the docket.

**FOR FURTHER INFORMATION CONTACT:** Cassandra Mance, Tanks, Toxics, and Pesticides Branch, Land, Chemical, and Redevelopment Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; (913) 551–7355; *mance.cassandra@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

**Authority:** This proposed rule is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: August 24, 2021.

**Edward H. Chu,**

*Acting Regional Administrator, EPA Region 7.*

[FR Doc. 2021–18913 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 697**

**[Docket No. 210827–0170]**

**RIN 0648–BK63**

## Fisheries of the Atlantic; Atlantic Migratory Group Cobia; Amendment 1 and Addendum 1 to Amendment 1

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations related to Amendment 1, and Addendum 1 to Amendment 1, to the Interstate Fishery Management Plan (FMP) for Atlantic Migratory Group Cobia (Interstate FMP), as prepared and submitted by the Atlantic States Marine Fisheries Commission (ASMFC). As described in Amendment 1 and Addendum 1, this proposed rule would modify the commercial quota and the process for a commercial quota closure for Atlantic migratory group cobia (Atlantic cobia) in Federal waters. The purpose of this proposed action is to increase the commercial quota as a result of the most recent stock assessment and to allow the ASMFC to monitor commercial landings for any needed commercial in-season closure while ensuring the long-term sustainability of the Atlantic cobia stock.

**DATES:** Written comments must be received on or before October 4, 2021.

**ADDRESSES:** You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2021–0054,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2021–0054'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 1 and Addendum 1 may be obtained from the ASMFC website at *http://www.asmfc.org/uploads/file/6009e765AtlanticCobia_AddendumI_Oct2020.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, telephone: 727–824–5305, or email: *Frank.Helies@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The fishery for Atlantic cobia in Federal waters is managed under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) by regulations at 50 CFR part 697. Separate migratory groups of cobia are managed in the Gulf of Mexico and Atlantic. Atlantic cobia is managed from Georgia through New York. The southern management boundary for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42′45.6″ N latitude. The northern management boundary for Atlantic cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a).

The final rule to implement Amendment 31 to the FMP for Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP) and Amendment 1 to the Interstate FMP removed Atlantic cobia from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and transitioned the management of Atlantic cobia in Federal waters to the Atlantic Coastal Act (84 FR 4733, February 19, 2019). All weights described in this rule are in round and eviscerated weight, combined.

### Background

The ASMFC approved Amendment 1 to the Interstate FMP in 2019 and Addendum 1 to Amendment 1 in 2020. Amendment 1 and Addendum 1 provide for an increase in the commercial quota and a revision to the process for a commercial in-season closure. This proposed rule would serve to implement certain measures in Federal waters contained within Amendment 1 and Addendum 1.

In 2020, a new Southeast Data, Assessment, and Review (SEDAR) assessment was completed for Atlantic cobia (SEDAR 58). SEDAR 58 indicated that Atlantic cobia was not overfished nor undergoing overfishing, and that the allowable harvest could be increased based on updated commercial and recreational catch estimates. Based on the results of the SEDAR 58 and new stock projections from February 2020, in October of 2020, the ASMFC approved an increase to the Atlantic cobia annual total harvest quota of 80,112 fish for the 2020–2022 fishing seasons to be implemented in Federal waters through this proposed rule. Through Amendment 1 and Addendum 1, the ASMFC also adjusted the commercial and recreational allocation percentages and changed the methodology used to close the commercial sector when the quota is reached.

Currently, the total Atlantic cobia quota is allocated 8 percent to commercial harvest and 92 percent to recreational harvest. The ASMFC changed these sector allocations to 4 percent to the commercial sector and 96 percent to the recreational sector to account for changes in the recreational catch estimates from the Marine Recreational Information Program Fishing Effort Survey. When defining these allocations in terms of numbers of fish, the updated allocations would result in a commercial quota of 3,204 fish and a recreational quota of 76,908 fish. As described in Amendment 1 and Addendum 1, using an average commercial weight of 22.82 lb (10.35 kg), this is equivalent to a commercial quota of 73,116 lb (33,165 kg) in round and gutted weight, combined. In addition, the ASMFC would closely monitor commercial landings to ensure the commercial quota is not exceeded.

### Management Measures Contained in This Proposed Rule

This proposed rule would modify the commercial quota and the process for closing the commercial sector in Federal waters when the quota is reached.

*Commercial Quota*

The current Atlantic cobia commercial quota of 50,000 lb (22,680 kg) was established through the final rule to implement Amendment 1 to the Interstate FMP (84 FR 4733, February 19, 2019). As a result of SEDAR 58, this proposed rule would increase the commercial quota to 73,116 lb (33,165 kg). The ASMFC is responsible for monitoring of commercial landings during the fishing year.

*Process To Close the Commercial Sector*

The current process requires an in-season closure in Federal waters during the fishing year for the commercial sector when the quota is reached or projected to be reached. When the NMFS Scientific Research Director estimates that the sum of commercial landings (cobia that are sold) reaches or is projected to reach the commercial quota, then NMFS will prohibit the sale and purchase of cobia for the remainder of that fishing year (a commercial closure). For example, in 2020, NMFS projected that commercial landings would reach the commercial quota on November 6, and therefore, NMFS closed the commercial sector on November 6, 2020, through December 31, 2020 (85 FR 70085; November 4, 2020).

This proposed rule would retain the possibility of an in-season closure if commercial landings reach the quota. This proposed rule also would change the closure language in the current regulations regarding in-season quota monitoring so that commercial landings would be monitored by the ASMFC and not by NMFS. Currently, NMFS monitors the commercial quota and closes the commercial sector when the quota is met or projected to be met. The new process would transfer quota monitoring responsibility to the ASMFC. Because Atlantic cobia are primarily landed in state waters, the ASMFC determined that they are better suited to monitor cobia landings and ensure the risk of early closures is minimized. During the fishing year, if the ASMFC estimates that the sum of commercial landings (cobia that are sold), reaches or is projected to reach the commercial quota, then the ASMFC would notify NMFS of the need for a commercial closure of the exclusive economic zone (EEZ) and NMFS would close the commercial sector. During any such closure, the harvest, sale, trade, barter, or purchase of Atlantic cobia would be prohibited for the remainder of that fishing year. When considering this proposed increase to the commercial quota, and when compared to cobia landings in previous fishing years, NMFS estimates that a commercial in-season closure is still possible as a result of the commercial quota being reached, but expects that any such closure would occur later in the fishing year than under the current commercial quota.

NMFS may consider additional commercial and recreational regulatory changes to be implemented through rulemaking for Atlantic cobia as described in Amendment 1 and Addendum 1 in future rulemaking.

**Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Interstate FMP, the Atlantic Coastal Act, the applicable provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is described below.

A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The Atlantic Coastal Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or record keeping compliance requirements are introduced in this proposed rule.

This proposed rule directly affects commercial fishing businesses that sell Atlantic cobia harvested within the EEZ off Georgia to New York. Atlantic cobia is harvested mostly in state waters and is primarily a bycatch, not targeted, commercial species in the Mid-Atlantic and South Atlantic. During the past 6 years (2015–2020), 17 percent of total Atlantic cobia commercial landings were of fish taken from the EEZ.

In the South Atlantic, from 2015 through 2019, there were, on average, 82 federally permitted commercial vessels with reported landings of Atlantic cobia from the South Atlantic (excluding Florida, which is outside of the Atlantic cobia stock boundary). These vessels had average annual dockside revenue from landings of Atlantic cobia of $37,663 (2019 dollars). In the Mid-Atlantic, from 2015 through 2019, there were, on average, 31 federally permitted commercial vessels with reported landings of Atlantic cobia and, on average, each of these vessels earned approximately $2,100 (2019 dollars) per year from the sale of Atlantic cobia.

All of the businesses that operate the above 113 federally permitted vessels are expected to operate primarily in the commercial fishing industry (NAICS code 11411). For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. The maximum annual dockside revenue that any of the permitted vessels had during the 5-year period was approximately $0.3 million (2019 dollars). Therefore, NMFS concludes that all of the above 113 permitted vessels represent a small commercial fishing business.

For-hire fishing captains and crew are allowed to sell Atlantic cobia harvested from the EEZ under the recreational possession limit when the commercial season is open; however, the respective Atlantic states require individuals to have a commercial fishing license in the state where the cobia is sold, and typically the vessels used to harvest those cobia have a Federal charter/headboat coastal migratory pelagics permit. From 2015 through 2019 less than 5 of the 1,712 currently permitted for-hire vessels sold Atlantic cobia, and the average revenue from those sales was approximately $11 (2019 dollars) annually per vessel.

A business that is primarily in the for-hire fishing industry (NAICS code 487210) is a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined annual receipts that are no more than $8.0 million for all of its affiliated operations worldwide. Average annual gross revenue of federally permitted charter vessels and headboats in the South Atlantic is $125,261 per charter vessel and $271,835 per headboat in 2019 dollars. Hence, NMFS expects the less than five for-hire fishing vessels that would be annually affected by the proposed rule are small businesses.

This proposed rule would increase the commercial quota of Atlantic cobia from 50,000 lb (22,680 kg) to 73,116 lb (33,165 kg). This rule would also revise the decision criteria used to close Federal waters to commercial fishing for Atlantic cobia. The Federal commercial season would close if the sum of the cobia landings that are sold, as estimated by the ASMFC, reach or are projected to reach the commercial quota, and the ASMFC notifies NMFS of

the need for a commercial closure of the EEZ.

The increase in the commercial quota from 50,000 lb (22,680 kg) to 73,116 lb (33,165 kg) would allow for an additional 23,116 lb (10,485 kg) of cobia to be sold by small commercial fishing businesses. As stated previously, an average of 17 percent of annual commercial landings of cobia are from the EEZ, and 17 percent of the 23,116-lb (10,485 kg) increase translates to an additional 3,930 lb (1,782 kg) of Atlantic cobia that could be harvested from the EEZ annually.

The average dockside price of Atlantic cobia has increased in the past 4 years, and especially since 2019. Using the average dockside price from 2019 through 2020, an additional 3,930 lb (1,782 kg) of cobia would translate to additional revenue of $16,427 (2019 dollars), and if spread evenly across the average 113 small commercial fishing businesses that report harvesting Atlantic cobia annually, each of those small businesses would benefit with an additional $145 annually (2019 dollars) in revenue. For the 113 commercial fishing vessels and small businesses that operate them, that additional revenue represents up to 0.13 percent of their average annual revenue from all landings. If the less than five small for-hire fishing businesses that, on average, annually sell bag-limit quantities of cobia harvested from the EEZ were to double their revenues from cobia sales, those increases would represent 0.01 percent or less of their average annual revenue.

Based on the analysis described above, NMFS concludes that this rule would not have a significant economic impact on a substantial number of small businesses. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paper Reduction Act of 1995.

**List of Subjects in 50 CFR Part 697**

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

Dated: August 30, 2021.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.28, revise paragraph (f)(1) to read as follows:

### § 697.28 Atlantic migratory group cobia.

* * * * *

(f) * * *

(1) *Commercial quota.* The following quota applies to persons who fish for cobia for commercial purposes—73,116 lb (33,165 kg). If the sum of the cobia landings that are sold, as estimated by the ASMFC, reach or are projected to reach the quota specified in this paragraph (f)(1), then the ASMFC will notify NMFS of the need for a commercial closure of the EEZ. NMFS will then subsequently file a notification with the Office of the Federal Register to prohibit (for commercial purposes) the harvest, sale, trade, barter, or purchase of cobia for the remainder of the fishing year.

* * * * *

[FR Doc. 2021–18960 Filed 9–1–21; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 86, No. 168
Thursday, September 2, 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 OFFICE OF THE UNITED STATES COURTS

### Regulations for the Administration of Payments to Chapter 7 Trustees Under Section 330(e) of the Bankruptcy Code

**AGENCY:** Administrative Office of the United States Courts.

**ACTION:** Interim regulations; request for comments.

**SUMMARY:** The Administrative Office of the United States Courts is promulgating interim regulations for the administration of payments to trustees that have rendered services in cases filed under or converted to chapter 7 of title 11, United States Code, from January 12, 2021, through September 30, 2026. These regulations govern trustees' entitlement to payment under the Bankruptcy Administration Improvement Act of 2020 and processes for requesting such payment from the bankruptcy court in which the case was filed.

The text of the proposed interim regulations were posted on August 30, 2021, on *regulations.gov* at: *https://www.regulations.gov/docket/USC-USC-2021-0006.*

All written comments and suggestions with respect to the proposed interim regulations may be submitted on or after the opening of the period for public comment on August 30, 2021, but no later than September 17, 2021. Written comments must be submitted electronically, following the instructions provided on the website.

**DATES:**

*Effective date:* These regulations are effective on September 30, 2021.

*Comment date:* Comments due on or before September 17, 2021.

**ADDRESSES:** You may send comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov/docket/USC-USC-2021-0006.* Follow the instructions for sending comments.

**FOR FURTHER INFORMATION CONTACT:** Daniel Isaacs-Smith, Senior Attorney, Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Room 4–272, Washington, DC 20544, Telephone (202) 502–1800, *AOml_BAIA2020@ao.uscourts.gov.*

**SUPPLEMENTARY INFORMATION:** *Statutory authority:* 11 U.S.C. 330(e)(6).

Dated: August 30, 2021.

**Daniel Isaacs-Smith,**

*Senior Attorney.*

[FR Doc. 2021–18968 Filed 9–1–21; 8:45 am]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2021–0054]**

### Notice of Request for Extension of Approval of an Information Collection; African Swine Fever; Importation of Live Dogs for Resale From Regions Where African Swine Fever Exists or Is Reasonably Believed To Exist

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

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the importation of live dogs for resale from regions where African swine fever exists or is reasonably believed to exist.

**DATES:** We will consider all comments that we receive on or before November 1, 2021.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0054 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the activities within this information collection request, contact Dr. MaryKate Anderson, Staff Veterinary Medical Officer, Live Animal Imports and Exports, Strategy and Policy, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; phone: (301) 851–3364; *marykate.anderson@usda.gov.* For more detailed information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* African Swine Fever; Importation of Live Dogs for Resale From Regions Where African Swine Fever Exists or is Reasonably Believed to Exist.

*OMB Control Number:* 0579–0478.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of the U.S. Department of Agriculture (USDA) is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, poultry, and aquaculture, and for eradicating such diseases and pests from the United States, when feasible. Within the USDA, this authority and mission is delegated to the Animal and Plant Health Inspection Service (APHIS).

Within APHIS, Veterinary Services is tasked with, among other things, preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur. In the past several years, there have been significant worldwide outbreaks of African swine fever (ASF). ASF is a

highly contagious and deadly viral disease affecting domestic and feral (wild) pigs. The disease has not been detected in the United States; however, APHIS is committed to working with State and industry partners to keep the disease out of the country.

APHIS has determined that dogs imported from ASF-affected countries for resale purposes, along with their bedding, represent a possible pathway for the introduction of disease. To block this pathway, APHIS issued a Federal Order (DA–2021–01) [1] imposing several restrictions on the importation of dogs for resale from regions where ASF exists or is reasonably believed to exist. Importers will need to verify that they have met these restrictions by completing and submitting a Dog Import Record that will record information regarding the dogs' characteristics, identification, origin, entry into the United States, disposition of their bedding and packing material, and confirmation of bathing.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 0.5 hours per response.

*Respondents:* Importers and animal breeders.

*Estimated annual number of respondents:* 200.

*Estimated annual number of responses per respondent:* 9.

*Estimated annual number of responses:* 1,800.

*Estimated total annual burden on respondents:* 900 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of August 2021.

**Michael Watson,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2021–18920 Filed 9–1–21; 8:45 am]

**BILLING CODE 3410–34–P**

[1] *https://www.aphis.usda.gov/import_export/downloads/vs-federal-order-asf.pdf.*

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2021–0046]**

### Notice of Request for Approval of an Information Collection; Control and Eradication of African Swine Fever; Conditions for Payment of Indemnity Claims

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

**ACTION:** New information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection associated with the payment of indemnity claims related to African swine fever.

**DATES:** We will consider all comments that we receive on or before November 1, 2021.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Enter APHIS–2021–0046 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0046, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the activities within this information collection request, contact Ms. Lecresha King, Program Analyst, National Preparedness and Incident Coordination, Strategy and Policy, VS, APHIS, 920 Main Campus Drive, Raleigh, NC 27606; (515) 380–5535. For more detailed information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Control and Eradication of African Swine Fever; Conditions for Payment of Indemnity Claims.

*OMB Control Number:* 0579–XXXX.

*Type of Request:* Approval of a new information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of the U.S. Department of Agriculture (USDA) is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, poultry, and aquaculture, and for eradicating such diseases and pests from the United States, when feasible. Within the USDA, this authority and mission is delegated to the Animal and Plant Health Inspection Service (APHIS).

Within APHIS, part of the mission of Veterinary Services is preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur. In the past several years, there have been significant worldwide outbreaks of African swine fever (ASF). ASF is a highly contagious and deadly viral disease affecting both domestic and feral (wild) pigs. The disease has not been detected in the United States; however, APHIS is committed to working with State and industry partners to keep the virus out of the country.

As part of APHIS' mission regarding ASF, there are information collection activities related to an outbreak such as appraisal and indemnity requests and appraisal and indemnity claims, worksheets for calculating proceeds from animals or materials sold for slaughter, domestic herd plans and financial plans, and an ASF response epidemiology questionnaire.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 4.882 hours per response.

*Respondents:* Agricultural producers, animal scientists and technicians, agricultural inspectors, and State animal health officials.

*Estimated annual number of respondents:* 40,050.

*Estimated annual number of responses per respondent:* 13.

*Estimated annual number of responses:* 519,950.

*Estimated total annual burden on respondents:* 2,538,300 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of August 2021.

**Michael Watson,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2021–18919 Filed 9–1–21; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Adjustment of Appendices Under the Dairy Tariff-Rate Quota Import Licensing Regulation

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the transfer of amounts for certain dairy articles from the historical license category (Appendix 1) to the lottery (nonhistorical) license category (Appendix 2) pursuant to the Dairy Tariff-Rate Quota Import Licensing regulations for the 2021 quota year. In addition, adjustments have been made to the Appendices to reflect changes to United Kingdom (UK) and European Union (EU) country allocations for certain tariff rate quotas (TRQs) and other changes to the Harmonized Tariff Schedule of the United States (HTSUS) made by the U.S. Trade Representative in response to the withdrawal of the UK from the EU and the accession of Croatia to the EU, which will go into effect for the 2022 quota year. Appendices 1 and 2 for the EU–27 for Additional U.S. Note 16 to Chapter 4 have also been adjusted to account for a clerical error in last year's Appendices 1 and 2 published amounts. This correction does not increase the overall quantity allotted to the EU–27 and the UK.

**DATES:** September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Abdelsalam El-Farra, (202) 720–9439; *abdelsalam.el-farra@fas.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Foreign Agricultural Service, under a delegation of authority from the Under Secretary for Trade and Foreign Agricultural Affairs, administers the Dairy Tariff-Rate Quota Import Licensing regulation codified at 7 CFR 6.20 through 6.36 that provides for the issuance of licenses to import certain dairy articles under TRQs as set forth in the HTSUS. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Imports Program, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states that whenever a historical license (Appendix 1) is permanently surrendered, revoked by the Licensing Authority, or not issued to an applicant pursuant to the provisions of § 6.23, then the amount of such license will be transferred to Appendix 2. Section 6.34(b) provides that the cumulative annual transfers will be published by notice in the **Federal Register**. Accordingly, this document sets forth the revised Appendices in the table below. The quantities for designated licenses (Appendix 3 and Appendix 4) are also included in the table below for completeness.

In addition, the Appendices have been revised to reflect modified EU and UK country allocations under certain TRQs in Chapter 4 of the HTSUS made by the U.S. Trade Representative in response to the withdrawal of the UK from the EU and to acknowledge the accession of Croatia to the EU. On July 6, 2021, the U.S. Trade Representative announced, *inter alia,* that: (1) The TRQs allocated to the EU under Additional U.S. Notes 6, 16, 17, and 18 to Chapter 4 will be allocated between the EU and the UK according to the average percentage of in-quota imports for the 2013–2015 period; and (2) the UK would have access to a specific in-quota quantity under these notes. Specifically, the U.S. Trade Representative announced that, effective with respect to articles entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2022:

1. Additional U.S. Note 2 to Chapter 4 of the HTSUS is modified by: (a) Inserting ''Croatia,'' into the list of countries in alphabetical order; and (b) deleting ''the Slovak Republic, Sweden or the United Kingdom'' and inserting ''the Slovak Republic or Sweden'' in lieu thereof.

2. With respect to the published in-quota quantity of 96,161 kilograms allocated to the EU 27 for the TRQ in Additional U.S. Note 6 to Chapter 4 of the HTSUS, the UK shall have access to a quantity of not less than 14,062 kilograms and the EU 27 shall have access to a quantity of not less than 82,099 kilograms.

3. Additional U.S. Note 16 to Chapter 4 of the HTSUS is modified by: (a) Inserting ''United Kingdom'' into the list of countries in alphabetical order; (b) inserting a quota quantity of ''2,213,374'' in the Quantity (kg) column for the United Kingdom; (c) deleting the quantity ''27,846,224'' in the Quantity (kg) column for the EU27; and (d)

''25,632,850'' in the Quantity (kg) column for the EU27 in lieu thereof.

4. Additional U.S. Note 17 to Chapter 4 of the HTSUS is modified by: (a) Inserting ''United Kingdom'' into the list of countries in alphabetical order; (b) inserting a quota quantity of ''23,617''' in the Quantity (kg) column for the United Kingdom; (c) deleting the quantity ''2,829,000'' in the Quantity (kg) column for the EU27; and (d) inserting ''2,805,383'' in the Quantity (kg) column for the EU27 in lieu thereof.

5. Additional U.S. Note 18 to Chapter 4 of the HTSUS is modified by: (a) Inserting ''United Kingdom'' into the list of countries in alphabetical order; (b) inserting a quota quantity of ''895,948'' in the Quantity (kg) column for the United Kingdom; (c) deleting the quantity ''1,31,000'' in the Quantity (kg) column for the EU27; and (d) inserting ''417,052'' in the Quantity (kg) column for the EU27 in lieu thereof.

For U.S. TRQs under Additional U.S. Notes 19 to 23 and 25 to Chapter 4, the UK otherwise will be eligible to export under the in-quota quantities allocated to ''other countries or areas.'' *See* Modification of U.S. Tariff-Rate Quotas and the Harmonized Tariff Schedule of the United States (86 FR 35560 (July 6, 2021)). Accordingly, the Licensing Authority has divided the amounts allocated to the EU under Additional U.S. Notes 6, 16, 17, and 18 in Appendices 1, 2, 3 and 4, as applicable, between the EU and the UK by directly applying the percentages used by the U.S. Trade Representative to allocate the overall TRQs under those notes.

Entities that currently hold EU–27 historical licenses for TRQs under Additional U.S. Notes 6, 16, 17, and 18 that wish to retain their EU–27 historical licenses and/or obtain UK historical licenses under these TRQs for the 2022 TRQ year and that otherwise qualify for carry over of such EU–27 historical licenses will be instructed to apply to carry over the EU–27 historical license and/or to obtain a UK historical license. The quantities of the new EU–27 license and/or UK license for the 2022 TRQ year that will be issued under these TRQs will be determined by allocating the original EU–27 license quantity between the two new licenses applying the same ratio that USTR used to split the applicable overall TRQ. Any discrepancies in quantities at the individual license level are due to rounding.

Notice of this action and specific instructions on how to apply for the 2022 TRQ year for EU–27 and UK historical licenses under these TRQs are being provided to all current holders of EU–27 historical licenses for TRQs under Additional U.S. Notes 6, 16, 17, and 18. The notice and instructions are also posted on USDA Foreign Agricultural Service's Dairy Import Licensing Program's website at: *https://www.fas.usda.gov/programs/dairy-import-licensing-program* and also in the Community Notices section of the Agricultural Trade License Administration System (ATLAS).

Finally, with regard to Additional U.S. Note 16, Cheese and Substitutes for Cheese, the quantity in Appendix 1 for EU–27 historical licenses includes an additional 21,768 kg and the quantity for EU–27 lottery licenses in Appendix 2 includes a reduction of 21,768 kg. This corrects a clerical error in the previously published quantities for Appendices 1 and 2. The correction does not change the overall quantity allotted to the EU–27 or the UK under Additional U.S. Note 16.

**Lori Tortora,**

*Licensing Authority.*

ARTICLES SUBJECT TO DAIRY IMPORT LICENSES (KILOGRAMS) [1]

| | Historical licenses (Appendix 1) [2] | Lottery licenses (Appendix 2) [3] | Sum of Appendix 1 & 2 [4] | Designated licenses (Tokyo round, Appendix 3) [4] | Designated licenses (Uruguay round, Appendix 4) [4] | Total [4] |
|---|---|---|---|---|---|---|
| *NON-CHEESE ARTICLES, Notes 6, 7, 8, 12, 14 (Appendix 1 reduction)*: | | | | | | |
| BUTTER (NOTE 6, Commodity Code G) (−19,466 kg) .. | 4,205,995 | 2,771,005 | 6,977,000 | ..... | ..... | 6,977,000 |
| EU–27 [5] ..... | 53,445 | 28,654 | 82,099 | ..... | ..... | 82,099 |
| The United Kingdom ..... | 9,154 | 4,908 | 14,062 | ..... | ..... | 14,062 |
| New Zealand ..... | 76,503 | 74,090 | 150,593 | ..... | ..... | ..... |
| Other Countries ..... | 35,382 | 38,553 | 73,935 | ..... | ..... | ..... |
| Any Country (−19,466 kg) ..... | 4,031,511 | 2,624,800 | 6,656,311 | ..... | ..... | ..... |
| DRIED SKIM MILK (NOTE 7, Commodity Code K) ..... | 0 | 5,261,000 | 5,261,000 | ..... | ..... | 5,261,000 |
| Australia ..... | 0 | 600,076 | 600,076 | ..... | ..... | ..... |
| Canada ..... | 0 | 219,565 | 219,565 | ..... | ..... | ..... |
| Any Country ..... | 0 | 4,441,359 | 4,441,359 | ..... | ..... | ..... |
| DRIED WHOLE MILK (NOTE 8, Commodity Code H) .... | 0 | 3,321,300 | 3,321,300 | ..... | ..... | 3,321,300 |
| New Zealand ..... | 0 | 3,175 | 3,175 | ..... | ..... | ..... |
| Any Country ..... | 0 | 3,318,125 | 3,318,125 | ..... | ..... | ..... |
| DRIED BUTTERMILK/WHEY (NOTE 12, Commodity Code M) ..... | 0 | 224,981 | 224,981 | ..... | ..... | 224,981 |
| Canada ..... | 0 | 161,161 | 161,161 | ..... | ..... | ..... |
| New Zealand ..... | 0 | 63,820 | 63,820 | ..... | ..... | ..... |
| BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14, Commodity Code SU) ..... | 0 | 6,080,500 | 6,080,500 | ..... | ..... | 6,080,500 |
| Any Country ..... | 0 | 6,080,500 | 6,080,500 | ..... | ..... | ..... |
| TOTAL: NON-CHEESE ARTICLES (−19,466 kg) ..... | 4,205,995 | 17,658,786 | 21,864,781 | ..... | ..... | 21,864,781 |
| *CHEESE ARTICLES (Notes 16, 17, 18, 19, 20, 21, 22, 23, 25) (Appendix 1 reduction)*: | ..... | ..... | ..... | ..... | ..... | ..... |
| CHEESE AND SUBSTITUTES FOR CHEESE (NOTE 16, Commodity Code OT (−648,520 kg) ..... | 17,021,404 | 14,448,327 | 31,469,731 | 9,661,128 | 7,496,000 | 48,626,859 |
| Argentina ..... | 0 | 7,690 | 7,690 | 92,310 | ..... | 100,000 |
| Australia (−522,506 kg) ..... | 13,122 | 528,048 | 541,170 | 758,830 | 1,750,000 | 3,050,000 |
| Canada (−54,507 kg) ..... | 895,655 | 245,345 | 1,141,000 | ..... | ..... | 1,141,000 |
| Costa Rica ..... | 0 | 0 | 0 | ..... | 1,550,000 | 1,550,000 |
| EU–27 (not including Portugal) (−34,573 kg) ..... | 12,769,952 | 8,505,615 | 21,275,567 | 835,707 | 3,168,576 | 25,279,850 |
| Portugal ..... | 65,838 | 63,471 | 129,309 | 223,691 | ..... | 353,000 |

ARTICLES SUBJECT TO DAIRY IMPORT LICENSES (KILOGRAMS) [1]—Continued

| | Historical licenses (Appendix 1) [2] | Lottery licenses (Appendix 2) [3] | Sum of Appendix 1 & 2 [4] | Designated licenses (Tokyo round, Appendix 3) [4] | Designated licenses (Uruguay round, Appendix 4) [4] | Total [4] |
|---|---|---|---|---|---|---|
| The United Kingdom | 1,118,071 | 744,709 | 1,862,780 | 73,170 | 277,424 | 2,213,374 |
| Israel | 79,696 | 0 | 79,696 | 593,304 | ..... | 673,000 |
| Iceland | 29,054 | 264,946 | 294,000 | 29,000 | ..... | 323,000 |
| New Zealand (−18,155 kg) | 1,332,845 | 3,482,627 | 4,815,472 | 6,506,528 | ..... | 11,322,000 |
| Norway | 122,860 | 27,140 | 150,000 | ..... | ..... | 150,000 |
| Switzerland | 512,184 | 159,228 | 671,412 | 548,588 | 500,000 | 1,720,000 |
| Uruguay | 0 | 0 | 0 | ..... | 250,000 | 250,000 |
| Other Countries (−18,779) | 82,127 | 119,508 | 201,635 | ..... | ..... | 201,635 |
| Any Country | 0 | 300,000 | 300,000 | ..... | ..... | 300,000 |
| BLUE-MOLD CHEESE (NOTE 17, Commodity Code B) (−2,300 kg) | 1,930,826 | 550,175 | 2,481,001 | ..... | 430,000 | 2,911,001 |
| Argentina | 2,000 | 0 | 2,000 | ..... | ..... | 2,000 |
| EU–27 (−2,300 kg) | 1,912,724 | 545,581 | 2,458,305 | ..... | 347,078 | 2,805,383 |
| The United Kingdom | 16,102 | 4,593 | 20,695 | ..... | 2,922 | 23,617 |
| Chile | 0 | 0 | 0 | ..... | 80,000 | 80,000 |
| Other Countries | 0 | 1 | 1 | ..... | ..... | 1 |
| CHEDDAR CHEESE (NOTE 18, Commodity Code C) (−9,324 kg) | 2,286,995 | 1,996,861 | 4,283,856 | 519,033 | 7,620,000 | 12,422,889 |
| Australia | 881,894 | 102,605 | 984,499 | 215,501 | 1,250,000 | 2,450,000 |
| Chile | ..... | 0 | 0 | ..... | 220,000 | 220,000 |
| EU–27 | 16,645 | 66,892 | 83,537 | ..... | 333,515 | 417,052 |
| The United Kingdom | 35,759 | 143,704 | 179,463 | ..... | 716,485 | 895,948 |
| New Zealand | 1,265,070 | 1,531,398 | 2,796,468 | 303,532 | 5,100,000 | 8,200,000 |
| Other Countries (−9,324 kg) | 87,627 | 52,262 | 139,889 | ..... | ..... | 139,889 |
| Any Country | ..... | 100,000 | 100,000 | ..... | ..... | 100,000 |
| AMERICAN-TYPE CHEESE (NOTE 19, Commodity Code A) (−4,536 kg) | 1,146,898 | 2,018,655 | 3,165,553 | 357,003 | 0 | 3,522,556 |
| Australia | 753,578 | 127,420 | 880,998 | 119,002 | ..... | 1,000,000 |
| EU–27 (−4,536 kg) | 131,539 | 222,461 | 354,000 | ..... | ..... | 354,000 |
| New Zealand | 158,725 | 1,603,274 | 1,761,999 | 238,001 | ..... | 2,000,000 |
| Other Countries or Areas [6] | 103,056 | 65,500 | 168,556 | ..... | ..... | 168,556 |
| EDAM AND GOUDA CHEESE (NOTE 20, Commodity Code D) (−10,902 kg) | 4,270,567 | 1,335,835 | 5,606,402 | 0 | 1,210,000 | 6,816,402 |
| Argentina | 105,418 | 19,582 | 125,000 | ..... | 110,000 | 235,000 |
| EU–27 (−10,902 kg) | 4,049,341 | 1,239,659 | 5,289,000 | ..... | 1,100,000 | 6,389,000 |
| Norway | 111,046 | 55,954 | 167,000 | ..... | ..... | 167,000 |
| Other Countries or Areas [6] | 4,762 | 20,640 | 25,402 | ..... | ..... | 25,402 |
| ITALIAN-TYPE CHEESES (NOTE 21, Commodity Code D) (−232,929 kg) | 5,867,429 | 1,653,118 | 7,520,547 | 795,517 | 5,165,000 | 13,481,064 |
| Argentina (−157,571 kg) | 3,530,236 | 595,247 | 4,125,483 | 367,517 | 1,890,000 | 6,383,000 |
| EU–27 (−75,358 kg) | 2,337,193 | 1,044,807 | 3,382,000 | ..... | 2,025,000 | 5,407,000 |
| Romania | 0 | 0 | 0 | ..... | 500,000 | 500,000 |
| Uruguay | 0 | 0 | 0 | 428,000 | 750,000 | 1,178,000 |
| Other Countries or Areas [6] | 0 | 13,064 | 13,064 | ..... | ..... | 13,064 |
| SWISS OR EMMENTHALER CHEESE (NOTE 22 Commodity Code GR) | 4,228,895 | 2,422,419 | 6,651,314 | 823,519 | 380,000 | 7,854,833 |
| EU–27 | 2,979,351 | 2,172,643 | 5,151,994 | 393,006 | 380,000 | 5,925,000 |
| Switzerland | 1,216,046 | 203,441 | 1,419,487 | 430,513 | ..... | 1,850,000 |
| Other Countries or Areas [6] | 33,498 | 46,335 | 79,833 | ..... | ..... | 79,833 |
| LOW FAT CHEESE (NOTE 23, Commodity Code LF) | 1,173,766 | 3,251,142 | 4,424,908 | 1,050,000 | 0 | 5,474,908 |
| EU–27 | 1,173,766 | 3,251,141 | 4,424,907 | ..... | ..... | 4,424,907 |
| Israel | 0 | 0 | 0 | 50,000 | ..... | 50,000 |
| New Zealand | 0 | 0 | 0 | 1,000,000 | ..... | 1,000,000 |
| Other Countries or Areas [6] | 0 | 1 | 1 | ..... | ..... | 1 |
| SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25, Commodity Code SW) (−108,457 kg) | 12,983,391 | 9,313,940 | 22,297,331 | 9,557,945 | 2,620,000 | 34,475,276 |
| Argentina | 0 | 9,115 | 9,115 | 70,885 | ..... | 80,000 |
| Australia | 209,698 | 0 | 209,698 | 290,302 | ..... | 500,000 |
| Canada | 0 | 0 | 0 | 70,000 | ..... | 70,000 |
| EU–27 (−108,457 kg) | 9,653,742 | 6,823,086 | 16,476,828 | 4,003,172 | 2,420,000 | 22,900,000 |
| Iceland | 0 | 149,999 | 149,999 | 150,001 | ..... | 300,000 |
| Israel | 27,000 | 0 | 27,000 | ..... | ..... | 27,000 |
| Norway | 2,285,329 | 1,369,981 | 3,655,310 | 3,227,690 | ..... | 6,883,000 |
| Switzerland | 759,369 | 924,736 | 1,684,105 | 1,745,895 | 200,000 | 3,630,000 |
| Other Countries or Areas [6] | 48,253 | 37,023 | 85,276 | ..... | ..... | 85,276 |
| TOTAL: CHEESE ARTICLES | 50,910,171 | 36,990,472 | 87,900,643 | 22,764,145 | 24,921,000 | 135,585,788 |
| TOTAL: CHEESE & NON-CHEESE | 55,116,166 | 54,649,258 | 109,765,424 | 22,764,145 | 24,921,000 | 157,450,569 |

[1] Source of the total TRQs is the U.S. Harmonized Tariff Schedule, Chapter 4, in the corresponding Additional U.S. Notes.
[2] Reduced from 2020 by total of −1,036,434 KG.
[3] Increased from 2020 by total of 1,036,434 KG.
[4] No change.
[5] The list of countries in Additional U.S. Note 2 to Chapter 4 now includes ''Croatia'' and omits ''the United Kingdom.''
[6] For Additional U.S. Notes 19 to 23 and 25, the UK will be eligible to export under the in-quota quantities allocated to ''other countries or areas.''

[FR Doc. 2021–19106 Filed 9–1–21; 8:45 am]
**BILLING CODE 3410–10–P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Assessment of Fees for Dairy Import Licenses for the 2022 Tariff-Rate Import Quota Year

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces a fee of $324 to be charged for the 2022 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles, which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule (HTS) of the United States.

**DATES:** September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Abdelsalam El-Farra, Dairy Import Licensing Program, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720–9439; or by email at: *abdelsalam.el-farra@fas.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Dairy Tariff-Rate Quota Import Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20 through 6.36 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of such licenses is monitored by the Import Program within the Foreign Agricultural Service, U.S. Department of Agriculture, and U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority to defray the Department of Agriculture's costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2022 calendar year.

The total cost to the Department of Agriculture of administering the licensing system for 2022 has been estimated to be $728,600.00 and the estimated number of licenses expected to be issued is 2,250. Of the total cost, $518,600.00 represents staff and supervisory costs directly related to administering the licensing system, and $210,000.00 represents other miscellaneous costs, including travel, publications, forms, and Automatic Data Processing (ADP) system support.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2022 calendar year, in accordance with 7 CFR 6.33, will be $324 per license.

**Lori Tortora,**

*Licensing Authority.*

[FR Doc. 2021–19090 Filed 9–1–21; 8:45 am]
**BILLING CODE 3410–10–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Cibola National Forest; New Mexico; Revision of the Land Management Plan for the Cibola National Forest

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of opportunity to object to the revised Land Management Plan for the Cibola National Forest.

**SUMMARY:** The Forest Service is revising the Cibola National Forest's Land Management Plan (Forest Plan). The Forest Service has prepared a Final Environmental Impact Statement (FEIS) for its revised Forest Plan and a draft Record of Decision (ROD). This notice is to inform the public that the Cibola National Forest is initiating a 60-day period where individuals or entities with specific concerns about the Cibola National Forest's revised Forest Plan and the associated FEIS may file objections for Forest Service review prior to the approval of the revised Forest Plan. This is also an opportunity to object to the Regional Forester's list of species of conservation concern for the Cibola National Forest.

**DATES:** The publication date of the legal notice in the Cibola National Forest's newspaper of record, *Albuquerque Journal,* initiates the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic scan of the legal notice with the publication date will be posted at *https://www.fs.usda.gov/project/?project=46268.*

**ADDRESSES:** The Cibola National Forest's revised Forest Plan, FEIS, draft ROD, species of conservation concern list, and other supporting information will be available for review at: *https://www.fs.usda.gov/project/?project=46268.* Copies of the Cibola National Forest's revised Forest Plan, FEIS, draft ROD, and Regional Forester's list of species of conservation concern for the Cibola National Forest can be obtained online at: *https://www.fs.usda.gov/project/?project=46268* or at the following office: Cibola National Forest Supervisor's Office, 2113 Osuna Rd. NE, Albuquerque, NM 87113, Phone: (505) 346–3900.

Objections must be submitted to the Objection Reviewing Officer by one of the following methods:

- Via regular mail, carrier, or hand delivery to the following address: USDA-Forest Service Southwest Region, ATTN: Objection Reviewing Officer, 333 Broadway Blvd. SE, Albuquerque, NM 87102 (Fax: 505–842–3173). Office hours for submitting a hand-delivered objection are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.
- Electronically at *objections-southwestern-regional-office@usda.gov* with subject: Cibola National Forest Plan Revision Objection. Electronically filed objections may be submitted by email in word (.doc or .docx), rich text format (.rtf), text (.txt), portable document format (.pdf), and/or hypertext markup language (.html).
- Electronically to the Objection Reviewing Officer via the CARA objection web form: *https://cara.ecosystem-management.org/Public//CommentInput?Project=46268.* Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.
- By Fax: 505–842–3173. Faxes must be addressed to ''Objection Reviewing Officer.'' The fax coversheet should include a subject line with ''Cibola National Forest Plan Revision Objection'' or ''Cibola Species of Conservation Concern'' and specify the number of pages being submitted.

**FOR FURTHER INFORMATION CONTACT:** Forest Supervisor, Steve Hattenbach at (505) 346–3804 or *steven.hattenbach@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service

(FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The decision to approve the revised Forest Plan and the Regional Forester's list of species of conservation concern for the Cibola National Forest will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62).

**How To File an Objection**

Objections must be submitted to the Reviewing Officer at the address shown in the **ADDRESSES** section of this notice. An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available; in cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the draft plan decision may be improved. If the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period (36 CFR 219.56(d)).

**Responsible Official**

The responsible official who will approve the ROD and the revised Forest Plan for the Cibola National Forest is Steve Hattenbach, Forest Supervisor, Cibola National Forest, Cibola National Forest Supervisor's Office, 2113 Osuna Road NE, Albuquerque NM 87113, and Phone: (505) 346–3804. The responsible official for the list of species of conservation concern is Michiko Martin, Regional Forester, USDA Forest Service Southwestern Region, 333 Broadway Blvd. SE, Albuquerque, NM 87102.

The Regional Forester is the reviewing officer for the revised Forest Plan since the Forest Supervisor is the responsible official (36 CFR 219.56(e)(2)). The decision to approve the species of conservation concern list will be subject to a separate objection process. The Chief of the Forest Service is the reviewing officer for species of conservation concern identification since the Regional Forester is the responsible official (36 CFR 219.56(e)(2)).

Dated: August 17, 2021.

**Barnie Gyant,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2021–18961 Filed 9–1–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Santa Fe National Forest; New Mexico; Revision of the Land Management Plan for the Santa Fe National Forest

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of opportunity to object to the revised Land Management Plan for the Santa Fe National Forest.

**SUMMARY:** The Forest Service is revising the Santa Fe National Forest's Land Management Plan (Forest Plan). The Forest Service has prepared a Final Environmental Impact Statement (FEIS) for its revised Forest Plan and a draft Record of Decision (ROD). This notice is to inform the public that the Santa Fe National Forest is initiating a 60-day period where individuals or entities with specific concerns about the Santa Fe National Forest's revised Forest Plan and the associated FEIS may file objections for Forest Service review prior to the approval of the revised Forest Plan. This is also an opportunity to object to the Regional Forester's list of species of conservation concern for the Santa Fe National Forest.

**DATES:** The publication date of the legal notice in the Santa Fe National Forest's newspaper of record, *Albuquerque Journal,* initiates the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic scan of the legal notice with the publication date will be posted at *https://www.fs.usda.gov/project/?project=49605.*

**ADDRESSES:** The Santa Fe National Forest's revised Forest Plan, FEIS, draft ROD, species of conservation concern list, and other supporting information will be available for review at: *https://www.fs.usda.gov/project/?project=49605.* Copies of the Santa Fe National Forest's revised Forest Plan, FEIS, draft ROD, and Regional Forester's list of species of conservation concern can be obtained online at: *https://www.fs.usda.gov/project/?project=49605,* or at the following office: Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe, NM 87508, Phone: (505) 438–5300.

Objections must be submitted to the Objection Reviewing Officer by one of the following methods:

- Via regular mail, carrier, or hand delivery to the following address: USDA-Forest Service Southwest Region, ATTN: Objection Reviewing Officer, 333 Broadway Blvd. SE, Albuquerque, NM 87102 (Fax: 505–842–3173). Office hours for submitting a hand-delivered objection are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.
- Electronically at *objections-southwestern-regional-office@usda.gov* with subject: Santa Fe National Forest Plan Revision Objection. Electronically filed objections may be submitted by email in word (.doc or .docx), rich text format (.rtf), text (.txt), portable document format (.pdf), and/or hypertext markup language (.html).
- Electronically to the Objection Reviewing Officer via the CARA

objection web form: *https://cara.ecosystem-management.org/Public//CommentInput?Project=49605.* Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.

• By Fax: 505–842–3173. Faxes must be addressed to ''Objection Reviewing Officer.'' The fax coversheet should include a subject line with ''Santa Fe National Forest Plan Revision Objection'' or ''Santa Fe Species of Conservation Concern'' and specify the number of pages being submitted.

**FOR FURTHER INFORMATION CONTACT:** Strategic Planning and Engagement Staff Officer, Jennifer Cramer at (505) 438–5442 or *jennifer.cramer@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The decision to approve the revised Forest Plan and the Regional Forester's list of species of conservation concern for the Santa Fe National Forest will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62).

**How To File an Objection**

Objections must be submitted to the Objection Reviewing Officer at the address shown in the **ADDRESSES** section of this notice. An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the draft plan decision may be improved. If the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

It is the responsibility of the objector to ensure that the Objection Reviewing Officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period (36 CFR 219.56(d)).

**Responsible Official**

The responsible official who will approve the ROD and the revised Forest Plan for the Santa Fe National Forest is Debbie Cress, Forest Supervisor, Santa Fe National Forest, Santa Fe National Forest Supervisor's Office, 11 Forest Lane, Santa Fe NM 87508, and Phone: (505) 438–5310. The responsible official for the list of species of conservation concern is Michiko Martin, Regional Forester, USDA Forest Service Southwestern Region, 333 Broadway Blvd. SE, Albuquerque NM 87102.

The Regional Forester is the reviewing officer for the revised Forest Plan since the Forest Supervisor is the responsible official (36 CFR 219.56(e)(2)). The decision to approve the species of conservation concern list will be subject to a separate objection process. The Chief of the Forest Service is the reviewing officer for species of conservation concern since the Regional Forester is the responsible official (36 CFR 219.56(e)(2)).

Dated: August 20, 2021.

**Barnie Gyant,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2021–18959 Filed 9–1–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Carson National Forest; New Mexico; Revision of the Land Management Plan for the Carson National Forest

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of opportunity to object to the revised Land Management Plan for the Carson National Forest.

**SUMMARY:** The Forest Service is revising the Carson National Forest's Land Management Plan (Forest Plan). The Forest Service has prepared a Final Environmental Impact Statement (FEIS) for its revised Forest Plan and a draft Record of Decision (ROD). This notice is to inform the public that the Carson National Forest is initiating a 60-day period where individuals or entities with specific concerns about the Carson National Forest's revised Forest Plan and the associated FEIS may file objections for Forest Service review prior to the approval of the revised Forest Plan. This is also an opportunity to object to the Regional Forester's list of species of conservation concern for the Carson National Forest.

**DATES:** The publication date of the legal notice in the Carson National Forest's newspaper of record, *Taos News,* initiates the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic scan of the legal notice with the publication date will be posted at *https://www.fs.usda.gov/project/?project=47966.*

**ADDRESSES:** The Carson National Forest's revised Forest Plan, FEIS, draft ROD, species of conservation concern list, and other supporting information will be available for review at: *https://www.fs.usda.gov/project/?project=47966.* Copies of the Carson National Forest's revised Forest Plan, FEIS, draft ROD, and Regional Forester's list of species of conservation concern for the Carson National Forest can be obtained online at: *https://www.fs.usda.gov/project/?project=47966,* or at the following office: Carson National Forest Supervisor's Office, 208 Cruz Alta Rd., Taos, NM 87571, Phone: (575) 758–6200.

Objections must be submitted to the Objection Reviewing Officer by one of the following methods:

- *Via regular mail, carrier, or hand delivery to the following address:* USDA-Forest Service Southwest Region, ATTN: Objection Reviewing Officer, 333 Broadway Blvd. SE, Albuquerque, NM 87102 (Fax: 505–842–3173). Office hours for submitting a hand-delivered objection are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.
- Electronically at *objections-southwestern-regional-office@usda.gov* with subject: Carson National Forest Plan Revision Objection. Electronically filed objections may be submitted by email in word (.doc or .docx), rich text format (.rtf), text (.txt), portable document format (.pdf), and/or hypertext markup language (.html).
- *Electronically to the Objection Reviewing Officer via the CARA objection web form: https://cara.ecosystem-management.org/Public//CommentInput?Project=47966.* Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.
- *By Fax:* 505–842–3173. Faxes must be addressed to ''Objection Reviewing Officer.'' The fax coversheet should include a subject line with ''Carson National Forest Plan Revision Objection'' or ''Carson Species of Conservation Concern'' and specify the number of pages being submitted.

**FOR FURTHER INFORMATION CONTACT:** Forest Planner, Peter Rich at (575) 758–6277 or *peter.rich@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The decision to approve the revised Forest Plan and the Regional Forester's list of species of conservation concern for the Carson National Forest will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62).

**How To File an Objection**

Objections must be submitted to the Objection Reviewing Officer at the address shown in the **ADDRESSES** section of this notice. An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the draft plan decision may be improved. If the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

It is the responsibility of the objector to ensure that the Objection Reviewing Officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period (36 CFR 219.56(d)).

**Responsible Official**

The responsible official who will approve the ROD and the revised Forest Plan for the Carson National Forest is James Duran, Forest Supervisor, Carson National Forest, Carson National Forest Supervisor's Office, 208 Cruz Alta Rd., Taos, NM 87571, and Phone: (575) 758–6301. The responsible official for the list of species of conservation concern is Michiko Martin, Regional Forester, USDA Forest Service Southwestern Region, 333 Broadway Blvd. SE, Albuquerque NM 87102.

The Regional Forester is the reviewing officer for the revised Forest Plan since the Forest Supervisor is the responsible official (36 CFR 219.56(e)(2)). The decision to approve the species of conservation concern list will be subject to a separate objection process. The Chief of the Forest Service is the reviewing officer for species of conservation concern identification since the Regional Forester is the responsible official (36 CFR 219.56(e)(2)).

Dated: August 20, 2021.

**Barnie Gyant,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2021–18957 Filed 9–1–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–839]**

### Steel Propane Cylinders From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2018–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that Sahamitr Pressure Container Plc. (also known as Sahamitr Pressure Container Public Company Limited) (SMPC) made sales of subject merchandise at less than normal value (NV) during the period of review (POR) December 27, 2018, through July 31, 2020. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jolanta Lawska, 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) 482–8362.

**SUPPLEMENTARY INFORMATION:**

## Background

In accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act), Commerce is conducting an administrative review of the antidumping duty (AD) order on steel propane cylinders from Thailand. On October 6, 2020, in accordance with 19 CFR 251.221(c)(1)(i), we initiated the administrative review of the AD order on SMPC.[1] On March 17, 2021, Commerce extended the deadline for the preliminary results to August 31, 2021.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3]

## Scope of the Order

The merchandise covered by this order is steel propane cylinders from Thailand. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.[4]

## Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

## Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period December 27, 2018, through July 31, 2020:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Sahamitr Pressure Container Plc | 14.11 |

## Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If an examined respondent's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce clarified its ''automatic assessment'' regulation on May 6, 2003.[5] This clarification applies to entries of subject merchandise during the POR produced by SMPC for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for SMPC will be equal to the weighted-average dumping margin established in the final results of this review (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously reviewed or investigated companies not listed in the final results of this review, including those for which Commerce may determine had no shipments during the POR, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 10.77 percent that was established in the less-than-fair-value investigation.[6] These deposit requirements, when imposed, shall remain in effect until further notice.

## Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[7]. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10] Executive summaries should

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 63081 (October 6, 2020).

[2] *See* Memorandum, ''Steel Propane Cylinders from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2018/2020,'' dated March 17, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Steel Propane Cylinders from Thailand; 2018–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Preliminary Decision Memorandum at ''Scope of the Order.''

[5] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *See Steel Propane Cylinders from Thailand: Final Determination of Sales at Less Than Fair Value,* 84 FR 29168, 29169 (June 21, 2019).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d); *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*).

[9] *See* 19 CFR 351.303 (for general filing requirements).

[10] *See generally* 19 CFR 351.303.

be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised by each party in their respective case brief. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm by telephone the date and time of the hearing two days before the scheduled hearing date.

Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11] An electronically filed document must be received successfully in its entirety in ACCESS by 5 p.m. Eastern Time on the due date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1) and 351.221(b)(4).

[11] *See Temporary Rule.*

Dated: August 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. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2021–19010 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–829]**

## Granular Polytetrafluoroethylene Resin From the Russian Federation: 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 granular polytetrafluoroethylene resin (granular PTFE resin) from the Russian Federation (Russia) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2020, through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jaron Moore or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–4868, 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 published the notice of initiation of this investigation on February 23, 2021.[1] On June 11, 2021, Commerce postponed the preliminary determination of this investigation and the deadline is now August 25, 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 granular PTFE from Russia. 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 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 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 not modifying the scope language as it appeared in the *Initiation Notice.*

No scope case briefs were received prior to the deadline established in the Preliminary Scope Decision

[1] *See Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 10926 (February 23, 2021) (*Initiation Notice*).

[2] *See Granular Polytetrafluoroethylene Resin from India and Russia: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 86 FR 31276 (June 11, 2021).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Granular Polytetrafluoroethylene Resin from the Russian Federation,'' 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 Notic*e, 86 FR at 10927.

[6] *See* Memorandum, ''Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Comments on Scope of Investigations,'' dated June 28, 2021 (Preliminary Scope Decision Memorandum).

Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

**Methodology**

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated constructed export prices in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. 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 calculated an individual estimated weighted-average dumping margin for HaloPolymer OJSC (Halopolymer), the sole mandatory respondent, that is not zero, *de minimis,* or based entirely on facts otherwise available. Consequently, the rate calculated for Halopolymer is also assigned as the rate for all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/producer | Estimated weighted-average dumping margin (percent) | Cash deposit rate (adjusted for subsidy offsets) (percent) |
|---|---|---|
| Halopolymer OJSC[8] | 17.99 | 17.36 |
| All Others | 17.99 | 17.36 |

**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.

Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate CVD rate(s). As further explained in the Preliminary Decision Memorandum, we made an adjustment for export subsidies found in the companion CVD investigation.[9] The adjusted rate may be found in the ''Preliminary Determination'' section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margin calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose to interested parties its calculations performed in connection with 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.

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum; *see also* ''Public Comment'' section of this notice.

[8] HaloPolymer OJSC reported that home market manufacturers HaloPolymer Kirovo-Chepetsk, LLC (HPKC), HaloPolymer Perm, OJSC (HPP), and Limited Liability Company First Fluoroplastic Plant (FFP) and home market reseller Limited Liability Company Trading House HaloPolymer (HPTH), are affiliated with HaloPolymer OJSC by common control. This reported affiliation is supported by record evidence. *See* Halopolymer's Letter, ''Section A Questionnaire Response,'' dated May 14, 2021, at 6–10 and Exhibits A–2 and A–3. Accordingly, the preliminary rate calculated applies to subject merchandise produced by HPKC, HPP, and FFP and exported by either HPTH or HaloPolymer OJSC.

[9] *See* Preliminary Decision Memorandum at 11–12.

**Public Comment**

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments 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.[10] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[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.

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 August 11, 2021, pursuant to 19 CFR 351.210(e), Halopolymer requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] 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 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 affirmative 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 these imports 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: August 25, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix I**

**Scope of the Investigation**

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of this investigation whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service (CAS) Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the granular PTFE resin.

The product covered by this investigation does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and customs purposes, the written description of the scope is dispositive.

**Appendix II**

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Period of Investigation
IV. Discussion of the Methodology
V. Adjustment to Cash Deposit Rate for Export Subsidies
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2021–18970 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[10] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–10; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* Halopolymer's Letter, ''Granular Polytetrafluoroethylene Resin from the Russian Federation: Request for Extension of Final Determination and Provisional Measures,'' dated August 11, 2021.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–899]**

## Granular Polytetrafluoroethylene Resin From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, 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 granular polytetrafluoroethylene (PTFE) resin from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2020,

through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Alexis Cherry or Katherine Johnson, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0607 or (202) 482–4929, 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 published the notice of initiation of this investigation on February 23, 2021.[1] On June 11, 2021, Commerce postponed the preliminary determination of this investigation and the deadline is now August 25, 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 granular PTFE resin from India. 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 published in the *Initiation Notice.* For a summary of the product coverage comments and rebuttals submitted to the record for this investigation, and accompanying discussion of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice.*

No scope case briefs were received prior to the deadline established in the Preliminary Scope Decision Memorandum.[7] There will be no further opportunity for comments on scope-related issues.[8]

## 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. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

## Preliminary Affirmative Determination of Critical Circumstances

On June 8, 2021, the petitioner[9] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of granular PTFE resin from India.[10] In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of granular PTFE resin from India produced and exported by Gujarat Fluorochemicals Limited (GFCL). Furthermore, we preliminarily determine that critical circumstances exist with respect to imports of granular PTFE resin from India produced and exported by all other producers and exporters. For a full description of Commerce's preliminary critical circumstances 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 calculated an individual estimated weighted-average dumping margin for GFCL, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for GFCL is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

## Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[1] *See Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 10926 (February 23, 2021) (*Initiation Notice*).

[2] *See Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 86 FR 31276 (June 11, 2021).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Granular Polytetrafluoroethylene Resin from India,'' 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.*

[6] *See* Memorandum, ''Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Comments on Scope of Investigations,'' dated June 28, 2021 (Preliminary Scope Decision Memorandum).

[7] *Id.* at 1.

[8] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum; *see also* ''Public Comment'' section of this notice.

[9] The petitioner is Daikin America, Inc.

[10] *See* Petitioner's Letter, ''Allegation of the Existence of Critical Circumstances,'' dated June 8, 2021; *see also* Petitioner's Letter, ''Critical Circumstances Addendum,'' dated June 16, 2021.

| Exporter/producer | Estimated weighted-average dumping margin (percent) | Cash deposit rate (adjusted for subsidy offset(s)) (percent) |
|---|---|---|
| Gujarat Fluorochemicals Limited | 13.09 | 10.01 |
| All Others | 13.09 | 10.01 |

**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 respondent listed above will be equal to the company-specific estimated weighted-average dumping margin 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.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by GFCL and all other producers or exporters. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producers or exporters identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate(s).[11] Any such adjusted cash deposit rate may be found in the ''Preliminary Determination'' section above.[12]

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. 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. Interested parties will be notified of the timeline for the submission of such case briefs and written comments 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.[13] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[14] 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.

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

[11] *See, e.g., Polyester Textured Yarn from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures,* 84 FR 31301 (July 1, 2019), unchanged in *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value,* 84 FR 63843 (November 19, 2019).

[12] *See* Preliminary Decision Memorandum for further discussion.

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[14] *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*).

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 August 5, 2021, pursuant to 19 CFR 351.210(e), GFCL requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15] 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.

[15] *See* GFCL's Letter, ''Gujarat Fluorochemicals Limited's Request to Postpone Final Determination,'' dated August 5, 2021.

**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: August 25, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigation**

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin. PTFE is covered by the scope of this investigation whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for PTFE is C2F4, and the Chemical Abstracts Service Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the granular PTFE.

The product covered by this investigation does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

Granular PTFE is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and Customs purposes, the written description of the scope is dispositive.

## Appendix II

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Period of Investigation
IV. Discussion of the Methodology
V. Adjustment to Cash Deposit Rate for Export Subsidies
VI. Affirmative Preliminary Determination of Critical Circumstances
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2021–18969 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–106]**

### Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on wooden cabinets and vanities and components thereof (cabinets) from the People's Republic of China (China) and simultaneously issuing preliminarily results, finding that Goldenhome Living Co., Ltd., (Goldenhome) is the successor-in-interest to Xiamen Goldenhome Co., Ltd., (Xiamen Goldenhome).

**DATES:** Effective September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jacob Keller, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4849.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 21, 2020, we published in the **Federal Register** an AD order on cabinets from China, which included Xiamen Goldenhome.[1] Pursuant to the *Order,* Commerce assigned Xiamen Goldenhome an AD cash deposit rate, adjusted for a subsidy offset, of 37.96 percent, based on the non-selected respondent rate.[2]

On July 19, 2021, Goldenhome informed Commerce that, as of October 9, 2020, Xiamen Goldenhome changed its name to ''Goldenhome Living Co., Ltd.'' [3] Goldenhome stated the change was in name only; all other former business operations remain unchanged.[4] Goldenhome requested that Commerce conduct a CCR and find that Goldenhome is the successor-in-interest

[1] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Antidumping Duty Order,* 85 FR 22126 (April 21, 2020) (*Order*).

[2] *Id.,* 85 FR at 22127.

[3] *See* Goldenhome's Letter, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China; Request for Changed Circumstances Review (A–570–106),'' dated July 19, 2021.

[4] *Id.* at 1–2 and 4.

to Xiamen Goldenhome, and that it be subject to Xiamen Goldenhome's AD margin, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b).[5] After finding Goldenhome did not address the good cause requirement in its initial request pursuant to 19 CFR 351.216(c), Commerce issued a letter to Goldenhome requesting it demonstrate good cause.[6] On August 30, 2021, Goldenhome filed its response demonstrating good cause in accordance with 19 CFR 351.216(c).[7] We did not receive comments from other interested parties concerning this request.

**Scope of the Order**

The products covered by the *Order* are wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[8]

**Initiation of Changed Circumstances Review**

Section 751(b)(4)(B) of the Act and 19 CFR 351.216(c) state that, ''in the absence of good cause shown,'' the Secretary of Commerce may not review a final AD or countervailing duty (CVD) determination less than 24 months after the date of publication of the notice of final determination or notice of suspension of an investigation. The final determination of the AD investigation of cabinets from China published on February 28, 2020.[9] Goldenhome argues that good cause exists to ensure the appropriate cash deposit rate applies to Goldenhome's entries and that Commerce previously found in similar situations that a name change, with no further changes in the company's operations, constitutes good cause pursuant to 19 CFR 351.216(c) to initiate a CCR.[10] Therefore, we preliminarily find that good cause has been shown pursuant to 19 CFR 351.216(c) to initiate a CCR less than 24 months after the publication of the notice of final determination.[11]

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of information concerning, or a request from, an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. We preliminarily find the information provided sufficient to warrant a CCR of the *Order.* Specifically, the information submitted by Goldenhome supporting its claim that Goldenhome is the successor-in-interest to Xiamen Goldenhome demonstrates changed circumstances sufficient to warrant such a review.[12] In accordance with 751(b)(1)(A) of the Act and 19 CFR 351.216(d), we are initiating a CCR based on the information contained in Goldenhome's submission to determine whether Goldenhome is the successor-in-interest to Xiamen Goldenhome.

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[13] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[14]

**Preliminary Results of Changed Circumstances Review**

In determining whether one company is the successor to another for AD purposes, Commerce examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) suppliers; and (4) customer base. While no one, or several, of these factors will necessarily provide a dispositive indication of succession, Commerce will generally consider one company to be the successor to another company if its resulting operations are essentially the same as those of its predecessor. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the company, in its current form, operates as essentially the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.[15]

In accordance with 19 CFR 351.216, we preliminarily determine that Goldenhome is the successor-in-interest to Xiamen Goldenhome. Record evidence, as submitted by Goldenhome, indicates that, based on the totality of the circumstances under Commerce's successor-in-interest criteria, Goldenhome's management and business relations are virtually identical to those of Xiamen Goldenhome before the name change with respect to the merchandise under review. Moreover, we preliminarily find that Goldenhome's production facilities, supplier relationships, and customer base, regarding the merchandise under review, are substantially the same as Xiamen Goldenhome before the name change. For the complete successor-in-interest analysis, *see* the Preliminary Decision Memorandum.

Should the final results of review remain the same as these preliminary results of review, effective the date of publication of the final results of review, we will instruct U.S. Customs and Border Protection to apply to entries of subject merchandise exported by Goldenhome the AD cash deposit rate applicable to Xiamen Goldenhome.

**Public Comment**

Interested parties may submit case briefs no later than 14 days after the

[5] *Id.*

[6] *See* Commerce's Letter, ''Supplemental Questionnaire Changed Circumstances Review Request Goldenhome Living Co., Ltd. (Goldenhome),'' dated August 25, 2021.

[7] *See* Goldenhome's Letter, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China; Response to Second Supplemental Questionnaire (A–570–106),'' dated August 27, 2021 (Good Cause Response).

[8] *See* Memorandum, ''Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Initiation and Preliminary Results of the Changed Circumstances Review; Preliminary Decision Memorandum,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[9] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 85 FR 11953 (February 28, 2020).

[10] *See* Good Cause Response at 2–3 (citing *Bulk Aspirin from the People's Republic of China; Initiation of Changed Circumstances Antidumping Duty Administrative Review,* 67 FR 39344 (June 7, 2002); *Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Initiation of Changed Circumstances Antidumping Duty* Administrative Review, 66 FR 12460 (February 27, 2001); and *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China,* 81 FR 44588 (July 8, 2018)). *See also Certain Aluminum Foil and Common Alloy Aluminum Sheet from the People's Republic of China: Notice of Initiation and Preliminary Determination of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews,* 84 FR 48909 (September 17, 2019), and accompanying Preliminary Decision Memorandum at 4–5.

[11] *See* Preliminary Decision Memorandum at 4–5.

[12] *See* 19 CFR 351.216(d).

[13] *See* 19 CFR 351.221(c)(3)(ii).

[14] *See, e.g., Notice of Initiation and Preliminary Results of Changed Circumstances Reviews: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* 85 FR 5193 (January 29, 2020), unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 85 FR 14638 (March 13, 2020) (Passenger Vehicle and Light Truck Tires from China CCR).

[15] *See Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China,* 79 FR 48117,48118 (August 15, 2014), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review,* 79 FR 58740 (September 30, 2014).

date of publication of this notice.[16] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[17] Commerce modified certain of its requirements for serving documents containing business proprietary information until further notice.[18] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[19] Executive summaries should be limited to five pages total, including footnotes.[20] All submissions, with limited exceptions, must be filed electronically using ACCESS.[21] Electronically filed comments must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 14 days after the date of publication of this notice.[22]

Consistent with 19 CFR 351.216(e), Commerce intends to issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results, if all parties agree to our preliminary finding.

### Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act, and 19 CFR 351.216(b) and 351.221(c)(3).

Dated: August 30, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

### Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Good Cause
V. Successor-In-Interest Determination
VI. Recommendation

[FR Doc. 2021–18992 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–867]**

## Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments, 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily finds that large power transformers from the Republic of Korea were sold in the United States at less than normal value during the period of review (POR), August 1, 2019, through July 31, 2020. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce initiated this review on October 6, 2020.[1] We selected one mandatory respondent in this review, Hyosung Heavy Industries Corporation (Hyosung). For a more detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice.[2]

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 to ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

### Scope of the Order

The scope of this order covers large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.[3]

### Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

### Preliminary Determination of No Shipments

On October 27, 2020, LS Electric Co., Ltd. (LS Electric), formerly known as LSIS Co., Ltd. (LSIS)[4] timely notified Commerce that it had no exports, sales, or entries of subject merchandise during the POR.[5] Commerce issued a no

[16] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[17] *See* 19 CFR 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*).

[18] *See Temporary Rule.*

[19] *See* 19 CFR 351.309(c)(2) and (d)(2).

[20] *Id.*

[21] *See* 19 CFR 351.303.

[22] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 63082 (October 6, 2020).

[2] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] The full text of the scope of the order is contained in Preliminary Decision Memorandum.

[4] Commerce determined that LS Electric is the successor-in-interest to LSIS. *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Successor-in-Interest Determination; 2018–2019,* 86 FR 30915 (June 10, 2021).

[5] *See* LS Electric's Letter, ''Large Power Transformers from the Republic of Korea: LS

shipment inquiry to U.S. Customs and Border Protection (CBP), and CBP found no evidence of shipments from LSIS during the POR.[6] Thus, based on record evidence, we preliminary determine that LSIS had no shipments during the POR. Consistent with Commerce's practice, we find that it is not appropriate to rescind the review with respect to LSIS but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of this review.[7]

**Preliminary Results of Review**

We preliminarily determine that, for the period August 1, 2018, through July 31, 2019, the following weighted-average dumping margins exist:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Hyosung Heavy Industries Corporation | 8.85 |
| Hyundai Electric & Energy Systems Co., Ltd | 8.85 |
| Iljin Electric Co., Ltd | 8.85 |
| ILJIN | 8.85 |

**Disclosure and Public Comment**

Commerce will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[8] Interested parties are invited to comment on these preliminary results. Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[9] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within seven days from the deadline date for the submission of case briefs.[10]

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12] Case and rebuttal briefs must be served on interested parties.[13] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

Commerce intends to publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended.[14]

**Assessment Rates**

Upon issuing the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for Hyosung is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[15] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). If Hyosung's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16]

In accordance with Commerce's ''automatic assessment'' practice,[17] for entries of subject merchandise during the review period produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 22.00 percent established in the LTFV investigation.[18]

For the companies which were not selected for individual review (*i.e.,* Hyundai Electric & Energy Systems Co., Ltd., Iljin Electric Co., Ltd., and ILJIN), we will assign an assessment rate based on the cash deposit rate calculated for the company selected for mandatory review (*i.e.,* Hyosung).[19] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[20]

Consistent with its recent notice,[21] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon

Electric Co., Ltd. (formerly known as LSIS Co., Ltd.) No Shipment Letter,'' dated October 27, 2020.

[6] *See* Memorandum, ''shipment inquiry with respect to the company below during the period 08/01/2019 through 07/31/2020,'' dated November 20, 2020.

[7] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014); and *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 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).

[11] *See* 19 CFR 351.309(c)(2).

[12] *See generally* 19 CFR 351.303.

[13] *See* 19 CFR 351.303(f).

[14] *See* section 751(a)(3)(A) of the Act; *see also* 19 CFR 351.213(h).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[16] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[17] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 77 FR 40857 (July 11, 2012).

[19] *See* section 735(c)(5)(A) of the Act; *see also* Preliminary Decision Memorandum at Section VII, ''Rate for Non-Selected Companies.

[20] *See* section 751(a)(2)(C) of the Act.

[21] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyosung and other companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 22.00 percent, the rate established in the investigation of this proceeding.[22] These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 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. Deadline for Submission of Updated Sales and Cost Information
IV. Scope of the Order
V. Preliminary Determination of No Shipments
VI. Discussion of the Methodology
VII. Rate for Non-Selected Companies
VIII. Recommendation

[FR Doc. 2021–19000 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[22] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–095]**

## Aluminum Wire and Cable From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on aluminum wire and cable from the People's Republic of China (China) covering the period June 5, 2019, through November 30, 2020. We preliminarily determine that ICF Cable and Jin Tiong Electrical Materials Manufacturer PTE, Limited (Jin Tiong) are not eligible for a separate rate, and, therefore, are part of the China-wide entity. Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey, 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) 482–3964.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 23, 2019, Commerce published the AD order on aluminum wire and cable from China.[1] On February 4, 2021, Commerce initiated the administrative review of the AD order on aluminum wire and cable from China covering the period June 5, 2019, through November 30, 2020.[2] The petitioners in this proceeding are Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire).[3] This review covers two producers or exporters of subject merchandise: ICF Cable and Jin Tiong.

On February 10, 2021, Commerce released U.S. Customs and Border Protection (CBP) entry data for U.S. imports of aluminum wire and cable from China during the POR that were subject to the *Order* during the POR.[4] Encore, one of the petitioners, submitted comments on the CBP entry data and respondent selection on February 17, 2021.[5]

On July 28, 2021, Commerce determined that it had erroneously issued its questionnaire to Jin Tiong[6] (*see* ''Preliminary Results of Administrative Review'' section, below), and, accordingly, withdrew the questionnaire and removed it from the record.[7] Jin Tiong objected to Commerce's decision to withdraw the questionnaire on July 30, 2021.[8] On August 5, 2021, Jin Tiong submitted a section A questionnaire response. Southwire, one of the petitioners, submitted comments on August 9, 2021, requesting Commerce to remove Jin Tiong's section A questionnaire response from the record.[9] On August 16, 2021, Commerce rejected Jin Tiong's Section A questionnaire and removed it from the record.[10]

### Scope of the Order

The products covered by this *Order* are aluminum wire and cable from China. For a full description of the

[1] *See Aluminum Wire and Cable from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 84 FR 70496 (December 23, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 8166 (February 4, 2021) (*Initiation Notice*).

[3] *See Aluminum Wire and Cable from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 52811 (October 18, 2018).

[4] *See* Memorandum, ''Release of U.S. Customs and Border Protection Data,'' dated February 10, 2021.

[5] *See* Encore's Letter, ''Aluminum Wire and Cable from the People's Republic of China: Comments on Customs Data and Respondent Selection,'' dated February 17, 2021.

[6] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order of Aluminum Wire and Cable from the People's Republic of China; 2019–2020—Rescission of Questionnaire Issued to Jin Tiong Electrical Materials Manufacturer PTE, Limited,'' dated July 28, 2020.

[7] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order of Aluminum Wire and Cable from the People's Republic of China; Removal of Questionnaire Issued to Jin Tiong Electrical Materials Manufacturer PTE, Limited,'' dated July 29, 2021.

[8] *See* Jin Tiong's letter, ''Aluminum Wire and Cable from the People's Republic of China, A–570–095; Objection to Withdrawal of Questionnaire,'' dated July 30, 2021.

[9] *See* Southwire's Letter, ''Aluminum Wire and Cable from the People's Republic of China: Response to Jin Tiong's Objection to Withdrawal of Questionnaire; Request that the Department Reject Jin Tiong's Section A Questionnaire Response,'' dated August 9, 2021.

[10] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order of Aluminum Wire and Cable from the People's Republic of China; Rejection and Removal of Jin Tiong Electrical Materials Manufacturer PTE, Limited's Unsolicited Section A Questionnaire Response,'' dated August 16, 2021.

scope of this *Order, see* ''Scope of the *Order,*'' in the attached appendix.

**Methodology**

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

**Preliminary Results of Administrative Review**

Commerce considers China to be a non-market economy (NME) country.[11] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for the purposes of these preliminary results.

ICF Cable and Jin Tiong are the companies subject to this review. In the *Initiation Notice,* Commerce explained:

> In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.
>
> * * * * *
>
> All firms listed {in the *Initiation Notice*} that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'' [12]

Commerce also stated that either a separate rate certification or a separate rate application, as appropriate, is due from each company no later than 30 days after publication of the *Initiation Notice,* noting that the deadline ''applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.'' [13] Thus, the deadline for the submission of a separate rate certification or separate rate application in this review was March 16, 2021.

The instructions for filing a separate rate application clearly state that each exporter is required to submit the necessary information needed to determine a company's eligibility for separate rate consideration:

> Exporters, whether or not located in the NME country, owned wholly by entities located in market-economy countries, provided that the ultimate owners are also located in market-economy countries (''wholly market-economy owned firms''), need only fill out the certifications contained in this application and provide supporting documentation for the fields in the application that are marked with an asterisk, ''*.'' These marked fields pertain to the firm's eligibility for separate rates consideration and support the firm's claim that it is in fact wholly owned by a market-economy entity. This information is also necessary for administration once a separate rate has been issued.[14]

Therefore, there is no basis for Jin Tiong's claim that it was exempt from filing a separate rate application based on it being located in Singapore, a market-economy country. The separate rate application clearly instructs such a company to provide the necessary information to demonstrate that it is wholly foreign owned.

Further, in the *Initiation Notice,* Commerce explained that ''{f}or exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.'' [15] Commerce thus notified the respondents under review that it would select respondents for individual examination from those companies that had submitted a separate rate application or certification (as applicable). Commerce did not receive a separate rate application from either ICF Cable or Jin Tiong.[16] Therefore, absent the submission of the required information necessary to establish whether any exporter is independent from the control of the government of the subject NME, *i.e.,* China, Jin Tong was not eligible for individual examination in this administrative review. Commerce thus withdrew the antidumping questionnaire erroneously sent to Jin Tiong. Additionally, because neither Jin Tong nor ICF Cable attempted to demonstrate that they are entitled to a separate rate, the aforementioned presumption of government control is applicable, and Commerce preliminary determines that both companies subject to this review are part of the China-wide entity.[17]

In addition, Commerce no longer considers the NME-wide entity as an exporter conditionally subject to an antidumping duty administrative review.[18] Accordingly, the NME-wide entity is not under review unless Commerce specifically receives a request for and initiates, or self-initiates, a review of the NME-wide entity. In this administrative review, no party requested a review of the China-wide entity. Moreover, we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity has been initiated, the China-wide entity's entries are not subject to the review, and the rate applicable to the China-wide entity is not subject to change as a result of this review. The existing weighted-average dumping margin, and, therefore, the applicable cash deposit rate and assessment rate for antidumping duties, is 52.79 percent, the rate established in the final determination of the less-than-fair-value investigation.[19]

**Disclosure and Public Comment**

Normally, Commerce discloses the calculations used in its analysis to parties in a review within five days of the date of publication of the notice of preliminary results, in accordance with 19 CFR 351.224(b). However, for the preliminary results of review, there are no calculations on the record to disclose.

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[20] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for

[11] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum at 8, unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[12] *See Initiation Notice,* 86 FR at 8167.

[13] *Id.*

[14] *See* ''People's Republic of China ('China') Separate Rate Application and Required Supporting Documentation,'' available at *https://enforcement.trade.gov/nme/sep-rate-files/app-20190221/prc-sr-app-022119.pdf,* at 3.

[15] *Id.*

[16] For ICF Cable and Jin Tiong, neither company had previously received a company-specific rate in the investigation, and, therefore, a separate rate application was the appropriate information which was required in this review for each company to demonstrate their eligibility for a separate rate.

[17] *See Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Rescission of Antidumping Duty Administrative Review, in Part; 2019–2020,* 86 FR 24587 (May 7, 2021).

[18] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[19] *See Order,* 84 FR at 70497.

[20] *See* 19 CFR 351.309(c).

filing case briefs.[21] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[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, filed electronically via ACCESS within 30 days after the date of publication of this notice.[23] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[24] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

All submissions should be filed using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[25] ACCESS is available to registered users at *https://access.trade.gov.* An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.[26] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[27]

## Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

Upon issuance of the final results of the administrative review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[28] If Commerce continues to find in the final results that ICF Cable and Jin Tiong are both part of the China-wide entity, we intend to instruct CBP to liquidate entries of subject merchandise exported by ICF Cable and Jin Tiong at the rate applicable to the China-wide entity, 52.79 percent.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese or non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 52.79 percent); and (4) for all exporters of subject merchandise that are not located in China which have not received their own rate, the cash deposit rate will be the rate applicable to the exporter located in China that supplied the exporters not located in China.

These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and countervailing duties occurred and the subsequent assessment of double antidumping duties.

## Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: August 27, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix

### Scope of the Order

The scope of the *Order* covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) At least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1000 kcmil. The assembly may: (1) Include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN–2, XHHW–2, USE, USE–2, RHH, RHW, or RHW–2, and also conform to Underwriters Laboratories (UL) standards UL–44, UL–83, UL–758, UL–854, UL–1063, UL–1277, UL–1569, UL–1581, or UL–4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the *Order* specifically excludes aluminum wire and cable products in lengths less than six feet, whether or not included in equipment already assembled at the time of importation.

The merchandise covered by the *Order* is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope is dispositive.

[FR Doc. 2021–18991 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[21] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (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) (*Temporary Rule*).

[22] *See* 19 CFR 351.309(c)(2).

[23] *See* 19 CFR 351.310(c).

[24] *See* 19 CFR 351.310(d).

[25] *See* 19 CFR 351.303.

[26] *See* 19 CFR 351.303(b)(1).

[27] *See Temporary Rule.*

[28] *See* 19 CFR 351.212(b)(1).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–557–813]**

## Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that sales of polyethylene retail carrier bags (PRCBs) were not made at less than normal value during the period of review (POR) August 1, 2019, through July 31, 2020. Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable September 2, 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

On October 6, 2020, Commerce published a notice initiating an antidumping duty administrative review of PRCBs from Malaysia covering Euro SME Sdn Bhd (Euro SME) for the POR.[1] During the course of this administrative review, Euro SME responded to Commerce's questionnaire and supplemental questionnaires. For further details, *see* the Preliminary Decision Memorandum.[2]

On March 31, 2021, Commerce extended the deadline for issuing the preliminary results of this review.[3] The current deadline is August 31, 2021.

### Scope of the Order

The merchandise covered by this order is PRCBs from Malaysia, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.

### Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available 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/.*

### Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period August 1, 2019, through July 31, 2020:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Euro SME Sdn. Bhd.; and Euro Nature Green Sdn. Bhd.[4] | 0.00 |

### Verification

On December 31, 2020, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corp. (petitioners) requested, pursuant to 19 CFR 351.307(b)(1)(v) that Commerce conduct verification of the questionnaire responses of Euro SME.[5] Commerce is currently unable to conduct on-site verification of the information relied upon in making its final results of this administrative review. Accordingly, we intend to take additional steps in lieu of on-site verification to verify the information. Commerce will notify interested parties of any additional documentation or information required.

### Disclosure and Public Comment

Commerce intends to disclose the calculations used in its analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs may be submitted to the Assistant Secretary for Enforcement and Compliance.[6] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS[9] and must be served on interested parties.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 63081 (October 6, 2020).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Malaysia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum, ''Polyethylene Retail Carrier Bags from Malaysia: Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated March 31, 2021.

[4] In the 2018–2019 review, Commerce collapsed Euro SME and Euro Nature Green Sdn. Bhd. (Nature Green) and treated them as a single entity. *See Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 83515 (December 22, 2020) and accompanying Preliminary Decision Memorandum at 3–5, unchanged in *Polyethylene Retail Carrier Bags from Malaysia: Final Results of Antidumping Administrative Review; 2018–19,* 86 FR 22019 (April 26, 2021). Our treatment of Euro SME and Nature Green remains unchanged in this instant review.

[5] *See* Petitioners' Letter, ''Polyethylene Retail Carrier Bags from Malaysia: Request for Verification,'' dated December 31, 2020.

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.309(d); *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*).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See* 19 CFR 351.303(f).

[11] *See Temporary Rule.*

limited to those raised in the respective case and rebuttal briefs.[12] 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.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[13]

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), upon issuance of the final results, Commerce intends to determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[14]

For any individually examined respondent whose weighted-average dumping margin is not *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales to a particular importer, we intend to calculate an importer-specific, *ad valorem* assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[15] We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* If a respondent's weighted-average dumping margin is *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR for which a respondent did not know that its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.

We intend to issue liquidation instructions to CBP 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above, will be the rate established in the final results of the review (if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not covered by this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company was investigated or reviews; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters will continue to be 84.94 percent, the all-others rate established in the LTFV investigation.[16]

These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

These preliminary results of review 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: August 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. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2021–19004 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**Background**

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

[12] *See* 19 CFR 351.310(c).

[13] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

[14] *See* section 751(a)(2)(C) of the Act.

[15] In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[16] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia,* 69 FR 48203 (August 9, 2004).

**Upcoming Sunset Reviews for October 2021**

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in October 2021 and will appear in that month's *Notice of Initiation of Five-Year (Sunset) Reviews* (Sunset Review).

| | Department contact |
|---|---|
| **Antidumping Duty Proceedings** | |
| Welded Stainless Pressure Pipe from India, A–533–867 (1st Review). | Mary Kolberg, (202) 482–1785. |
| Chlorinated Isocyanurates from China, A–570–898 (3rd Review). | Jacky Arrowsmith, (202) 482–5255. |
| Chlorinated Isocyanurates from Spain, A–469–814 (3rd Review). | Jacky Arrowsmith, (202) 482–5255. |
| **Countervailing Duty Proceeding** | |
| Welded Stainless Pressure Pipe from India, C–533–868 (1st Review). | Mary Kolberg, (202) 482–1785. |

**Suspended Investigations**

No Sunset Review of suspended investigations is scheduled for initiation in October 2021.

Commerce's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset*) *Reviews* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 16, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–18923 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

**SUPPLEMENTARY INFORMATION:**

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

**Respondent Selection**

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below.

Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) Identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

**Deadline for Particular Market Situation Allegation**

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

*Opportunity To Request a Review:* Not later than the last day of September 2021,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceedings** | |
| Belarus: Steel Concrete Reinforcing Bars, A–822–804 | 9/1/20–8/31/21 |
| Brazil: Cold-Rolled Steel Flat Products, A–351–843 | 9/1/20–8/31/21 |
| Brazil: Emulsion Styrene-Butadiene Rubber, A–351–849 | 9/1/20–8/31/21 |
| India: Cold-Rolled Steel Flat Products, A–533–865 | 9/1/20–8/31/21 |
| India: Lined Paper Products, A–533–843 | 9/1/20–8/31/21 |
| India: Oil Country Tubular Goods, A–533–857 | 9/1/20–8/31/21 |
| Indonesia: Steel Concrete Reinforcing Bars, A–560–811 | 9/1/20–8/31/21 |
| Japan: Stainless Steel Wire Rod, A–588–843 | 9/1/20–8/31/21 |
| Latvia: Stainless Concrete Reinforcing Bars, A–449–804 | 9/1/20–8/31/21 |
| Mexico: Emulsion Styrene-Butadiene Rubber, A–201–848 | 9/1/20–8/31/21 |
| Mexico: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes, A–201–847 | 9/1/20–8/31/21 |
| Mexico: Magnesia Carbon Bricks, A–201–837 | 9/1/20–8/31/21 |
| Moldova: Steel Concrete Reinforcing Bars, A–841–804 | 9/1/20–8/31/21 |
| Poland: Emulsion Styrene-Butadiene Rubber, A–455–805 | 9/1/20–8/31/21 |
| Poland: Steel Concrete Reinforcing Bars, A–455–803 | 9/1/20–8/31/21 |
| Republic of Korea: Cold-Rolled Steel Flat Products, A–580–881 | 9/1/20–8/31/21 |
| Republic of Korea: Emulsion Styrene-Butadiene Rubber, A–580–890 | 9/1/20–8/31/21 |
| Republic of Korea: Heavy Walled Rectangular Welded Carbon Pipes and Tubes, A–580–880 | 9/1/20–8/31/21 |
| Republic of Korea: Oil Country Tubular Goods, A–580–870 | 9/1/19–8/31/20 |
| Republic of Korea: Polyethylene Terephthalate (PET) Sheet, A–580–903 | 3/3/20–8/31/21 |
| Republic of Korea: Stainless Steel Wire Rod, A–580–829 | 9/1/20–8/31/21 |
| Socialist Republic of Vietnam: Oil Country Tubular Goods, A–552–817 | 9/1/20–8/31/21 |
| Sultanate of Oman: Polyethylene Terephthalate (PET) Sheet, A–523–813 | 3/3/20–8/31/21 |
| Taiwan: Forged Steel Fittings, A–583–863 | 9/1/20–8/31/21 |
| Taiwan: Narrow Woven Ribbons With Woven Selvedge, A–583–844 | 9/1/20–8/31/21 |
| Taiwan: Raw Flexible Magnets, A–583–842 | 9/1/20–8/31/21 |
| Taiwan: Stainless Steel Wire Rod, A–583–828 | 9/1/20–8/31/21 |
| The People's Republic of China: Certain Kitchen Appliance Shelving and Racks, A–570–941 | 9/1/20–8/31/21 |
| The People's Republic of China: Certain Magnesia Carbon Bricks, A–570–954 | 9/1/20–8/31/21 |
| The People's Republic of China: Certain Steel Wheels 12 to 16.5 Inches in Diameter, A–570–090 | 9/1/20–8/31/21 |
| The People's Republic of China: Foundry Coke Products, A–570–862 | 9/1/20–8/31/21 |
| The People's Republic of China: Lined Paper Products, A–570–901 | 9/1/20–8/31/21 |
| The People's Republic of China: Narrow Woven Ribbons With Woven Selvedge, A–570–952 | 9/1/20–8/31/21 |
| The People's Republic of China: Raw Flexible Magnets, A–570–922 | 9/1/20–8/31/21 |
| The People's Republic of China: Steel Concrete Reinforcing Bars, A–570–860 | 9/1/20–8/31/21 |
| The People's Republic of China: Steel Racks, A–570–088 | 9/1/20–8/31/21 |
| Turkey: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes, A–489–824 | 9/1/20–8/31/21 |
| Turkey: Oil Country Tubular Goods, A–489–816 | 9/1/20–8/31/21 |
| Ukraine: Steel Concrete Reinforcing Bars, A–823–809 | 9/1/20–8/31/21 |
| United Kingdom: Cold-Rolled Steel Flat Products, A–412–824 | 9/1/20–8/31/21 |
| **Countervailing Duty Proceedings** | |
| Brazil: Cold-Rolled Steel Flat Products, C–351–844 | 1/1/20–12/31/20 |
| India: Cold-Rolled Steel Flat Products, C–533–866 | 1/1/20–12/31/20 |

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

| | Period |
|---|---|
| India: Lined Paper Products, C–533–844 | 1/1/20–12/31/20 |
| India: Oil Country Tubular Goods, C–533–858 | 1/1/20–12/31/20 |
| Republic of Korea: Cold-Rolled Steel Flat Products, C–580–882 | 1/1/20–12/31/20 |
| The People's Republic of China: Certain Steel Wheels 12 to 16.5 Inches in Diameter, C–570–091 | 1/1/20 –12/31/20 |
| The People's Republic of China: Kitchen Appliance Shelving and Racks, C–570–942 | 1/1/20–12/31/20 |
| The People's Republic of China: Magnesia Carbon Bricks, C–570–955 | 1/1/20–12/31/20 |
| The People's Republic of China: Narrow Woven Ribbons With Woven Selvedge, C–570–953 | 1/1/20–12/31/20 |
| The People's Republic of China: Raw Flexible Magnets, C–570–923 | 1/1/20–12/31/20 |
| The People's Republic of China: Steel Racks, C–570–089 | 1/1/20–12/31/20 |
| Turkey: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes, C–489–825 | 1/1/20–12/31/20 |
| Turkey: Oil Country Tubular Goods, C–489–817 | 1/1/20–12/31/20 |
| **Suspension Agreements** | |
| Fresh Tomatoes, A–201–820 | 9/1/20–8/31/21 |

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2021. If Commerce does not receive, by the last day of September 2021, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

[3] *See* the Enforcement and Compliance website at *https://legacy.trade.gov/enforcement/.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 24, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–18971 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB375]**

### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will host a workgroup meeting via webinar to develop an ecosystem model to describe the ecological effects of increased Red Snapper recruitment.

**DATES:** The webinar meeting will be held September 21–23, 2021, from 12:30 p.m. until 5 p.m. each day.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as it becomes available.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Council will host a workgroup meeting to develop an ecosystem model to describe the ecological effects of increased Red Snapper recruitment. An ecosystem model has been developed for the South Atlantic region and the model is being parameterized to describe the potential ecological impact of changing Red Snapper recruitment. Modelers will present their ecosystem model to the workgroup to gather feedback and describe assumptions. Participants include ecosystem modelers, stock assessment scientists, biologists, and researchers. The product from the workgroup meeting will be a report to the Council.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18978 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB381]**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Protected Resources Committee will hold a public meeting via webinar.

**DATES:** The meeting will be held on Monday, September 20, 2021, from 1 p.m. to 3:30 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

**ADDRESSES:** The meeting will be held via webinar. Details on the agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: *https://www.mafmc.org/council-events.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Mid-Atlantic Fishery Management Council's Protected Resources Committee will meet to review scoping materials for phase two of the Atlantic Large Whale Take Reduction Plan which focuses on reducing the risk of entanglement to right, humpback, and fin whales in U.S. East Coast gillnet, Atlantic mixed species trap/pot, and Mid-Atlantic lobster and Jonah crab trap/pot fisheries. The measures that will be developed in phase two of this plan have the potential to impact several Council managed fisheries and the Protected Resources Committee will develop recommendations for Council engagement in the scoping process, which extends to October 21, 2021. The Council will consider these recommendations at their October meeting.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–19011 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB332]**

### Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR webinar III for SEDAR Procedural Workshop 8: Fishery Independent Index Development under changing survey design.

**SUMMARY:** The SEDAR Procedural Workshop 8 for Fishery Independent Index Development will consist of a series of webinars and an in-person workshop. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The SEDAR Procedural Workshop 8 webinar III will be held from 2 p.m. until 4 p.m. EDT, September 20, 2021.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

Participants will discuss data analysis for the SEDAR Procedural Workshop 8.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18976 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB382]**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Scallop Joint Advisory Panel and Plan Development Team via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This webinar will be held on Tuesday, September 21, 2021, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/4238623239871509515.*

**ADDRESSES:** *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Advisory Panel and Plan Development Team will discuss Framework 34, specifically a review of results of 2021 scallop surveys, and preliminary projections. The primary focus of this meeting will be to develop input on the range of potential specification alternatives for FY 2022 and FY 2023. Framework 34 will implement measures approved through Amendment 21 to the FMP. The action will set ABC/ACLs, days-at-sea, access area allocations, total allowable landings for the Northern Gulf of Maine (NGOM) management area, targets for General Category incidental catch, General Category access area trips and trip accounting, and set-asides for the observer and research programs for fishing year 2022 and default specifications for fishing year 2023. They will also discuss the 2021 Work Priorities with a focus on Amendment 21 timelines, including final decision and implementation. Receive updates on the progress of the Scallop Survey Working Group and the evaluation of rotational management. Develop input, if needed. Separately the Advisory Panel will provide input on the range of possible 2022 scallop work priorities. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18979 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 0648–XB387]**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of web conference.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will meet September 20, 2021 through September 24, 2021.

**DATES:** The meetings will be held on Monday, September 20, 2021 through Thursday, September 23, 2021, from 8 a.m. to 4 p.m., Alaska time. If necessary, the meetings will continue into Friday, September 24, 2021.

**ADDRESSES:** The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2427.*

*Council address:* North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** Sara Cleaver, Council staff; phone: (907) 271–2809; email: *sara.cleaver@noaa.gov* or Steve MacLean, Council staff; email *steve.maclean@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Agenda

*Monday, September 20, 2021 Through Tuesday, September 21, 2021*

The Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Plan Teams will meet jointly to review and discuss issues of importance to both Plan Teams, including but not limited to: Bering Sea Fishery Ecosystem Plan, observer updates, Economic and Socioeconomic Profile update, Climate Fisheries Initiative, Ecosystem Status Report Climate update, Ecosystem surveys, Essential Fish Habitat, Economic Stock Assessment and Fishery Evaluation (SAFE), Bottom Trawl Surveys (BTS), Age Composition estimation, Random effects models, Assessment Risk Tables, Longline survey, and Sablefish assessment.

*Wednesday, September 22, 2021 Through Thursday September 23, 2021*

The BSAI Groundfish Plan Team will review stock assessment updates and reports on Arctic Regional Action Plan, Easter Bering Sea (EBS) Regional Action Plan, Alaska Climate Integrated Modeling (ACLIM), EBS Pacific cod, Aleutian Island (AI) Pacific cod, Survey sample design, BSAI Greenland turbot, Acoustic vessels of opportunity, EBS pollock, BSAI Atka mackerel, Blackspotted and Rougheye rockfish genetics and spatial management issues, and proposed specifications.

*Wednesday, September 22, 2021 Through Thursday, September 23, 2021*

The GOA Groundfish Plan Team will review stock assessment updates and reports on GOA Regional Action Plan, GOA ACLIM, GOA BTS, GOA BTS Design, Shelikof survey, Shelikof time series, GOA pollock, GOA Pacific ocean perch, GOA Other rockfish, Rockfish genetics, GOA rock sole, GOA Pacific cod, Pacific cod Economic and Socioeconomic Profile, and proposed specifications.

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2427* prior to the meeting, along with meeting materials.

*Friday, September 24, 2021*

The BSAI and GOA Groundfish Plan Teams will meet jointly or individually as necessary to complete discussion of the agenda items previously listed, and/or work on minutes.

#### Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2427.*

#### Public Comment

Public comment letters should be submitted electronically via the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/2427.*

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18994 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB370]**

### Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR 74 Data Scoping Webinar II for Gulf of Mexico red snapper.

**SUMMARY:** The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 74 Data Scoping Webinar II will be held on September 20, 2021, from 11 a.m. to 1 p.m. Eastern.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data

Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the data webinar are as follows:

- Participants will discuss what data from the GRSC may be available for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18977 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB305]**

### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of data webinar.

**SUMMARY:** The SEDAR 77 assessment of the Atlantic stock of hammerhead sharks will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 77 HMS Hammerhead Sharks Data webinar I has been scheduled for Thursday, September 23, 2021, from 12 p.m. until 3 p.m. EDT.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/4708377487720594446.*

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerhead Shark Data Webinar 1 are as follows: Identify and discuss data issues or concerns.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18975 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID: 0648–XB389]**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The MAFMC's Spiny Dogfish Monitoring Committee will meet via webinar to develop recommendations for Spiny Dogfish specifications.

**DATES:** The meeting will be held on Monday, September 20, 2021, from 1:30 p.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held via webinar. Details on the proposed agenda, connection information, and briefing materials will be posted via the MAFMC website calendar at: *https://www.mafmc.org/council-events.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Spiny Dogfish Monitoring Committee will meet to review annual specifications and management measures and make any appropriate recommendations for future Spiny Dogfish specifications.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden at (302) 526–5251, at least 5 days prior to any meeting date.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 30, 2021.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2021–18993 Filed 9–1–21; 8:45 am]

**BILLING CODE 3510–22–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Schools of National Service, Formerly the Segal Education Award Matching Program

**AGENCY:** The Corporation for National and Community Service.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 1, 2021.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: AmeriCorps, Attention: Rhonda Taylor, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Taylor, 202–355–2202, or by email at *rtaylor@cns.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Schools of National Service Commitment Form.

*OMB Control Number:* 3045–0143.

*Type of Review:* Renewal.

*Respondents/Affected Public:* Businesses and organizations.

*Total Estimated Number of Annual Responses:* 200.

*Total Estimated Number of Annual Burden Hours:* 100.

*Abstract:* AmeriCorps seeks to secure educational benefits from colleges, universities and other qualified educational institutions for AmeriCorps alumni seeking to attend their institution. This collection allows AmeriCorps and the institution to enhance the educational opportunities available to AmeriCorps alumni because of their service. The program, formerly the Segal Education Award Matching Program, now has a new name, Schools of National Service, and an updated form design that should be easier to complete and make it easier for alumni to learn about benefits available to them. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on 10/31/21.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will

be available for public inspection on *regulations.gov.*

Dated: August 30, 2021.

**Rhonda Taylor,**

*Director Partnerships & Program Engagement.*

[FR Doc. 2021–19003 Filed 9–1–21; 8:45 am]

**BILLING CODE 6050–28–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for NCCC Impact Evaluation

**AGENCY:** The Corporation for National and Community Service.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing a renewal of the existing public information collection request (ICR) entitled NCCC Impact Evaluation with revisions that expand the scope to include COVID–19 vaccine distribution and related activities case studies.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 1, 2021.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention: Melissa Gouge, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Melissa Gouge, 202–606–6736, or by email at *mgouge@cns.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* NCCC Impact Evaluation.

*OMB Control Number:* 3045–0189.

*Type of Review:* Renewal.

*Respondents/Affected Public:* Individuals and Households; Businesses and Organizations.

*Total Estimated Number of Additional Responses:* 210.

*Total Estimated Number of Additional Burden Hours:* 305.

*Abstract:* AmeriCorps NCCC program members have been a crucial part of AmeriCorps' COVID–19 pandemic response, serving as personnel on vaccine distribution mission assignments alongside FEMA and other agencies. No one could have anticipated the COVID–19 pandemic, but we have seized an opportunity to develop questions that build on the existing study but are specific to these ongoing activities.

These activities are an essential element of our agency's COVID–19 pandemic response—one that is also essential to our mission—to improve lives and strengthen communities. To further our mission in a time of increasing uncertainty, we aim to collect information on current activity that must be measured now in order to assess, identify, and make any identified programmatic changes. Peak performance of these projects is crucial to our agency's COVID–19 pandemic response and public safety writ large.

Vaccine delivery is of increasing importance as the COVID–19 pandemic continues an unpredictable course. In time, we hope, the pandemic will subside, but it is crucial that we analyze these mission assignments now to make improvements that will literally save lives. How will this save lives? Currently, just over 50% of Americans are fully vaccinated against the virus (Source: *CDC.gov*, accessed 08/20/2021). Vaccines have proven to decrease severity of illness and fatalities from COVID–19. AmeriCorps NCCC members are increasing access to vaccines through their service. Programmatic improvements instituted 'in real time' to enhance their efforts will lead to even greater access and a healthier public.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: August 27, 2021.

**Mary Hyde,**

*Director, Office of Research and Evaluation.*

[FR Doc. 2021–18958 Filed 9–1–21; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC21–120–000.

*Applicants:* Highest Power Solar, LLC, PGR 2021 Lessee 7, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Highest Power Solar, LLC, et al.

*Filed Date:* 8/26/21.

*Accession Number:* 20210826–5136.

*Comment Date:* 5 pm ET 9/16/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER20–1713–001.
*Applicants:* Evergy Kansas Central, Inc.
*Description:* Compliance filing: Order No. 864 Compliance Deficiency Response to be effective N/A.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5122.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER20–2040–002.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Compliance filing: Deficiency Response in ER20–2040—Prairie Wind Order No. 864 Compliance Filing to be effective N/A.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5085.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER20–2041–002.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Compliance filing: Deficiency Response in ER20–2041—KCPL Order No. 864 Compliance Filing to be effective N/A.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5084.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER20–2042–002.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Compliance filing: Deficiency Response in ER20–2042—KCPL–GMO Order No. 864 Compliance Filing to be effective N/A.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5082.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER20–2044–002.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Compliance filing: Deficiency Response in ER20–2044—Westar Energy, Order No. 864 Compliance Filing to be effective N/A.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5079.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER20–2044–003.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Compliance filing: Supp. Deficiency Response in ER20–2044—Westar Energy, Order 864 Compliance to be effective N/A.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5162.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER20–2614–001.
*Applicants:* New England Power Company.
*Description:* Compliance filing: Amended Order No. 864 Compliance Filing—New England Power AC Support Agreement to be effective 1/27/2020.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5074.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–1223–001.
*Applicants:* Tucson Electric Power Company.
*Description:* Compliance filing: Order No. 864 Compliance Filing to be effective 1/27/2020.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5131.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–1510–002.
*Applicants:* Midcontinent Independent System Operator, Inc., Big Rivers Electric Corporation.
*Description:* Compliance filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35: 2021–08–27_BREC Compliance Filing re Attachment A to be effective 6/1/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5156.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2217–001.
*Applicants:* Lincoln Land Wind, LLC.
*Description:* Tariff Amendment: Amendment to Application For Market Based Rate Authority to be effective 8/31/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5000.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2473–001.
*Applicants:* Liberty Utilities (Granite State Electric) Corp.
*Description:* Tariff Amendment: Revised Filing of Rate Updates Under Borderline Sales Tariff to be effective 7/1/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5052.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2778–000.
*Applicants:* UGI Corporation.
*Description:* Request for Waiver of Affiliate Transaction Pricing Rule of UGI Corporation.
*Filed Date:* 8/26/21.
*Accession Number:* 20210826–5101.
*Comment Date:* 5 pm ET 9/16/21.

*Docket Numbers:* ER21–2779–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* § 205(d) Rate Filing: 2021–08–26 ESDER 4—State-of-Charge, Default Energy Bids & Demand Response to be effective 12/31/9998.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5077.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2780–000.
*Applicants:* Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2021–08–27_SA 3697 ITC Midwest-Great Pathfinder Wind E&P (J1050) to be effective 7/30/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5119.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2781–000.
*Applicants:* Public Service Company of Colorado.
*Description:* § 205(d) Rate Filing: 2021–08–27 OATT-Savion-Surplus LGIA–584–0.0.0 to be effective 8/28/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5130.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2782–000.
*Applicants:* Sagebrush ESS, LLC.
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 10/27/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5152.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2783–000.
*Applicants:* Portland General Electric Company.
*Description:* § 205(d) Rate Filing: PGE–BPA Amended and Restated Engineering and Procurement Agreement to be effective 8/28/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5155.
*Comment Date:* 5 pm ET 9/17/21.

*Docket Numbers:* ER21–2784–000.
*Applicants:* Basin Electric Power Cooperative.
*Description:* Initial rate filing: Submission of Service Agreement Nos. 106 and 107 to be effective 8/27/2021.
*Filed Date:* 8/27/21.
*Accession Number:* 20210827–5161.
*Comment Date:* 5 pm ET 9/17/21.

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: August 27, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–18999 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–44–000]**

### LA Storage, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hackberry Storage Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Hackberry Storage Project (Project) involving construction and operation of facilities by LA Storage, LLC (LA Storage) in Cameron and Calcasieu Parishes, Louisiana. The Commission will use the EIS in its decision-making process to determine whether LA Storage'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.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on October 20, 2020, in Docket No. PF20–5–000, the Commission opened a scoping period during LA Storage's planning process for the Project and prior to filing a formal application with the Commission, a process referred to as ''pre-filing.'' LA Storage has now filed an application with the Commission, and staff intends to prepare an EIS that will address the concerns raised during the pre-filing scoping process as well as comments received in response to this notice. Therefore, the Commission requests comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 26, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, during the pre-filing process, the Commission opened a scoping period which expired on November 19, 2020; however, Commission staff continued to accept comments during the entire pre-filing process. All substantive written and oral comments provided during pre-filing will be considered during the preparation of the EIS. Therefore, if you submitted comments on this Project to the Commission during the pre-filing process in Docket No. PF20–5–000 you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

LA Storage provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

#### Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–44–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

#### Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

The Project would involve the conversion of three existing salt dome caverns to natural gas storage service and the development of one new salt dome cavern for additional natural gas storage service, all within a permanent natural gas storage facility on a 160-acre tract of land owned by LA Storage. In addition to the storage caverns, LA Storage would construct and operate on-site compression facilities (Pelican Compressor Station) and up to six solution mining water supply wells at the storage facility on LA Storage's property; the Hackberry Pipeline, consisting of approximately 11.1 miles of 42-inch-diameter natural gas pipeline connecting the certificated Port Arthur

Pipeline Louisiana Connector (PAPLC) pipeline (CP18–7) to the natural gas storage caverns; the Cameron Interstate Pipeline (CIP) Lateral, an approximately 4.9-mile-long, 42-inch-diameter natural gas pipeline extending from the existing CIP to the planned natural gas storage caverns; metering and regulating at the CIP and PAPLC interconnects; and an approximately 6.2-mile-long, 16-inch-diameter brine disposal pipeline that would transport brine from the caverns to four saltwater disposal wells located on two pads north of the facility.

The general location of the project facilities is shown in appendix 1.[1]

Construction of the planned facilities would disturb about 441 acres of land. Following construction, LA Storage would maintain about 267 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The Hackberry Pipeline, CIP Lateral, and brine disposal pipeline would be collocated for 4.7 miles.

Based on an initial review of LA Storage's proposal and public comments received during the pre-filing process, Commission staff have identified several expected impacts that deserve attention in the EIS. These include: Project impacts on wetlands and other fish and wildlife resources; impacts on water and air quality; safety of salt domes and brine injection; greenhouse gas emissions; and climate change.

**The NEPA Process and the EIS**

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use;
- greenhouse gas and climate;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will 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 eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

**Alternatives Under Consideration**

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3]

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

**Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on October 20, 2020, with the Louisiana State Historic Preservation Office, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Schedule for Environmental Review**

On February 10, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. 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 December 2021.

Issuance of Notice of Availability of the final EIS: April 8, 2022

90-day Federal Authorization Decision Deadline[5]: July 7, 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.

**Permits and Authorizations**

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

| Permit | Agency |
|---|---|
| Clean Water Act (CWA) Section 404 Discharges to Waters of the United States. | U.S. Army Corps of Engineers. |

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] 40 CFR 1508.1(z).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[5] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

| Permit | Agency |
|---|---|
| Coastal Use Permit ... | Louisiana Department of Natural Resources. |
| Clean Air Act Title V Air Permit. | Louisiana Department of Environmental Quality. |

**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; local libraries; newspapers; elected officials; Native American Tribes; and other interested parties. 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. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

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 CP21–44–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

Or

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–44–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: August 27, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–18967 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR21–61–000.

*Applicants:* Whistler Pipeline LLC.

*Description:* Submits tariff filing per 284.123(b),(e)/: Baseline Refile to be effective 8/1/2021.

*Filed Date:* 8/26/2021.

*Accession Number:* 20210826–5092.

*Comment Date/Protest Due:* 5 p.m. 9/16/21.

*Docket Numbers:* RP21–1050–000.

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* Compliance filing: Rate Schedule S–2 OFO Penalty Flow Through Refund to be effective N/A.

*Filed Date:* 8/26/21.

*Accession Number:* 20210826–5021.

*Comment Date:* 5 p.m. ET 9/7/21.

*Docket Numbers:* RP21–1051–000.

*Applicants:* Kern River Gas Transmission Company.

*Description:* § 4(d) Rate Filing: 2021 Desert Peak Delivery Meter to be effective 10/1/2021.

*Filed Date:* 8/26/21.

*Accession Number:* 20210826–5070.

*Comment Date:* 5 p.m. ET 9/7/21.

*Docket Numbers:* RP21–1052–000.

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* § 4(d) Rate Filing: Negotiated Rates—FTNP—Northeast Energy Associates to be effective 9/1/2021.

*Filed Date:* 8/26/21.

*Accession Number:* 20210826–5098.

*Comment Date:* 5 p.m. ET 9/7/21.

*Docket Numbers:* RP21–1053–000.

*Applicants:* Columbia Gulf Transmission, LLC.

*Description:* Compliance filing: CGT Cashout Report 2021 to be effective N/A.

*Filed Date:* 8/27/21.

*Accession Number:* 20210827–5056.

*Comment Date:* 5 p.m. ET 9/8/21.

*Docket Numbers:* RP21–1054–000.

*Applicants:* Tennessee Gas Pipeline Company, L.L.C.

*Description:* § 4(d) Rate Filing: Volume No. 2—EQT Energy, LLC SP369939 to be effective 9/1/2021.

*Filed Date:* 8/27/21.

*Accession Number:* 20210827–5057.

*Comment Date:* 5 p.m. ET 9/8/21.

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 protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–18996 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 9648–019]**

### One Hundred River Street, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 9648–019.

c. *Date Filed:* June 30, 2021.

d. *Submitted By:* One Hundred River Street, LLC (One Hundred River).

e. *Name of Project:* Fellows Dam Project (project).

f. *Location:* On the Black River in Windsor County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. Potential *Applicant Contact:* Mr. Richard Genderson, One Hundred River Street, LLC; 300 Massachusetts Ave. NE, Washington, DC 20002; (202) 543–9300; email at *rick@cellar.com.*

i. *FERC Contact:* Michael Watts at (202) 502–6123; or email at *michael.watts@ferc.gov.*

j. One Hundred River filed its request to use the Traditional Licensing Process on June 30, 2021, and provided public notice of its request on June 30, 2021 and July 7, 2021. In a letter dated August 27, 2021, the Director of the Division of Hydropower Licensing approved One Hundred River's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating One Hundred River as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On June 30, 2021, One Hundred River filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 9648. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2024.

p. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 27, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–18964 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 9650–036]**

### Factory Falls, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 9650–036.

c. *Date Filed:* June 30, 2021.

d. *Submitted By:* Factory Falls, Inc. (Factory Falls).

e. *Name of Project:* Gilman Dam Project (project).

f. *Location:* On the Black River in Windsor County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. William Handly, Factory Falls, Inc.; 286 South Street, Springfield, VT 05156–3277; (802) 885–5360; email at *bhandly@vermontel.net.*

i. *FERC Contact:* Amy Chang at (202) 502–8250; or email at *amy.chang@ferc.gov.*

j. Factory Falls filed its request to use the Traditional Licensing Process on June 30, 2021 and provided public notice of its request on June 30, 2021 and July 7, 2021. In a letter dated August 27, 2021, the Director of the Division of Hydropower Licensing approved Factory Falls' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Factory Falls as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On June 30, 2021, Factory Falls filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 9650. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2024.

p. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 27, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–18966 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 9649–019]**

### Lovejoy Tool Company, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 9649–019.

c. *Date Filed:* June 30, 2021.

d. *Submitted By:* Lovejoy Tool Company, Inc. (Lovejoy Tool).

e. *Name of Project:* Lovejoy Dam Project (project).

f. *Location:* On the Black River in Windsor County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Todd Priestley, Lovejoy Tool Company, Inc.; 133 Main Street, Springfield, VT 05156; (800) 843–8376; email at *todd.priestley@lovejoytool.com.*

i. *FERC Contact:* Amy Chang at (202) 502–8250; or email at *amy.chang@ferc.gov.*

j. Lovejoy Tool filed its request to use the Traditional Licensing Process on June 30, 2021 and provided public notice of its request on June 30, 2021 and July 7, 2021. In a letter dated August 27, 2021, the Director of the Division of Hydropower Licensing approved Lovejoy Tool's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lovejoy Tool as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On June 30, 2021, Lovejoy Tool filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 9649. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2024.

p. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 27, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–18963 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–2769–000]**

### PGR 2021 Lessee 7, 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 PGR 2021 Lessee 7, 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 September 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 26, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–18907 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–2775–000]**

### Spartacus Energy Services, 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 Spartacus Energy Services, 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 September 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 TYY, (202) 502–8659.

Dated: August 27, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–18998 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–2766–000]**

### Central Line 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 Central Line 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.

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 September 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 26, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–18905 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7888–023]**

### Comtu Falls Corporation; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 7888–023.

c. *Date Filed:* June 30, 2021

d. *Submitted By:* Comtu Falls Corporation (Comtu).

e. *Name of Project:* Comtu Falls Project (project).

f. *Location:* On the Black River in Windsor County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. Potential *Applicant Contact:* Ms. Celeste Fay, Comtu Falls Corp. c/o Gravity Renewables, Inc.; PO Box 7580, Boulder, CO 80306; (303) 440–3378; email at *celeste@gravityrenewables.com.*

i. *FERC Contact:* Michael Watts at (202) 502–6123; or email at *michael.watts@ferc.gov.*

j. Comtu filed its request to use the Traditional Licensing Process on June 30, 2021, and provided public notice of its request on June 30, 2021. In a letter dated August 27, 2021, the Director of the Division of Hydropower Licensing approved Comtu's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Comtu as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On June 30, 2021, Comtu filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 7888. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2024.

p. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 27, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–18965 Filed 9–1–21; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2021–0513; FRL–8830–01–OCSPP]**

## Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel their registrations of certain products and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdrew their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before October 4, 2021.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0513, through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Submit written withdrawal request by mail to: Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Christopher Green.

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:** Christopher Green, Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your

comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

## II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel and terminate certain uses product registrations. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Company No. | Product name | Active ingredients |
|---|---|---|---|
| 4–459 | 4 | Bonide Captan Wettable | Captan. |
| 100–1343 | 100 | Pulsar Herbicide | Fluroxypyr-meptyl & Dicamba, diglycolamine salt. |
| 279–3027 | 279 | Ammo 2.5 EC Insecticide | Cypermethrin. |
| 279–3070 | 279 | Cynoff WSP Insecticide | Cypermethrin. |
| 279–3591 | 279 | Statement Herbicide | Metolachlor & Sodium salt of fomesafen. |
| 499–371 | 499 | Whitmire PT 120 XLO Sumithrin Contact Insecticide | Phenothrin. |
| 499–376 | 499 | Whitmire PT 1810 Total Release Insecticide | Bifenthrin. |
| 499–443 | 499 | Whitmire TC 161 Injection System | Prallethrin & Cyfluthrin. |
| 499–471 | 499 | Whitmire Micro-Gen TC200 Injection System | Prallethrin & lambda-Cyhalothrin. |
| 499–485 | 499 | TC 218 | Cyfluthrin. |
| 499–489 | 499 | TC 62 | Cyfluthrin. |
| 499–523 | 499 | TC 260 | Cyfluthrin. |
| 499–538 | 499 | TC 130 Gen II | Cyfluthrin. |
| 1381–188 | 1381 | Battery 2.5 EC | Cypermethrin. |
| 2693–212 | 2693 | Super Epoxycop with Irgarol—Blue | 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide. |
| 5383–223 | 5383 | Troy EX2407 | 1,2-Benzisothiazolin-3-one & Ziram. |
| 7969–343 | 7969 | Cyfluthrin Encapsulated Residual Insecticide Spray | Cyfluthrin. |
| 7969–361 | 7969 | Priaxor D Fungicide | Tetraconazole; Fluxapyroxad & Pyraclostrobin. |
| 8622–81 | 8622 | Stabilized Bromine Solution | Sulfamic acid, bromo-, monosodium salt. |
| 34704–884 | 34704 | Bifenthrin 7 T&O | Bifenthrin. |
| 34704–888 | 34704 | Bifenthrin 7.9% FL Nursery Insecticide/Miticide | Bifenthrin. |
| 34704–899 | 34704 | PMN HG | Permethrin. |
| 34704–919 | 34704 | Bisect Nursery Granular Insecticide | Bifenthrin. |
| 34704–925 | 34704 | Termethrin 3.2 Termiticide/Insecticide (Alternate) | Permethrin. |
| 34704–956 | 34704 | Bisect CG Granules | Bifenthrin. |
| 34704–957 | 34704 | Bisect G (Alternate) | Bifenthrin. |
| 34704–963 | 34704 | Covert Termiticide/Insecticide | Permethrin. |
| 34704–977 | 34704 | LPI Metolachlor | Metolachlor. |
| 34704–1073 | 34704 | LPI S-Metolachlor Herbicide | S-Metolachlor. |
| 34704–1027 | 34704 | Permethrin Cutworm Bait | Permethrin. |
| 60061–94 | 60061 | Pettit Marine Paint Ultima SR Ablative Dual Biocide Antifouling Bottom Paint. | Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- |
| 60061–110 | 60061 | Petit Marine Paint SR–21 Fresh Water Antifouling | 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- |
| 60061–111 | 60061 | Copper Powder 1921 | Copper as elemental. |
| 60061–117 | 60061 | Pettit Marine Paint Ultima SR Antifouling Paint | 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide. |
| 60061–136 | 60061 | Pettit Hydrocoat SR Dual-Biocide Ablative Antifouling. | Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- |
| 60061–141 | 60061 | Pettit Hydrocoat Pro SR Dual-Biocide Ablative Antifouling Paint. | 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide. |
| 62719–427 | 62719 | Dimension 1EC Turf Herbicide | Dithiopyr. |
| 62719–468 | 62719 | Dimension Ultra 2SC | Dithiopyr. |
| 83222–7 | 83222 | Cyper G–AG 2.5 EC Insecticide | Cypermethrin. |
| 83222–30 | 83222 | Clethodim 2 EC Herbicide | Clethodim. |
| 84229–18 | 84229 | Tide Technical Tebuconazole | Tebuconazole. |
| AL–060006 | 34704 | Permethrin Insecticide | Permethrin. |
| GA–060005 | 34704 | Permethrin Insecticide | Permethrin. |
| ID–060017 | 34704 | Stealth Herbicide | Pendimethalin. |
| ID–060020 | 34704 | Stealth Herbicide | Pendimethalin. |
| MA–170001 | 34704 | Intensity Post-Emergence Grass Herbicide | Clethodim. |
| WA–160001 | 90924 | Formaldehyde Solution 37 | Formaldehyde. |

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| Registration No. | Company No. | Product name | Active ingredient | Uses to be terminated |
|---|---|---|---|---|
| 270–300 | 270 | Equicare Flysect Super-7 Repellent Spray. | Stabilene; MGK 326; MGK 264; Piperonyl butoxide; Pyrethrins & Permethrin. | Use on dogs. |
| 19713–235 | 19713 | Drexel Captan 50W | Captan | Home and Garden Sublabel. |
| 19713–362 | 19713 | Drexel 80% Captan | Captan | Home and Garden Sublabel. |

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

| Registration No. | Company No. | Product name | Active ingredient | Uses to be terminated |
|---|---|---|---|---|
| 19713–385 | 19713 | Drexel 80% Kaptan | Captan | Home and Garden Sublabel. |
| 19713–405 | 19713 | Drexel Captan 80 WDF | Captan | Home and Garden Sublabel. |
| 19713–646 | 19713 | Drexel Captan 50W Fungicide | Captan | Home and Garden Sublabel. |
| 19713–652 | 19713 | Drexel Captan 80 WDG | Captan | Home and Garden Sublabel. |
| 47371–146 | 47371 | HS–420 (10%) Water Treatment Microbicide. | 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride. | Directions for use for sanitization of food processing equipment and other hard surfaces in food contact locations. |
| 47371–164 | 47371 | Formulation HS–1210 Disinfectant/Sanitizer (50%). | Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16) & 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride. | Directions for use for re-circulating water in cooling towers and oil field flood or saltwater disposal systems. |
| 61842–21 | 61842 | Linex® 4L Agricultural Herbicide | Linuron | Post-harvest; Crop stubble; Fallow Ground; Stale Seedbed. |
| 61842–22 | 61842 | Linuron Technical | Linuron | Terrestrial Non-Cropland; Lupine. |
| 61842–23 | 61842 | Lorox DF Agricultural Herbicide | Linuron | Corn (field); Potato; Sorghum. |
| 61842–24 | 61842 | Linuron Flake Technical | Linuron | Terrestrial Non-Cropland; Lupine. |
| 61842–32 | 61842 | Linuron Technical | Linuron | Terrestrial Non-Cropland; Lupine. |

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

| EPA Company No. | Company name and address |
|---|---|
| 4 | Bonide Products, LLC, 6301 Sutliff Road, Oriskany, NY 13424. |
| 100 | Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. |
| 270 | Farnam Companies, Inc., 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173. |
| 279 | FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104. |
| 499 | BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. |
| 1381 | Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589. |
| 2693 | International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091. |
| 5383 | Troy Chemical Corporation, 8 Vreeland Road, Florham Park, NJ 07932. |
| 7969 | BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. |
| 8622 | ICL–IP America, Inc., 11636 Huntington Road, Gallipolis Ferry, WV 25515. |
| 19713 | Drexel Chemical Company, P.O Box 13327, Memphis, TN 38113–0327. |
| 34704 | Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286. |
| 47371 | H&S Chemicals Division of Lonza, LLC, 412 Mount Kemble Avenue, Morristown, NJ 07960. |
| 60061 | Kop-Coat, Inc., 36 Pine Street, Rockaway, NJ 07866. |
| 61842 | Tessenderlo Kerley, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332. |
| 62719 | Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. |
| 83222 | Winfield Solutions, LLC, 1080 County Rd., F West, MS5705, P.O. Box 64589, St. Paul, MN 55164. |
| 84229 | Tide International, USA, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332. |
| 90924 | Championx, LLC, 11177 S. Stadium Drive, Sugar Land, TX 77478. |

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

## IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

### V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2 of Unit II.

For voluntary product cancellations, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II. except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products & products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products & terminated uses.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: August 11, 2021.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2021–19002 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8875–01–R6]**

### Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for Blanchard Refining Company, Galveston Bay Refinery, Galveston County, Texas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition for objection to Clean Air Act Title V operating permit.

**SUMMARY:** The Environmental Protection Agency (EPA) Administrator signed an Order dated August 9, 2021, granting in part and denying in part a Petition dated April 11, 2017 from the Environmental Integrity Project and Sierra Club. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to Blanchard Refining Company (Blanchard) for its Galveston Bay Refinery located in Galveston County, Texas.

**ADDRESSES:** The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office is currently closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

**FOR FURTHER INFORMATION CONTACT:** Aimee Wilson, EPA Region 6 Office, Air Permits Section, (214) 665–7596, *wilson.aimee@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project and Sierra Club dated April 11, 2017, requesting that the EPA object to the issuance of operating permit no. O1541, issued by TCEQ to the Galveston Bay Refinery in Galveston County, Texas. The Petition claims the proposed permit improperly incorporated a State-only major source flexible permit, failed to establish a compliance schedule for Blanchard to obtain a federally approved major source permit, failed to identify, incorporate, and assure compliance with permits by rule (PBR) claimed by Blanchard, and failed to assure compliance with emission limits and operating requirements established by Blanchard's New Source Review (NSR) permits, including permits by rule.

On August 9, 2021, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for EPA's decision.

Dated: August 23, 2021.

**David Garcia,**

*Director, Air and Radiation Division, Region 6.*

[FR Doc. 2021–18933 Filed 9–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review of Information Collection Reinstatement; Comment Request [OMB No. 3064–0203]

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Agency information collection activities: Submission for OMB review; comment request.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the reinstatement of a previously approved and subsequently discontinued information collection for the Small Business Lending Survey, a survey of banks that the FDIC has proposed to field in May 2022. On April 21, 2021, the FDIC published a notice in the **Federal Register** requesting comment for 60 days on the proposed reinstatement of this information collection. No comments were received. The FDIC hereby gives notice of its plan

to submit to OMB a request to approve the reinstatement of this information collection, and again invites comment.

**DATES:** Comments must be submitted on or before October 4, 2021.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

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:** Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

Proposal to reinstate the following collection of information:

*Title:* FDIC Small Business Lending Survey.

*OMB Number:* 3064–0203.

*Frequency of Response:* Once.

*Affected Public:* FDIC-insured depository institutions.

*Estimated Annual Burden:*

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0203]

| IC description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses/ respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| Respondents with Gross Annual Revenue Less than $1 Billion. | Reporting (Voluntary) .. | One time ..... | 1,152 | 1 | 3.5 | 4,032 |
| Respondents with Gross Annual Revenue $1 Billion or More. | Reporting (Voluntary) .. | One time ..... | 848 | 1 | 6.5 | 5,512 |
| Total Estimated Annual Burden Hours. | ..... | ..... | ..... | ..... | ..... | 9,544 |

Source: FDIC.

**General Description of Collection**

Small businesses are an important component of the U.S. economy. According to the Small Business Administration (SBA), small firms accounted for almost half of private-sector employment and over 65 percent of net new jobs between 2000 and 2019.[1] Many small businesses have little or no direct access to capital markets and are thus reliant on bank financing, both for operating expenses and for investment. For banks, small business lending is an important way that they help meet their communities' needs, especially for the many banks that primarily focus on commercial rather than consumer lending.

Given the value of small businesses to the U.S. economy and the role of bank lending to small businesses, the proposed FDIC 2022 Small Business Lending Survey (SBLS 2022), which surveys banks, will provide important data to complement existing sources of information and will provide additional insight into many aspects of small business lending extended by banks.

The proposed SBLS 2022 will document the current types of credit offered, information banks use to underwrite loans, the market area for small business loans, competition for small business lending, and the practices used to conduct small business lending. SBLS 2022 asks similar questions about banks' lending volumes for business purposes as in the 2016 collection, but by finer gradations for both business size and loan size and by both loans outstanding and loan originations. The proposed collection will also provide new information on banks' current or planned use of financial technology, whether and how banks use automated lending, and the effects of the coronavirus pandemic with respect to their small business loan programs.

**Comment Discussion**

On April 21, 2021, the FDIC issued a request for comment (86 FR 20697) on a proposed second collection of the SBLS to be fielded in May 2022. No comments were received.

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The FDIC will consider all comments to determine the extent to which the information collection should be modified prior to submission to OMB for review and approval. After the comment period closes, comments will be summarized and/or included in the FDIC's request to OMB for approval of the collection. All comments will become a matter of public record.

[1] SBA, ''Frequently Asked Questions About Small Businesses,'' accessed June 9, 2021, *https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf.*

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 27, 2021.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2021–18951 Filed 9–1–21; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Thursday, September 2, 2021 at 10:00 a.m.

**PLACE:** Virtual Meeting. NOTE: Because of the Covid-19 Pandemic, We Will Conduct the Open Meeting Virtually. If You Would Like to Access The Meeting, See the Instructions Below.

**STATUS:** The September 2, 2021 Open Meeting has been canceled.

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

*Authority:* Government in the Sunshine Act, 5 U.S.C. 552b.

**Vicktoria J. Allen,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2021–19132 Filed 8–31–21; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 4, 2021.

*A. Federal Reserve Bank of Minneapolis* (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dairyland Bank Holding Corporation, La Crosse, Wisconsin;* to retain 16.234 percent of the voting shares of Farmers State Bank-Hillsboro, Hillsboro, Wisconsin.

Board of Governors of the Federal Reserve System, August 30, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–19001 Filed 9–1–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10241 and CMS–10174]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by October 4, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Survey of Retail Prices; *Use:* This information collection request provides for a survey of the average acquisition costs of all covered outpatient drugs purchased by retail community pharmacies. CMS may contract with a vendor to conduct monthly surveys of retail prices for covered outpatient drugs. Such prices

represent a nationwide average of consumer purchase prices, net of discounts and rebates. The contractor shall provide notification when a drug product becomes generally available and that the contract include such terms and conditions as the Secretary shall specify, including a requirement that the vendor monitor the marketplace. CMS has developed a National Average Drug Acquisition Cost (NADAC) for states to consider when developing reimbursement methodology. The NADAC is a pricing benchmark that is based on the national average costs that pharmacies pay to acquire Medicaid covered outpatient drugs. This pricing benchmark is based on drug acquisition costs collected directly from pharmacies through a nationwide survey process. This survey is conducted on a monthly basis to ensure that the NADAC reference file remains current and up-to-date. *Form Number:* CMS–10241 (OMB control number 0938–1041); *Frequency:* Monthly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 72,000; *Total Annual Responses:* 72,000; *Total Annual Hours:* 36,000. (For policy questions regarding this collection contact: Lisa Shochet at 410–786–5445.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Prescription Drug Event Data From Contracted Part D Providers for Payment; *Use:* The PDE data is used in the Payment Reconciliation System to perform the annual Part D payment reconciliation, any PDE data within the Coverage Gap Phase of the Part D benefit is used for invoicing in the CGDP, and the data are part of the report provided to the Secretary of the Treasury for Section 9008.

CMS has used PDE data to create summarized dashboards and tools, including the Medicare Part D Drug Spending Dashboard & Data, the Part D Manufacturer Rebate Summary Report, and the Medicare Part D Opioid Prescribing Mapping Tool. The data are also used in the Medicare Trustees Report. Due to the market sensitive nature of PDE data, external uses of the data are subject to significant limitations. However, CMS does analyze the data on a regular basis to determine drug cost and utilization patterns in order to inform programmatic patterns and to develop informed policy in the Part D program.

The information users will be Pharmacy Benefit Managers (PBMs), third party administrators and pharmacies, and the PDPs, MA–PDs, Fallbacks and other plans that offer coverage of outpatient prescription drugs under the Medicare Part D benefit to Medicare beneficiaries. The statutorily required data is used primarily for payment and is used for claim validation as well as for other legislated functions such as quality monitoring, program integrity and oversight. *Form Number:* CMS–10174 (OMB control number: 0938–0982); *Frequency:* Yearly; *Affected Public:* Businesses or other for-profits, Not-for-profit institutions; *Number of Respondents:* 739; *Total Annual Responses:* 1,499,238,090; *Total Annual Hours:* 2,998. (For policy questions regarding this collection contact Ivan Iveljic at 410–786–3312.)

Dated: August 30, 2021.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021–19012 Filed 9–1–21; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Privacy Act of 1974; Matching Program

**AGENCY:** Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Notice of a re-established matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research, and Evaluation (HHS/ACF/OPRE), is providing notice of a re-established matching program between the Department of Defense, Defense Manpower Data Center (DoD/DMDC) and State Public Assistance Agencies (SPAAs), ''Verification of Continued Eligibility for Benefits Through the Public Assistance Reporting Information System (PARIS) Program.'' HHS/ACF/OPRE facilitates the matching program.

**DATES:** The deadline for comments on this notice is October 4, 2021. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately September 30, 2021, through March 30, 2023) and within 3 months of expiration may be renewed for 1 additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

**ADDRESSES:** Interested parties may submit written comments on this notice, by mail or email, to the Director, Division of Data and Improvement, HHS/ACF Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, *paris@acf.hhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** General questions about the matching program may be submitted to Alicia Gumbs, HHS/ACF Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201 (202) 690–8490, *paris@acf.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974, as amended (5 U.S.C. 552a, subsection(e)(12)), provides certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records (meaning, Federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other Federal or non-Federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient Federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o) (2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program complies with these requirements.

**Naomi Goldstein,**

*Deputy Assistant Secretary for Planning, Research, and Evaluation, ACF.*

**Participating Agencies**

Department of Defense, Defense Manpower Data Center (DoD/DMDC) is the source agency, and each State Public Assistance Agency (SPAA) is a non-Federal agency. The Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research and Evaluation (HHS/ACF/OPRE) facilitates the matching program and is not a source or recipient of data used in the matching program.

**Authority for Conducting the Matching Program**

Sections 402, 1137, and 1903(r) of the Social Security Act (42 U.S.C. 602, 1320b–7, and 1396b(r)).

**Purpose(s)**

This matching program identifies individuals receiving both Federal compensation (pay or pension benefits) and public assistance benefits under Federal benefit programs administered by the states and verifies public assistance clients' declarations of income circumstances.

Each participating State Public Assistance Agency (SPAA) will provide the Department of Defense, Defense Manpower Data Center (DMDC) with finder files containing identifying and other data about public assistance applicants or recipients (clients), which DMDC will match against DoD military and civilian pay files, military retired pay files, and survivor pay files (Office of Personnel Management (OPM) civilian retired and survivor pay files will not be used). DMDC will return matched data to the SPAA, which the SPAA will use to verify clients' continued eligibility to receive public assistance benefits under HHS' Medicaid and Temporary Assistance for Needy Families (TANF) programs and the Department of Agriculture's Supplemental Nutrition Assistance Program (SNAP) and, if ineligible, to take such action as may be authorized by law and regulation to ensure fair and equitable treatment in the delivery of benefits attributable to funds provided by the Federal Government. HHS will support each SPAA's efforts to participate in the matching program by assisting with finalizing the terms of the agreement and coordinating signatures on the agreement.

**Categories of Individuals**

The categories of individuals whose information is involved in the matching program are:

- Individuals who apply for or receive public assistance benefits under Federal programs administered by the states (*i.e.,* under Medicaid, TANF, and SNAP); and
- Individuals who receive compensation from the DoD (*i.e.,* military, civilian, survivor, or retirement pay or pension benefits).

**Categories of Records**

The categories of records involved in the matching program are public assistance client identifying information and Federal pay and pension data.

A SPAA will provide the following data elements to DMDC about each public assistance client:

- Client social security number (SSN), client last name, first name, client date of birth, address, gender, marital status, information regarding the specific public assistance benefit being received, file date, state name, state optional data, client location code, and case number.

DMDC will provide the SPAA with match results containing the following data elements about any public assistance client who is receiving compensation from DoD:

- SSN; state data; record type; file date; date of birth; last name; first name; middle name; suffix name; sex; gross pay; unit identification (ID) code (UIC); agency; pay plan; pay grade; pay step; basic salary; state residence; Federal taxable wages; Federal tax withheld; state taxable wages; state tax withheld; employee status code; payroll office number; personnel office ID; pay basic code; pay period end date (YYYYMMDD); disbursing date (YYYYMMDD); pay status; category code; total base pay all drills; marital status code; dependents quantity; off duty military code; welfare to work hire code; city; state; zip; address lines 1, 2, 3, 4, 5 and 6; mailing address effective; claim number; retired pay entitlement effective; comments 1, 2, 3 and 4; and member SSN.

**System(s) of Records**

The DoD data used in this matching program will be disclosed from the following system of records, as authorized by routine use 16 published March 11, 2019: DMDC 01, titled ''Defense Manpower Data Center Data Base,'' last published in full at 84 FR 6383 (Feb. 27, 2019), and modified at 84 FR 8698 (Mar. 11, 2019) and 84 FR 15605 (Apr. 16, 2019).

[FR Doc. 2021–19067 Filed 8–31–21; 11:15 am]

**BILLING CODE 4184–79–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0874]**

### Proposal To Refuse To Approve a New Drug Application for ITCA 650 (Exenatide in DUROS Device); Opportunity for a Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Director of the Center for Drug Evaluation and Research (Center Director) at the Food and Drug Administration (FDA or Agency) is proposing to refuse to approve a new drug application (NDA) submitted by Intarcia Therapeutics, Inc. (Intarcia), for ITCA 650 (exenatide in DUROS device) in its present form. This notice summarizes the grounds for the Center Director's proposal and offers Intarcia an opportunity to request a hearing on the matter.

**DATES:** Submit either electronic or written requests for a hearing by October 4, 2021; submit data, information, and analyses in support of the hearing and any other comments by November 1, 2021.

**ADDRESSES:** You may submit hearing requests, documents in support of the hearing, and any other comments as follows. Please note that late, untimely filed requests and documents will not be considered. Electronic requests for a hearing must be submitted on or before October 4, 2021; electronic documents in support of the hearing and any other comments must be submitted on or before November 1, 2021. The *https://www.regulations.gov* electronic filing system will accept hearing requests until 11:59 p.m. Eastern Time at the end of October 4, 2021, and will accept documents in support of the hearing and any other comments until 11:59 p.m. Eastern Time at the end of November 1, 2021. Documents received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before these dates.

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2021–N–0874 for ''Proposal To Refuse To Approve a New Drug Application for ITCA 650 (Exenatide in DUROS Device); Opportunity for a Hearing.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Kevin Fain, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6419, Silver Spring, MD 20993, 301–796–5842, *Kevin.Fain@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Proposal To Refuse To Approve NDA 209053

Intarcia submitted NDA 209053 for ITCA 650 (exenatide in DUROS device), a drug-device combination product intended to deliver the active ingredient exenatide, a GLP–1 receptor agonist (RA), on November 21, 2016, under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(b)(1)). Intarcia proposed that ITCA 650 be indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus (T2DM).

On September 21, 2017, the former Division of Metabolism and Endocrinology Products (DMEP), Office of Drug Evaluation II (now the Division of Diabetes, Lipid Disorders, and Obesity, within the Office of Cardiology, Hematology, Endocrinology and Nephrology (OCHEN)) in the Office of New Drugs (OND) in FDA's Center for Drug Evaluation and Research (CDER), issued a complete response letter to Intarcia under § 314.110(a) (21 CFR 314.110(a)) stating that NDA 209053 could not be approved in its present form, describing the specific deficiencies and, where possible, recommending ways that Intarcia might remedy these deficiencies. On September 9, 2019, Intarcia resubmitted the NDA under section 505(b)(1) of the FD&C Act. On March 9, 2020, the former DMEP issued a second complete response letter stating that NDA 209053 could not be approved in its present form, describing the specific deficiencies and, where possible, recommending ways that Intarcia might remedy these deficiencies. These deficiencies, which are summarized below, include the following:

1. The clinical trial data demonstrated that ITCA 650 causes acute kidney injury (AKI).

a. A signal of AKI was evident in the pivotal phase 3 trials of the ITCA 650 clinical development program. A standardized Medical Dictionary for Regulatory Activities query for acute renal failure identified reports of AKI serious adverse events in 14 subjects (0.6 percent) who received ITCA 650 versus 4 subjects (0.2 percent) who received placebo.

b. The magnitude of the AKI risk was greater for ITCA 650 than for the marketed exenatide products or for other members of the GLP–1 RA class. Although other drugs in the GLP–1 RA class have a risk of AKI, this information is based on spontaneous postmarketing adverse event reports. The risk of AKI was not detected in the clinical trials that supported the approval of these drugs. In contrast, the risk of AKI was clearly identified in the ITCA 650 clinical trial data. This AKI risk for ITCA 650, compared to other members of the GLP–1 RA class, is particularly concerning because it was identified from these adequate and well-controlled clinical trials, which constitute stronger evidence for assessing a drug's safety than spontaneous postmarketing adverse event reports.

c. AKI events experienced by participants who received ITCA 650 sometimes resulted in prolonged hospitalization; complications observed in association with AKI events included dialysis and death.

d. A majority of the serious AKI events in participants randomized to ITCA 650 appeared to be associated with vomiting, diarrhea, and dehydration, which are known adverse

reactions associated with exenatide therapy, supporting a causal relationship between ITCA 650 and AKI.

e. Intarcia's proposed risk mitigation measures were inadequate and sufficient risk mitigation approaches could not be identified for the AKI risk identified in the clinical trial data, particularly because serious AKI events occurred in participants who received ITCA 650 who did not have known risk factors (moderate to severe renal impairment or use of concomitant medications that increase the risk of AKI) and serious AKI events were observed with use of both the nominal initial/reduced dose ITCA 650, 20 micrograms (mcg)/day, and the nominal maintenance dose ITCA 650, 60 mcg/day.

2. The cardiovascular risk assessment failed to provide sufficient assurance that ITCA 650 is not associated with excess cardiovascular (CV) risk. Rather, the clinical trial data suggested that ITCA 650 may be associated with an increased risk for major adverse cardiovascular events (MACE), defined as myocardial infarction, nonfatal stroke, and cardiovascular death.

a. A prespecified meta-analysis incorporated the data from clinical trials CLP–103, CLP–105, and CLP–107, and included 181 MACE and unstable angina (UA) events. An unfavorable point estimate of 1.12 was observed [hazard ratio (HR) for MACE + UA; 1.12 (95 percent confidence interval (CI): 0.83, 1.51)].

b. Furthermore, estimates of CV risk from the meta-analysis were notably higher and nominally statistically significant in the subgroup of participants 65 years of age or older [HR for MACE + UA; 1.67 (95 percent CI: 1.02, 2.71)]. Subgroup analyses also suggested an interaction between CV risk and baseline renal function, where the HR estimates trended higher with worse renal function.

c. The CV risk analyses from trial CLP–107 augmented the concern that the drug is associated with a higher risk for MACE. CLP–107 was a randomized, double-blind, placebo-controlled cardiovascular outcomes trial (CVOT) conducted in a patient population at high risk of MACE. CLP–107 contributed 174 of the 181 total MACE + UA events observed in the CV risk meta-analysis. In CLP–107, the assessment of product-related CV risk yielded an HR for MACE of 1.24 (95 percent CI: 0.90, 1.70).

d. This CV risk resulting from ITCA 650 use is particularly concerning when compared to the beneficial effect of other drugs in this class on CV outcomes. In contrast to the unfavorable CVOT results for ITCA 650, some other GLP–1 RA products carry indications for MACE risk reduction in patients with T2DM based on favorable results of CVOTs. The MACE HR observed in a CVOT conducted for another formulation of exenatide was 0.91 (95 percent CI: 0.83, 1.0). The lower bound of the CLP–107 confidence interval (0.90) nearly excludes the point estimate for MACE risk observed with this other product (0.91), suggesting a true difference in MACE risk between the products.

3. The data provided to validate the limits of the in vitro dose delivery specifications did not support the safe and effective use of the device constituent of ITCA 650.

a. The device design validation data did not support the proposed daily, weekly, and biweekly in vitro drug-release specifications as appropriate for the intended use.

b. The in vitro device performance data demonstrated inconsistent day-to-day drug delivery and did not support that weekly and biweekly in vitro drug-release testing is adequate to ensure controlled in vivo drug release by the device constituent of ITCA 650.

4. The data provided, inclusive of delivery performance data and failure analyses, did not demonstrate adequate device reliability associated with in vitro dose delivery to support safety and effectiveness for the intended use.

a. Variability in the daily in vitro drug-release data did not support the use of weekly and biweekly averages to calculate device failure rates.

b. The failure rate data was inadequate to support the safety and effectiveness of the device constituent of ITCA 650.

c. The sponsor provided inadequate mitigation strategies to reduce device failures.

5. The information provided, including the following, was inadequate in support of sterility assurance for ITCA 650:

a. The container-closure integrity test data provided to support integrity of a container-closure system used for sterile intermediate storage of sterile components of ITCA 650.

b. Information regarding the product-contact filling equipment used for commercial manufacturing of ITCA 650.

c. Information provided to support the routine depyrogenation process for components of the primary container-closure system for ITCA 650.

d. The method suitability data provided to support the proposed routine endotoxins test method with ITCA 650.

6. An FDA inspection of the Intarcia manufacturing facility identified deficiencies with the manufacturing practices for ITCA 650 that were not adequately addressed.

a. Controls were inadequate to ensure empty devices would not be included in the final release of ITCA 650.

b. Qualification of the filling line with an original or new manifold was not performed.

c. The results and reports of the process simulation test, used to demonstrate the effectiveness of preventing microbiological contamination of ITCA 650, were not provided.

The complete response letters issued on September 21, 2017, and March 9, 2020, both stated that to address the clinical deficiencies, Intarcia should address all the specific device and product quality-related deficiencies and provide additional clinical data that adequately address the clinical risks and establish that ITCA 650 is safe and effective for the intended use. The complete response letters stated that Intarcia is required either to resubmit the application, fully addressing all deficiencies listed in the letter, or take other actions available under § 314.110 (*i.e.,* withdraw the application or request an opportunity for a hearing). Applicable regulations, including 21 CFR 10.75, also provide a mechanism for applicants to obtain formal review of one or more decisions reflected in a complete response letter (see FDA's guidance for industry and review staff ''Formal Dispute Resolution: Sponsor Appeals Above the Division Level'' (November 2017)).[1]

Intarcia submitted a formal dispute resolution request (FDRR) on June 5, 2020, concerning the complete response letter issued on March 9, 2020, by the former DMEP. Ellis Unger, Director of OND's OCHEN, denied the FDRR by correspondence dated July 30, 2020, based on his determination that the drug's unexpected numeric imbalance in cases of serious AKI, the MACE observed in the CVOT, and device-related deficiencies regarding exenatide release rates over the life of the product outweighed the benefit in reductions in Hemoglobin A1c. Intarcia submitted another FDRR on August 14, 2020, for review of the OCHEN denial. Robert Temple, Senior Advisor to OND, denied the second FDRR on behalf of OND by correspondence dated October 30, 2020,

[1] Available at *https://www.fda.gov/media/126910/download*. FDA updates guidances periodically. For the most recent version of a guidance, check the FDA guidance web page at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*.

based on his determination that the drug's clinical risks, device-related deficiencies, and product quality and manufacturing deficiencies had not been satisfactorily resolved, reaffirming the reasoning in OCHEN's denial of the prior FDRR. Intarcia submitted a third FDRR on November 27, 2020, for review of the OND denial and requested an advisory committee meeting. Douglas Throckmorton, Deputy Director for Regulatory Programs, CDER, denied the third FDRR and the request for an advisory committee meeting on behalf of CDER by correspondence dated February 12, 2021, based on his determination that the drug's clinical risks and device-related deficiencies had not been satisfactorily resolved, reaffirming the reasoning in OND's denial of the prior FDRR, and determined that an advisory committee would be premature because of these unresolved safety issues.

On March 16, 2021, Intarcia submitted a request for an opportunity for a hearing under § 314.110(b)(3) on whether there are grounds under section 505(d) of the FD&C Act for denying approval of NDA 209053.

## II. Notice of Opportunity for a Hearing

For the reasons stated above and as explained in further detail in the March 9, 2020, complete response letter and the February 12, 2021, November 27, 2020, and July 30, 2020, FDRR denials, notice is given to Intarcia and all other interested persons that the Center Director proposes to issue an order refusing to approve NDA 209053 on the grounds that the application fails to meet the criteria for approval under section 505(d) of the FD&C Act, including the following: (1) Data submitted in the application do not show that the product would be safe under the proposed conditions of use (section 505(d)(2) of the FD&C Act) and (2) the methods used in, and the facilities and controls used for, the manufacture, processing, or packing of the product are not shown to be adequate to preserve its identity, strength, quality, and purity (section 505(d)(3) of the FD&C Act).

Intarcia may request a hearing before the Commissioner of Food and Drugs (the Commissioner) on the Center Director's proposal to refuse to approve NDA 209053. If Intarcia decides to seek a hearing, it must file: (1) A written notice of participation and request for a hearing (see the **DATES** section) and (2) the studies, data, information, and analyses relied upon to justify a hearing (see the **DATES** section), as specified in § 314.200 (21 CFR 314.200).

As stated in § 314.200(g), a request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing to resolve. We note in this regard that because CDER proposes to refuse to approve NDA 209053 based on the multiple deficiencies summarized above, any hearing request from Intarcia must address all of those deficiencies. Failure to request a hearing within the time provided and in the manner required by § 314.200 constitutes a waiver of the opportunity to request a hearing. If a hearing request is not properly submitted, FDA will issue a notice refusing to approve NDA 209053.

The Commissioner will grant a hearing if there exists a genuine and substantial issue of fact or if the Commissioner concludes that a hearing would otherwise be in the public interest (§ 314.200(g)(6)). If a hearing is granted, it will be conducted according to the procedures provided in 21 CFR parts 10 through 16 (21 CFR 314.201).

Paper submissions under this notice of opportunity for a hearing should be filed in one copy, except for those submitted as ''Confidential Submissions'' (see ''Written/Paper Submissions'' and ''Instructions''). Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, submissions may be seen in the Dockets Management Staff Office between 9 a.m. and 4 p.m., Monday through Friday, and on the internet at *https://www.regulations.gov.* This notice is issued under section 505(c)(1)(B) of the FD&C Act and §§ 314.110(b)(3) and 314.200.

Dated: August 27, 2021.

**Jacqueline Corrigan-Curay,**

*Principal Deputy Center Director, Center for Drug Evaluation and Research.*

[FR Doc. 2021–18928 Filed 9–1–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Food and Drug Administration (FDA) Commissioner of Food and Drugs (Commissioner), the authority vested in the Secretary to issue all regulations of the FDA. This includes authority to issue regulations pursuant to the Federal Food, Drug, and Cosmetic Act (FD&C Act), applicable portions of the Public Health Service Act (PHS Act), and other authorities governing functions of the FDA. This authority may be re-delegated by the Commissioner.

On September 15, 2020, the Secretary of Health and Human Services (HHS) issued a memorandum (''September 15 Memorandum'') to the HHS Heads of Operating and Staff Divisions that reserved to the Secretary ''the authority to sign and issue any rule for which notice and comment would normally be required, irrespective of whether notice and comment is waived.'' The September 15 Memorandum further stated that it rescinded ''any prior delegation of rulemaking authority'' to the Operating Divisions, including FDA. This delegation revokes the September 15 Memorandum as it applies to FDA and reinstates any delegations to FDA rescinded by the September 15 Memorandum.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines. For internal Department management purposes, this delegation is subject to certain reservations of authority for the Secretary to approve FDA regulations. Specifically, the Secretary reserves the authority to approve regulations of FDA, except regulations to which sections 556 and 557 of Title 5 U.S.C. apply, which (1) establish procedural rules applicable to a general class of foods, drugs, cosmetics, medical devices, tobacco products, or other subjects of regulation; or (2) present highly significant public issues involving the quality, availability, marketability, or cost of one or more foods, drugs, cosmetics, medical devices, tobacco products, or other subjects of regulation. The delegation does not preclude the Secretary from approving a regulation, or being notified in advance of an action, to which section 556 and 557 of Title 5 U.S.C. apply, which meets one of the above-referenced criteria. This reservation of authority is intended only to improve the internal management of the Department of Health and Human Services, and it is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the Department of Health and Human Services, the FDA, any Agency, officer, or employee of the United States, or any person. Regulations issued by FDA without the approval of the Secretary are to be conclusively viewed as falling outside the scope of this reservation of authority.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions

taken by the Commissioner or the Commissioner's subordinates which involved the exercise of the authorities delegated herein, or substantially similar authorities, prior to the effective date of the delegation.

Dated: August 30, 2021.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2021–18985 Filed 9–1–21; 8:45 am]

**BILLING CODE 4164–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: NMR and X-Ray (S10).

*Date:* October 6, 2021.

*Time:* 10:00 a.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 858–735–0788, *shan.wang@nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Behavioral Neuroendocrinology, Neuroimmunology, Rhythms, and Sleep Study Section.

*Date:* October 7–8, 2021.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov.*

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

*Date:* October 7–8, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

*Date:* October 7–8, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov.*

*Name of Committee:* Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

*Date:* October 7–8, 2021.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

*Date:* October 7–8, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

*Date:* October 7, 2021.

*Time:* 9:30 a.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov.*

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

*Date:* October 7–8, 2021.

*Time:* 9:30 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensory-Motor Neuroscience Study Section.

*Date:* October 7–8, 2021.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

*Date:* October 7–8, 2021.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 30, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–18980 Filed 9–1–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

**FOR FURTHER INFORMATION CONTACT:** Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

**SUPPLEMENTARY INFORMATION:** In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

#### HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

#### HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

#### HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Carlos Castillo,**

*Committee Management Officer.*

[FR Doc. 2021–18974 Filed 9–1–21; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2021–0407]**

### Guidance: Change 2 to NVIC 02–18 Guidelines on Qualification for STCW Endorsements as Officer in Charge of a Navigational Watch of Vessels of Less Than 500 GT

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

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard announces the availability of change 2 to Navigation and Vessel Inspection Circular (NVIC) 02–18, Guidelines on Qualification for STCW Endorsements as Officer in Charge of a Navigational Watch of Vessels of Less Than 500 GT. This NVIC provides guidance to mariners concerning regulations governing endorsements to Merchant Mariner Credentials for service on vessels of less than 500 Gross Tons (GT) (*i.e.,* not limited to near-coastal waters). This change notice revises NVIC 02–18 to indicate that the Coast Guard will not enforce the 3 month maximum allowable substitution for credible sea service in a rating capacity.

**DATES:** The policies announced in Change–2 to NVIC 02–18 are effective as of August 26, 2021.

**ADDRESSES:** To view documents and CH–2 NVIC 02–18 mentioned in this notice, search the docket number USCG–2021–0407 using the Federal eRulemaking Portal at *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information about this document, contact the James Cavo, Mariner Credentialing Program Policy Division (CG–MMC–2), Coast Guard; telephone 202–372–1205; email *MMCPolicy@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** NVIC 02–18 describes the Coast Guard's policy for merchant mariners to qualify for and renew Standards of Training, Certification and Watchkeeping for Seafarers (STCW) endorsements to Merchant Mariner Credentials under 46 CFR 11.319 for service as officer in charge of a navigational watch (OICNW) on vessels of less than 500 GT upon all waters (*i.e.,* not limited to near-coastal waters). The Coast Guard has become aware that mariners seeking an endorsement as OICNW of vessels of less than 500 GT are experiencing difficulties meeting the bridge watchkeeping requirements for the endorsement in a rating capacity.

As specified in § 11.319(a)(2), mariners must obtain at least six months of service performing bridge watchkeeping duties. This section also limits the amount of service in a rating capacity that can be used to meet this requirement to not more than 6 months of experience, which is accepted as a maximum of three months of creditable service. The mariner would have to obtain three additional months of service performing bridge watchkeeping duties in a non-rating capacity, such as an officer capacity. The OICNW of vessels less than 500 GT is considered a first certificate of competence, in that it may be the first STCW officer endorsement a mariner obtains, mariners typically qualify by serving as a rating such as able seaman. It is often impossible for these mariners to meet the 6 month bridge watchkeeping requirement with the 3 month limit on credible rating service because they cannot serve as an officer to accrue the remaining 3 months of bridge watchkeeping without this OICNW first certificate of competence.

This CH–2 will remedy that barrier to qualifying for the OICNW of vessels less than 500 GT endorsement by not enforcing the 3 month maximum allowable substitution for service as a rating to meet the required service performing bridge watchkeeping duties. This change notice revises NVIC 02–18 to indicate that the Coast Guard will accept, on a day for day basis and without limitation, service in any capacity performing bridge watchkeeping duties under the supervision of an officer holding the STCW endorsement as Master, Chief Mate, or OICNW. Allowing mariners to accrue bridge watchkeeping service in a

rating capacity on a day for day basis provides additional avenues for qualification as an OICNW of vessels less than 500 GT and reduces the regulatory burden on these mariners.

We compared the requirements for OICNW of vessels less than 500 GT in 46 CFR 11.319 with those for OICNW of vessels of 500 GT or more in 46 CFR 11.309. For the endorsement for OICNW on vessels 500 GT or more, a mariner can satisfy the bridge watchkeeping requirements with six months of rating service. The OICNW on vessels of 500 GT or more endorsement has no cap on rating sea service and rating service is credited on a day for day basis.

The rating limitation on the OICNW of vessels less than 500 GT was included because of an oversight during development of the final rule ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to National Endorsements'' that published on December 24, 2013. (78 FR 77796). The Coast Guard had the three month rating limitation in both §§ 11.309(a)(2) and 11.319(a)(2) in the notice of proposed rulemaking (74 FR 59354, Nov. 17, 2009) and supplemental notice of proposed rulemaking (76 FR 45908, Aug. 11, 2011). In the final rule, the Coast Guard removed the limitation in § 11.309(a)(2) for endorsements as OICNW for 500 GT or more stating we ''revise[d] section to reduce redundant language from other sections of this subpart.'' (79 FR at 77799). However, the Coast Guard neglected to make the same change to 46 CFR 11.319(a)(2) for the lower tonnage regulation for OICNW of vessels less than 500 GT.

The rating limitation was carried over from previous editions of the regulatory text, but was not intended to be a limit on either of the STCW OICNW endorsements. It is unnecessarily burdensome to limit the rating capacity bridge watchkeeping to three months in the endorsement that is that is for a lesser tonnage.

For these reasons, the Coast Guard will not enforce the limitation on the rating capacity service in 11.319(a)(2), as reflected in CH–2 to NVIC 02–18 Guidelines on Qualification for STCW Endorsements as Officer in Charge of a Navigational Watch of Vessels of Less Than 500 GT.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: August 26, 2021.

**J.W. Mauger,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2021–18956 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2021–0628]**

### National Navigation Safety Advisory Committee Meeting

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Notice of federal advisory committee meeting.

**SUMMARY:** The National Navigation Safety Advisory Committee (Committee) will meet in Portsmouth, Virginia to discuss matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems. The meeting will be open to the public.

**DATES:**

*Meeting:* The Committee will meet on Tuesday, September 21, and Wednesday, September 22, 2021, from 8 a.m. to 5:30 p.m. Eastern Daylight Time (EDT). Please note that this meeting may adjourn early if the Committee has completed its business.

*Comments and supporting documentations:* To ensure your comments are received by Committee members before the meeting, submit your written comments no later than September 15, 2021.

**ADDRESSES:** The meeting will be held at the Renaissance Portsmouth-Norfolk Waterfront hotel, 425 Water Street, Portsmouth, VA 23704. *https://www.marriott.com/hotels/travel/orfpt-renaissance-portsmouth-norfolk-waterfront-hotel/?scid=bb1a189a-fec3-4d19-a255-4ba596febe2&y_source=1_MTYzODkzNC03MTUtbG9jYXRpb24uZ29vZ2xlX3dlYnNpdGVfb3ZlcnJpZGU%3D.*

*Pre-registration Information:* Pre-registration is not required for access. Attendees will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC). Masks will be provided for all attendees regardless of vaccination status. The most up to date CDC guidance can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Instructions:* You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than September 15, 2021. We are particularly interested in comments on the issues in the ''Agenda'' section below. 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 individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the words ''Department of Homeland Security'' and the docket number USCG–2021–0628. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information provided. You may wish to view the Privacy and Security Notice available on the homepage of *https://www.regulations.gov,* and DHS's eRulemaking System of Records notice (85FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Docket Search:* Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Detweiler, Alternate Designated Federal Officer of the National Navigation Safety Advisory Committee, telephone (202) 372–1566, or email *George.H.Detweiler@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. appendix). The National Navigation Safety Advisory Committee is authorized by section 601 of the *Frank LoBiondo Act of 2018* and is codified in 46 U.S.C. 15107. The Committee operates under the

provisions of the *Federal Advisory Committee Act* (5 U.S.C. appendix) in addition to the administrative provisions applicable to all National Maritime Transportation Advisory Committees in 46 U.S.C. 15109. The Committee advises the Secretary of the Department of Homeland Security through the Commandant of the Coast Guard on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems.

**Agenda**

*Day 1*

The agenda for the September 21, 2021 is as follows:

1. Call to order.
2. Introduction.
3. Remarks by the Chairman and the Designated Federal Officer (DFO).
4. Roll call of Committee members and determination of a quorum.
5. Presentations on autonomous and unmanned systems, chart carriage requirements, and navigation safety in and around Offshore Renewable Energy Installations (OREI).
6. Presentation of Tasks. Following the above presentations, the Committee Chairman and the Designated Federal Officer will form subcommittees to discuss the following task statement:
   1. Task Statement 21–01, Autonomous and unmanned systems.
   2. Task Statement 21–02, Chart carriage requirement.
   3. Task Statement 21–03, Navigation safety in and around Offshore Renewable Energy Installations.
7. Public comment period.
8. Report by Subcommittees on accomplishments.
9. Adjournment of meeting.

*Day 2*

The agenda for September 22, 2021 meetings is as follows:

1. Call to order.
2. Introduction.
3. Remarks by the Chairman and the DFO.
4. Roll call of Committee members and determination of a quorum.
5. Subcommittee discussions continued from Tuesday, 21 September, 2021.
6. Public comment period.
7. Subcommittee reports presented to the Committee.
8. Schedule next meeting date.
9. Closing remarks by the Chairman and the DFO.
10. Adjournment of meeting.

A copy of all meeting documentation will be available, by September 15, 2021, by going to the Coast Guard Homeport website, *https://homeport.uscg.mil,* selecting the Missions tab, and navigating to the Federal Advisory Committees section. Alternatively, you may contact Mr. George Detweiler as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

A public comment period will be held during each Subcommittee and full Committee meeting concerning matters being discussed. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: August 27, 2021.

**Michael D. Emerson,**

*Director, Marine Transportation Systems.*

[FR Doc. 2021–18962 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. CISA–2021–0015]**

### Notice of the President's National Infrastructure Advisory Council Meeting

**AGENCY:** Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

**ACTION:** Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

**SUMMARY:** CISA announces a public meeting of the President's National Infrastructure Advisory Council (NIAC). To facilitate public participation, CISA invites public comments on the agenda items and any associated briefing materials to be considered by the council at the meeting.

**DATES:** *Meeting Registration:* Individual registration to attend the meeting by phone is required and must be received no later than 5:00 p.m. EDT on Sunday, September 19, 2021. For more information on how to participate, please contact *NIAC@cisa.dhs.gov.*

*Speaker Registration:* Individuals may register to speak during the meeting's public comment period. The registration must be received no later than 5:00 p.m. EDT on Sunday, September 19, 2021.

*Written Comments:* Written comments must be received no later than 5:00 p.m. EDT on Monday, September 13, 2021.

*Meeting Date:* The meeting will be held on Wednesday, September 22, 2021 from 1:30 p.m.–3:00 p.m. EDT. The meeting may close early if the council has completed its business.

**ADDRESSES:** The meeting will be held remotely via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NIAC@cisa.dhs.gov* by 5:00 p.m. EDT on Sunday, September 19, 2021.

*Comments:* Written comments may be submitted on the issues to be considered by the NIAC as described in the **SUPPLEMENTARY INFORMATION** section below and any briefing materials for the meeting. Any briefing materials that will be presented at the meeting will be made publicly available before the meeting at the following website: *www.cisa.gov/niac.*

Comments identified by docket number CISA–2021–0015 may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NIAC@cisa.dhs.gov.* Include docket number CISA–2021–0015 in the subject line of the message.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All written comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on participating in the upcoming NIAC meeting, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket and comments received by the NIAC, go to *www.regulations.gov* and enter docket number CISA–2021–0015.

**FOR FURTHER INFORMATION CONTACT:** Rachel Liang, *Rachel.Liang@cisa.dhs.gov;* 202–936–8300.

**SUPPLEMENTARY INFORMATION:** The NIAC is established under Section 10 of E.O. 13231 issued on October 16, 2001. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (Pub. L. 92–463). The NIAC shall provide the President, through the Secretary of Homeland Security, with advice on the security and resilience of the Nation's critical infrastructure sectors.

*Meeting Purpose/Objective:* The NIAC will meet in an open meeting on Wednesday, September 22, 2021, to present, deliberate, and vote on the Workforce and Talent Management Study Report.

**Public Participation**

*Meeting Registration Information*

Requests to attend via conference call will be accepted and processed in the order in which they are received. Individuals may register to attend the NIAC meeting by phone by sending an email to *NIAC@cisa.dhs.gov.*

*Public Comment*

While this meeting is open to the public, participation in FACA deliberations are limited to council members. A public comment period will be held during the meeting from approximately 2:35 p.m.–2:45 p.m. EDT. Speakers who wish to comment must register in advance and can do so by emailing *NIAC@cisa.dhs.gov* no later than 5:00 p.m. EDT on Sunday, September 19, 2021. Speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments.

*Information on Services for Individuals With Disabilities*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact *NIAC@cisa.dhs.gov* by 5:00 p.m. EDT on Sunday, September 19, 2021.

**Rachel Liang,**

*Designated Federal Officer, President's National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.*

[FR Doc. 2021–18973 Filed 9–1–21; 8:45 am]

**BILLING CODE 9110–9P–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1279]**

## Certain Flocked Swabs, Products Containing Flocked Swabs, and Methods of Using Same; Notice of Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 9, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Copan Italia S.p.A. of Brescia, Italy and Copan Industries, Inc. of Aguadilla, Puerto Rico. Supplements to the Complaint were filed on August 16, 2021, August 19, 2021, and August 20, 2021. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flocked swabs, products containing flocked swabs, and methods of using same by reason of infringement of certain claims of U.S. Patent No. 9,011,358 (''the '358 Patent''); U.S. Patent No. 9,173,779 (''the '779 Patent''); and U.S. Patent No. 10,327,741 (''the '741 Patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on August 27, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 6–9, 11–14, 16–19, and 21–22 of the '358 patent; claims 1, 4–6, 8, 9, 11–13, 16–20, and 22–24 of the '779 patent; and claims 1, 3, 5, 7–10, 18, and 20 of the '741 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''flocked swabs, such as nasopharyngeal swabs, and kits containing flocked swabs, that are used in the collection, sampling, or testing of and for infectious diseases such as influenza, SARS–CoV–2 (the coronavirus that causes COVID–19), and other diseases'';

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Copan Italia S.p.A., Via F. Perotti 10, 25125, Brescia, Italy

Copan Industries, Inc., 1068 Ave. General Ramey, #789 San Antonio, Puerto Rico 00690

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Han Chang Medic, 79–35 Jangsan 2-Gil, Susin-Myeon, Dongnam-Gu, Cheonan, Chungnam, 31252, Republic of Korea

Wuxi NEST Biotechnology Co., Ltd., No. 530, Xida Road, Meicun Industrial Park, Xinwu District, Wuxi, Jiangsu, 214112, China

NEST Scientific Inc., 1592 Hart St Unit 12, Rahway, NJ 07065–5519

NEST Scientific USA, 1592 Hart St Unit 12, Rahway, NJ 07065–5519

Miraclean Technology Co., Ltd., 301, Bldg. A, No. 18 Factory Building,

Rongshuxa Industrial Zone, Tongxin Community, Baolong Str., Longgang Dist., Shenzhen, Guangdong, 518116, China
Vectornate Korea Ltd., 56 Nanosandan 2-ro, Jinwon-myeon, Jangseong, Jeonnam, 57247, Republic of Korea
Vectornate USA, Inc., 10 Industrial Ave Ste 4, Mahwah, NJ 07430–2284
Innovative Product Brands, Inc., 7045 Palm Avenue, Highland, CA 92346–3291
Thomas Scientific, Inc., 1654 High Hill Rd, Swedesboro, NJ 08085–1780
Thomas Scientific, LLC, 1654 High Hill Rd, Swedesboro, NJ 08085–1780
Stellar Scientific, LLC, 40 New Plant Ct, Owings Mills, MD 21117–4356
Cardinal Health, Inc., 7000 Cardinal Pl, Dublin, OH 43017–1091
Ksl Biomedical, Inc., 1000 Youngs Rd Ste 210, Williamsville, NY 14221–2644
Ksl Diagnostics, Inc., 1000 Youngs Rd Ste 207, Williamsville, NY 14221–2644
Jiangsu Changfeng Medical Industry Co., Ltd., Seat of Touqiao Town, Guangling District, Yangzhou, Jiangsu, 225108, China
No Borders Dental Resources, Inc., dba MediDent Supplies, 18716 E Old Beau Trl, Queen Creek, AZ 85142–3522
BioTeke Corporation (Wuxi) Co., Ltd., 4th Floor-A, D5, No. 1719, Huishan Avenue, Wuxi, Jiangsu, 214174, China
Fosun Pharma USA Inc., 104 Carnegie Ctr Ste 204, Princeton, NJ 08540–6232
Hunan Runmei Gene Technology Co., Ltd., Room 401, Building No. 3 in ChangSha Medical and Health Industrial Park, No. 1048 Zhong Qing Road, Kai Fu District, Changsha, Hunan, 410153, China
VWR International, LLC, 100 W Matsonford Rd Ste 1, Radnor, PA 19087–4565
Slmp, LLC dba StatLab Medical Products, 2090 Commerce Dr., McKinney, TX 75069–8203

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 27, 2021.

**Katherine Hiner,**

*Supervisory Attorney.*

[FR Doc. 2021–18932 Filed 9–1–21; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1278]**

### Certain Radio Frequency Transmission Devices and Components Thereof Notice of Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 28, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Zebra Technologies Corporation of Lincolnshire, Illinois. A supplement to the complaint was filed on August 13, 2021. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency transmission devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,895,219 (''the '219 patent'') and U.S. Patent No. 7,683,788 (''the '788 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

**ADDRESSES:** The complaint, as supplemented, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on August 26, 2021, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 3–8, and 10, 11, and 13–16 of the '219 patent and claims 17–19 of the '788 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is (i) ''RF transmission devices generally capable of transmitting and receiving data; and (ii)

components of such RF transmission devices—in particular, enclosures, transceivers and processors'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Zebra Technologies Corporation, 3 Overlook Point, Lincolnshire, IL 60069.

(b) The respondent is the following entities alleged to be in violation of section 337, and is the party upon which the complaint is to be served: OnAsset Intelligence, Inc., 8407 Sterling Street, Irving, TX 75063.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 27, 2021.

**Katherine Hiner,**

*Supervisory Attorney.*

[FR Doc. 2021–18931 Filed 9–1–21; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1277]**

## Certain Smart Thermostats, Load Control Switches, and Components Thereof; Notice of Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 28, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Causam Enterprises, Inc. of Raleigh, North Carolina. A supplement to the complaint was filed on August 16, 2021. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart thermostats, load control switches, and components thereof by reason of infringement of one or more claims of U.S. Patent No. 8,805,552 (''the '5,552 patent''), U.S. Patent No. 9,678,522 (''the '8,522 patent''), U.S. Patent No. 10,394,268 (''the '268 patent''), and U.S. Patent No. 10,396,592 (''the '592 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

*Scope of Investigation:* Having considered the amended complaint, the U.S. International Trade Commission, on August 26, 2021, *ordered that* —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–9, 16, 19–21, 23–28, and 30 of the '5,552 patent, claims 1–8, 10, 13–17, 19–23, and 25–29 of the '8,522 patent, claims 1–11, 13–16, and 18–19 of the '268 patent, and claims 1–2, 8–9, 11, 13–14, and 17 of the '592 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''smart thermostats and load control switches with Demand Response functionality and components thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Causam Enterprises, Inc., 8480 Honeycutt Road, Suite 200, Raleigh, NC 27615.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Alarm.com Holdings, Inc., 8281 Greensboro Drive, Suite 100, Tysons, VA 22102.

Alarm.com Inc., 8281 Greensboro Drive, Suite 100, Tysons, VA 22102.

Ecobee, Inc., 25 Dockside Drive, Suite 600, Toronto, ON M5A OB5, Canada.

EnergyHub, Inc., 41 Flatbush Ave., Suite 400A, Brooklyn, NY 11217,

Itron, Inc., 2111 N. Molter Road, Liberty Lake, WA 99019.

Itron Distributed Energy Management, Inc., 2111 N. Molter Road, Liberty Lake, WA 99019.

Resideo Smart Homes Technology (Tianjin), Building 21, Jinbin Development Area, No. 156 Nanhai Road, Teda, Tianjin 300457, China.

Resideo Technologies, Inc., 901 E. 6th Street, Austin, TX 78702.

Xylem Inc., 1 International Drive, Rye Brook, NY 10573.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not a party to this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 27, 2021.

**Katherine Hiner,**

*Supervisory Attorney.*

[FR Doc. 2021–18929 Filed 9–1–21; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–688A]**

### Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2021

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Drug Enforcement Administration proposes to adjust the 2021 aggregate production quotas for several controlled substances in schedules I and II of the Controlled Substances Act and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

**DATES:** Interested persons may file written comments on this notice in accordance with 21 CFR 1303.13(c) and 1315.13(d). Electronic comments must be submitted, and written comments must be postmarked, on or before October 4, 2021. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2021 adjusted aggregate production quotas for schedule I and II controlled substances, and an adjusted assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–688A'' on all correspondence, including any attachments. DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (571) 776–2265.

**SUPPLEMENTARY INFORMATION:**

#### Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also

prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

**Legal Authority and Background**

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of DEA pursuant to 28 CFR 0.100.

DEA established the 2021 aggregate production quotas for substances in schedules I and II and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine on November 30, 2020 (85 FR 76604). That order stipulated that, in accordance with 21 CFR 1303.13 and 1315.13, all aggregate production quotas and assessments of annual need are subject to adjustment.

**Analysis for Proposed Adjusted 2021 Aggregate Production Quotas and Assessment of Annual Needs**

DEA proposes to adjust the established 2021 aggregate production quotas to be manufactured in the United States in 2021 to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes. However, DEA's analysis does not suggest the need for adjustment of the 2021 assessment of annual needs for the List I chemicals.

*Factors for Determining the Proposed Adjustments*

In determining the proposed adjustments, the Administrator has taken into account the criteria in accordance with 21 CFR 1303.13 (adjustment of aggregate production quotas for controlled substances) and 21 CFR 1315.13 (adjustment of the assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine). The Administrator is authorized to increase or reduce the aggregate production quota at any time. 21 CFR 1303.13(a) and 1315.13(a). DEA regulations state that there are five factors that shall be considered in determining to adjust the aggregate production quota and the assessment of annual needs. 21 CFR 1303.13(b) and 1315.13(b).

DEA determined whether to propose an adjustment of the aggregate production quotas and assessment of annual needs for 2021 by considering the factors summarized below:

(1) Changes in the demand for that class or chemical, changes in the national rate of net disposal of the class or chemical, changes in the national rate of net disposal of the class or chemical by registrants holding individual manufacturing quotas for that class or chemical, and changes in the extent of any diversion in the class of controlled substance;

(2) whether any increased demand for that class or chemical, the national and/or individual rates of net disposal of that class or chemical are temporary, short term, or long term;

(3) whether any increased demand for that class or chemical can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the aggregate production quota or assessment of annual needs, taking into account production delays and the probability that other individual manufacturing quotas may be suspended pursuant to Sec. 1303.24(b) and 1315.24(b);

(4) whether any decreased demand for that class or chemical will result in excessive inventory accumulation by all persons registered to handle that class or chemical (including manufacturers, distributors, practitioners, importers, and exporters), notwithstanding the possibility that individual manufacturing quotas may be suspended pursuant to Sec. 1303.24(b) and 1315.24(b) or abandoned pursuant to Sec. 1303.27 and 1315.27; and

(5) other factors affecting medical, scientific, research, and industrial needs in the United States, lawful export requirements, and other factors affecting importation needs of listed chemicals in the United States as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the class or the substances which are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires. 21 CFR 1303.13(b) and 1315(b).

DEA considered the change in the extent of diversion of all controlled substances in proposing adjustments to the aggregate production quotas as required by 21 CFR 1303.13(b)(1). Pursuant to these factors, DEA has determined that any calculated changes from the previously determined initial calculations are slight and not statistically significant from the quantities originally calculated for the extent of diversion that were applied to the initial aggregate production quota valuations.

DEA also considered updated information obtained from 2020 year-end inventories, 2020 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information made available to DEA after the initial aggregate production quotas and assessment of annual needs had been established. Other factors the Administrator considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information.

In evaluating whether there is a need for adjustment of the 2021 assessment of annual needs for List I chemicals, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively). However, DEA's analysis does not suggest the need for adjustment of the 2021 assessment of annual needs.

*Considerations Based Upon the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act*

Pursuant to 21 U.S.C. 826(a)(1), ''production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.'' However, the Substance Use-Disorder Prevention that Promotes Opioid Recovery Treatment for Patients and Communities Act of 2018 (SUPPORT Act), (Pub. L. 115–271), provides an exception to that general rule by now giving DEA the authority to establish quotas in terms of pharmaceutical dosage forms if the

agency determines that doing so will assist in avoiding the overproduction, shortages, or diversion of a controlled substance.

DEA has stated before that while there is the authority to set aggregate production quotas in terms of pharmaceutical dosage form, DEA will not be using that authority at this time. Furthermore, when DEA does utilize the authority, it will be doing so at the individual dosage-form manufacturing level, as that is where it is most appropriate to do so. As such, there are no adjustments to set any controlled substances in terms of pharmaceutical dosage forms.

Under the SUPPORT Act, when setting the aggregate production quota, DEA must estimate the amount of diversion of any substance that is considered a ''covered controlled substance,'' as defined by the SUPPORT Act. 21 U.S.C. 826(i)(1)(A). The covered controlled substances are fentanyl, oxycodone, hydrocodone, oxymorphone, and hydromorphone. The SUPPORT Act also requires DEA to ''make appropriate quota reductions, as determined by the [Administrator],[1] from the quota the [Administrator] would have otherwise established had such diversion not been considered.'' 21 U.S.C. 826(i)(1)(C). When estimating diversion, the ''[Administrator]—(i) shall consider information the [Administrator], in consultation with the Secretary of Health and Human Services, determines reliable on rates of overdose deaths and abuse and overall public health impact related to the covered controlled substance in the United States; and (ii) may take into consideration whatever other sources of information the [Administrator] determines reliable.'' 21 U.S.C. 826(i)(1)(B).

In February 2021, DEA sent letters to the Centers for Disease Control and Prevention (CDC), Centers for Medicare and Medicaid Services (CMS), and the states requesting overdose death and overprescribing data that could be considered for estimating diversion. DEA did not receive information from CMS. However, DEA did receive information from the CDC in June 2021 and has started to receive information from the states. DEA has begun to receive Prescription Drug Monitoring Program (PDMP) data from the states in a format that will allow the Agency to develop a more robust methodology to assist in the determination of the diversion estimate in the future. This information will be considered in determining the estimates of diversion for the five covered controlled substances in the Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2022.

To update the estimates of diversion, DEA used data from the Drug Theft and Loss Report, Statistical Management Analysis & Reporting Tools System (SMARTS), and System to Retrieve Information on Drug Evidence (STRIDE) databases to aggregate the active pharmaceutical ingredient (API) of each covered controlled substance by metric weight. From the databases, DEA gathered data involving employee theft, break-ins, armed robberies, and material lost in transit. DEA also used seizure data obtained from reports submitted by law enforcement agencies nationwide. This data was categorized by basic drug class and the amount of API in the dosage form was delineated with an appropriate metric for use in proposing the adjusted aggregate production quota values. Using the data, DEA calculated the estimates for the amount of diversion by multiplying the strength of the API listed for each finished dosage form by the total amount of units reported to estimate the metric weight in grams of the controlled substance being diverted. Below, DEA has updated the chart to include estimations of diversion for each of the covered controlled substances.

| Diversion estimates for 2020 (g) | |
|---|---|
| Fentanyl | 184 |
| Hydrocodone | 20,759 |
| Hydromorphone | 946 |
| Oxycodone | 47,316 |
| Oxymorphone | 534 |

DEA considered the change in the extent of diversion of all controlled substances in proposing adjustments to the aggregate production quotas as required by 21 CFR 1303.13(b)(1). Pursuant to these factors, DEA has determined that any calculated changes from the previously determined initial calculations are slight and not statistically significant from the quantities originally calculated for the extent of diversion that were applied to the initial aggregate production quota valuations.

## Proposed Adjustments for the 2021 Aggregate Production Quotas and Assessment of Annual Needs

DEA is proposing significant increases to the APQs of the schedule I substances psilocybin, psilocin, marihuana, and marihuana extract, which are directly related to increased interest by DEA registrants in the use of hallucinogenic controlled substances for research and clinical trial purposes. DEA firmly believes in supporting regulated research of schedule I controlled substances. Therefore, the APQ increases reflect the need to fulfill research and development requirements in the production of new drug products, and the study of marijuana effects in particular, as necessary steps toward potential Food and Drug Administration (FDA) approval of new drug products.

The DEA established the 2021 aggregate production quotas for substances in schedules I and II on November 30, 2020 (85 FR 76604). Subsequent to that publication, DEA published in the **Federal Register** two final rules to permanently schedule 14 specific fentanyl-related substances under the CSA (86 FR 22113, April 27, 2021, and 86 FR 23602, May 4, 2021). The specific fentanyl-related substances are 2′-fluoro 2-fluorofentanyl, 4′-Methyl acetyl fentanyl, beta-Methyl fentanyl, beta-Phenyl fentanyl, Fentanyl carbamate, ortho-Fluoroacryl fentanyl, ortho-Fluorobutyryl fentanyl, ortho-Fluoroisobutyryl fentanyl, ortho-Methyl acetylfentanyl, ortho-Methyl methoxyacetyl fentanyl, para-Fluoro furanyl fentanyl, para-Methylfentanyl, Phenyl fentanyl, and Thiofuranyl fentanyl. As a result, these substances will continue to be subject to the CSA schedule I controls and are now being assigned individual aggregate production quotas.

On March 1, 2021, DEA published a temporary scheduling order placing Brorphine in schedule I of the CSA (86 FR 11862), making all regulatory controls pertaining to schedule I controlled substances applicable to the manufacture of these substances, including the requirement to establish an aggregate production quota pursuant to 21 U.S.C. 826 and 21 CFR part 1303. This notice proposes to establish an aggregate production quota for this substance.

On May 7, 2021, DEA published an interim final rule placing serdexmethylphenidate, a component in a combination drug product recently approved by FDA for the treatment of ADHD in patients six years of age and older, in schedule IV of the CSA (86 FR 24487). Serdexmethylphenidate is manufactured from methylphenidate, a schedule II controlled substance. In order to more accurately estimate and manage the quantity of methylphenidate necessary for direct formulation into schedule II drug products versus the

[1] All functions vested in the Attorney General by the CSA have been delegated to the Administrator of DEA. 28 CFR 0.100(b).

quantity of methylphenidate necessary for the manufacturing of serdexmethylphenidate or other substances, DEA has delineated methylphenidate into methylphenidate (for sale) and methylphenidate (for conversion). This notice proposes to establish an aggregate production quota for methylphenidate (for conversion).

On June 20, 2021, DEA published the final rule to place oliceridine, a medication recently approved by FDA for medical use as an intravenous drug for the management of acute pain severe enough to require an intravenous opioid analgesic and for patients for whom alternative treatments are inadequate, in schedule II of the CSA effective July 12, 2021 (86 FR 30772). The placement of oliceridine in schedule II of the CSA, makes all regulatory controls pertaining to schedule II controlled substances applicable to the manufacture of this substance, including the requirement to establish an aggregate production quota pursuant to 21 U.S.C. 826 and 21 CFR part 1303.

The Administrator, therefore, proposes to adjust the 2021 aggregate production quotas for certain schedule I and II controlled substances. The Administrator does not propose an adjustment to the assessments of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The proposed adjusted APQs, as expressed in grams of anhydrous acid or base, are as follows:

| Basic class | Established 2021 quotas (g) | Proposed revised 2021 quotas (g) |
|---|---|---|
| **Temporarily Scheduled** | | |
| Brorphine | N/A | 30. |
| **Schedule I** | | |
| 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine | 20 | no change. |
| 1-(1-Phenylcyclohexyl)pyrrolidine | 15 | 30. |
| 1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine | 10 | no change. |
| 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201) | 30 | no change. |
| 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694) | 30 | no change. |
| 1-Benzylpiperazine | 25 | no change. |
| 1-Methyl-4-phenyl-4-propionoxypiperidine | 10 | no change. |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine | 15 | no change. |
| 2′-fluoro 2-fluorofentanyl | N/A | 30. |
| 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E) | 30 | no change. |
| 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D) | 30 | no change. |
| 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N) | 30 | no change. |
| 2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P) | 30 | no change. |
| 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H) | 100 | no change. |
| 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36) | 30 | no change. |
| 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C) | 30 | no change. |
| 2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82) | 25 | no change. |
| 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I) | 30 | no change. |
| 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5) | 30 | no change. |
| 2,5-Dimethoxy-4-ethylamphetamine (DOET) | 25 | no change. |
| 2,5-Dimethoxy-4-n-propylthiophenethylamine | 25 | no change. |
| 2,5-Dimethoxyamphetamine (DMA) | 25 | no change. |
| 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2) | 30 | no change. |
| 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4) | 30 | no change. |
| 3,4,5-Trimethoxyamphetamine | 30 | no change. |
| 3,4-Methylenedioxyamphetamine (MDA) | 55 | no change. |
| 3,4-Methylenedioxymethamphetamine (MDMA) | 50 | no change. |
| 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) | 40 | no change. |
| 3,4-Methylenedioxy-N-methylcathinone (methylone) | 40 | no change. |
| 3,4-Methylenedioxypyrovalerone (MDPV) | 35 | no change. |
| 3-FMC; 3-Fluoro-N-methylcathinone | 25 | no change. |
| 3-Methylfentanyl | 30 | no change. |
| 3-Methylthiofentanyl | 30 | no change. |
| 4′-Methyl acetyl fentanyl | N/A | 30. |
| 4-Bromo-2,5-dimethoxyamphetamine (DOB) | 30 | no change. |
| 4-Bromo-2,5-dimethoxyphenethylamine (2-CB) | 25 | no change. |
| 4-Chloro-α-pyrrolidinovalerophenone (4-chloro-alpha-PVP) | 25 | no change. |
| 4CN-Cumyl-Butanica, 1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide | 25 | no change. |
| 4-Fluoroisobutyryl fentanyl | 30 | no change. |
| 4-FMC; Flephedrone | 25 | no change. |
| 4-MEC; 4-Methyl-N-ethylcathinone | 25 | no change. |
| 4-Methoxyamphetamine | 150 | no change. |
| 4-Methyl-2,5-dimethoxyamphetamine (DOM) | 25 | no change. |
| 4-Methylaminorex | 25 | no change. |
| 4-Methyl-N-methylcathinone (mephedrone) | 45 | no change. |
| 4-Methyl-α-ethylaminopentiophenone (4-MEAP) | 25 | no change. |
| 4-Methyl-α-pyrrolidinohexiophenone (MPHP) | 25 | no change. |
| 4-Methyl-α-pyrrolidinopropiophenone (4-MePPP) | 25 | no change. |

| Basic class | Established 2021 quotas (g) | Proposed revised 2021 quotas (g) |
|---|---|---|
| 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol | 50 | no change. |
| 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog) | 40 | no change. |
| 5F-CUMYL-PINACA | 25 | no change. |
| 5F-EDMB-PINACA | 25 | no change. |
| 5F-MDMB-PICA | 25 | no change. |
| 5F-AB-PINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide | 25 | no change. |
| 5F-CUMYL-P7AICA; (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboximide) | 25 | no change. |
| 5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 30 | no change. |
| 5F-AMB (methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate) | 30 | no change. |
| 5F-APINACA; 5F-AKB48 (*N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide) | 30 | no change. |
| 5-Fluoro-PB-22; 5F-PB-22 | 20 | no change. |
| 5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone | 25 | no change. |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 25 | no change. |
| 5-Methoxy-N,N-diisopropyltryptamine | 25 | no change. |
| 5-Methoxy-N,N-dimethyltryptamine | 35 | no change. |
| AB-CHMINACA | 30 | no change. |
| AB-FUBINACA | 50 | no change. |
| AB-PINACA | 30 | no change. |
| ADB-FUBINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide) | 30 | no change. |
| Acetorphine | 25 | no change. |
| Acetyl Fentanyl | 100 | no change. |
| Acetyl-*alpha*-methylfentanyl | 30 | no change. |
| Acetyldihydrocodeine | 30 | no change. |
| Acetylmethadol | 25 | no change. |
| Acryl Fentanyl | 25 | no change. |
| ADB-PINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide) | 50 | no change. |
| AH-7921 | 30 | no change. |
| All other tetrahydrocannabinol | 1,000 | no change. |
| Allylprodine | 25 | no change. |
| Alphacetylmethadol | 25 | no change. |
| *alpha*-Ethyltryptamine | 25 | no change. |
| Alphameprodine | 25 | no change. |
| Alphamethadol | 25 | no change. |
| Alphaprodine | 25 | no change. |
| *alpha*-Methylfentanyl | 30 | no change. |
| *alpha*-Methylthiofentanyl | 30 | no change. |
| *alpha*-Methyltryptamine (AMT) | 25 | no change. |
| *alpha*-Pyrrolidinobutiophenone ($\alpha$-PBP) | 25 | no change. |
| *alpha*-Pyrrolidinoheptaphenone (PV8) | 25 | no change. |
| *alpha*-Pyrrolidinohexanophenone ($\alpha$-PHP) | 25 | no change. |
| *alpha*-Pyrrolidinopentiophenone ($\alpha$-PVP) | 25 | no change. |
| Aminorex | 25 | no change. |
| Anileridine | 20 | no change. |
| APINCA, AKB48 (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide) | 25 | no change. |
| Benzethidine | 25 | no change. |
| Benzylmorphine | 30 | no change. |
| Betacetylmethadol | 25 | no change. |
| *beta*-Hydroxy-3-methylfentanyl | 30 | no change. |
| *beta*-Hydroxyfentanyl | 30 | no change. |
| *beta*-Hydroxythiofentanyl | 30 | no change. |
| *beta*-Methyl fentanyl | N/A | 30. |
| *beta*-Phenyl fentanyl | N/A | 30. |
| Betameprodine | 25 | no change. |
| Betamethadol | 4 | no change. |
| Betaprodine | 25 | no change. |
| Bufotenine | 15 | no change. |
| Butylone | 25 | no change. |
| Butyryl fentanyl | 30 | no change. |
| Cathinone | 40 | no change. |
| Clonitazene | 25 | no change. |
| Codeine methylbromide | 30 | no change. |
| Codeine-N-oxide | 192 | no change. |
| Cyclopentyl Fentanyl | 30 | no change. |
| Cyclopropyl Fentanyl | 20 | no change. |
| Cyprenorphine | 25 | no change. |
| d-9-THC | 384,460 | no change. |
| Desomorphine | 25 | no change. |
| Dextromoramide | 25 | no change. |
| Diapromide | 20 | no change. |
| Diethylthiambutene | 20 | no change. |

| Basic class | Established 2021 quotas (g) | Proposed revised 2021 quotas (g) |
|---|---|---|
| Diethyltryptamine | 25 | no change. |
| Difenoxin | 9,200 | no change. |
| Dihydromorphine | 753,500 | no change. |
| Dimenoxadol | 25 | no change. |
| Dimepheptanol | 25 | no change. |
| Dimethylthiambutene | 20 | no change. |
| Dimethyltryptamine | 50 | no change. |
| Dioxyaphetyl butyrate | 25 | no change. |
| Dipipanone | 25 | no change. |
| Drotebanol | 25 | no change. |
| Ethylmethylthiambutene | 25 | no change. |
| Etorphine | 30 | no change. |
| Etoxeridine | 25 | no change. |
| Fenethylline | 30 | no change. |
| Fentanyl carbamate | N/A | 30. |
| Fentanyl related substances | 600 | no change. |
| FUB-144 | 25 | no change. |
| FUB-AKB48 | 25 | no change. |
| FUB-AMB, MMB-Fubinaca, AMB-Fubinaca | 25 | no change. |
| Furanyl fentanyl | 30 | no change. |
| Furethidine | 25 | no change. |
| *gamma*-Hydroxybutyric acid | 29,417,000 | no change. |
| Heroin | 45 | no change. |
| Hydromorphinol | 40 | no change. |
| Hydroxypethidine | 25 | no change. |
| Ibogaine | 30 | no change. |
| Isobutyryl Fentanyl | 25 | no change. |
| JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole) | 35 | no change. |
| JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) | 45 | no change. |
| JWH-073 (1-Butyl-3-(1-naphthoyl)indole) | 45 | no change. |
| JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole) | 30 | no change. |
| JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole) | 30 | no change. |
| JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole) | 35 | no change. |
| JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole) | 30 | no change. |
| JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole) | 30 | no change. |
| JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole) | 30 | no change. |
| Ketobemidone | 30 | no change. |
| Levomoramide | 25 | no change. |
| Levophenacylmorphan | 25 | no change. |
| Lysergic acid diethylamide (LSD) | 40 | no change. |
| MAB-CHMINACA; ADB-CHMINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide). | 30 | no change. |
| MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate). | 30 | no change. |
| MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 30 | no change. |
| MMB-CHMICA-(AMB-CHMICA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate | 25 | no change. |
| Marihuana | 1,500,000 | 2,000,000. |
| Marihuana extract | 200,000 | 500,000. |
| Mecloqualone | 30 | no change. |
| Mescaline | 25 | no change. |
| Methaqualone | 60 | no change. |
| Methcathinone | 25 | no change. |
| Methyoxyacetyl fentanyl | 30 | no change. |
| Methyldesorphine | 5 | no change. |
| Methyldihydromorphine | 25 | no change. |
| Morpheridine | 25 | no change. |
| Morphine methylbromide | 5 | no change. |
| Morphine methylsulfonate | 5 | no change. |
| Morphine-N-oxide | 150 | no change. |
| MT-45 | 30 | no change. |
| Myrophine | 25 | no change. |
| NM2201; Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate | 25 | no change. |
| *N,N*-Dimethylamphetamine | 25 | no change. |
| Naphyrone | 25 | no change. |
| *N*-Ethyl-1-phenylcyclohexylamine | 25 | no change. |
| *N*-Ethyl-3-piperidyl benzilate | 10 | no change. |
| *N*-Ethylamphetamine | 24 | no change. |
| *N*-Ethylhexedrone | 25 | no change. |
| *N*-Ethylpentylone, ephylone | 30 | no change. |
| *N*-Hydroxy-3,4-methylenedioxyamphetamine | 24 | no change. |

| Basic class | Established 2021 quotas | Proposed revised 2021 quotas |
|---|---|---|
| | (g) | (g) |
| N-Methyl-3-Piperidyl Benzilate | 30 | no change. |
| Nicocodeine | 25 | no change. |
| Nicomorphine | 25 | no change. |
| Noracymethadol | 25 | no change. |
| Norlevorphanol | 2,550 | no change. |
| Normethadone | 25 | no change. |
| Normorphine | 40 | no change. |
| Norpipanone | 25 | no change. |
| Ocfentanil | 25 | no change. |
| Ortho-fluorofentanyl, 2-fluorofentanyl | 30 | no change. |
| *ortho*-Fluoroacryl fentanyl | N/A | 30. |
| *ortho*-Fluorobutyryl fentanyl | N/A | 30. |
| *ortho*-Fluoroisobutyryl fentanyl | N/A | 30. |
| *ortho*-Methyl acetylfentanyl | N/A | 30. |
| *ortho*-Methyl methoxyacetyl fentanyl | N/A | 30. |
| Para-chloroisobutyryl fentanyl | 30 | no change. |
| Para-fluorofentanyl | 25 | no change. |
| Para-fluorobutyryl fentanyl | 25 | no change. |
| *para*-Fluoro furanyl fentanyl | N/A | 30. |
| *para*-Methylfentanyl | N/A | 30. |
| Para-methoxybutyryl fentanyl | 30 | no change. |
| Parahexyl | 5 | no change. |
| PB-22; QUPIC | 20 | no change. |
| Pentedrone | 25 | no change. |
| Pentylone | 25 | no change. |
| Phenadoxone | 25 | no change. |
| Phenampromide | 25 | no change. |
| Phenomorphan | 25 | no change. |
| Phenoperidine | 25 | no change. |
| Phenyl fentanyl | N/A | 30. |
| Pholcodine | 5 | no change. |
| Piritramide | 25 | no change. |
| Proheptazine | 25 | no change. |
| Properidine | 25 | no change. |
| Propiram | 25 | no change. |
| Psilocybin | 30 | 1,500. |
| Psilocyn | 50 | 1,000. |
| Racemoramide | 25 | no change. |
| SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole) | 45 | no change. |
| SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole) | 30 | no change. |
| Tetrahydrofuranyl fentanyl | 15 | no change. |
| Thebacon | 25 | no change. |
| Thiafentanil | 25 | no change. |
| Thiofentanyl | 25 | no change. |
| Thiofuranyl fentanyl | N/A | 30. |
| THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone) | 30 | no change. |
| Tilidine | 25 | no change. |
| Trimeperidine | 25 | no change. |
| UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone | 25 | no change. |
| U-47700 | 30 | no change. |
| Valeryl fentanyl | 25 | no change. |
| **Schedule II** | | |
| 1-Phenylcyclohexylamine | 15 | no change. |
| 1-Piperidinocyclohexanecarbonitrile | 25 | no change. |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) | 937,758 | no change. |
| Alfentanil | 3,260 | no change. |
| Alphaprodine | 25 | no change. |
| Amobarbital | 20,100 | no change. |
| Bezitramide | 25 | no change. |
| Carfentanil | 20 | no change. |
| Cocaine | 68,576 | no change. |
| Codeine (for conversion) | 1,612,500 | no change. |
| Codeine (for sale) | 27,616,684 | no change. |
| D-amphetamine (for sale) | 21,200,000 | no change. |
| D,l-amphetamine | 21,200,000 | no change. |
| D-amphetamine (for conversion) | 14,137,578 | 16,068,789. |
| Dextropropoxyphene | 35 | no change. |
| Dihydrocodeine | 156,713 | no change. |

| Basic class | Established 2021 quotas | Proposed revised 2021 quotas |
|---|---|---|
| | (g) | (g) |
| Dihydroetorphine | 25 | no change. |
| Diphenoxylate (for conversion) | 14,100 | no change. |
| Diphenoxylate (for sale) | 770,800 | no change. |
| Ecgonine | 68,576 | no change. |
| Ethylmorphine | 30 | no change. |
| Etorphine hydrochloride | 32 | no change. |
| Fentanyl | 731,452 | no change. |
| Glutethimide | 25 | no change. |
| Hydrocodone (for conversion) | 1,250 | no change. |
| Hydrocodone (for sale) | 30,821,224 | no change. |
| Hydromorphone | 2,827,940 | 2,743,101. |
| Isomethadone | 30 | no change. |
| L-amphetamine | 30 | no change. |
| Levo-alphacetylmethadol (LAAM) | 25 | no change. |
| Levomethorphan | 30 | no change. |
| Levorphanol | 26,495 | no change. |
| Lisdexamfetamine | 21,000,000 | no change. |
| L-methamphetamine | 587,229 | no change. |
| Meperidine | 856,695 | no change. |
| Meperidine Intermediate-A | 30 | no change. |
| Meperidine Intermediate-B | 30 | no change. |
| Meperidine Intermediate-C | 30 | no change. |
| Metazocine | 15 | no change. |
| Methadone (for sale) | 25,619,700 | no change. |
| Methadone Intermediate | 27,673,600 | no change. |
| Methamphetamine | 50 | no change. |
| D-methamphetamine (for conversion) | 485,020 | no change. |
| D-methamphetamine (for sale) | 40,000 | no change. |
| Methylphenidate (for conversion) | 0 | 15,300,000. |
| Methylphenidate (for sale) | 57,438,334 | no change. |
| Metopon | 25 | no change. |
| Moramide-intermediate | 25 | no change. |
| Morphine (for conversion) | 3,376,696 | no change. |
| Morphine (for sale) | 27,784,062 | 26,505,995. |
| Nabilone | 62,000 | no change. |
| Norfentanyl | 25 | no change. |
| Noroxymorphone (for conversion) | 22,044,741 | no change. |
| Noroxymorphone (for sale) | 376,000 | no change. |
| Oliceridine | N/A | 22,500. |
| Opium (powder) | 250,000 | no change. |
| Opium (tincture) | 530,837 | no change. |
| Oripavine | 33,010,750 | no change. |
| Oxycodone (for conversion) | 620,887 | no change. |
| Oxycodone (for sale) | 57,110,032 | no change. |
| Oxymorphone (for conversion) | 28,204,371 | no change. |
| Oxymorphone (for sale) | 563,174 | no change. |
| Pentobarbital | 25,850,000 | 30,766,670. |
| Phenazocine | 25 | no change. |
| Phencyclidine | 35 | no change. |
| Phenmetrazine | 25 | no change. |
| Phenylacetone | 40 | no change. |
| Piminodine | 25 | no change. |
| Racemethorphan | 5 | no change. |
| Racemorphan | 5 | no change. |
| Remifentanil | 3,000 | no change. |
| Secobarbital | 172,100 | no change. |
| Sufentanil | 4,000 | no change. |
| Tapentadol | 13,447,541 | no change. |
| Thebaine | 57,137,944 | no change. |
| **List I Chemicals** | | |
| Ephedrine (for conversion) | 100 | no change. |
| Ephedrine (for sale) | 4,136,000 | no change. |
| Phenylpropanolamine (for conversion) | 14,878,320 | no change. |
| Phenylpropanolamine (for sale) | 16,690,000 | no change. |
| Pseudoephedrine (for conversion) | 1,000 | no change. |
| Pseudoephedrine (for sale) | 174,246,000 | no change. |

The Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Administrator may adjust the 2021 aggregate production quotas and assessment of annual needs as needed.

**Conclusion**

After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will issue and publish in the **Federal Register** a final order establishing any adjustment of 2021 aggregate production quota for each basic class of controlled substances in schedules I and II and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. 21 CFR 1303.13(c) and 1315.13(f).

**Anne Milgram,**

*Administrator.*

[FR Doc. 2021–18935 Filed 9–1–21; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

### Rescission of Notice of Intention Not To Request, Accept or Use Employer Information Report (EEO–1) Component 2 Data, November 25, 2019

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) collect workforce data through the Employer Information Report (EEO–1) under their Joint Reporting Committee. OFCCP is rescinding its previously issued notice, which stated that OFCCP did not intend to request, accept, or use EEO–1 Component 2 data. The agency has determined that it was premature to issue a notice stating OFCCP did not expect to find significant utility in the data.

**DATES:** This action is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY).

**SUPPLEMENTARY INFORMATION:**

**Background**

OFCCP administers and enforces Executive Order 11246, as amended (E.O. 11246), which applies to Federal contractors and subcontractors. E.O. 11246 prohibits employment discrimination and requires affirmative action to ensure equal employment opportunity regardless of race, color, religion, sex, sexual orientation, gender identity, or national origin. It also prohibits Federal contractors and subcontractors from discriminating against applicants and employees for inquiring about, discussing, or disclosing information about their pay or the pay of their co-workers, subject to certain limitations.

OFCCP and the EEOC have separate legal authority to collect EEO–1 data, and they coordinate collection to promote efficiency through their Joint Reporting Committee. The EEOC's legal authority to collect EEO–1 data from private employers derives from Title VII of the Civil Rights Act, and OFCCP's authority to collect data from certain Federal contractors derives from E.O. 11246 and its implementing regulations.[1] The EEO–1 data collection is a mandatory annual data collection that requires all private sector employers that are covered by Title VII and have 100 or more employees, and Federal contractors with 50 or more employees meeting certain criteria, to submit demographic workforce data, including data by sex, race, ethnicity, and job categories (Component 1) (Office of Management and Budget (OMB) Control No. 3046–0049). The EEO–1 Component 1 data has been shared between the two agencies for decades to avoid duplicative information collections and to minimize the burden on employers.

OFCCP had previously expressed interest in collecting summary compensation data for the purpose of informing its compliance and enforcement efforts. On August 8, 2014, OFCCP published a notice of proposed rulemaking in the **Federal Register** to amend the regulations that implement E.O. 11246 by adding a requirement that certain Federal contractors and subcontractors supplement their EEO–1 Report with summary information on compensation paid to employees, as contained in the Form W–2, Wage and Tax Statement, by sex, race, ethnicity, and specified job categories, as well as other relevant data points such as hours worked and the number of employees.[2] The purpose of the proposed collection was to enable OFCCP to more effectively focus its enforcement resources to better identify potential pay inequities for further evaluations. Public comments submitted to OFCCP on the proposal argued for, among other things, improving interagency coordination and decreasing employer burden for reporting compensation data by using the EEO–1 data collection, rather than conducting a new OFCCP data collection. Ultimately, OFCCP determined that it would collaborate with the EEOC to collect compensation data as part of the EEO–1 filing rather than proceed with publishing a final rule.

On July 14, 2016, the EEOC published a 30-day notice in the **Federal Register** to obtain a three-year approval from OMB for the continued collection of Component 1 demographic data, as well as a new collection of summary compensation data, referred to as ''Component 2'' EEO–1 data.[3] The notice stated that, although the EEOC is responsible for compliance with the Paperwork Reduction Act of 1995, the EEO–1 report is a joint data collection to meet the enforcement needs of both the EEOC and OFCCP while avoiding duplication. The Component 2 collection included aggregated data on employee pay and hours worked. On September 29, 2016, OMB approved the EEO–1 Components 1 and 2 information collection for calendar years 2017 and 2018.

On August 29, 2017, OMB stayed the EEOC's collection of Component 2 data, and the EEOC proceeded to collect only Component 1 data. Subsequently, the EEOC issued a **Federal Register** notice on September 15, 2017, suspending the Component 2 data collection.[4] In response to a lawsuit challenging OMB and the EEOC's actions, on March 4, 2019, the United States District Court for the District of Columbia vacated OMB's stay of the Component 2 data collection and ordered that the previous approval of the EEO–1 Component 2 collection was in effect.[5] The court further ordered the EEOC to collect the Component 2 data for calendar years 2017 and 2018 by September 30, 2019. On May 3, 2019, the EEOC published a **Federal Register** notice announcing the

[1] *See* 42 U.S.C. 2000e–8(c); 29 CFR 1602.7; 41 CFR 60–1.7.

[2] *See* 79 FR 46561 (Aug. 8, 2014).

[3] *See* 81 FR 45479 (July 14, 2016).

[4] *See* 82 FR 43362 (Sept. 15, 2017).

[5] *National Women's Law Center, et al.* v. *Office of Management and Budget, et al.,* 358 F. Supp. 3d 66 (D.D.C. 2019).

immediate reinstatement of the collection of 2017 and 2018 Component 2 data from EEO–1 filers.[6] A February 6, 2020 Joint Status Report to the court stated that more than 89% of all eligible employers had submitted Component 2 data, and on February 10, 2020, the United States District Court for the District of Columbia deemed the collection complete.

On September 12, 2019, the EEOC published a 60-day notice in the **Federal Register** announcing its intention not to seek renewal of the OMB approval for the collection of Component 2 data.[7] The EEOC concluded that, it should consider information from the Component 2 data collection before deciding whether to pursue another pay data collection consistent with the Paperwork Reduction Act.

Subsequently, on November 25, 2019, OFCCP published a notice in the **Federal Register** indicating that the agency would not ''request, accept, or use Component 2 data, as it does not expect to find significant utility in the data given limited resources and [the data's] aggregated nature.'' [8] While the notice conceded that ''the data could potentially inform OFCCP's scheduling process for compliance evaluations,'' OFCCP concluded that the Component 2 data was too broad and not collected at a level of detail that would enable the agency to make comparisons among similarly situated employees as required by the ''Title VII standards that OFCCP applies in administering and enforcing [E.O.] 11246'' without conducting additional analysis that would put an unnecessary financial burden on the agency.[9]

On March 23, 2020, the EEOC published the 30-day notice indicating that it would not seek an extension to continue Component 2 data collection.[10]

### Accepting Aggregated Component 2 Data from the EEOC

OFCCP issued its November 2019 notice stating the agency would not request, accept, or use Component 2 data even before the United States District Court for the District of Columbia deemed the collection of 2017 and 2018 Component 2 data complete in February 2020. At that time, OFCCP had little information about the response rate of the collection, how the data was submitted and assembled, or the completeness of the data. Nor did the agency have the opportunity to review and analyze the data.

Upon further consideration, OFCCP believes the position taken by the agency in the November 2019 notice was premature and counter to the agency's interests in ensuring pay equity. As detailed below, there are substantial reasons to believe that the Component 2 data could be useful to OFCCP's enforcement. Given the effort expended by employers to submit the data and resources devoted by the EEOC and OFCCP in the development of the collection, OFCCP believes it would be valuable to analyze this data to assess its utility for OFCCP's enforcement efforts.

OFCCP intends to devote further agency resources to evaluate the data's utility because the joint collection and analysis of compensation data could improve OFCCP's ability to efficiently and effectively investigate potential pay discrimination.[11] Also, analyzing compensation data in conjunction with other available information, such as labor market survey data, could help OFCCP identify neutral criteria to select contractors for compliance evaluations. Thus, OFCCP is rescinding its November 25, 2019 notice. OFCCP plans to analyze the Component 2 data collection to assess its utility for providing insight into pay disparities across industries and occupations and strengthen Federal efforts to combat pay discrimination.

**Tina T. Williams,**

*Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.*

[FR Doc. 2021–18924 Filed 9–1–21; 8:45 am]

**BILLING CODE 4510–CM–P**

[6] *See* 84 FR 18974 (May 3, 2019).

[7] *See* 84 FR 48138 (Sept. 12, 2019).

[8] *See* 84 FR 64932 (Nov. 25, 2019).

[9] 84 FR 64993.

[10] *See* 85 FR 16340 (March 23, 2020).

[11] As stated in the EEOC's July 14, 2016, 30-day notice, EEOC concluded that ''implementing the proposed EEO–1 pay data collection will improve the EEOC's ability to efficiently and effectively structure its investigation of pay discrimination charges.'' *See* 81 FR 45479, 45483 (July 14, 2016). OFCCP, too, believes the compensation data collection may be useful for its enforcement efforts.

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Notice of Proposed Information Collection Requests: 2022–2024 IMLS Native American Library Services Enhancement Grants Notice of Funding Opportunity (3137–0110)

**AGENCY:** Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

**ACTION:** Notice, request for comments, collection of information.

**SUMMARY:** The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning a plan to modify the eligibility criteria and to update performance measurement requirements for Native American Library Services Enhancement Grants. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before October 31, 2021.

**ADDRESSES:** Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

**FOR FURTHER INFORMATION CONTACT:** Anthony D. Smith, Associate Deputy Director, Office of Library Services, Discretionary Programs, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Smith can be reached by telephone at 202–653–4716, or by email at *asmith@imls.gov.*

**SUPPLEMENTARY INFORMATION:** IMLS is particularly interested in public comment that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**I. Background**

The Institute of Museum and Library Services is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

**II. Current Actions**

The Native American Library Services Enhancement Grants program is designed to assist Native American tribes in improving core library services for their communities. The program goals are (1) to improve digital services to support needs for education, workforce development, economic and business development, health information, critical thinking skills, and digital literacy skills; (2) to improve educational programs related to specific topics and content areas of interest to library patrons and community-based users; and (3) to enhance the preservation and revitalization of Native American cultures and languages.

This action is to modify the eligibility criteria and to update performance measurement requirements for Native American Library Services Enhancement Grants. If approved, the program would no longer require applicants to first submit an application to the Native American Library Services Basic Grants program in the same year. This would reduce unnecessary administrative burden for applicants and awardees and allow applicants to choose the grant program(s) best suited to their needs. Updating performance measurement requirements will bring this program into better alignment with other IMLS grant programs and make it easier for applicants to comply.

*Agency:* Institute of Museum and Library Services.

*Title:* 2022–2024 IMLS Native American Library Services Enhancement Grants Notice of Funding Opportunity.

*OMB Control Number:* 3137–0110.

*Agency Number:* 3137.

*Respondents:* Federally recognized Native American Tribes.

*Total Estimated Number of Annual Respondents:* 40.

*Frequency of Response:* Once per request.

*Average Hours per Response:* 40 hours.

*Total Estimated Number of Annual Burden Hours:* 1,600.

*Cost Burden (dollars):* $47,632.

*Public Comments Invited:* Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 27, 2021.

**Kim Miller,**

*Senior Grants Management Specialist, Institute of Museum and Library Services.*

[FR Doc. 2021–18937 Filed 9–1–21; 8:45 am]

**BILLING CODE 7036–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Notice To Announce Request for Information for the Modification of the Eligibility Requirements for the Native American Library Services Enhancement Grants Program

**AGENCY:** Institute of Museum and Library Services, National Foundation on the Arts and the Humanities .

**ACTION:** Request for information.

**SUMMARY:** This Request for Information (RFI) is intended to gather broad input to assist the Institute of Museum and Library Services (IMLS) in making a determination whether or not to modify the eligibility requirements for the Native American Library Services Enhancement Grants program (Enhancement Grant). Currently, to be eligible for Enhancement Grant funding, an applicant is required to first submit a Native American Library Services Basic Grant (Basic Grant) application in the same year. IMLS is considering the elimination of this specific eligibility requirement to reduce application and administrative burdens for applicants and awardees and to allow applicants to choose the grant program(s) best suited to their needs.

**DATES:** Submit comments on or before Friday, October 29, 2021.

**ADDRESSES:** Comments must be submitted to *imls-librarygrants@imls.gov.*

**SUPPLEMENTARY INFORMATION:** Both the Enhancement Grants program and the Basic Grants program are designed to assist federally recognized Indian tribes in improving core library services for their communities. See *https://www.imls.gov/grants/available/native-american-library-services-enhancement-grants* and *https://www.imls.gov/grants/available/native-american-library-services-basic-grants* for details. IMLS is committed to the continuous improvement of all its grant programs and to minimizing grant-related application and administrative burdens for its applicants and awardees. The current structure requires every applicant for an Enhancement Grant program to also apply for a Basic Grant in the same year.

The Basic Grant program is designed to support library operations and core services, including library workforce training. The Enhancement Grant program is designed to support larger and more complex library projects, including preservation. For the Basic Grant program in Fiscal Year 2021, IMLS expects to award a total of $1,900,000, consisting of 192 individual awards ranging from $6,000 to $10,000. For the Enhancement Grant program, IMLS expects to award a total of $1,200,000, consisting of 20 individual awards ranging from $10,000 to $150,000.

The Basic Grant program is less competitive than the Enhancement Grant program because essentially every eligible Basic Grant applicant receives a grant; whereas Enhancement Grant applications compete against each other and not all applications receive an award. The two programs are also financially interdependent: Funding that is not awarded from the Basic Program pool is then added to the funding available for the Enhancement Program pool. For example, if not all of the FY21 $1,900,000 funding is awarded because IMLS receives fewer Basic Grant applications than anticipated, the balance of unawarded Basic Grant funds will then be made available to the Enhancement Grant funding pool (*i.e.,* whatever is not awarded from the $1,900,000 Basic Grants pool is added to the $1,200,000 Enhancement Grant pool).

The original reason to have a Basic Grant before applying for an Enhancement Grant was to help ensure that all Tribes received at least a basic level of funding before larger, more complex projects were supported.

However, this may place unnecessary application and grant administration burdens on applicants who wish to apply for, and carry out, only an Enhancement Grant. For example, such applicants may not want to apply for and administer a Basic Grant but are simply looking for a grant to support a larger project.

Eliminating the requirement to first apply for a Basic Grant would make it possible for Tribes to apply for an Enhancement Grant only and still allow them to apply for both an Enhancement Grant and a Basic Grant if they wish. This change is intended to give applicants the flexibility to apply for the grant(s) that best suit their needs.

**Information Requested**

IMLS invites input from all Tribal communities, including but not limited to individuals, Tribal governments, libraries, archives, museums, institutions of higher education, and cultural heritage centers.

Organizations are strongly encouraged to submit a single response that reflects the views of their organization and membership as a whole.

IMLS asks you to consider the following when reflecting on the proposed elimination of the requirement that Indian tribes wishing to apply for an Enhancement Grant apply first for a Basic Grant in the same year:

- How might the elimination of this requirement benefit the Tribe(s) with which you have close relationships?
- How might the elimination of this requirement harm or result in an unexpected negative consequence for the Tribe(s) with which you have close relationships?
- Taking the potential benefits and negative consequences into account, do you recommend we eliminate or keep the requirement as is?
- What other suggestions do you have for improving these two grant programs?
- What else would you like to see IMLS do to minimize the grant-related administrative burden for its applicants and awardees?

**Responses**

Responses to this RFI are voluntary. Please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public websites, in reports, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements.

This request is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of the United States Government. IMLS will not make any awards based on responses to this RFI or pay for the preparation of any information submitted or for the Government's use of such information.

Dated: August 30, 2021.

**Kim Miller,**

*Senior Grants Management Specialist, Institute of Museum and Library Services.*

[FR Doc. 2021–19017 Filed 9–1–21; 8:45 am]

**BILLING CODE 7036–01–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's (NSB) Committee on External Engagement hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

**TIME AND DATE:** Wednesday, September 8, 2021, from 1:00–2:00 p.m. EDT.

**PLACE:** This meeting will be held by teleconference through the National Science Foundation.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The agenda of the teleconference is to plan NSB engagement activities for the fall and winter.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Nadine Lymn, *nlymn@nsf.gov,* 703/292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates may be found at the National Science Board website at *www.nsf.gov/nsb.*

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2021–19145 Filed 8–31–21; 4:15 pm]

**BILLING CODE 7555–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92790; File No. SR–NASDAQ–2021–065]**

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Nasdaq Rule 5750 (Proxy Portfolio Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Proxy Portfolio Shares

August 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 August 25, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 amend Nasdaq Rule 5750 (Proxy Portfolio Shares) to provide for the use of ''Custom Baskets'' consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Nasdaq Rule 5750 (Proxy Portfolio Shares) [3] to provide for the use of ''Custom Baskets'' consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 [4] applicable to a series of Proxy Portfolio Shares.

To effectuate this change, the Exchange proposes the following amendments to Nasdaq Rule 5750:

First, the proposed rule change adopts new subparagraph (c)(6) under Nasdaq Rule 5750 (Definitions), which defines ''Custom Basket'', for the purposes of Nasdaq Rule 5750, to mean a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. The proposed rule change makes conforming amendments to the definition of Proxy Portfolio Shares in Nasdaq Rule 5750(c)(1) and Reporting Authority in Nasdaq Rule 5750(c)(3). The proposed rule change amends the definition of ''Proxy Portfolio Share'' in Nasdaq Rule 5750(c)(1) to provide for creations of shares in return for a deposit by the purchaser of, and redemptions of shares at a holder's request in return for, a Custom Basket rather than a Proxy Basket to the extent permitted by a fund's exemptive relief.

In addition, the proposed rule change amends the definition of ''Reporting Authority'' in respect of a particular series of Proxy Portfolio Shares in Nasdaq Rule 5750(c)(3) to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. Currently, ''Reporting Authority'' in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. Nasdaq Rule 5750(c)(3) further provides that a series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions. The proposed rule change adds ''Custom Basket'' to the non-exclusive list of information relating to Proxy Portfolio Shares that a Reporting Authority calculates and reports, *i.e.,* including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares.

Second, the proposed rule change amends Nasdaq Rule 5750(d) (Initial and Continued Listing), which currently provides criteria that Proxy Portfolio Shares must satisfy for initial and continued listing on the Exchange, to incorporate specific initial and continued listing criteria for Custom Baskets. Specifically, Nasdaq Rule 5750(d)(1)(B) currently provides that the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio. The proposed rule change adopts an additional requirement in Nasdaq Rule 5750(d)(1)(B) providing that the Exchange will also obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.[5]

Third, the proposed Rule change amends Nasdaq Rule 5750(d)(2)(A), which currently provides that, with respect to each Proxy Basket, that it will be publicly disseminated at least once daily and will be made available to all market participants at the same time. Nasdaq Rule 5750(d)(2)(A) will be amended to provide that, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash.

The proposed rule change also makes conforming amendments to Nasdaq Rule 5750(b)(5) and (6). In particular, Nasdaq Rule 5750(b)(5) currently provides that, if the investment adviser to the Investment Company issuing 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 of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto. The proposed rule change amends Nasdaq Rule 5750(b)(5) to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. As proposed, Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company issuing 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-

[3] Nasdaq Rule 5750 defines the term ''Proxy Portfolio Share'' as a security that: (A) Represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open- end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[4] 15 U.S.C. 80a *et seq.*

[5] 17 CFR 243.100–243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable. In addition, proposed Nasdaq Rule 5750(b)(5) provides that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio, the Proxy Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable, or changes thereto.

Nasdaq Rule 5750(b)(6) currently provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket. The proposed rule change similarly amends Nasdaq Rule 5750(b)(6) to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. As proposed, Nasdaq Rule 5750(b)(6)provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Proxy Basket, or Custom Basket, as applicable.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general and Section 6(b)(5) of the Act[7] 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed rule change to provide for the use of Custom Baskets consistent with the applicable exemptive relief applicable to a series of Proxy Portfolio Shares will perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will permit use of Custom Baskets, consistent with the applicable exemptive relief, in a manner that will benefit investors by increasing efficiencies in the creation and redemption process. More specifically, Custom Baskets provide an issuer with flexibility in portfolio construction that may assist in reducing taxable capital gains distributions for investors and may generally improve tax efficiencies. Further, the use of Custom Baskets, to the extent permitted by a fund's exemptive relief, may also result in narrower bid/ask spreads and smaller premiums and discounts to the net asset value for Proxy Portfolio Shares to the extent that the Investment Company utilizes Custom Baskets with fewer securities which may, in turn, allow Authorized Participants to more efficiently hedge and participate generally in the Proxy Portfolio Shares. In addition to this, the flexibility provided in the creation of Custom Baskets may serve to increase competition between issuers. The Exchange believes the proposed rule change will enhance competition among market participants overall, to the benefit of investors and the marketplace.

The Exchange also believes that amending Nasdaq Rule 5750 to incorporate specific initial listing criteria required to be met by Proxy Portfolio Shares that utilize Custom Baskets is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that the daily dissemination of the composition of any Custom Basket transacted on the previous day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash, together with the right of Authorized Participants to create and redeem each day at the net asset value, will enable market participants to value and trade shares in a manner that will not lead to significant deviations between the bid/ask price and net asset value of shares of a series of Proxy Portfolio Shares.

Further, including Custom Baskets in the requirements of Nasdaq Rule 5750(b)(5) and (6) would act as a safeguard against any misuse and improper dissemination of nonpublic information related to a fund's Custom Basket or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Custom Basket will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that the proposed rule change to Nasdaq Rule 5750 is designed to prevent fraudulent and manipulative acts and practices.

The Exchange also believes that the proposed initial and continued listing standards are designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with the applicable exemptive relief. Specifically, the Exchange believes that requiring as an initial listing condition that an issuer and any person acting on behalf of the series of Proxy Portfolio Shares comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket, would further the full and fair disclosure objectives of Regulation Fair Disclosure to the benefit of the investing public and all market participants. Additionally, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, the Exchange believes that requiring, as a

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

continued listing condition, that each business day, before the opening of trading in the regular market session, an investment company make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash, also furthers the goals of transparency and full and fair disclosure, to the benefit of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change, by permitting the use of Custom Baskets, is consistent with a fund's exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–065 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–2021–065. 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–2021–065 and should be submitted on or before September 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18943 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92798; File No. SR–PEARL–2021–33]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the MIAX Pearl Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Ports

August 27, 2021.

## I. Introduction

On July 1, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–PEARL–2021–33) to amend the MIAX Pearl Options Fee Schedule (''Fee Schedule'') to increase monthly fees for the Exchange's MIAX Express Network Full Service MEO Ports.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on July 15, 2021.[5] The Commission has received no comment letters on the proposed rule change. Under Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (i) Temporarily suspending File Number SR–PEARL–2021–33; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR–PEARL–2021–33.

## II. Description of the Proposed Rule Change

MIAX Pearl proposes to increase the monthly fees for Full Service MEO Ports, which fee increases became effective July 1, 2021.[7] The Exchange states that Full Service MEO Ports are used for by options Members to submit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* Notice, *infra* note 5, at 37347 n.3.

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347 (''Notice'').

[6] 15 U.S.C. 78s(b)(3)(C).

[7] *See* Notice, *supra* note 5, at 37347.

quotes and orders and allow for a higher throughput rates than other ports offered by the Exchange, such as FIX ports.[8]

Full Service MEO Ports are of two types: Bulk and Single.[9] An options Member using Full Service MEO Ports may be allocated up to two (2) Full Service MEO Ports for each Matching Engine to which it connects (two Bulk, two Single, or one of each), and the monthly fee for Full Service MEO Port use will be determined by volume, according to tiered schedules.[10] More specifically, the Exchange assesses Members Full Service MEO Port fees based upon the monthly total volume executed by a Member and its Affiliates [11] on the Exchange across all origin types, not including Excluded Contracts,[12] as compared to the Total Consolidated Volume (''TCV''),[13] in all MIAX Pearl-listed options, with separate schedules for Bulk and Single.

The Exchange proposes to increase fees for all Full Service MEO Port as follows:

For Full Service MEO Ports—Bulk, if the Member's relevant monthly volume falls within the parameters of:

- Tier 1 (up to 0.30% TCV): The monthly fee would increase from $3,000 to $5,000;
- Tier 2 (above 0.30%, up to 0.60% TCV): The monthly fee would increase from $4,500 to $7,500; and
- Tier 3 (above 0.60% TCV): The monthly fee would increase from $5,000 to $10,000.

For Full Service MEO Ports—Single, if the Member's relevant monthly volume falls within the parameters of:

- Tier 1 (up to 0.30% TCV): The monthly fee would increase from $2,000 to $2,500;
- Tier 2 (above 0.30%, up to 0.60% TCV): The monthly fee would increase from $3,375 to $3,500; and
- Tier 3 (above 0.60% TCV): The monthly fee would increase from $3,750 to $4,500.

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[14] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[15] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

In support of the proposed fee increases, the Exchange argues principally that the fees for Full Service MEO Ports are constrained by competitive forces, and that this is supported by their revenue and cost analysis. In particular, the Exchange states that there are 16 options markets that are ''highly competitive'' and that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.[16] In further support of its argument that competitive forces constrain its proposed Full Service MEO Port fee increases, the Exchange states that there is no regulatory requirement that any market participant connect to the Exchange or that any market participant connect at any specific connection speed.[17] The Exchange further states no options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange, which the Exchange believes is illustrated by the fact that it is unaware of any one options exchange whose membership includes every registered broker-dealer.[18]

The Exchange also states that the proposed fees are designed to recover a portion of the costs associated with directly accessing the Exchange and that the proposed increases are reasonable and appropriate to allow the Exchange to offset expenses the Exchange has and will incur in relation to providing the Full Service MEO Ports.[19] The Exchange provides an analysis of its revenues, costs, and profitability associated with these fees, which it references as ''Proposed Access Fees.'' The Exchange states that this analysis reflects an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services.[20] The Exchange states that this analysis shows fee increase will not result in excessive pricing or supra-competitive profits when compared to the Exchange's annual expense associated with providing the MEO Ports versus the annual revenue for the MEO Ports.[21]

The Exchange states that for 2021, the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $897,084.[22] The $897,084 in projected total annual expense is comprised of the following, all of which the Exchange states are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees. The Exchange states that the $897,084 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange.

The Exchange states that the total third-party expense, relating to fees paid by the Exchange to third-parties for

[8] *See* Notice, *supra* note 5, at 37349.

[9] *See* Notice, *supra* note 5, at 37348 n. 5–6. ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders.

[10] *See* Notice, *supra* note 5, at 37348. The Exchange states that it currently has twelve matching engines, which means that for a single monthly fee, a Member may receive up to twenty-four Full Service MEO Ports for that single fee. *Id.*

[11] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). *See* Notice, *supra* note 5, at 37348 n.11.

[12] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* Notice, *supra* note 5, at 37348 n.12.

[13] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* Notice, *supra* note 5, at 37348 n.13.

[14] 15 U.S.C. 78s(b)(3)(C).

[15] 15 U.S.C. 78s(b)(1).

[16] *See id.* at 37350. The Exchange adds that the Exchange had combined market share of 5.31% in June 2021 and it is aware of no evidence that this provides the Exchange with anti-competitive pricing power.

[17] *See id.* at 37354.

[18] *See* Notice, *supra* note 5, at 37454–55.

[19] *See* Notice, *supra* note 5, at 37349.

[20] *See* Notice, *supra* note 5, at 37350. The Exchange also states that no expense amount is allocated twice and the expenses only cover the MIAX Pearl options market. *Id.* at 37354. Expenses associated with the MIAX Pearl equities market are accounted for separately and are not within the scope of this filing. *See id.* at 37384.

[21] *See* Notice, *supra* note 5, at 37350.

[22] *See* Notice, *supra* note 5, at 37351.

certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees is projected to be $40,166 for 2021.[23] The Exchange represents that it determined whether third-party expenses related to the access services associated with the Proposed Access Fees, and, if such expense did so relate, determined what portion (or percentage) of such expense represents the cost to the Exchange to provide access services associated with the Proposed Access Fees. This includes allocating a portion of fees paid to: (1) Equinix, for data center services (approximately 1.80% of the Exchange's total applicable Equinix expense); (2) Zayo Group Holdings, Inc. for network services (approximately 0.90%); (3) Secure Financial Transaction Infrastructure and various other services providers (approximately 0.90%); and (4) various other hardware and software providers (approximately 0.90%).

In addition, the Exchange states that the total internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $856,918 for 2021.[24] The Exchange represents that: (1) The Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $783,513, which is a portion of the Exchange's total projected expense of $9,163,894 for employee compensation and benefits (approximately 8.55%); (2) the Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $64,456, which is a portion of the Exchange's total projected expense of $2,864,716 for depreciation and amortization (approximately 2.25%); [25] and (3) the Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $8,949, which is a portion of the Exchange's total projected expense of $497,180 for occupancy (approximately 1.80%).

The Exchange states that this cost and revenue analysis shows that the proposed rule change will not result in excessive pricing or supra-competitive profit.[26] The Exchange projects that, on a fully-annualized basis, the Proposed Access Fees will have an expense of $897,084 per annum and a projected revenue of $1,467,000 per year, resulting in a projected profit margin of 39% ($1,467,000 in projected revenue minus $897,084 in projected expense = $578,916 profit per year). The Exchange states that this estimated profit margin for Full Service MEO Port fees is well below the operating profit margins of other competing exchanges based on financial statements filed by them in 2019 Form 1 amendments.[27] The Exchange also states that its proposed increased Full Service MEO Port fees are in line with, or cheaper than, the similar port fees or similar membership fees charged by other options exchanges.[28]

The Exchange further states that its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), are still recouping the initial expenditures from building out their systems while ''legacy'' exchanges have already paid for and built their systems.[29] The Exchange also notes that its affiliates, MIAX and MIAX Emerald, also charge fees for their high throughput, low latency MEI Ports in a similar fashion as the Exchange charges for its MEO Ports.[30] Furthermore, the Exchange notes that it has historically undercharged for Full Service MEO Ports as compared to other options exchanges and the proposed monthly fee increases for Full Service MEO Ports would bring the Exchange's fees more in line with that of other options exchanges, while maintaining a competitive fee structure for Full Service MEO Ports.[31]

The Exchange states that the proposed fees are equitably allocated, not unfairly discriminatory, and do not impose an unnecessary or inappropriate burden on competition because the Proposed Access Fees do not favor certain categories of market participants,[32] the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of the market participants, with the lowest bandwidth consuming members paying the least, and the highest bandwidth consuming paying the most; [33] and options market participants are not forced to connect to (and purchase MEO Ports from) all options exchanges.[34]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[35] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [36]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [37] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [38] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[39]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to increase fees for the Exchange's Full Service MEO Ports is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons

[23] *See* Notice, *supra* note 5, at 37351–52.

[24] *See* Notice, *supra* note 5, at 37352–53.

[25] The Exchange states that the total projected expense of $2,864,716 for depreciation and amortization differs from the projected expense of depreciation and amortization projected by the Exchange in a different filing (SR–PEARL–2021–32) because the Exchange factors in the depreciation of its own internally developed software when assessing costs for Full Service MEO Ports, resulting in a higher depreciation expense number in this filing. *See* Notice, *supra* note 5, at 37353, n.30.

[26] *See* Notice, *supra* note 5, at 37353.

[27] *See* Notice, *supra* note 5, at 37354. The Exchange states that Nasdaq ISE, LLC's operating profit margin for 2019 was 83% and Nasdaq PHLX LLC's operating profit margin for 2019 was 67%.

[28] *See* Notice, *supra* note 5, at 37349. *See also* Notice, *supra* note 5, at 37348 n.9.

[29] *See* Notice, *supra* note 5, at 37354.

[30] *See* MIAX Fee Schedule, Section (5)(d)(ii); MIAX Emerald Fee Schedule, Section (5)(d)(ii).

[31] *See* Notice, *supra* note 5, at 37349.

[32] *See id.* at 37354.

[33] *See* Notice, *supra* note 5, at 37355.

[34] For a more detailed description of the Exchange's justifications for the proposed rule change, *see* Notice, *supra* note 5, at 37349–55.

[35] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[36] *Id.*

[37] 15 U.S.C. 78f(b)(4).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(b)(8).

using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[40]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[41]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[42] and 19(b)(2)(B) of the Act[43] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[44] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;''[45]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;''[46] and
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[47]

As discussed in Section III above, the Exchange makes various arguments in support of the proposal. The Commission believes that there are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposal to increase Full Service MEO Port fees is consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[48] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[49] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[50]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act;[51] as well as any other provision of the Act, or the rules and regulations thereunder.

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 23, 2021. Rebuttal comments should be submitted by October 7, 2021. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[52]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposal 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–PEARL–2021–33 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–PEARL–2021–33. This file number should be included on the

[40] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[41] For purposes of temporarily suspending the 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).

[42] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[43] 15 U.S.C. 78s(b)(2)(B).

[44] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[45] 15 U.S.C. 78f(b)(4).

[46] 15 U.S.C. 78f(b)(5).

[47] 15 U.S.C. 78f(b)(8).

[48] 17 CFR 201.700(b)(3).

[49] *See id.*

[50] *See id.*

[51] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[52] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–33 and should be submitted on or before September 23, 2021. Rebuttal comments should be submitted by October 7, 2021.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(3)(C) of the Act,[53] that File Number SR–PEARL–2021–33 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

**Vanessa A. Countryman,**

*Secretary.*

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**BILLING CODE 8011–01–P**

[53] 15 U.S.C. 78s(b)(3)(C).

[54] 17 CFR 200.30–3(a)(57) and (58).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92789; File Nos. SR–MIAX–2021–28, SR–EMERALD–2021–21]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC and MIAX Emerald, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Establish Fees for the Exchanges' cToM Market Data Products

August 27, 2021.

## I. Introduction

On June 30, 2021, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald'') (each, an ''Exchange,'' and collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees for, respectively, the MIAX Complex Top of Market (''cToM'') and the MIAX Emerald cToM market data products. The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule changes were published for comment in the **Federal Register** on July 15, 2021.[4] Pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) Temporarily suspending the proposed rule changes; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule changes.

## II. Description of the Proposed Rule Changes

The Exchanges propose to establish fees for their cToM market data products.[6] According to the Exchanges, the cToM feed provides subscribers with the same information as the Exchanges' respective simple order market Top of Market (''ToM'') feeds, but for each Exchange's Strategy Book [7] (*i.e.,* best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on each Exchange), plus additional information specific to complex orders (*i.e.,* identification of the complex strategies currently trading on each Exchange, complex strategy last sale information, and the status of securities underlying the complex strategy).[8]

The Exchanges each propose to assess Internal Distributors [9] $1,250 per month and External Distributors [10] $1,750 per month for the cToM data feed.[11] The Exchanges each will assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM, and will reduce such fees for new Distributors for the first month during which they subscribe to cToM based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release Nos. 92359 (July 9, 2021), 86 FR 37393 (SR–MIAX–2021–28); and 92358 (July 9, 2021), 86 FR 37361 (SR–EMERALD–2021–21) (each, a ''Notice''). For ease of reference, page citations are to the Notice for SR–MIAX–2021–28, unless otherwise indicated.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] The proposed fee changes became effective on July 1, 2021. *See* Notice, *supra* note 4, at 37394.

[7] The ''Strategy Book'' is each Exchange's electronic book of complex orders and complex quotes. *See* MIAX and MIAX Emerald Rule 518(a)(17).

[8] The Exchanges state that cToM is a distinct market data product from ToM. They also state that ToM subscribers are not required to subscribe to cToM, and that cToM subscribers are not required to subscribe to ToM. *See* Notice, *supra* note 4, at 37394.

[9] A ''Distributor'' of the Exchanges' data is any entity that receives a feed or file of data either directly from the Exchanges or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). *See* MIAX and MIAX Emerald Fee Schedule, Section 6(a). All members or non-members that determine to receive any market data feed from the Exchanges must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (''Exchange Data Agreement''). *See* Notice, *supra* note 4, at 37395. Pursuant to the Exchange Data Agreement, ''Internal Distributors'' are restricted to the ''internal use'' of any market data they receive, meaning they may only distribute the Exchanges' market data to their officers and employees and their affiliates. *See id.*

[10] ''External Distributors'' may distribute the Exchanges' market data to persons who are not their officers, employees, or affiliates, and may charge their own fees for the distribution of such market data. *See* Notice, *supra* note 4, at 37395.

[11] *See id.* at 37394. The Exchanges also propose to make a related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6(a) of each Exchanges' fee schedule, as the Exchanges will now charge fees for both the ToM and cToM data feeds. *See id.* at 37394 n.10.

[12] New Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM, divided by the total number of trading days in the affected calendar month. *See id.* at 37394.

## III. Suspension of the Proposed Rule Changes

Pursuant to Section 19(b)(3)(C) of the Act,[13] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[14] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission believes a temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder.

The Exchanges generally argue that the proposed fees are consistent with the Act because the Exchanges operate in a highly competitive environment that constrains their pricing of the cToM feeds.[15] In particular, the Exchanges maintain that subscribing to the cToM feeds is optional, as is the use of complex orders themselves.[16] The Exchanges argue that because complex orders are not protected or subject to trade-through requirements, and because market makers are not subject to continuous quoting requirements for complex orders (as they are for simple orders), it is therefore a business decision whether market participants use complex order strategies on the Exchanges and whether they purchase cToM data to help effect those strategies.[17] Accordingly, the Exchanges assert that if they priced their complex data products too highly, and market participants wanted to use those data products to trade complex orders, then those market participants would move their complex order flow to a more competitively-priced exchange offering complex order functionality and a comparable data product.[18] The Exchanges argue that this potential to lose both order flow and data subscribers on each of MIAX and/or MIAX Emerald constrains their pricing of the cToM feeds.[19] The Exchanges also argue that the proposed fees are reasonable because they are similar to and generally lower than the fees assessed by other exchanges that provide similar data products, and that proposing fees excessively higher would ultimately reduce demand for the Exchanges' own cToM products.[20]

The Exchanges further argue that the proposals are equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchanges on a uniform basis.[21] Moreover, the Exchanges assert that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the cToM data feeds, since Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights, including rights to commercialize such market data.[22]

Finally, the Exchanges assert that the proposed fees would not cause any unnecessary or inappropriate burden on inter-market competition, as other exchanges are free to introduce their own comparable data products and lower their prices to better compete with the Exchanges' offerings.[23] In this regard, the Exchanges assert that the proposals will promote competition by permitting the Exchanges to sell data products similar to those offered by other competitor options exchanges.[24] The Exchanges also assert that the proposed rule changes would not cause any unnecessary or inappropriate burden on intra-market competition, as the proposed fees apply uniformly to any purchaser by not differentiating between subscribers that purchase cToM (other than between Internal and External Distributors, as described above), and are set at a modest level allowing any interested member or non-member to purchase such data based on their business needs.[25]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchanges' present proposals, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[26] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [27]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [28] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [29] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[30]

In temporarily suspending the Exchanges' proposed rule changes, the Commission intends to further consider whether the proposals to establish fees for the cToM market data feeds are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule changes satisfy the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 15 U.S.C. 78s(b)(1).

[15] *See* Notice, *supra* note 4, at 37395–96. In support, the Exchanges state that MIAX and MIAX Emerald currently represent approximately 6.75% and 3.24% of options market share, respectively. *See id.* at 37395; Emerald Notice, *supra* note 4, at 37362.

[16] *See* Notice, *supra* note 4, at 37395.

[17] *See id.*

[18] *See id.* at 37395–96.

[19] *See id.*

[20] *See id.* In addition, the Exchanges state that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchanges charge for their ToM data products. *See id.* at 37396. The Exchanges also argue that the proposed fees are reasonable because members have had the ability to receive cToM data free of charge from MIAX for the past five years and from MIAX Emerald for the past two years, since each respective cToM market data product was established on each Exchange. *See id.* at 37395; Emerald Notice, *supra* note 4, at 37361, 37363. The Exchanges now assert that it is no longer necessary to provide cToM data for free to attract market participants, as the Exchanges' Strategy Books are now established and the Exchanges no longer need to rely on such fee waivers to attract market participants. *See* Notice, *supra* note 4, at 37394, 37396.

[21] *See* Notice, *supra* note 4, at 37396.

[22] *See id.* at 37395–96. In addition, the Exchanges argue that they use more resources to support External Distributors as compared to Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of the Exchanges' staff. *See id.* at 37396.

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[27] *See id.*

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(8).

necessary or appropriate in furtherance of the purposes of the Act.[31]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.[32]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposals, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[33] and 19(b)(2)(B) of the Act[34] to determine whether the Exchanges' proposed rule changes should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule changes to inform the Commission's analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,[35] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchanges have demonstrated how their proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'';[36]
- Whether the Exchanges have demonstrated how their proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers'';[37] and
- Whether the Exchanges have demonstrated how their proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[38]

As discussed in Section III above, the Exchanges made various arguments in support of their proposals. The Commission believes that there are questions as to whether the Exchanges have provided sufficient information to demonstrate that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[39] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[40] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[41]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[42]

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 23, 2021. Rebuttal comments should be submitted by October 7, 2021. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[43]

The Commission asks that commenters address the sufficiency and merit of the Exchanges' statements in support of the proposals, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–MIAX–2021–28 or SR–EMERALD–2021–21 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–MIAX–2021–28 or SR–EMERALD–2021–21. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the

[31] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[32] For purposes of temporarily suspending the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[34] 15 U.S.C. 78s(b)(2)(B).

[35] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[36] 15 U.S.C. 78f(b)(4).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78f(b)(8).

[39] 17 CFR 201.700(b)(3).

[40] *See id.*

[41] *See id.*

[42] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[43] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File No. SR–MIAX–2021–28 or SR–EMERALD–2021–21 and should be submitted on or before September 23, 2021. Rebuttal comments should be submitted by October 7, 2021.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[44] that File Nos. SR–MIAX–2021–28 and SR–EMERALD–2021–21, be and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18942 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 34366]**

## Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 27, 2021.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2021. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on September 21, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*.

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

### Cushing Real Income & Preferred Fund [File No. 811–23420]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on July 16, 2021.

*Applicant's Address: Kevin.Hardy@skadden.com*.

### Oppenheimer International Small-Mid Co Fund [File No. 811–08299]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Invesco Oppenheimer International Small-Mid Company Fund and, on May 24, 2019, made a final distribution to its shareholders based on net asset value. Expenses of $1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser (or it's affiliates) and the acquiring fund.

*Filing Dates:* The application was filed on June 11, 2021 and amended on August 18, 2021.

*Applicant's Address: Taylor.Edwards@invesco.com*.

### Partners Group Private Income Opportunities, LLC. [File No. 811–23188]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Partners Group Private Equity (Master Fund), LLC., and on December 31, 2020 made a final distribution to its shareholders based on net asset value. Expenses of $299,769.21 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

*Filing Dates:* The application was filed on June 4, 2021 and amended on August 6, 2021.

*Applicant's Address: joshua.deringer@faegredrinker.com*.

### PGIM Strategic Credit Fund [File No. 811–23576]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on June 10, 2021.

*Applicant's Address: debra.rubano@prudential.com*.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18927 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92786; File No. SR–ICEEU–2021–010]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granting Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures, and General Contract Terms

August 27, 2021.

## I. Introduction

On May 13, 2021, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities

[44] 15 U.S.C. 78s(b)(3)(C).

[45] 17 CFR 200.30–3(a)(57) and (58).

Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Clearing Rules (the ''Rules''),[3] Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures, and General Contract Terms (collectively, the ''Amended Documents'') to make various updates and enhancements. The proposed rule change was published for comment in the **Federal Register** on June 2, 2021.[4] The Commission did not receive comments regarding the proposed rule change. On June 16, 2021, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[5] Partial Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on July 21, 2021.[6] The Commission did not receive comments regarding Partial Amendment No. 1 to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the ''proposed rule change'').

## II. Description of the Proposed Rule Change

ICE Clear Europe proposes specific changes to the Amended Documents that would generally make various drafting improvements, clarifications, and updates, in each case as described below.[7] These changes are organized below according to each Amended Document.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures and General Contract Terms, Exchange Act Release No. 92020 (May 26, 2021), 86 FR 29612 (June 2, 2021) (SR–ICEEU–2021–010) (''Notice'').

[5] ICE Clear Europe filed Partial Amendment No. 1 to update Exhibit 5D, the Delivery Procedures, to correct a formatting error that resulted in the omission of several proposed definitions to update references to ICE Clear Europe systems.

[6] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Partial Amendment No. 1 and Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures, and General Contract Terms, Exchange Act Release No. 92418 (July 15, 2021), 86 FR 38521 (July 21, 2021) (SR–ICEEU–2021–010).

[7] The following description of the proposed rule change is substantially excerpted from the Notice.

### *A. The Rules*

#### i. Removal of ''Default Portability Preference'' in the Rules

ICE Clear Europe proposes to remove the process by which Non-FCM/BD Clearing Members may deliver a ''Default Portability Preference,'' with advance, pre-default, porting information to ICE Clear Europe. Currently, the Default Portability Preference allows a Customer or Specified Principal (*i.e.,* a principal-client for an Individually Segregated Sponsored Account) to specify, in advance of a default, one of more preferred Transferee Clearing Members to receive its Customer-CM Transactions under ICE Clear Europe's Default Portability Rules. ICE Clear Europe represents that it developed this process and preference mechanism as part of its default planning processes prior to post-financial crisis legislation coming into effect, such as the European Market Infrastructure Regulation (''EMIR'').[8] Given that EMIR requires post-default porting notices to be served as a pre-condition to porting, ICE Clear Europe proposes to replace its current pre-default portability preference structure with a post-default portability preference structure using ''Porting Notices,'' as discussed below.

To implement this change, ICE Clear Europe proposes to delete the existing definitions of ''Default Portability Preference'' and ''Non-Transfer Positions'' in Rule 101 (Definitions), and to add a new definition of ''Porting Notice'' in Rule 101, which would cross-reference the existing definition of the term in the relevant Standard Terms of the Rules. The existing definition of ''Porting Notice'' would not change, and is generally defined in the Standard Terms as a post-default notification to ICE Clear Europe from a Customer or Sponsored Principal of a porting preference to a designated Transferee Clearing Member.

In Rule 904 (Transfer of Contracts and Margin on a Clearing Member Event of Default), the proposed rule change would amend Rules 904(g) and 904(j) to remove the existing references to Default Portability Preference and replace them with references to Porting Notices. In addition, the proposed rule change also would amend Rule 904(g) to provide that a Transferee Clearing Member's consent can only be evidenced in a Porting Notice that is countersigned by such Clearing Member or otherwise agreed in writing. ICE Clear Europe represents that this change would clarify that simply being named by a customer as a potential Transferee Clearing Member is not sufficient to evidence a Clearing Member's consent to being named a Transferee Clearing Member by the Clearing Member's customer.[9] ICE Clear Europe proposes additional changes in Rules 904(m), 904(p), 904(u) and 904(w) to reflect the proposed deletion of Default Portability Preference.

In Rule 907(d), the proposed rule change would delete existing references to Default Portability Preference and Non-Transfer Positions, and would instead provide that in connection with porting, ICE Clear Europe will be entitled to rely on any information provided to it by a Defaulter prior to declaration of default in respect of Contracts, Customer-CM Transactions, Margin, and the Accounts in which Contracts and Margin were recorded or which relate to particular Customers or particular groups of Customers. ICE Clear Europe represents that this proposed change would allow it to continue to be able to act efficiently in default scenarios, and rely on more of the relevant information available to it in relation to the Defaulter.[10] The proposed rule change to Rule 907(b) would also clarify that ICE Clear Europe has no obligation to inquire of any person as to any Porting Notice.

The proposed rule change would also remove references to Default Portability Preferences and include reference to Porting Notices in the CDS Standard Terms (paragraph 6), F&O Standard Terms (paragraph 6) and FX Standard Terms (paragraph 6) annexed to the Rules.

#### ii. Amendments to the Definitions Relating to Energy Transactions

The proposed rule change would amend certain definitions relating to Energy transactions to simplify and make such terms consistent with previous amendments to definitions for other F&O Products.[11] Specifically, in Rule 101, the proposed rule change would shorten the existing definition of the term ''Energy'' to refer to the term ''Market'' rather than naming all specific ICE markets. The proposed rule change would also introduce new definitions of the terms ''Energy Matched Transaction'' (referencing an energy transaction conducted on a Market) and ''Energy Transaction'' (covering an Energy Matched Transaction or an

[8] Notice, 86 FR 29612.

[9] Notice, 86 FR 29613.

[10] Notice, 86 FR 29613.

[11] *See* Exchange Act Release No. 34–87275 (File No. SR–ICEEU–2019–020) (Oct. 10, 2019), 84 FR 55649 (Oct. 17, 2019) (changes to definitions using the term Market).

Energy Block Transaction meeting specified criteria).

iii. EFRP (Exchange for Related Positions) Definition Amendments

ICE Clear Europe proposes several changes to the Rules to address more clearly exchange for related position transactions, referred to as EFRPs, under applicable Market rules, including to revise defined terms and clarify that such transactions are available on exchanges for products other than soft commodities.

In Rule 101, the proposed rule change would add a new ''EFRP'' definition using a similar drafting structure to that for EFP (exchange for physicals) and EFS (exchange for swaps) transactions by including the phrase ''or any similar transaction under any Market Rules.'' Also, the proposed rule change would clarify the current definition of ''EFS'' in Rule 101 to refer only to exchange for swaps or similar transactions under Market Rules and to remove an existing reference to exchange for related positions, which would instead be covered by the proposed EFRP definition. In the ''Financials & Softs Block Transaction'' definition, the proposed rule change would broaden the reference to ''Soft Commodity EFRPs'' to include all EFRPs under all Market Rules, as Soft Commodity EFRPs are specific to ICE Futures Europe. Accordingly, the proposed rule change would delete the ''Soft Commodity EFRP'' definition which is not otherwise used.

iv. Amendments to Product Termination Rules

The proposed rule change would amend Rule 105(a) to shorten the termination period (generally from four months to one month) for a service withdrawal for a product in circumstances in which there is no open interest in the relevant Set. ICE Clear Europe represents that a longer termination period is unnecessary in such circumstances, since no action is required by Clearing Members to close out their positions.[12] The proposed amendments to Rule 105(a) would also clarify that where a product termination occurs following actions of the relevant exchange (*e.g.,* a de-listing), the notice period required under the exchange's rules would instead apply and the exchange would be responsible for providing such notice.

v. Amendments to the Termination Rules for Clearing Members

ICE Clear Europe proposes amendments to Rule 209(d) to facilitate membership terminations in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions. In such context, the proposed amendment would establish an exception to the requirement for terminating Clearing Members to immediately pay to ICE Clear Europe, upon service of a Termination Notice, Assessment Contributions equal to three times the required relevant guaranty fund contribution. ICE Clear Europe represents that such an exception is warranted since all positions would be received by an affiliated Clearing Member in good standing that would remain liable with respect to any obligations arising from or related to the holding of such positions under the Rules (including as to future Assessment Contributions).[13]

The proposed rule change would further amend Rule 209(d) to clarify that references in the Clearing Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, where the Clearing Member has provided Permitted Cover to ICE Clear Europe (whether under Rule 209(d) or prior to the Clearing Member serving its termination notice or the Termination Date), would be interpreted as a reference to that Permitted Cover being applied. The proposed rule change would also clarify that the Permitted Cover which has been provided by the Clearing Member prior to the serving of a termination notice or a Termination Date could, as is currently intended, also be included as part of, for example, any applications of Guaranty Fund by ICE Clear Europe under Part 9 or Part 11.

The proposed amendments to Rule 209(d) would further clarify for the avoidance of doubt that the following obligations would apply to a terminating Clearing Member until Open Contract Positions have been closed, the Termination Date has passed, and all Guaranty Fund Contributions have been returned under Rule 1102(g): Application of Guaranty Fund Contributions, application of Assessment Contributions (to the extent paid under Rule 209(d) or otherwise prior to the Termination Date), position limits under Part 6, disciplinary actions under Part 10, and the declaration and consequences of an Event of Default under Part 9 of the Rules.

ICE Clear Europe represents that the foregoing proposed amendments to Rule 209(d) reflect its experience with both default planning and recent Clearing Member terminations involving group reorganizations.[14]

vi. Amendments to Notice Provisions

ICE Clear Europe represents that the proposed changes regarding the delivery of notices under the Rules have been informed by default simulation planning and, in particular, the requirements around default notices under Rule 901, but are not limited to that context.[15] Specifically, the proposed rule change would amend Rules 113(a) and 113(a)(i) to delete the current references to telephone as a valid mode of service of notices (since ICE Clear Europe represents that this is not supported operationally) and to replace such references with email.[16] Accordingly, under the proposed rule change, the email address last notified to ICE Clear Europe by a Clearing Member would become an option for service of notices. The proposed addition of new Rule 113(a)(ii) would clarify that ICE Clear Europe may also validly deliver notices to a process agent nominated by the Clearing Member to act as its agent. Rule 113(e) currently refers to such agents for service of process, and would be expanded under the proposed rule change to explicitly refer to service of other contractual notices and communications. The proposed amendments to Rule 113(a) would further clarify that delivery in accordance with this section would be deemed made to the Clearing Member or Sponsored Principal, as well as to an agent appointed by the Clearing Member or Sponsored Principal.

The proposed rule change would also amend Rules 113(c) and 113(d) to clarify the precise time when effective service is deemed to be made for communications by fax, email, and courier, and that effective service and delivery can be achieved outside of opening hours on a business day, consistent with current operational practices.

Similarly, the proposed rule change would amend Rule 1901(n) to clarify that process agents for Sponsored Principals will act as agents for service of process of any notice, order, or other communication under the Rules and the Sponsored Principal Agreement.

[12] Notice, 86 FR 29613.

[13] Notice, 86 FR 29613.

[14] Notice, 86 FR 29614.

[15] Notice, 86 FR 29614.

[16] Notice, 86 FR 29614.

ICE Clear Europe proposes to amend Part E of the summary table at paragraph 4.2 of the Membership Procedures to provide that the termination of a Clearing Membership Agreement or membership as a Clearing Member would become effective no less than 30 Business Days after the date of the Termination Notice Time or pursuant to Rule 917(c) instead of the current notice period of no less than three months' advance notice if termination is not for cause and otherwise as specified in and allowed pursuant to the Rules. This change would make the summary table consistent with current Rule 209. Finally, throughout the summary table at paragraph 4.2 of the Membership Procedures, the proposed rule change would update the email address to which Clearing Members should send certain notifications.

vii. Clarifying Clearing Membership Criteria and Clearing Member Obligations

The proposed rule change would amend Rule 201(a)(ix) to reference existing Rule 201(b), under which ICE Clear Europe may require that potential Clearing Members enter into additional annexes or agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. ICE Clear Europe represents that it had to develop certain annexes to cater for local law issues arising in certain EU member states as part of Clearing Members' post-Brexit group legal structuring.[17] By specifically referencing Rule 201(b), the proposed amendments to Rule 201(a)(ix) would clarify the basis in the Rules for ICE Clear Europe to require such additional documentation to be executed, where necessary.

The proposed rule change would also amend Rule 202(a)(xxii), which currently requires Clearing Members to have competent persons accessible to ICE Clear Europe during opening hours and for two hours immediately after the business day. Under the proposed amendment, Clearing Members would be required to have competent persons accessible to ICE Clear Europe for two hours prior to the start of the business day as well. ICE Clear Europe represents that this change is consistent with current operational practice and necessary to ensure that staff are available to process and deal with questions relating to morning margin calls.[18]

ICE Clear Europe proposes to add a new Rule 301(o) that would allow it to request information on account balances of nominated accounts of the Clearing Member at financial institutions when needed, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is, or is likely to be, in default. ICE Clear Europe represents that this change would address issues that have arisen in practice where payment banks have refused to provide such information to ICE Clear Europe.[19]

viii. Greater Flexibility in Financial Reporting by Clearing Members

The proposed rule change would amend Rule 205(a)(ii) to give ICE Clear Europe greater flexibility to accept different kinds of financial statements (for example, semi-annual accounts) from Clearing Members as part of their financial reporting obligations, in circumstances where that Clearing Member does not produce a quarterly financial statement for its regulators. This amendment would also result in a conforming change to Part A of the summary table at paragraph 4.2 of the Membership Procedures. ICE Clear Europe represents that these proposed amendments would formalize current operational practice for those Clearing Members who do not prepare regulatory quarterly financials.[20]

ix. Clarifying CDS Contract Formation

The proposed rule change would amend Rule 401(o) to clarify that, where a CDS Contract of a Non-FCM/BD Clearing Member for a customer account arises pursuant to Rule 401, a Customer-CM CDS Transaction arises between the Customer and the Non-FCM/BD Clearing Member at the same time as the Contract. The current rule does not specify the timing of the Customer-CM CDS Transaction. The proposed amendment would reflect the equivalent rule for a Customer-CM F&O Transaction in Rule 401(n).

x. Clarifying How Open Contract Positions Are Aggregated and Netted

The proposed rule change would amend Rules 406(b) and (c) to address contractual netting for F&O contracts by aligning the provisions for F&O Contracts more closely with the corresponding rule provisions on contractual netting for CDS contracts in Rule 406(d), *et seq.* In particular, the proposed changes would expressly address aggregation of open contract positions of an F&O Clearing Member in addition to netting of such positions, and would clarify that the process for aggregation or netting takes place via contractual novation.

xi. Clarifying How the Clearing House May Amend Contract Terms

The proposed rule change would amend Rule 409(a) so that ICE Clear Europe can evidence its consent to amendments, waivers, and variations of the Contract Terms by a Circular. ICE Clear Europe represents that a Circular has been the usual way of issuing such amendments, waivers, and variations, and the proposed change would conform the Rules to operational practice.[21]

xii. Pledged Collateral Not for Settlement Payments

The proposed rule change would amend Rule 1603(c) to clarify that only ''original'' or ''initial'' types of Margin payments shall be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin, and FX Mark-to-Market Margin, which is provided to or by ICE Clear Europe by outright transfer of cash as a settlement payment. ICE Clear Europe represents that this proposed change is intended to be consistent with amendments previously made to the Rules to clarify that such variation and mark-to-market margin are settlement payments rather than collateral, and was inadvertently omitted from such prior amendments.[22]

xiii. Hedging Following an Event of Default

The proposed rule change would amend Rule 903(c) to clarify that ICE Clear Europe's right to authorize hedging transactions in a Default scenario would include transactions on a Market, any other Exchange, or over the counter. The proposed amendments would also provide that such transactions taking place on an exchange which is not a Market, or where requested or directed otherwise by ICE Clear Europe, need not themselves be cleared.

xiv. Affiliate Cross-Defaults

The proposed rule change would amend Rule 901(a)(iv) to clarify that the declaration of an Event of Default in respect of one Clearing Member is a circumstance in which ICE Clear Europe can declare an Event of Default in respect of another Clearing Member that

[17] Notice, 86 FR 29614.

[18] Notice, 86 FR 29614.

[19] Notice, 86 FR 29614.

[20] Notice, 86 FR 29614.

[21] Notice, 86 FR 29615.

[22] *See* Notice, 86 FR 29615. *See also* Exchange Act Release No. 34–88665 (File No. SR–ICEEU–2020–003) (Apr. 16, 2020), 85 FR 22892 (Apr. 23, 2020).

is a Group Company, *i.e.,* a parent or a subsidiary entity of such Clearing Member. ICE Clear Europe represents that this proposed clarification addresses questions raised in default planning exercises.[23]

xv. ''Eligible Contract Participant'' Status

The proposed rule change would amend Rule 201(a)(xx) to provide that the requirement for a Clearing Member to be an ''eligible contract participant'' [24] only applies if it is to be a CDS Clearing member or an FX Clearing member. The amendment reflects that such status is required under applicable U.S. law for persons that trade swaps and security-based swaps (such as CDS), but not for futures.[25] Similarly, the proposed rule change would amend Section 10 of the F&O Standard Terms to remove a requirement that an F&O Clearing Member and Customer be an eligible contract participant. The proposed rule change would also amend Rule 1901(b)(xv) and Rule 1901(d)(ix) to provide that the requirement for a Sponsored Principal to be an eligible contract participant only applies in relation to CDS Contracts and FX Contracts.

xvi. Corrected Names of Internal Risk Committees

The proposed rule change would amend Rule 916(d) to change the term ''Risk Committee'' to ''relevant product risk committee.'' ICE Clear Europe represents that this change reflects that there are different product risk committees addressing topics specific to F&O and CDS.[26]

xvii. Clarifications Relating to Negative EDSP

The proposed rule change would amend the definition of ''Exchange Delivery Settlement Price'' or ''EDSP'' in Rule 101 (Definitions) to clarify, for the avoidance of doubt, that the EDSP can be a positive or negative number, or zero. The proposed rule change would amend Rule 703(b) (Delivery) by adding new language to clarify the process for payment obligations if the EDSP is a negative number. In such event, amended Rule 703(b) would provide that the roles of the Buyer and Seller as set forth in the Rules, Delivery Procedures, Contract Terms, and Market Rules shall be reversed solely in respect of the payment obligation related to that EDSP.

xviii. Prospectus Directive

The proposed rule change would amend Rule 1501 (Definitions) in Part 15 (Credit Default Swaps) of the Rules to change the definition of ''Prospectus Directive'' to ''Prospectus Regulation,'' because the EU Prospectus Directive has been repealed and replaced with the Prospectus Regulation. The proposed rule change would also make conforming changes to the following definitions: ''Offer to the Public,'' by replacing the obsolete term ''Prospectus Directive'' with ''Prospectus Regulation''; ''Relevant Member State,'' by using a new defined term ''Relevant State'' that would remove the current reference to the Prospectus Directive and add the phrase ''or the United Kingdom''; and ''Securities,'' by replacing the current references to the Prospectus Directive with a reference to the Prospectus Regulation. Similarly, the proposed rule change would delete the definition of ''2010 PD Amending Directive'' (and references thereto) as this directive is also no longer in force. Additional conforming changes would be made in Rule 1503 to remove obsolete legislative references to the Prospectus Directive.

xix. Updates for Changes to Applicable Anti-Money Laundering Law

The proposed rule change would amend Rule 101 (Definitions) by updating the definition of the term ''Money Laundering Directive'' to reflect the implementation of the fifth EU Anti-Money Laundering Directive. The proposed rule change would also add a new definition of ''Money Laundering Regulations'' to reference the applicable UK regulations corresponding to that Directive, including after its exit from the European Union.

In Rule 201(a)(xxix) (Clearing Membership Criteria) and Rule 1901(d)(xi) (Attaining status of a Sponsored Principal), the proposed rule change would remove the existing references to ''simplified due diligence.'' ICE Clear Europe represents that this change reflects the repeal and restatement of the U.K.'s former Money Laundering Regulations 2007 pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which removed simplified due diligence as the default option for a defined list of entities and replaced it with discretionary risk-based levels of due diligence.[27]

The proposed rule change also would amend Rule 201(a)(xxxi) to add anti-money laundering laws to the existing list of applicable laws that are required to be acceptable to ICE Clear Europe in the respective jurisdictions of Clearing Members. The proposed rule change would add a new Rule 201(a)(xxxiii) to require Clearing Members to have adequate policies, procedures, systems, and controls relating to Applicable Laws, including relating to anti-money laundering and the prevention of financial crime. The proposed rule change would make similar amendments to Rules 202(a)(xii) and 1901(m) to update references to relevant laws, clarify that the Clearing Member is required to make certain representations and warranties to ICE Clear Europe with respect to the matters in those subsections, require the Clearing Member to have the necessary authority from customers and others to disclose the necessary information about beneficial owners in order to comply with requirements under Applicable Laws, and to retain copies of documents required to be retained under anti-money laundering laws.

Similarly, the proposed rule change would amend Rule 1607 (Additional FCM/BD Requirements for Customer Transactions) by adding a new clause (g) to require FCM/BD Customers to obtain the authority from ''beneficial owners'' to disclose information necessary for anti-money laundering due diligence to the Clearing Member and ICE Clear Europe. The proposed rule change would add similar new requirements to the CDS Standard Terms in clause 3(q), F&O Standard Terms in clause 3(r), and FX Standard Terms in clause 3(q).

xx. Introduction of a Summary Disciplinary Process and Other Disciplinary Process Updates

The proposed rule change would amend the Rules to introduce new Rule 1008, which would provide ICE Clear Europe with the authority to issue a summary fine to a Clearing Member under certain conditions, and to make certain minor drafting improvements to the disciplinary process provisions of the Rules. ICE Clear Europe represents that the new authority to issue a summary fine would be consistent with the authority to issue summary fines provided under the rules of other ICE exchanges for which ICE Clear Europe provides clearing services. ICE Clear Europe further represents that it intends to introduce a more streamlined

[23] Notice, 86 FR 29615.

[24] Commodity Exchange Act Section 1a(18), 7 U.S.C. 1a(18).

[25] *See* Section 6(l) of the Act, 15 U.S.C. 78f(l); Commodity Exchange Act Section 2(e), 7 U.S.C. 2(e).

[26] Notice, 86 FR 29615.

[27] Notice, 86 FR 29617.

sanctioning process for clear-cut and minor rules violations, rather than subjecting such violations to the formal and more cumbersome proceedings of a disciplinary committee.[28] To implement such changes, ICE Clear Europe proposes a number of specific changes as described below.

In Rule 101 (Definitions), the proposed rule change would amend the definition of ''Appeal Panel'' to include a reference to the new Summary Disciplinary Process, and would add a new definition of ''Summary Disciplinary Process.'' In Rule 102 (Interpretation), the proposed rule change would amend Rule 102(j) to refer to new Rule 1008 in the context of disciplinary proceedings under the Rules. The proposed rule change would amend Rule 102(p) to add language that any Disciplinary Panel, Summary Disciplinary Committee, or Appeal Panel appointed pursuant to Part 10 of the Rules (Disciplinary Proceedings) would be able to exercise discretion in the same way as ICE Clear Europe under Rule 102(p). In Rule 1005(c), the proposed rule change would make a related amendment to delete the word ''exclusive'' before the word ''discretion'' with respect to the Appeal Panel given the proposed changes to Rule 102(p).

ICE Clear Europe proposes other amendments in the Rules to implement the new Summary Disciplinary Process. Specifically, the proposed rule change would amend Rule 1002(i) (Investigations) to replace existing language with a new reference to the proposed Summary Disciplinary Process under Rule 1008. Current Rule 1002(i) provides that ICE Clear Europe may order that a Clearing Member pay a fine which ICE Clear Europe decides in its discretion is commensurate with a breach of the Rules, which fine is appealable directly to the Appeal Panel. As revised, Rule 1002(i) would provide that ICE Clear Europe may impose sanctions pursuant to the Summary Disciplinary Process under Rule 1008. The proposed rule change would amend Rule 1003(b) (Disciplinary Proceedings) to add a new sentence that ICE Clear Europe must also establish a Disciplinary Panel where so required by an Appeal Panel pursuant to Rule 1005(a)(iii)(Appeals) or Rule 1008(h) (Summary Disciplinary Process). Proposed new Rule 1005(g) would be added to state that Rule 1005 applies as the appeal process concerning an imposed sanction pursuant to the Summary Disciplinary Process under Rule 1008.

[28] Notice, 86 FR 29618.

The proposed rule change would add new Rule 1008 (Summary Disciplinary Process) to set out the summary disciplinary process that ICE Clear Europe may adopt against a Clearing Member, which process would clarify the situations in which the new process may apply, the sanctioning power of the Summary Disciplinary Process, and the process by which ICE Clear Europe would conduct the Summary Disciplinary Process. Specifically, ICE Clear Europe may apply the proposed Summary Disciplinary Process in relation to: The late filing or submission of any document, notice or information; the late making of any payment; any failure to record a Contract in the correct Account; the late making or taking of any delivery; any breach of Rule 202(a)(xix) (participation in default management simulations, new technology testing and other exercises); any breach of Rule 503(g) (the submission of end-of-day prices relating to Sets of CDS Contracts required of Clearing Members to aid in the establishment of Mark-to-Market Prices); any breach of a position limit under Part 6 of the Rules; any breach of any provision of the Rules or Procedures that ICE Clear Europe considers to be of a factual nature where ICE Clear Europe holds sufficient evidence of such facts; any breach of any provision of the Rules or Procedures that ICE Clear Europe considers to be minor in nature; or any breach of the Rules or Procedures which ICE Clear Europe considers would be appropriately addressed by the Summary Disciplinary Process.

Proposed Rule 1008 would limit sanctions to the following: Issuance of a private warning or reprimand naming the Clearing Member or a Clearing Member Customer, client or Representative; a fine of up to £50,000; or any combination of the foregoing. Proposed Rule 1008 would also specify the process of imposing any sanction, including the notice process by ICE Clear Europe, the opportunity for a Clearing Member to appeal, the grounds for appeal and the actions the appeal panel may take (*i.e.,* to affirm, vary or revoke a sanction). Proposed Rule 1008 also would allow ICE Clear Europe to provide further guidance by way of Circular in relation to the operation of, or procedures for, the Summary Disciplinary Process.

xxi. Other Updates

The proposed rule change would make a number of other drafting enhancements, clarifications, and improvements throughout the Rules, primarily in the definitions.

In Rule 101 (Definitions), the proposed rule change would add a new definition of ''Acceptance Time,'' which is defined to mean: ''(i) in relation to a CDS Contract, the 'Acceptance Time' (as defined in the CDS Procedures); or (ii) in relation to an FX Contract, the 'FX Acceptance Time' (as defined in the FX Procedures).'' The proposed definition would ensure definitional consistency with respect to specifying the applicable time for the acceptance of such Contracts for clearing by ICE Clear Europe, and clarify the meaning of certain undefined references to such term in the Rules, *e.g.,* in Rule 1204 (Variations to or Cancellation of Transfer Orders) and in paragraph 10 (Reliance on CDS Trade Particulars and submissions to Deriv/SERV) of the Standard Terms exhibits annexed to the Rules. In the definition of ''Applicable Law,'' the proposed rule change would add ''direction'' to the list of included types of Applicable Law, and also would add a reference to the ''FSMA,'' which is an existing defined term that means the UK's Financial Services and Markets Act 2000 that ICE Clear Europe unintentionally omitted from the existing ''Applicable Law'' definition. In the ''Clearing Organisation'' definition, the proposed rule change would add a reference to ''securities clearing agency'' to ensure that the defined term includes securities clearing agencies regulated by the Commission. In the definition of ''Defaulter,'' the proposed rule change would clarify that the defined term refers to a person in respect of whom an Event of Default has occurred, rather than a person in respect of whom a Default Notice has been issued. The proposed rule change would add a new definition of ''FINRA,'' to mean the U.S. Financial Industry Regulatory Authority, Inc., or any successor thereto, as the term FINRA is currently used in the existing definition of ''Regulatory Authority'' without clear definition. In the definition of ''Regulatory Authority,'' the proposed rule change would add a reference to the ''National Futures Association.'' The proposed rule change would amend the definition of ''Original Margin'' to clarify that buyer's security, seller's security and delivery Margin would all be included within the scope of the term. The proposed rule change would amend the definition of ''Rule Change'' expressly to include changes to Contract Terms, and would revise the existing cross-reference to Rule 109 (Alteration of Rules, Procedures, Guidance and Circulars) to reflect that it is not the sole provision governing the process for Rule Changes. In the definition of

''Segregated Customer,'' the proposed rule change would make typographical corrections. The proposed rule change also would amend the definitions of ''Transferee'' and ''Transferor'' to clarify that the subject of a transfer or delivery is a Deliverable, as such term is currently defined in the Rules.

The proposed rule change would amend Rule 201(a)(v) (Clearing Membership Criteria) to change an erroneous singular phrase ''Contract is'' to the plural ''Contracts are.'' The proposed rule change would amend Rules 304(a)(ii)(A), 304(a)(ii)(B), and 1901(e) regarding Sponsored Principals to correctly reference the term ''Nominated Bank Account'' in place of the current term ''Nominated Account.''

The proposed rule change would amend Rule 401(g) (Formation of Contracts) to reflect that under existing practice and as stated and assumed elsewhere in the Rules (*e.g.,* Rule 906, Clearing Procedures), Clearing Members can have multiple Proprietary Position Accounts. The proposed rule change would amend Rule 406(a) (Open Contract Positions) to remove an erroneous reference to the legacy term ''Clearing Processing System'' and replace it with the correct defined term ''ICE System.''

The proposed rule change would amend Rule 904(b) (Transfer of Contracts and Margin on a Clearing Member Default) to change an incorrect term ''Market-to-Market Value'' to the correct defined term ''Mark-to-Market Price.'' Similarly, the proposed rule change would amend Rule 905(g) (Termination and close out of Contracts on a Clearing Member Event of Default) to delete a reference to ''Market-to-Market Value'' as well as the unused term Reference Price. In Rule 905(b)(ix), the proposed rule change would make a grammatical change to reflect that there may be multiple Defaulters rather than just one. The proposed rule change would amend Rule 908(i) (Application of Assets upon an Event of Default) to correct existing typographical errors and an incorrect cross-reference. The proposed rule change would amend clause (ii) of Rule 908(i) to reflect that the applicable modifications would be set out in the Default Auction Procedures as opposed to a Circular. In the definition of ''MTM/VM'' in Rule 913(a)(xxxi), the proposed rule change would amend the existing language to reflect that MTM/VM is transferred to, rather than held as a deposit by, the Clearing House. The proposed rule change would delete the definition of ''Product Termination Amount'' in Rule 913(a)(xxxviii) as this term is already defined in existing Rule 916. The proposed rule change would amend Rule 913(a)(lviii) to clarify, for the avoidance of doubt, that amounts payable in respect of transfers are included in the definition of ''Transfer Cost.'' The proposed rule change would amend Rule 915(e) (Partial Tear-Up) to correctly reference all categories of mark-to-market or variation margin for all product categories. The proposed rule change would amend Rule 916(i) to clarify that Guaranty Fund and Assessment contributions due pursuant to Rule 916(i) are subject to the provisions of Rule 917 (Cooling-off period and Clearing Member termination rights), including the limitations thereon during a Cooling-off Period. The proposed rule change would amend Rule 918(d) to refer to any Event of Default rather than multiple Events of Default. The proposed rule change would also incorporate references to Rules 916 (Contract Termination following Certain Conditions or Under-priced Auction) and 918 (Termination of membership) into Rule 1102(g) (Clearing Members' Contributions) to reflect that these Rules could apply in certain cases to determine the return of Guaranty Fund Contributions.

The proposed rule change would delete Rule 1901(d)(vi), because the referenced Council Directive has been repealed. As a result, the proposed rule change would renumber subsequent provisions and update cross-references in other provisions.

The proposed rule change would correct a typographical error in the title of Part 23, Rules for Market Transactions. The proposed rule change would make other typographical and drafting corrections in various provisions of the Rules, including 102(q), 202(a)(xxi), 203(a)(xx) and 504(c)(vi).

The proposed rule change would amend Part 3(b) of the F&O Standard Terms to more clearly state that Customer-CM F&O Transactions would arise in accordance with Part 4 of the Rules. This change would align with the drafting used in the other Standard Terms.

The proposed rule change would amend Rule 1607(d)(iii), CDS Standard Terms 7(iii), F&O Standard Terms 7(iii) and FX Standard Terms 7(iii) to refer to ''Personal Data'' rather than ''Personal Data of its Data Subjects.'' This change would eliminate unnecessary language.

*B. Clearing Procedures*

The proposed rule change would amend paragraph 1.1(a) of the Clearing Procedures to remove existing references to the PTMS/ACT systems, because they are legacy systems that ICE Clear Europe represents that it no longer uses.[29] ICE Clear Europe proposes to replace them with a reference to ICE FEC, which is a new defined term in the Delivery Procedures that means ''the single user interface used by the Clearing House offering functions to view and manage trades, transfers, allocations and claims.'' The proposed rule change would amend paragraphs 1.1(f) and 3.1(c) of the Clearing Procedures to remove the definitions of MFT and ECS, respectively, as these terms would now be defined in the Delivery Procedures.

*C. Finance Procedures*

The proposed rule change would amend the Finance Procedures in Part 4 (Assured Payment System: Accounts), paragraphs 4.1(a)(i) and (iv) and 4.4(a)(i) and (iv), concerning the account requirements for members to reflect that ICE Clear Europe clears both EUR and USD denominated CDS contracts; accordingly, all CDS Clearing Members are required to have both EUR and USD accounts and would no longer be required to have a GBP account.

The proposed rule change would amend paragraph 6.1(i)(ix) of the Finance Procedures to clarify that the additional margin requirement that applies where payment of variation or mark-to-market margin is made in a currency other than the contractual currency would apply on a Currency Holiday. ICE Clear Europe represents that this reflects current practice.[30]

The proposed rule change would also update and correct the committee references in the Finance Procedures. Specifically, ICE Clear Europe proposes to change the references in paragraph 14(2) and 14(3) from the CDS Risk Committee and FX Risk Committee to ''CDS Product Risk Committee'' and ''FX Product Risk Committee,'' respectively. The proposed rule change would also make similar changes throughout the CDS Procedures where ''CDS Risk Committee'' is currently used.

The proposed rule change would make amendments to paragraphs 3.10, 3.11, 3.21 and 4.5 in the Finance Procedures to remove clarify that the terms MFT and ECS would now be defined in the Delivery Procedures.

The proposed rule change would amend paragraph 15.4(b) of the Finance Procedures by deleting an outdated reference to the Continuing CDS Rule Provisions, which are no longer in effect.

[29] Notice, 86 FR 29617.

[30] Notice, 86 FR 29617.

*D. Delivery Procedures*

i. Anti-Money Laundering

The proposed rule change would add new paragraph 1.1(d) to the Delivery Procedures to obligate Clearing Members to conduct appropriate anti-money laundering due diligence for any transferors and transferees and provide relevant documentation to ICE Clear Europe and/or the Clearing Member. The proposed amendments to paragraphs 5.4 and 5.5 of the Delivery Procedures would add language to clarify that transferors and transferees that are customers would be bound by the F&O Standard Terms, including with respect to delivery of information, and also to clarify that transferors and transferees are not customers of ICE Clear Europe for purposes of relevant anti-money laundering laws and other Applicable Law.

ii. Updates to ICE Clear Europe Systems

The proposed rule change would add new definitions in the Delivery Procedures to ''ECS,'' ''MFT,'' ''ICE FEC,'' and ''MPFE'' to ensure there are consistent references to ICE Clear Europe systems in the various Amended Documents. The proposed rule change would define the term ''ECS'' to mean ''the extensible clearing system that provides functionality for position maintenance (including close-outs), options exercise and delivery, in addition to cash and collateral management for the Clearing House (or any successor system).'' The proposed rule change would define the term ''MFT'' to mean ''the managed file transfer system through which the Clearing House provides access to all clearing reports and data files.'' The proposed rule change would define the term ''ICE FEC'' to mean ''the single user interface used by the Clearing House, offering functions to view and manage trades, transfers, allocations and claims.'' The proposed rule change also would define the term ''MPFE'' to mean ''the futures expiry report generated by the Clearing House.''

Similarly, the proposed rule change would remove existing references to the legacy ICE System Crystal throughout the Delivery Procedures and replace them with new references to ECS, MFT, and ICE FEC, which are the systems that ICE Clear Europe now uses. Similarly, the proposed rule change would delete Delivery Documentation Summaries and form references throughout the Delivery Procedures where ECS has replaced the manual submission of forms to ICE Clear Europe. Specifically, these changes would be made in Part B (ICE Gasoil Futures), Part D (ICE Futures UK Natural Gas Contracts), Part F (ICE Endex TTF Natural Gas Contracts), Part G (ICE Endex Gaspool Natural Gas Contracts), Part H (ICE Endex NCG Natural Gas), Part I (ICE Endex ZTP Natural Gas Contracts), Part N (ICE Deliverable US Emissions Contracts), Part Q (Financials & Softs White Sugar Contracts), Part U (Financials & Softs Gilt Contract) and Part Z (Equity Futures/Options).

iii. Other Updates

ICE Clear Europe proposes changes to the Delivery Procedures to update various operational practices and to make other updates and drafting improvements.

The proposed rule change would add a new paragraph 7 to the Delivery Procedures to reference the alternative delivery procedure for Emission Contracts as set out in paragraph 7 of Part A of the Delivery Procedures (ICE Endex Deliverable EU Emissions Contracts). Subsequent paragraphs would be renumbered and conforming amendments to cross-references would be made.

The proposed rule change would amend Part A (ICE Endex Deliverable EU Emissions Contracts) of the Delivery Procedures to change existing references to ''Account,'' which is no longer a defined term in the Delivery Procedures, to the defined term ''Registry Account.'' The proposed rule change would amend the defined term ''Contract Date.'' Under the current definition, ''Contract Date'' means, for an ICE Endex EUA, an individual Business Day on which (a) trading commences, (b) trading ceases, and (c) the Delivery Period commences for those trades executed on that Business Day. The proposed rule change would delete clause (c) of the current definition because ICE Clear Europe found it was redundant in light of clauses (a) and (b). ICE Clear Europe represents that the term ''Contract Date'' is only used in connection with daily contracts, and in that context, only one daily contract is available at a time, and so the date on which trading commences and trading ceases sufficiently defines the Contract Date. The proposed rule change also would delete Section 9.3 (ICE EUA and EUAA Auction Contracts), because Part A no longer references auction contracts.

The proposed rule change would also amend paragraph 7 (Emissions Alternative Delivery Procedure (''EADP'')) in Part A following the entry into an EADP Agreement (*i.e.,* an agreement to adopt an EADP) by a Clearing Member and ICE Clear Europe. In such event, paragraph 7.3 currently provides that the existing Contract would be liquidated on the basis of the Exchange Delivery Settlement Price. Under paragraph 7.3 as revised, the existing Contract would no longer be liquidated, but instead would be dealt with in the manner specified in the EADP. If the existing Contract were to be liquidated under the EADP, this would be done on the basis of the Exchange Delivery Settlement Price. Delivery under the EADP Agreement would be subject to the requirements set out in the entirety of paragraph 7 instead of just paragraph 7.3. The proposed rule change also would amend paragraph 7.5 with respect to the timing and process for addressing a Failed Delivery. Current paragraph 7.5 provides that in the event that the Clearing Member and ICE Clear Europe are unable to enter into an EADP Agreement or effect delivery under EADP by the close of business on the Business Day following the day of the Failed Delivery, ICE Clear Europe will refer the matter to ICE Endex and Invoice Back affected Contracts and may itself, begin disciplinary proceedings, levy a fine, call additional Margin or declare an Event of Default. The proposed amendments to paragraph 7.5 would provide that the Clearing Member and ICE Clear Europe would have a reasonable period of time after the Failed Delivery to enter into an EADP Agreement or effect delivery under the EADP, rather than by the close of business on the Business Day following the day of the Failed Delivery, before ICE Clear Europe may refer the matter to the relevant exchange. The proposed amendments to paragraph 7.5 also would provide that ICE Clear Europe will consider in its discretion what other reasonable next steps it should take, if any. As an example, ICE Clear Europe may decide to take one of the currently listed actions, but would not be limited by such list and would not be required to Invoice Back affected Contracts.

The proposed rule change would delete Part M (ICE Endex German Power Futures), because these contracts have been delisted from the relevant exchange. The proposed rule change also would delete outdated references to ICE OTC Contracts in Part N (ICE Deliverable US Emissions Contracts (Bilateral Delivery)), as revised.

In Part U (Financials & Softs Gilt Contracts), the proposed rule change would add a new paragraph 2 (Failed Settlement and Non-Delivery of Stock) to establish a procedure to address the Seller's non-delivery of securities under a Financials & Softs Gilt Contract, including the actions ICE Clear Europe may take to promote settlement in

accordance with the contract terms and the requirements of the CREST central securities depository, as well as the express allocation of the costs of such steps to the Clearing Member who failed to make delivery. New paragraph 2.1 in amended Part U would address ICE Clear Europe's procedure to address the Seller's partial delivery of available Gilts and the resulting partial settlement between the Buying Clearing Member and the Selling Clearing Member. ICE Clear Europe represents that these proposed provisions are intended to reflect existing practices and to provide consistency with the corresponding provisions of the Delivery Procedures for other contracts, including Part Z (Equity Futures/Options).

In Part Z, the proposed rule change would make various updates to reference the correct settlement facilities and relevant settlement details and settlement procedures for Equity Futures/Options Contracts. Specifically, the proposed rule change would amend paragraph 1.4 (Deliverable Equities) to clarify the treatment of corporate events relating to underlying securities by reference to the relevant Exchange corporate action policy and the relevant contract terms. The proposed rule change also would amend the provisions in paragraph 2.3 (Partialling) and paragraph 3 (Failed Settlements and Non-Delivery of Stock) to clarify the processes for dealing with partial deliveries and failed deliveries, including the steps that ICE Clear Europe may take to facilitate delivery, the rights and responsibilities of the buying clearing member with respect to onward deliveries under other contracts, and the allocation of costs to clearing members. The proposed rule change would amend paragraph 2.4 (Daylight Indicator) to clarify that ICE Clear Europe may in its discretion decide to accept, or not to accept, any request for daylight settlement. In paragraph 3.1 (Buying In Summary Timetable), the proposed rule change would make various drafting clarifications and improvements.

In Part FF (ICE Futures New York Harbour Ultra Low Sulphur Diesel Futures, ICE Futures Europe New York Harbour Ultra Low Sulphur Heating Oil Futures), the proposed rule change would amend the first table with respect to the receipt of documents by ICE Clear Europe by removing the statement that in the event of non-availability of any of the listed delivery documents, Seller may substitute a letter of indemnity in favor of the Buyer.

Finally, the proposed rule change would make various drafting clarifications, typographical corrections, and updates to defined terms and cross-references throughout the Delivery Procedures.

*E. CDS Procedures*

i. List of Eligible Single Name Reference Entities

The proposed rule change would amend paragraph 11.4 of the CDS Procedures (Modifications to List of Eligible Single Name Reference Entities). Paragraph 11.4 gives ICE Clear Europe the ability to make certain modifications to its list of Eligible Single Name Reference Entities, subject to consultation with the CDS Product Risk Committee. Currently, upon making any such modifications, ICE Clear Europe must give notice by Circular. The proposed rule change would amend this provision such that upon making any changes, ICE Clear Europe would be required to update certain relevant information relating to CDS Contracts on its website, rather than giving notice by Circular of such actions. ICE Clear Europe represents that it discusses changes to the list of eligible reference entities prior to implementation with the Trading Advisory Group, which has weekly meetings to which trader representatives of CDS Clearing Members are invited. Members of the Trading Advisory Group are also notified by email of changes to reference obligations. In addition, ICE Clear Europe represents that its Operations Working Group discusses changes to clearing reference obligations prior to implementation, and the Operations Working Group has weekly meetings to which operational personnel of CDS Clearing Members are invited. Once agreed, ICE Clear Europe would reflect the changes on the cleared product website on the date they are made eligible or modified, in accordance with amended paragraph 11.4. Given these procedures, ICE Clear Europe believes that CDS Clearing Members will have sufficient information about changes in reference obligations and that the current requirement of a circular is unnecessary.

ii. Allow Clearing Members To Nominate Affiliates

ICE Clear Europe proposes to amend paragraph 4.4(f) of the CDS Procedures by adding a new sentence to specify that a CDS Clearing Member could designate an Affiliate that is also a CDS Clearing Member to accept CDS Contracts in lieu of the designating Clearing Member for CDS Contracts arising as a result of the existing CDS end-of-day pricing process pursuant to Rule 401(a)(xi). Similarly, the proposed rule change would amend paragraph 11.5 of the CDS Procedures (Self-referencing CDS) to allow a CDS Clearing Member to designate an Affiliate to accept transactions arising out of the existing auction process to be used in the case of self-referencing CDS transactions. ICE Clear Europe represents that this change reflects existing practice for CDS Clearing Members, as documented in certain arrangements between ICE Clear Europe and certain CDS Clearing Members allowing this to take place, but was unintentionally omitted from the CDS Procedures.[31]

iii. CDS Clearing Member Sign-Off of Weekly Cycles

The proposed rule change would amend Section 3 of the CDS Procedures regarding margin. Specifically, ICE Clear Europe proposes to add a new paragraph 3.5 to the CDS Procedures to require CDS Clearing Members to provide sign-off via email on weekly cycles by a specified time and day. This change would document existing operational processes.[32]

*F. Membership Procedures*

i. Deadlines for Financial Statements

The proposed rule change would amend the summary table at paragraph 4.2 of the Membership Procedures to extend the deadline for submitting financial statements from 30 to 45 days after the relevant period so that the deadline aligns with other regulatory reporting deadlines, such as the UK's Financial Conduct Authority (FCA) deadlines.

ii. Adjustments to Clearing Member Capital Requirements

The proposed rule change would make a number of changes to the Membership Procedures to implement the Basel III standard for Clearing Member capital. First, the proposed rule change would amend paragraph 3.3. Paragraph 3.3 provides a definition of the term ''Capital'' with respect to a Non-FCM/BD Clearing Member. This definition currently provides that capital, as a general matter, includes fully-paid ordinary and preference share capital, retained reserves and, for some purposes and subject to limits, subordinated debt that is perpetual or repayable on 5 years or more notice. The proposed rule change would amend this definition to instead provide that capital, as a general matter, includes fully-paid ordinary and preference share capital, retained reserves and, for some purposes and subject to limits,

[31] Notice, 86 FR 29616.

[32] Notice, 86 FR 29616.

subordinated debt that is perpetual or repayable with more than one year outstanding.

The proposed rule change would amend paragraph 3.5(a) of the Membership Procedures to lower, from the current 50% to the proposed 25%, the portion of a Clearing Member's Capital requirement that may be covered by subordinated loans before ICE Clear Europe would require a written undertaking from the Clearing Member to not repay subordinated loans without its consent. ICE Clear Europe represents that this proposed change would align the Clearing Member capital requirement more closely with Basel III requirements, under which subordinated debt may be used, to an upper limit of 25%.[33]

The proposed rule change also would amend paragraph 3.5 of the Membership Procedures to remove irrevocable letters of credit as a potential method that Clearing Members or Sponsored Principals may use to satisfy capital requirements, and to add a new paragraph 3.5(c) to give ICE Clear Europe authority to, at its discretion, require a Clearing Member to post additional cash or collateral in addition to the normal margin requirements. ICE Clear Europe represents that these proposed changes in capital requirements would promote greater consistency with its existing operational implementation of capital requirements for Clearing Members.[34]

*G. Complaint Resolution Procedures*

ICE Clear Europe proposes to make various clarifications and changes throughout the Complaint Resolution Procedures, including to address typographical errors and promote consistency with its Rules.

Specifically, the proposed rule change would amend paragraph 1.1 to reframe the Complaint Resolution Procedures based on ICE Clear Europe's obligations as a CCP under EMIR.[35] Throughout the procedures, the proposed rule change would replace references to the term ''Complaints Resolution Procedure'' with the plural term ''Complaint Resolution Procedures'' to correct a typographical error and for consistency with the term used in Rule 101.

The proposed rule change would amend paragraph 1.1 to use the defined term ''Person'' (which is defined in Rule 101) rather than ''person,'' with conforming changes throughout the Complaint Resolution Procedures. The proposed rule change also would amend paragraphs 1.1 and 1.2 to provide for an independent ''Commissioner,'' who is responsible for the investigation of complaints generally, and for the appointment of an ''Investigator'' to investigate a particular complaint. In paragraph 1.3, ICE Clear Europe proposes minor drafting updates to improve clarity.

The amended Complaint Resolution Procedures would refer where appropriate to ''Eligible Complaint'' instead of the undefined term ''complaint'' to clarify that only Eligible Complaints (and not other complaints) would be within the scope of the procedures. As a result, the proposed rule change would replace the defined term ''Complaint'' by the undefined term ''complaint'' to allow a distinction between complaints generally speaking and those that qualify as ''Eligible Complaints.''

In paragraph 2.1, the proposed rule change would amend the definition of ''Eligible Complaints'' by broadening it to include complaints against any Directors, officers, employees or committees (or committee members) of ICE Clear Europe, which ICE Clear Europe believes is the proper scope for the Complaint Resolution Procedures. The amendments would also clarify that Eligible Complaints may relate to the manner in which ICE Clear Europe has failed to perform applicable regulatory functions. In paragraph 2.2, ICE Clear Europe proposes minor drafting amendments to correct typographical errors and use of defined terms.

The proposed rule change would make drafting improvements in paragraph 3.6 to include ''investigation of the'' before ''Eligible Complaint,'' and in paragraph 4.1 to clarify that acknowledgment of the complaint by ICE Clear Europe must be made promptly, and in any case within 5 Business Days of receipt.

ICE Clear Europe proposes to add new paragraph 4.2, which would allow ICE Clear Europe to refer complaints to another recognized body or authorized person if such entity is entirely or partly responsible for handling the subject matter of the complaint, such as an exchange for which ICE Clear Europe clears. To establish the process for ICE Clear Europe to refer such a complaint, the proposed rule change would also add new paragraph 4.3. Such amendments are intended to clarify existing procedures, and avoid a situation where ICE Clear Europe would be forced to address a duplicative complaint or a complaint better handled by another entity. In paragraph 4.4, the proposed rule change would correct minor typographical errors.

The proposed amendments to paragraph 4.5 would clarify that the Investigator must be an individual who has no personal interest or involvement in the matter of the Eligible Complaint, and would also make typographical corrections and similar drafting improvements.

In paragraph 4.7, the proposed rule change would clarify that the Investigator would not be required to disclose any information about the Complainant's identity when drafting its report of the Eligible Complaint, and also would correct minor typographical errors and update cross-references.

In paragraph 4.8 as revised, the proposed rule change would include delivery disputes and appeals in the list of potential ongoing matters that could warrant delay in the consideration of an Eligible Complaint. Amended paragraph 4.12 would include a similar change and correct certain typographical errors.

In paragraph 4.11 as revised, the proposed rule change would clarify that where ICE Clear Europe objects to the referral of a complaint to the Commissioner under specified circumstances (such that ICE Clear Europe can conclude its own investigation), it must submit to the Commissioner the reasons for that determination. The proposed rule change would also update several cross-references in paragraph 4.11.

In paragraph 4.12 as revised, the proposed rule change would expand the list of ongoing matters that would justify delay in the Commissioner's consideration of an Eligible Complaint to be consistent with the list in paragraph 4.8, and also reference other processes under Part 10 of the Rules. The proposed rule change would also amend paragraph 4.14 to make non-substantive drafting improvements.

In paragraph 5 as revised, the proposed rule change would clarify that the Investigator recommends, rather than takes, remedial action. The proposed rule change would amend paragraph 6.3 to add ''appeal process'' to the list of dispute resolution procedures that a Complainant cannot use if it requires the referral of any Eligible Complaint to the Commissioner pursuant to the Complaint Resolution Procedures. The proposed rule change would also delete the reference to ''mediation'' in paragraph 5 as it is no longer necessary in light of the other listed types of dispute resolution.

[33] Notice, 86 FR 29616–29617.

[34] Notice, 86 FR 29616–29617.

[35] As a result of ICE Clear Europe Circular C20/163, this reference to EMIR is to be interpreted as including a reference to EMIR as applicable in the United Kingdom under the European Union (Withdrawal) Act 2018. *See* Exchange Act Release No. 34–90746 (File No. SR–ICEEU–2020–016) (Dec. 21, 2020), 85 FR 85704 (Dec. 29, 2020).

The proposed rule change would amend paragraph 7.2 to clarify that the Commissioner does not have to continue investigating a complaint if the complaint is not an Eligible Complaint. In addition, the proposed rule change would amend paragraph 7.3 to clarify that the Commissioner would only be required to produce a final response where the complaint is an Eligible Complaint.

The proposed rule change would amend paragraph 7.6 to ensure that the Commissioner has access to all relevant personnel (including directors, officers and other persons to whom functions have been outsourced) that may be needed for the purposes of the Eligible Complaint. In addition, the proposed rule change would amend paragraph 7.8 to obligate ICE Clear Europe to inform the Complainant of an alternative Commissioner, when one is appointed, within five Business Days of the date of appointment.

The proposed rule change would also amend paragraph 8.1 to state explicitly that ICE Clear Europe is required to consider the Commissioner's report and recommendations, in addition to informing the Commissioner of any proposed steps it would take in response to the report and recommendations. In addition, the proposed rule change would also make other non-substantive drafting clarifications in paragraph 8.1, and correct typographical errors in paragraphs 8.2 and 8.3. Lastly, the proposed rule change would amend paragraph 11 to include the Investigator as a person subject to the confidentiality obligations with respect to the complaint, and make certain drafting clarifications.

*H. General Contract Terms*

Similar to certain of the changes to Rules described above, the proposed rule change would amend the introduction to the General Contract Terms by removing references to named ICE markets and, in their place, would use the more generic term ''relevant Market.'' The proposed rule change would also add the standard term ''Amendments'' to the General Contract Terms to clarify that the terms of any Contract may be amended in the same way as ICE Clear Europe may amend the Rules in accordance with Rule 109 (Alteration of Rules, Procedures, Guidance and Circulars).

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the 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 Act and the rules and regulations thereunder applicable to such organization.[36] For the reasons given below, the Commission finds that the proposed rule change is consistent with Sections 17A(b)(3)(F), 17A(b)(3)(G), and 17A(b)(3)(H) of the Act,[37] and Rules 17Ad–22(e)(1), 17Ad–22(e)(2)(i), 17Ad–22(e)(6)(ii), 17Ad–22(e)(10), 17Ad–22(e)(13), 17Ad–22(e)(14), 17Ad–22(e)(17)(i), and 17Ad–22(e)(18).[38]

*A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.[39]

As discussed above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents, to ensure that the Amended Documents are clear, consistent, and provide an enforceable legal basis for ICE Clear Europe's activities. In the Commission's view, a lack of clarity and consistency in ICE Clear Europe's Rules and Procedures could hinder ICE Clear Europe's ability to promptly and accurately clear and settle transactions and safeguard securities and funds, by possibly leading to disputes over the terms of transactions. Likewise the Commission believes a lack of enforceable legal basis could undermine the legitimacy and finality of ICE Clear Europe's actions in clearing and settling transactions. Thus, the Commission believes the proposed rule change, in general, should help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible.

In particular, the Commission believes all of the proposed changes to the Rules, as discussed in Part II.A above, would help ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible. For example, the Commission believes the changes to Rule 904 (Transfer of Contracts and Margin on a Clearing Member Event of Default), Rule 907 (Administrative matters concerning an Event of Default), and to relevant definitions in Rule 101 would enhance ICE Clear Europe's default planning and post-default porting processes by providing an EMIR-compliant post-default porting preference structure using Porting Notices that require written consent by the designated Transferee Clearing Member. The Commission further believes that this aspect of the proposed rule change would help facilitate the porting of Customer positions and collateral and the settlement of the transactions resulting from such transfers, which in turn would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions in the event of a Clearing Member's default and safeguard securities and funds which are in its custody or control or for which it is responsible. Similarly, the Commission believes the changes to Rule 901(a)(iv) to clarify that the declaration of an Event of Default in respect of one Clearing Member is a circumstance in which ICE Clear Europe can declare an Event of Default in respect of another Clearing Member that is a parent or a subsidiary of such Clearing Member would better enable ICE Clear Credit to invoke such default declaration powers and thereby prevent or reduce losses that could result from affiliate cross-defaults. The Commission further believes that losses from a default could interfere with ICE Clear Europe's ability to clear and settle transactions and safeguard securities and funds. Therefore, the Commission believes that these aspects of the proposed rule change, in facilitating ICE Clear Europe's ability to respond to defaults and thereby prevent or reduce losses, would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible. Moreover, the Commission believes the changes to add new Rule 301(o), which would allow ICE Clear Europe to request information when needed on account balances of nominated accounts of the Clearing Member at financial institutions, including for the purpose of calling on available cash where the Clearing

[36] 15 U.S.C. 78s(b)(2)(C).

[37] 15 U.S.C. 78q–1(b)(3)(F), 15 U.S.C. 78q–1(b)(3)(G), and 15 U.S.C. 78q–1(b)(3)(H).

[38] 17 CFR 240.17Ad–22(e)(1), 17Ad–22(e)(2)(i), 17Ad–22(e)(6)(ii), 17Ad–22(e)(10), 17Ad–22(e)(13), 17Ad–22(e)(14), 17Ad–22(e)(17)(i), and 17Ad–22(e)(18).

[39] 15 U.S.C. 78q–1(b)(3)(F).

Member has failed to meet a payment obligation or determining whether the Clearing Member is, or is likely to be, in default, would help to ensure that ICE Clear Europe's Clearing Members are able to perform their obligations that enable ICE Clear Europe to clear and settle transactions, such as transferring margin and contributing to the Guaranty Fund. Finally, the Commission believes the changes to add a new summary disciplinary process in proposed Rule 1008 to improve and streamline ICE Clear Europe's process for disciplining Clearing Members for specified violations of the Rules and Procedures, such as the late making of a payment or the late making or taking of a delivery, would help to ensure that Clearing Members meet their membership obligations to ICE Clear Europe and thereby help to ensure that ICE Clear Europe is able to clear and settle transactions.

For these reasons, the Commission believes all of the changes to the Rules discussed in Part II.A above would help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

Moreover, the Commission believes the changes to the Clearing Procedures discussed in Part II.B above would increase the clarity of the Clearing Procedures by removing references to systems no longer used by ICE Clear Europe. Similarly, the Commission believes that removing the definitions of MFT and ECS, and instead referring to those terms as defined in the Delivery Procedures, would help to ensure that the Clearing Procedures use the correct definitions of those terms, as defined in the Delivery Procedures. The Commission believes that these changes would help to ensure the Clearing Procedures are up-to-date and use correct terms and references, thus decreasing the possibility for error in using and applying the Clearing Procedures, and therefore facilitating the prompt and accurate clearance and settlement of transactions using the Clearing Procedures.

The Commission similarly believes the changes to the Finance Procedures discussed in Part II.C above would help to ensure the Finance Procedures are up-to-date and use correct terms and references. As with the Clearing Procedures, the proposed rule change would remove the definitions of MFT and ECS, and instead refer to those terms as defined in the Delivery Procedures, thus helping to ensure that the Finance Procedures use the correct definitions. Moreover, the Commission believes that removing a reference to the Continuing CDS Rule Provisions, which are no longer in effect, and updating and correcting references to certain ICE Clear Europe committees throughout the Finance Procedures would help to ensure that the Finance Procedures reflect the current documentation and committees in effect at ICE Clear Europe. Finally, the Commission believes that amending the account requirements for members to reflect that ICE Clear Europe clears both EUR and USD denominated CDS contracts, clarifying the effect of negative rates on payments of interest and price alignment amounts, and clarifying that the additional margin requirement would apply on a Currency Holiday would help to ensure that the Finance Procedures are consistent with ICE Clear Europe's operational practices. The Commission believes that these changes would help to ensure the Finance Procedures are up-to-date, clear, and use correct terms and references, thus decreasing the possibility for error in using and applying the Finance Procedures, and therefore facilitating the prompt and accurate clearance and settlement of transactions using the Finance Procedures.

The Commission further believes the changes to the Delivery Procedures discussed in Part II.D above would clarify and update the Delivery Procedures. Specifically, the Commission believes that clarifying the application of current applicable law regarding anti-money laundering and the obligation of Clearing Members to conduct anti-money laundering due diligence would help to ensure the application of relevant and current anti-money laundering obligations to ICE Clear Europe and Clearing Members. Similarly, the Commission believes that adding definitions for current ICE Clear Europe technology systems used in the Delivery Procedures (ECS, MFT, ICE FEC, and MPFE), updating references to those technology systems, and removing references to systems no longer in use, like Crystal, would help reduce the possibility for error in using and applying the Delivery Procedures by ensuring they reference the correct and current ICE Clear Europe internal systems. The Commission further believes that amending Part A of the Delivery Procedures to add a reference to the alternative delivery procedure for Emission Contracts, update references to certain defined terms, and revise the process for the Emissions Alternative Delivery Procedure and a Failed Delivery, would help to ensure the correct application and operation of the delivery provisions with respect to EU Emissions Contracts. Moreover, the Commission believes that deleting Part M and related references to those contracts delisted from the relevant exchange, establishing a procedure to address the Seller's non-delivery of securities under a Financials & Softs Gilt Contract in Part U, correcting references to the settlement facilities and relevant settlement details and settlement procedures for Equity Futures/Options Contracts in Part Z, and updating the table in Part FF regarding the receipt of documents by ICE Clear Europe, would help to ensure the Delivery Procedures reflect the contracts currently cleared by the relevant exchanges and would help to establish effective operational processes for the contracts found in Parts U, Z, and FF. Finally, the Commission believes that making drafting clarifications and typographical corrections throughout the Delivery Procedures would help to reduce the possibility for error in applying the Delivery Procedures. Thus, the Commission believes all of the changes to the Delivery Procedures discussed in Part II.D would clarify and update the Delivery Procedures, thereby facilitating the prompt and accurate clearance and settlement of transactions using the Delivery Procedures.

Similarly, the Commission believes that the proposed changes to the CDS Procedures discussed in Part II.E above would, in general, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody or control. Specifically, the Commission believes that the changes to the CDS Procedures would enhance the flexibility of ICE Clear Europe's operations, benefitting both ICE Clear Europe and Clearing Members. For example, the Commission believes that adding a new paragraph 3.5 to require CDS Clearing Members to provide sign-off via email on weekly cycles by the time specified by ICE Clear Europe would provide a flexible and efficient means for sign-off, via email. Similarly, the Commission believes that allowing a Clearing Member to designate an Affiliate that is also a CDS Clearing Member to accept CDS Contracts in lieu of it for CDS Contracts arising as a result of the existing CDS end-of-day pricing process and to accept transactions arising out of the existing auction process to be used in the case of self-referencing CDS transactions would give Clearing Members flexibility in determining who is best positioned to

accept transactions in those situations. Moreover, the Commission believes that allowing ICE Clear Europe to provide notice of certain modifications to its list of Eligible Single Name Reference Entities via its website rather than by Circular would provide ICE Clear Europe operational efficiency and flexibility in making these changes. Finally, the Commission believes that correcting references throughout the CDS Procedures to the CDS Product Risk Committee and FX Product Risk Committee would help to decrease the possibility for error in applying the CDS Procedures by ensuring usage of the current and correct committee names. The Commission therefore believes that these changes would generally improve the flexibility and efficiency of ICE Clear Europe's operations and the application of the CDS Procedures, thus promoting ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's possession or control.

The Commission further believes that the changes to the Membership Procedures discussed in Part II.F above would, in general, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody or control. Specifically, the Commission believes that updating the definition of Capital; lowering to 25% the portion of a Clearing Member's Capital requirement that may be covered by subordinated loans; removing irrevocable letters of credit as a potential method that Clearing Members or Sponsored Principals may use to satisfy capital requirements; and giving ICE Clear Europe authority to, at its discretion, require a Clearing Member to post additional cash or collateral in addition to the normal margin requirements would help to align ICE Clear Europe's standards for Clearing Member capital with the Basel III standard. The Commission believes this in turn would help to assure consistent and reasonable capital standards for Clearing Members, thereby contributing to the overall financial resiliency of ICE Clear Europe and its ability to promptly and accurately clear and settle transactions and assure the safeguarding of securities and funds in its custody or control.

Moreover, the Commission believes that amending the summary table at paragraph 4.2 to change the deadline for submitting financial statements from 30 to 45 days and to allow ICE Clear Europe to accept different kinds of financial statements from Clearing Members as part of their financial reporting obligations, in circumstances where they do not produce quarterly financial statements, consistent with the proposed change to Rule 205(a)(ii), would provide additional operational flexibility to ICE Clear Europe and Clearing Members. The Commission also believes that amending the summary table at paragraph 4.2 to be consistent with Rule 209 and updating the email address to which Clearing Members should send certain notifications would help to decrease the possibility for error in submitting such notifications. The Commission therefore believes that these changes would generally improve the flexibility of ICE Clear Europe's operations and the application of the Membership Procedures, thus promoting ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions and assure the safeguarding of securities and funds in its custody or control.

As noted above in Part II.G, the proposed rule change would make various changes to the Complaint Resolution Procedures to correct typographical errors and promote consistent use of terminology such as replacing the term ''Complaints Resolution Procedure'' with ''Complaint Resolution Procedures,'' and using defined terms such as ''Person,'' ''Commissioner,'' and ''Eligible Complaint.'' The Commission believes these changes would help to strengthen ICE Clear Europe's Complaint Resolution Procedures by making them easier to reference, which in turn supports ICE Clear Europe's ability to carry out the prompt clearance and settlement of transactions while addressing this aspect of its operations. The Commission similarly believes that the other proposed changes to the Complaint Resolution Procedures described in Part II.G above, such as the referral of complaints to another recognized body and details regarding the handling of Eligible Complaints, support the efficient handling of complaints and thus would help to support its clearance and settlement functions.

Finally, as described in Part II.H above, the proposed rule change would amend the introduction to the General Contract Terms to remove references to named ICE markets and instead use the more generic term ''relevant Market.'' The proposed rule change would also add the standard term ''Amendments'' to the General Contract Terms to clarify that the terms of any Contract may be amended in the same way as ICE Clear Europe may amend the Rules in accordance with Rule 109 (Alteration of Rules, Procedures, Guidance and Circulars). The Commission believes that these changes to the General Contract Terms will generally help clarify and simplify the Rules and Procedures, and make it easier for ICE Clear Europe to keep such documents up to date notwithstanding potential future changes in the Markets cleared and similar events, as well as to enhance the usefulness of the Procedures with appropriate cross-references. Further, the Commission believes that these proposed changes will in turn help make ICE Clear Europe's documents more effective and consistent with current operational practices and processes, thereby supporting ICE Clear Europe's ability to promptly and accurately clear and settle securities transactions.

Therefore, for these reasons, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.[40]

*B. Consistency With Section 17A(b)(3)(G) of the Act*

Section 17A(b)(3)(G) of the Act requires, among other things, that ICE Clear Europe's rules provide that Clearing Members shall be appropriately disciplined for violation of any provision of ICE Clear Europe's rules by fine or other fitting sanction.[41]

As discussed above, the proposed rule change would add a new summary disciplinary process in proposed Rule 1008 to improve and streamline ICE Clear Europe's process for disciplining Clearing Members for specified violations of the Rules and Procedures, including those that ICE Clear Europe considers to be minor in nature. ICE Clear Europe would be limited to the following sanctions it could impose against Clearing Members for such violations under proposed Rule 1008: The issuance of a private warning or reprimand naming the Clearing Member or a Clearing Member Customer, client or Representative; a fine of up to £50,000; or any combination of the foregoing. The Commission believes that such limited sanctions under the proposed summary disciplinary process would be appropriate forms of discipline against Clearing Members who commit the applicable types of violations under new Rule 1008.

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 15 U.S.C. 78q–1(b)(3)(G).

For these reasons, the Commission finds the proposed rule change is consistent with Section 17A(b)(3)(G) of the Act.[42]

*C. Consistency With Section 17A(b)(3)(H) of the Act*

Section 17A(b)(3)(H) of the Act[43] requires, among other things, that ICE Clear Europe's rules, in general, provide a fair procedure with respect to the disciplining of participants. As discussed above, the proposed rule change would add a new summary disciplinary process under proposed Rule 1008 for sanctioning Clearing Members that breach certain Rules or Procedures, including by specifying the process by which ICE Clear Europe may impose any of the specified sanctions, the opportunity for a Clearing Member to appeal, the grounds for appeal, and the actions the appeal panel may take (*i.e.,* to affirm, vary, or revoke a sanction). The Commission believes these aspects of the proposed rule change would provide a fair procedure for disciplining Clearing Members.

For these reasons, the Commission finds the proposed rule change is consistent with Section 17A(b)(3)(H) of the Act.[44]

*D. Consistency With Rule 17Ad–22(e)(1)*

Rule 17Ad–22(e)(1) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[45] As discussed above, the proposed amendments to the General Contract Terms would clarify, simplify, and harmonize various aspects of the Rules and Procedures, to be consistent with current operations, remove outdated references, address changes in Markets served, and similar matters. The Commission believes that these proposed changes will enhance the clarity of the legal framework provided by the Rules and Procedures under which ICE Clear Europe operates, and are therefore consistent with Rule 17Ad–22(e)(1).[46]

As noted above, the proposed rule change would reframe the Complaint Resolution Procedures as based on ICE Clear Europe's obligations as a CCP under EMIR; clarify that only certain kinds of complaints, ''Eligible Complaints,'' would be part of the complaint resolution process; broaden the definition of ''Eligible Complaints'' to include complaints against any directors, officers, employees or committees; clarify procedural delays and timing in the process; and add the ability to refer complaints to other responsible entities. The Commission believes that these proposed changes express a well-founded, clear, transparent, and enforceable legal basis for how ICE Clear Europe manages complaints and is therefore consistent with Rule 17Ad–22(e)(1).[47]

As discussed above, the proposed rule change would update various definitions and other provisions in the Rules and Procedures to reflect current laws and regulations in the EU and UK governing anti-money laundering requirements and the requisite levels of due diligence. Proposed new Rule 201(xxxiii) would require Clearing Members to have adequate policies, procedures, systems, and controls relating to Applicable Laws, including anti-money laundering laws. The proposed rule change would amend Rule 1607 (Additional FCM/BD Requirements for Customer Transactions) to require FCM/BD Customers to obtain the authority from beneficial owners to disclose information necessary for anti-money laundering due diligence to the Clearing Member and ICE Clear Europe, and add similar new requirements to the Standard Terms exhibits to the Rules. Similarly, the proposed amendments to the Delivery Procedures would obligate Clearing Members to conduct appropriate anti-money laundering due diligence for any transferors and transferees and provide relevant documentation to ICE Clear Europe and/or the Clearing Member. The Commission believes that these proposed changes would help to establish and maintain a well-founded legal basis for the Rules and Procedures governing ICE Clear Europe's operations under applicable anti-money laundering laws, and are therefore consistent with Rule 17Ad–22(e)(1).[48]

As discussed above, the proposed rule change would amend Rule 201 to clarify the legal basis in the Rules for ICE Clear Europe to require Clearing Members to execute additional documentation in the form of annexes or agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. As ICE Clear Europe would impose such documentation requirements where necessary to comply with, or address post-Brexit local law group structuring issues in certain EU member states, the Commission believes these proposed amendments provide a well-founded legal basis for ICE Clear Europe to impose such additional documentation requirements, and are therefore consistent with Rule 17Ad–22(e)(1).[49]

As discussed above, the proposed rule change would amend Rule 201 (Clearing Membership Criteria), Rule 1901 (Attaining status as a Sponsored Principal), and Section 10 of the F&O Standard Terms to remove the requirement for Clearing Members, Customers, and Sponsored Principals to be an ''eligible contract participant'' if they are engaging solely in F&O Contracts. As eligible contract participant status is required under applicable U.S. law to trade swaps and security-based swaps, such as CDS, but is not required to trade futures, the Commission believes these proposed amendments provide a well-founded legal basis for ICE Clear Europe to remove such status requirement, and are therefore consistent with Rule 17Ad–22(e)(1).[50]

As discussed above, the proposed rule change would amend paragraph 3.5(a) of the Membership Procedures to lower the threshold, from 50% to 25%, at which ICE Clear Europe would require a written undertaking from the Clearing Member to not repay subordinated loans without its consent. As this proposed change would align the Clearing Member capital requirement more closely with Basel III requirements applicable to Clearing Members, the Commission believes these proposed amendments provide a well-founded legal basis for ICE Clear Europe to lower such threshold, and are therefore consistent with Rule 17Ad–22(e)(1).[51]

As discussed above, the proposed rule change would make a number of clarifications and drafting improvements to the Amended Documents to explicitly and correctly reference current law; eliminate discrepancies and inconsistencies; comply with applicable legal requirements; use consistent terminology; update cross-references and numbering; and correct drafting errors. The Commission believes that these changes, taken as a whole, would help to ensure that the Amended Documents provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of ICE Clear Europe's activities in all relevant jurisdictions.

[42] 15 U.S.C. 78q–1(b)(3)(G).

[43] 15 U.S.C. 78q–1(b)(3)(H).

[44] 15 U.S.C. 78q–1(b)(3)(H).

[45] 17 CFR 240.17Ad–22(e)(1).

[46] 17 CFR 240.17Ad–22(e)(1).

[47] 17 CFR 240.17Ad–22(e)(1).

[48] 17 CFR 240.17Ad–22(e)(1).

[49] 17 CFR 240.17Ad–22(e)(1).

[50] 17 CFR 240.17Ad–22(e)(1).

[51] 17 CFR 240.17Ad–22(e)(1).

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(1).[52]

*E. Consistency With Rule 17Ad–22(e)(2)(i)*

Rule 17Ad–22(e)(2)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.[53] As noted above, the proposed changes to the Complaint Resolution Procedures would clarify the roles of those investigating complaints, state explicitly that ICE Clear Europe must consider the investigative complaint report and recommendations, and inform the complaining party. The Commission believes that these proposed changes therefore provide for governance arrangements related to the complaint resolution process that are clear and transparent and are consistent with Rule 17Ad–22(e)(2)(i).[54]

As discussed above, the proposed rule change would also amend and update committee references in Rule 916(d) to change the term ''Risk Committee'' to ''relevant product risk committee'' to clarify that there are different product risk committees addressing topics specific to F&O and CDS. The proposed rule change would make similar updates to the CDS Risk Committee and FX Risk Committee references in the Finance Procedures by changing them to ''CDS Product Risk Committee'' and ''FX Product Risk Committee,'' respectively, and also throughout the CDS Procedures where ''CDS Risk Committee'' is currently used. The Commission believes that these changes would help to ensure that ICE Clear Europe's governance arrangements are clear and transparent by clearly identifying the various product risk committees involved in governance at ICE Clear Europe.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i).[55]

*F. Consistency With Rule 17Ad–22(e)(6)(ii)*

Rule 17Ad–22(e)(6)(ii) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its Clearing Members by establishing a risk-based margin system that, at a minimum, among other matters, marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances.[56] As discussed above, Rule 1603(c) would be amended to clarify that only ''original'' or ''initial'' types of Margin payments would be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin, which are provided to or by ICE Clear Europe by outright transfer of cash as a settlement payment. This proposed change is intended to be consistent with ICE Clear Europe's previous amendments to the Rules to clarify that such variation and mark-to-market margin are settlement payments rather than collateral. Because, as discussed above, ICE Clear Europe inadvertently omitted this proposed amendment from its prior amendments, the Commission believes these changes would facilitate ICE Clear Europe's consistent treatment and collection of variation and mark-to-market margin from Clearing Members.

For this reason, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(6)(ii).[57]

*G. Consistency With Rule 17Ad–22(e)(10)*

Rule 17Ad–22(e)(10) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.[58] As discussed above, the proposed rule change would amend the definition of ''Exchange Delivery Settlement Price'' or ''EDSP'' in Rule 101 (Definitions) to clarify, for the avoidance of doubt that the EDSP can be a positive or negative number, or zero. The proposed rule change would amend Rule 703(b) (Delivery) to clarify the process for payment of the EDSP in a physical settlement if the EDSP is a negative number. The Commission believes that these proposed changes would increase the clarity and transparency of the physical settlement process, which in turn would help ICE Clear Europe avoid the risk of settlement discrepancies associated with the delivery of physical instruments.

As discussed above, the proposed rule change would amend the Delivery Procedures to update various operational practices and to make other updates and drafting improvements. Specifically, proposed new paragraph 7 would make explicit reference to the alternative delivery procedure for Emission Contracts in the event of a failed delivery, as set out in paragraph 7 (Emissions Alternative Delivery Procedure (''EADP'')) of Part A of the Delivery Procedures (ICE Endex Deliverable EU Emissions Contracts). Amended paragraph 7.3 of Part A would update the manner of settlement of an existing Contract following the entry into an EADP Agreement by a Clearing Member and ICE Clear Europe, so that it would no longer be limited to liquidation on the basis of the Exchange Delivery Settlement Price, but rather, dealt with in the manner specified in the EADP. In addition, amended paragraph 7.5 would provide for a longer time period after a failed delivery for the Clearing Member and ICE Clear Europe to enter into an EADP Agreement or effect delivery under the EADP before ICE Clear Europe may refer the matter to the relevant exchange or take other reasonable next steps in its discretion. The Commission believes these changes would establish and update transparent written procedures for failed deliveries of Emissions Contracts, and provide greater flexibility for ICE Clear Europe to manage the risks associated with such failed deliveries.

With respect to Financials & Softs Gilt Contracts, the proposed rule change would amend Part U of the Delivery Procedures to add a new paragraph 2 (Failed Settlement and Non-Delivery of Stock) to establish a procedure to address the Seller's non-delivery of securities under a Financials & Softs Gilt Contract, including the actions ICE Clear Europe may take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository, as well as the express allocation of the costs of such steps to the Clearing Member who failed to make delivery. Proposed new paragraph 2.1 in amended Part U would establish ICE Clear Europe's procedure to address the Seller's partial delivery of available Gilts and the resulting partial settlement between the Buying Clearing Member and the Selling Clearing Member. The Commission believes these changes in Part U would establish transparent written standards and procedures for handling failed deliveries and partial deliveries of Financials and Softs Gilt

[52] 17 CFR 240.17Ad–22(e)(1).

[53] 17 CFR 240.17Ad–22(e)(2)(i).

[54] 17 CFR 240.17Ad–22(e)(2)(i).

[55] 17 CFR 240.17Ad–22(e)(2)(i).

[56] 17 CFR 240.17Ad–22(e)(6)(ii).

[57] 17 CFR 240.17Ad–22(e)(6)(ii).

[58] 17 CFR 240.17Ad–22(e)(10).

Contracts and for managing their associated risks.

The proposed rule change also would amend Part Z of the Delivery Procedures to make various updates to reference the correct settlement facilities and relevant settlement details and settlement procedures for Equity Futures/Options Contracts. Amended paragraph 2.3 (Partialling) and paragraph 3 (Failed Settlements and Non-Delivery of Stock) would clarify the processes for dealing with partial deliveries and failed deliveries, including the steps that ICE Clear Europe may take to facilitate delivery, the rights and responsibilities of the buying clearing member with respect to onward deliveries under other contracts, and the allocation of costs to clearing members. Similar to the changes in Part U, the Commission believes these changes in Part Z would establish transparent written standards and procedures for handling partial deliveries and failed deliveries of Equity Futures/Options Contracts and for managing their associated risks.

Throughout the Delivery Procedures, the proposed rule change would also update and clarify operational processes and ICE Clear Europe systems, delivery documentation summaries, timetables, and other relevant provisions. The Commission believes these changes would help ICE Clear Europe establish and maintain transparent and up-to-date operational practices to help manage the risks associated with physical deliveries and settlement.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(10).[59]

*H. Consistency With Rule 17Ad–22(e)(13)*

Rule 17Ad–22(e)(13) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its Clearing Members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[60] As discussed above, the proposed rule change would amend ICE Clear Europe's default planning process by removing the current pre-default porting preference structure, and replacing it with a post-default porting preference structure using Porting Notices (which refers to a post-default notification of a porting preference) that require written consent by the designated Transferee Clearing Member. The proposed rule change also would amend Rule 907(b) to clarify that ICE Clear Europe has no obligation to inquire of any person as to any Porting Notice. In the interest of further enhancing efficiencies in default scenarios, the proposed rule change would amend Rule 907(d) to authorize ICE Clear Europe's ability to rely on relevant information concerning Contracts, Customer-CM Transactions, Margin, and customer accounts that a defaulting Clearing Member provided to ICE Clear Europe prior to declaration of default. The Commission believes that these aspects of the proposed rule change would help ICE Clear Europe continue to take timely action to contain losses and liquidity demands in the case of a Clearing Member default.

As discussed above, the proposed rule change would amend Rule 903(c) to clarify that ICE Clear Europe's right to authorize hedging transactions in a default scenario would include transactions on a Market, any other Exchange, or over the counter, and that hedging transactions need not be cleared if transacted on an exchange which is not a Market, or as requested or directed otherwise by ICE Clear Europe. The Commission believes such changes would enhance ICE Clear Europe's authority to use hedging to help contain losses and liquidity demands following an Event of Default.

As discussed above, the proposed rule change would amend Rule 901 (Events of Default affecting Clearing Members or Sponsored Principals) to clarify that the declaration of a Clearing Member's Event of Default would authorize ICE Clear Europe to declare an Event of Default in respect of another Clearing Member that is a Group Company, *i.e.,* a parent or subsidiary of such defaulting Clearing Member. The Commission believes that this change would enhance ICE Clear Europe's authority to declare cross-defaults of affiliated Clearing Members to help contain losses and liquidity demands in a default scenario.

Finally, as discussed above, the proposed rule change would make a number of drafting improvements to Rule 904(b) (Transfer of Contracts and Margin on a Clearing Member Default), Rule 905(g) (Termination and close out of Contracts on a Clearing Member Event of Default), and Rule 908(i) (Application of Assets upon an Event of Default), that would enhance the clarity of ICE Clear Europe's default management procedures and support ICE Clear Europe's operational capacity to take timely action to contain losses and liquidity demands.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(13).[61]

*I. Consistency With Rule 17Ad–22(e)(14)*

Rule 17Ad–22(e)(14) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a Clearing Member's customers and the collateral provided to ICE Clear Europe with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that Clearing Member.[62] As discussed above, the proposed rule change would remove the current Default Portability Preference process by which Non-FCM/BD Clearing Members may deliver porting information to ICE Clear Europe in advance of a Clearing Member default, which was rarely used in practice, and replace such process with a post-default portability preference notification process using Porting Notices to designate a customer's preferred Transferee Clearing Member. This change is consistent with the EMIR requirement for post-default notices to be served as a pre-condition to porting. The proposed rule change would make conforming amendments to Rules 904 and 907 to reflect this change and would clarify the process for providing post-default Porting Notices. In particular, amended Rule 904(g) would require that the Transferee Clearing Member must consent in writing to the customer's designation of such Transferee Clearing Member in a Porting Notice. The Commission believes these aspects of the proposed rule change would clarify and facilitate the process of post-default porting that is consistent with EMIR, and effectively protects customer positions and collateral in the event of a Clearing Member default.

As discussed above, the proposed rule change would amend Rule 209(d) to facilitate membership terminations in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions, which include Customer Account Positions. The Commission believes these amendments would help to enable the portability of a customer's contracts in the specific context of a Clearing Member termination.

[59] 17 CFR 240.17Ad–22(e)(10).

[60] 17 CFR 240.17Ad–22(e)(13).

[61] 17 CFR 240.17Ad–22(e)(13).

[62] 17 CFR 240.17Ad–22(e)(14).

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(14).[63]

*J. Consistency With Rule 17Ad–22(e)(17)(i)*

Rule 17Ad–22(e)(17)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[64] As discussed above, the proposed rule change would amend the provisions for delivery of notices in various Rules as part of ICE Clear Europe's default simulation planning. The proposed amendments would generally replace telephone with email delivery, and clarify the delivery to nominated process agents, as well as the timing for effective service and delivery of notices. The Commission believes these changes would help to improve the efficiencies in the delivery of notices, which in turn would help ICE Clear Europe manage the related operational risks associated with the delivery and receipt of notices in case of a Clearing Member default or termination, among other operational scenarios.

The Commission believes that the proposed amendment to Rule 202 (Obligations of Clearing Members) to require Clearing Members to have competent staff representatives accessible to ICE Clear Europe for two hours before the start of the business day would help ICE Clear Europe ensure that its operational policies are consistent with its operational practices for appropriately managing the risks associated with Clearing Members meeting time-sensitive morning margin calls.

The Commission believes that the proposed addition of new Rule 301(o), which would allow ICE Clear Europe to request information when needed on account balances of nominated accounts of the Clearing Member at financial institutions, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is, or is likely to be, in default, would help ICE Clear Europe reduce operational risks that have arisen in practice when payment banks have refused to provide such information to ICE Clear Europe.

The Commission believes that the proposed new definitions of ICE Clear Europe's operational systems in the Delivery Procedures and updated references to such systems throughout the Amended Documents would help ICE Clear Europe manage operational risks by upgrading legacy systems and ensuring that all internal and external stakeholders are aware of the new systems and their basic operational purposes and functionalities.

As discussed above, the proposed rule change would make various amendments to certain Rules to ensure clear and consistent operational practices for Contracts. Amended Rule 401(o) would clarify that a Customer-CM CDS Transaction arises at the same time as the Contract for consistency with the equivalent rule for a Customer-CM F&O Transaction. Amended Rule 406 would clarify how open contract positions in F&O Contracts are netted and aggregated. Amended Rule 409 would clarify that ICE Clear Europe may evidence its consent to amendments, waivers, and variations of Contract Terms by issuing a Circular. The Commission believes these changes would help ICE Clear Europe reduce operational risks by formalizing appropriate and consistent operational practices related to the Contracts it clears.

Finally, the Commission believes the proposed amendments to Rule 105(a) to shorten the termination period for ICE Clear Europe's service withdrawal as a clearing house for any product where there is no open interest in the relevant Set, and to clarify that the relevant exchange's notice period and notification responsibility would apply to a product termination that follows actions by the exchange, such as a de-listing, would help ICE Clear Europe manage and mitigate both internal and external sources of operational risks associated with product terminations.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(17)(i).[65]

*K. Consistency With Rule 17Ad–22(e)(18)*

Rule 17Ad–22(e)(18) requires that ICE Clear Europe 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, and monitor compliance with such participation requirements on an ongoing basis.[66]

The Commission believes that the changes to the Membership Procedures discussed above would establish objective, risk-based, and publicly disclosed criteria for participation, by updating the definition of Clearing Member Capital and related requirements applicable to Clearing Members to align with the Basel III standard. Similarly, the Commission believes that changing the deadline for submitting financial statements from 30 to 45 days; allowing ICE Clear Europe to accept different kinds of financial statements from Clearing Members as part of their financial reporting obligations; and providing that termination of a Clearing Membership Agreement or membership as a Clearing Member would become effective no less than 30 Business Days after the date of the Termination Notice Time or pursuant to Rule 917(c), would establish objective, risk-based, and publicly disclosed criteria for participation, by setting forth clear deadlines and standards applicable to Clearing Members. Finally, the Commission believes that adding a new paragraph 3.5 to the CDS Procedures to require Clearing Members to provide sign-off via email on weekly cycles by the time specified by ICE Clear Europe would establish an objective, risk-based, and publicly disclosed requirement upon Clearing Members. Therefore, the Commission finds these aspects of the proposed rule change are consistent with Rule 17Ad–22(e)(18).[67]

Finally, the Commission believes that the proposed amendment to Rule 202 (Obligations of Clearing Members) to require Clearing Members to have competent staff representatives accessible to ICE Clear Europe for two hours before the start of the business day would help ICE Clear Europe ensure that its participants have sufficient financial resources and operational capacity to meet their morning margin call obligations.

For these reasons, the Commission finds the proposed rule change is consistent with Rule 17Ad–22(e)(18).[68]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial

[63] 17 CFR 240.17Ad–22(e)(14).

[64] 17 CFR 240.17Ad–22(e)(17)(i).

[65] 17 CFR 240.17Ad–22(e)(17)(i).

[66] 17 CFR 240.17Ad–22(e)(18).

[67] 17 CFR 240.17Ad–22(e)(18).

[68] 17 CFR 240.17Ad–22(e)(18).

Amendment No. 1, is consistent with the requirements of the Act, and in particular, with the requirements of Sections 17A(b)(3)(F), 17A(b)(3)(G), and 17A(b)(3)(H) of the Act, and Rules 17Ad–22(e)(1), (e)(2)(i), 17Ad–22(e)(6)(ii), 17Ad–22(e)(10), 17Ad–22(e)(13), 17Ad–22(e)(14), 17Ad–22(e)(17)(i), and (e)(18).[69]

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act[70] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–ICEEU–2021–010), be, and hereby is, approved.[71]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

**Vanessa A. Countryman,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92792; File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, SR–PEARL–2021–30]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC, MIAX Emerald, LLC, and MIAX PEARL, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend Fees for Purge Ports

August 27, 2021.

### I. Introduction

On July 1, 2021, Miami International Securities Exchange, LLC (''MIAX''), MIAX Emerald, LLC (''MIAX Emerald), and MIAX PEARL, LLC (''MIAX Pearl'') (each an ''Exchange;'' collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase fees for purge ports. Each proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule changes were published for comment in the **Federal Register** on July 15, 2021.[4] The Commission has received comment on the proposals.[5] Pursuant to Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (1) Temporarily suspending File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, and SR–PEARL–2021–30; and (2) instituting proceedings to determine whether to approve or disapprove File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, and SR–PEARL–2021–30.

### II. Description of the Proposed Rule Changes

Each Exchange currently provides certain of its members the option to purchase purge ports to assist in their quoting activity.[7] Purge ports provide the ability to send quote purge messages to an Exchange's system.[8] Each Exchange offers purge ports as a package; a member has the option to receive up to two purge ports per matching engine to which it connects.[9] MIAX has 24 matching engines, and thus a member may receive up to 48 purge ports on MIAX.[10] MIAX Emerald and MIAX Pearl each have 12 matching engines, and thus a member may receive up to 24 purge ports on these Exchanges.[11]

MIAX and MIAX Emerald previously charged a flat fee of $1,500 per month for purge ports, and MIAX Pearl previously charged a flat fee of $750 per month for purge ports, regardless of the number of matching engines to which a member connected and consequently regardless of the number of purge ports allocated to the member. Each Exchange proposes to increase the flat monthly fee to $7,500.

### III. Suspension of the Proposed Rule Changes

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As described below, the Commission believes a temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder.

When an exchange files a proposed rule change with the Commission, including fee filings, it is required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[14] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [15]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires, among other things, that the rules of an exchange: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [16] (2) be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [17] and (3) not impose any burden on competition

[69] 15 U.S.C. 78q–1(b)(3)(F); 15 U.S.C. 78q–1(b)(3)(G); 15 U.S.C. 78q–1(b)(3)(H); 17 CFR 240.17Ad–22(e)(1), (e)(2)(i), (e)(6)(ii), (e)(10), (e)(13), (e)(14), (e)(17)(i), and (e)(18).

[70] 15 U.S.C. 78s(b)(2).

[71] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[72] 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). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release Nos. 92364 (July 9, 2021), 86 FR 37364 (July 15, 2021) (SR–MIAX–2021–29) (''MIAX Notice''); 92360 (July 9, 2021), 86 FR 37373 (July 15, 2021) (SR–EMERALD–2021–22) (''MIAX Emerald Notice''); 92363 (July 9, 2021), 86 FR 37376 (July 15, 2021) (SR–PEARL–2021–30) (''MIAX Pearl Notice''). For ease of reference, citations to statements generally applicable to all three notices are to the MIAX Notice.

[5] Comment on the proposed rule changes can be found at: *https://www.sec.gov/comments/sr-miax-2021-29/srmiax202129.htm; https://www.sec.gov/comments/sr-emerald-2021-22/sremerald202122.htm; https://www.sec.gov/comments/sr-pearl-2021-30/srpearl202130.htm.*

[6] 15 U.S.C. 78s(b)(3)(C).

[7] *See, e.g.,* MIAX Notice, *supra* note 4, at 37365.

[8] *See* MIAX Options Fee Schedule, Section (5)(d)(ii), footnote 30; MIAX Emerald Options Fee Schedule, Section (5)(d)(ii); MIAX Pearl Options Fee Schedule, Definitions Section.

[9] *See, e.g.,* MIAX Notice, *supra* note 4, at 37365.

[10] *See* MIAX Notice, *supra* note 4, at 37365.

[11] *See* MIAX Emerald Notice, *supra* note 4, at 37374; MIAX Pearl Notice, *supra* note 4, at 37377.

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* 17 CFR 240.19b–4 (General Instructions for Form 19b–4—Information to be Included in the Complete Form—Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[15] *See id.*

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

not necessary or appropriate in furtherance of the purposes of the Act.[18]

In support of their proposals, the Exchanges state that the use of purge ports is completely optional, and no options market participant is required by rule, regulation, or competitive forces to use them.[19] The Exchanges explain that members can use other protocols to purge or cancel messages, and that purge ports were designed as an optional service to enable firms to manage their quoting risk and meet their heightened quoting obligations.[20] The Exchanges state that they are not aware of any reason why a market participant could not simply drop its purge ports if the Exchanges were to establish unreasonable prices for purge ports that, in the determination of such market participant, did not make business or economic sense for such participant.[21]

The Exchanges also state that they operate in a highly competitive environment, and if an exchange sets non-transaction fees that are too high for its relevant marketplace, market participants can choose to no longer access that particular exchange.[22]

The Exchanges further state that the increased monthly flat fee for purge ports is competitive with fees charged by other exchanges that offer comparable purge port services.[23] The Exchanges state that they have historically undercharged for purge ports as compared to other exchanges, and that the proposed monthly fee increase would bring the Exchanges' fees more in line with that of other options exchanges.[24] The Exchanges argue that, when calculated on a per purge port basis, other exchanges charge higher monthly fees. MIAX states that, assuming a member receives 48 purge ports (two per each of its 24 matching engines), this results in a cost of $156.25 per purge port ($7,500 divided by 48).[25] MIAX Emerald and MIAX Pearl state that, assuming a member receives 24 purge ports (two per each of their 12 matching engines), this results in a cost of $312.50 per purge port ($7,500 divided by 24).[26] The Exchanges state that Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGX Exchange, Inc. (''EDGX''), Cboe Exchange, Inc. (''Cboe''), and Nasdaq GEMX, LLC (''GEMX'') charge higher monthly per purge port fees of $750, $750, $850, and $1,250, respectively.[27]

The one comment letter received to date challenges several of the Exchanges' assertions.[28] The commenter states that the Exchanges' argument that the proposed $7,500 monthly fee is lower on a per purge port basis than the fees assessed by other exchanges (BZX, EDGX, Cboe, GEMX) is disingenuous, because each of these other exchanges has one matching engine, and thus market participants require only two purge ports on each of these exchanges, resulting in significantly lower fees when calculated on a monthly basis.[29] The commenter also states that the Exchanges' argument that purge ports are optional functionality, which members are free to drop if priced too high, is without merit.[30] The commenter asserts that the Exchanges know that market makers have no choice but to absorb these fees so as not to imperil their business with stale quotes.[31] The commenter further states that the Exchanges did not provide any justification for the fee increase itself; and that the Exchanges likely cannot assert that the cost of maintaining purge ports has increased at all, let alone five-fold.[32]

In temporarily suspending the Exchanges' proposed rule changes, the Commission intends to further consider whether the proposed purge port fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule changes satisfy the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; are designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[33]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.[34]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[35] and 19(b)(2)(B) of the Act[36] to determine whether the Exchanges' proposed rule changes should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule changes to inform the Commission's analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,[37] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchanges have demonstrated how the proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'';[38]
- Whether the Exchanges have demonstrated how the proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to ''perfect the mechanism of a free and open market and a national market

[18] 15 U.S.C. 78f(b)(8).

[19] *See, e.g.,* MIAX Notice, *supra* note 4, at 37365–66.

[20] *See id.* at 37366.

[21] *See id.*

[22] *See id.* at 37365–66.

[23] *See id.* at 37365.

[24] *See id.*

[25] *See* MIAX Notice, *supra* note 4, at 37365.

[26] *See* MIAX Emerald Notice, *supra* note 4, at 37374; MIAX Pearl Notice, *supra* note 4, at 37377.

[27] *See, e.g.,* MIAX Notice, *supra* note 4, at 37365.

[28] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP, dated August 5, 2021 (''SIG Letter'').

[29] *See* SIG Letter, *supra* note 28, at 2.

[30] *See id.*

[31] *See id.*

[32] *See id.*

[33] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[34] For purposes of temporarily suspending the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[38] 15 U.S.C. 78f(b)(4).

system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers'';[39] and

• Whether the Exchanges have demonstrated how the proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[40]

As discussed in Section III above, the Exchanges made various arguments in support of the proposal, and the Commission received comment disputing the Exchanges' arguments and expressing concerns regarding the proposal.[41] In particular, the commenter argues that the Exchanges did not provide sufficient information to establish that the proposed fees are consistent with the Act and the rules thereunder.[42]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[43] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[44] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[45]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, and specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; are designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act;[46] as well as any other provision of the Act, or the rules and regulations thereunder.

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 23, 2021. Rebuttal comments should be submitted by October 7, 2021. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[47]

The Commission asks that commenters address the sufficiency and merit of the Exchanges' statements in support of the proposals, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, and SR–PEARL–2021–30 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, and SR–PEARL–2021–30. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, and SR–PEARL–2021–30 and should be submitted on or before September 23, 2021. Rebuttal comments should be submitted by October 7, 2021.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,[48] that File Nos. SR–MIAX–2021–29, SR–EMERALD–2021–22, and SR–PEARL–2021–30 be, and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved ordisapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18944 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(8).

[41] *See* SIG Letter, *supra* note 28.

[42] *See id.* at 2.

[43] 17 CFR 201.700(b)(3).

[44] *See id.*

[45] *See id.*

[46] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[47] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[48] 15 U.S.C. 78s(b)(3)(C).

[49] 17 CFR 200.30–3(a)(57) and (58).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92799; File No. SR–FICC–2021–801]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Amendment No. 1, To Add the Sponsored GC Service and Make Other Changes

August 27, 2021.

On May 12, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2021–801 pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act''),[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] to amend FICC's Government Securities Division Rulebook[4] to add a new service that expands FICC's existing Sponsored Service. The advance notice was published for public comment in the **Federal Register** on June 3, 2021.[5] On June 8, 2021, FICC filed Amendment No. 1 to the advance notice, to correct an erroneous cross reference in the original filing.[6] The advance notice, as modified by Amendment No. 1, is hereinafter referred to as the ''Advance Notice.'' On June 11, 2021, the Commission, by the Division of Trading and Markets, pursuant to delegated authority,[7] requested additional information from FICC pursuant to Section 806(e)(1)(D) of the Act.[8] The request for information tolled the Commission's period of review of the Advance Notice until 60 days from the date of the Commission's receipt of the information requested from FICC, absent an additional information request.[9] The Commission received the information requested from FICC on July 2, 2021.

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and, for the reasons discussed below, is hereby providing notice of no objection to the Advance Notice.

### I. The Advance Notice

#### *A. Background*

1. FICC Services for Repurchase Agreement (''Repo'') Transactions

Repos involve a pair of securities transactions between two parties. The parties agree to the terms of the trade, including the securities, principal amount, interest rate, haircut, and tenor (*i.e.,* date of maturity). The first transaction (the ''Start Leg'') consists of the sale of securities, in which one party (the ''cash borrower'') delivers securities, and in exchange, the other party (the ''cash lender'') delivers cash. At the Start Leg, the cash borrower typically delivers an amount of securities equal in value to the amount of cash received from the cash lender, plus a haircut. Repo durations range from one day (''overnight'') to a year or more, but are usually less than three months (''term''). The second transaction (the ''End Leg'') occurs on a date after that of the Start Leg and consists of the repurchase of securities, in which the obligations to deliver cash and securities are the reverse of the Start Leg. At the End Leg, the cash borrower typically delivers the amount of cash borrowed, plus interest, and the cash lender returns the securities.

FICC serves as CCP and provides clearance and settlement services to facilitate both bilateral and tri-party repo transactions. FICC facilitates bilateral repos[10] in which all securities delivery obligations are made against full payment (''delivery-versus-payment'' or ''DVP'') (the ''DVP Service''). FICC generally novates and guarantees settlement of a trade upon validation of the trade details, which results in the legally binding and enforceable contract between FICC and the parties to the trade.[11] On a daily basis, FICC aggregates and matches a member's offsetting obligations resulting from the member's trades, thereby netting the member's total daily settlement obligations.[12]

FICC facilitates tri-party repos[13] through its General Collateral Finance (''GCF'') Repo® Service, which enables members to trade general collateral finance repos based on rate, term, and underlying product throughout the day on a blind basis.[14] The Bank of New York Mellon operates the tri-party platform that facilitates trades conducted through the GCF Repo Service. FICC has established standardized, generic CUSIP Numbers exclusively for GCF Repo processing and to specify the acceptable types of underlying Fedwire book-entry eligible collateral, which include U.S. Treasuries, U.S. government agency securities, and certain mortgage-backed securities.[15]

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] FICC's Government Securities Division (''GSD'') Rulebook (''Rules'') are *available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] Securities Exchange Act Release No. 92019 (May 27, 2021), 86 FR 29834 (June 3, 2021) (SR–FICC–2021–801) (''Notice of Filing'').

[6] Amendment No. 1 made a correction to Exhibit 5 of the filing. On May 12, 2021, FICC also filed a related proposed rule change (SR–FICC–2021–003) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The proposed rule change was published in the **Federal Register** on June 1, 2021. Securities Exchange Act Release No. 92014 (May 25, 2021), 86 FR 29334 (June 1, 2021) (SR–FICC–2020–003). On June 8, 2021, FICC filed Amendment No. 1 to the proposed rule change to make the same correction as regarding the Advance Notice. The proposed rule change, as amended by Amendment No. 1, is hereinafter referred to as the ''Proposed Rule Change.'' In the Proposed Rule Change, FICC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. On June 24, 2021, the Commission published a notice designating a longer period of time for Commission action and a longer period for public comment on the Proposed Rule Change. Securities Exchange Act Release No. 92185 (June 15, 2021), 86 FR 33420 (June 24, 2021) (SR–FICC–2021–003). The Commission has received one comment in support of the Proposed Rule Change, available at *https://www.sec.gov/comments/sr-ficc-2021-003/srficc2021003.htm.* Because the proposals contained in the Advance Notice and the Proposed Rule Change are the same, the Commission considered all public comments received on the proposal as applicable to both filings, regardless of whether the comments were submitted with respect to the Advance Notice or the Proposed Rule Change.

[7] 17 CFR 200.30–3(a)(93).

[8] 12 U.S.C. 5465(e)(1)(D).

[9] *See* 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); see Memorandum from the Office of Clearance and Settlement, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at https://www.sec.gov/rules/sro/ficc-an/2021/34-92019-memo-ficc.pdf.*

[10] A bilateral repo is one in which the cash lender and cash borrower directly exchange cash and securities. In the bilateral repo market, the parties specify the securities used as collateral. Therefore, a cash lender seeking to obtain a particular security would utilize the bilateral repo market.

[11] *See* Rule 5, *supra* note 4.

[12] *See* Rule 11, *supra* note 4.

[13] A tri-party repo is one in which a clearing bank, acting as tri-party agent, provides to both the cash lender and the cash borrower certain operational, custodial, collateral management, and other services. In tri-party repo trading, both parties maintain accounts at a clearing bank, which facilitates the payment and delivery of cash and securities between the parties' accounts. In contrast to the bilateral repo market and its use of specific collateral, the tri-party repo market is exclusively for general collateral repos, meaning that the parties agree to use any securities from a pre-approved basket of acceptable securities as collateral. In a general collateral repo, the cash lender is indifferent to the particular securities it receives as collateral, provided that the securities come from the pre-approved basket of acceptable securities.

[14] *See* Rule 20, *supra* note 4.

[15] *See* Rule 1 (definitions of ''GCF Repo Transaction'' and ''Generic CUSIP Number'') and Rule 20, Section 2, *supra* note 4; Notice of Filing, *supra* note 5 at 29836.

2. Sponsored Membership

In 2005, FICC established the Sponsored Service, allowing eligible members to sponsor their clients into a limited form of membership.[16] A Sponsoring Member is permitted to submit to FICC, for comparison, novation, and netting, certain eligible securities transactions of its Sponsored Members. FICC requires each Sponsoring Member to establish an omnibus account at FICC (separate from its regular netting account) for Sponsored Member trading activity. Sponsored Members generally have to meet the definition of a qualified institutional buyer (''QIB''), as defined in Rule 144A [17] under the Securities Act of 1933.[18]

For operational and administrative purposes, FICC interacts solely with the Sponsoring Member as agent for purposes of the day-to-day satisfaction of its Sponsored Members' obligations to and from FICC, including their securities and funds-only settlement obligations.[19] Sponsoring Members are also responsible for providing FICC with a Sponsoring Member Guaranty, whereby the Sponsoring Member guarantees to FICC the payment and performance by its Sponsored Members of their obligations under the Rules.[20] Although Sponsored Members are principally liable to FICC for their own settlement obligations under the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails to perform its settlement obligations.[21]

*B. Proposed Sponsored GC Service*

Currently, the Sponsored Service only facilitates trading in bilateral DVP repos, not tri-party repos. In the Advance Notice, FICC proposes to expand the Sponsored Service to accommodate tri-party repo trading, which it believes would increase term repo activity within the Sponsored Service. FICC states that several market participants have indicated that they currently transact tri-party term repos outside of central clearing because they are not operationally equipped to perform the collateral management and other functions associated with term DVP repos.[22] In particular, money market funds and other mutual funds generally prefer to use the tri-party repo market because a clearing bank administers collateral management and other functions, as described above.[23]

Therefore, FICC proposes to add the Sponsored GC Service, which would allow (but not require) Sponsoring Members and their Sponsored Members to trade general collateral repos with each other on the tri-party platform of a Sponsored GC Clearing Agent Bank [24] (each, a ''Sponsored GC Trade''). Such general collateral repos would involve the same asset classes that are currently available for members using the GCF Repo Service.[25] Consistent with the GCF Repo Service, the Sponsored GC Service would also permit cash borrowers to make collateral substitutions. Sponsored GC Trades would settle in a manner similar to the way Sponsoring Members and Sponsored Members currently settle tri-party repos with each other outside of central clearing.

Sponsored GC Service Structure

Sponsored GC Trades would only be between a Sponsored Member and its Sponsoring Member. FICC would novate only the End Legs of Sponsored GC Trades. Consistent with the current settlement process of such tri-party repos outside of central clearing, the Start Legs of Sponsored GC Trades would continue to settle on a trade-for-trade basis on the tri-party platform of a Sponsored GC Clearing Agent Bank.[26]

Accrued repo interest on Sponsored GC Trades would be paid and collected by FICC on a daily basis. Additionally, if the market value of the securities collateral decreases from its market value at the Start Leg, the cash borrower would be required deliver to FICC additional securities (and/or cash) such that the market value of the total securities collateral remains at least equal to its market value at the Start Leg. Conversely, if the market value of the securities collateral increases from its value at the Start Leg, the cash lender would be required to deliver to FICC securities (and/or cash) such that the market value of the remaining securities collateral remains at least equal to its market value at the Start Leg. Such additional securities (and/or cash) must be delivered within the timeframe set forth in a proposed new schedule of Sponsored GC Trade timeframes set forth in the Rules.

In order to facilitate settlement of securities and cash obligations, FICC would direct each party to a Sponsored GC Trade 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 pre-novation counterparty. As a result, each transfer of securities and daily repo interest would be made directly between the Sponsored Member and its Sponsoring Member via the tri-party repo platform of a Sponsored GC Clearing Agent Bank.[27]

[16] Securities Exchange Act Release No. 51896 (June 21, 2005), 70 FR 36981 (June 27, 2005) (SR–FICC–2004–22). *See* Rule 3A, *supra* note 4.

[17] 17 CFR 230.144A.

[18] 15 U.S.C. 77a *et seq.*

[19] *See* Rule 3A, Section 8, *supra* note 4.

[20] *See* Rule 1 (definition of ''Sponsoring Member Guaranty'') and Rule 3A, Section 2(c), *supra* note 4.

[21] *Id.*

[22] *See* Notice of Filing, *supra* note 5 at 29836. A key difference between the bilateral and tri-party repo markets deals with the operational aspects of managing term repos. In the tri-party repo market, a clearing bank typically automatically selects securities from the cash borrower's account to serve as collateral that satisfies the credit and liquidity criteria agreed between the parties. The clearing bank delivers securities against the simultaneous delivery of cash between the parties' accounts at the clearing bank. The clearing bank manages the regular revaluation of collateral, variation margining, income payments on the collateral, and collateral substitutions. In the bilateral repo market, the parties themselves perform such collateral management and other administrative functions.

[23] *See* Notice of Filing, *supra* note 5 at 29836.

[24] The Bank of New York Mellon operates the tri-party platform that would facilitate trades conducted through the Sponsored GC Service.

[25] FICC would register a new series of Generic CUSIP Numbers for the Sponsored GC Service as follows: (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''). The purpose of registering a new series of Generic CUSIP Numbers specific to the Sponsored GC Service is to avoid any operational processing errors that could otherwise result if a trade intended for the Sponsored GC Service was inadvertently processed as a GCF Repo transaction or vice versa. Notice of Filing, *supra* note 5 at 29836.

[26] FICC does not believe it would be efficient or appropriate to novate the Start Legs of Sponsored GC Trades, as that novation would unnecessarily complicate an already efficient process by requiring the parties to make significant operational and business changes to include FICC in the transaction chain. Since Sponsored GC Trades would only be between a Sponsored Member and its Sponsoring Member on a known (*i.e.,* not blind) basis, all Start Leg obligations would settle between a single set of counterparties, negating any efficiency or reduced settlement risk that FICC's novation would provide. *See* Notice of Filing, *supra* note 5 at 29836–37.

[27] FICC similarly does not believe it would be appropriate for FICC to be in the transaction chain for each payment and delivery under a Sponsored GC Trade because inserting FICC in the middle of the payments and deliveries would require substantial changes in operational processes for both Sponsored Members and Sponsoring Members. FICC does not believe such operational changes are necessary since 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). *See id.*

Market Risk Management

FICC would manage its market risk with respect to Sponsored GC Trades similar to the manner in which FICC manages existing trades within the Sponsored Service. To mitigate market risk, FICC would calculate the Value at Risk (''VaR'') margin component (''VaR Charge'') [28] for each Sponsored Member based on its activity in the Sponsored Service, including its activity in the proposed Sponsored GC Service. The VaR Charge for the Sponsoring Member's omnibus account for Sponsored Member trading activity would continue to be gross-margined as the sum of the individual VaR Charges for each Sponsored Member client.[29]

Additionally, FICC would assign a symbol to each Sponsored Member to facilitate FICC's ability to surveil the Sponsored Member's activity across its Sponsored GC Trades as well as its other Sponsored Member Trades within the existing Sponsored Service (both with the same Sponsoring Member and across Sponsoring Members, if applicable). In addition, FICC would apply certain heightened requirements that apply to certain Sponsoring Members within the Sponsored GC Service as well.[30] For example, FICC may impose heightened financial requirements on these Sponsoring Members based on their anticipated activity and other factors,[31] and FICC may limit such a Sponsoring Member's activity if the sum of the VaR Charges of its omnibus and netting accounts exceeds its net capital.[32]

In addition, FICC would manage the mark-to-market risk associated with unaccrued repo interest on a Sponsored GC Trade through a proposed new interest rate mark component of funds-only settlement.[33] FICC would also apply an Interest Adjustment Payment to Sponsored GC Trades 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.[34]

Liquidity Risk Management

Currently, trades between a Sponsoring Member and its Sponsored Member do not independently create liquidity risk for FICC. Under its Rules, if a Sponsoring Member defaults, FICC may close out (that is, cash settle) the Sponsored Member trades of the defaulting Sponsoring Member.[35] Similarly, if a Sponsored Member defaults, 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 defaulting Sponsored Member.[36] Thus, in both default scenarios, FICC bears no liquidity risk.

As a result, to the extent a Sponsoring Member either (1) runs a matched book of Sponsored Member trades (*i.e.,* enters into offsetting trades with its own Sponsored Members), or (2) simply enters into trades with its Sponsored Member (*i.e.,* without entering into offsetting transactions), such activities do not increase FICC's liquidity risk. FICC bears liquidity risk only when a Sponsoring Member enters into an offsetting trade in which a third-party member is the pre-novation counterparty. In that scenario, FICC is required to settle the obligations of a defaulting Sponsoring Member.

Since Sponsored GC Trades would not involve third-party members, such trades would impact FICC's liquidity risk in a similar manner to trades between a Sponsoring Member and its Sponsored Member in the current Sponsored Service. As a result, FICC proposes to manage the liquidity risk associated with Sponsored GC Trades in the same manner that it currently manages such risk for other trades between a Sponsoring Member and its Sponsored Member.

*C. Proposed Changes to Allocations Within the Capped Contingency Liquidity Facility (''CCLF'')*

1. CCLF Background

On April 25, 2017, the Commission approved FICC's adoption of the Clearing Agency Liquidity Risk Management Framework (''Framework''), which broadly describes FICC's liquidity risk management strategy and objective to maintain sufficient liquid resources in order to meet the potential amount of funding required to settle outstanding transactions of a defaulting member (including affiliates) in a timely manner.[37] The Framework identifies, among other things, each of the qualifying liquid resources available to FICC, including the CCLF.[38] The CCLF is a rules-based, committed liquidity resource, designed to enable FICC to meet its cash settlement obligations in the event of a default of the member (including the member's family of affiliated members) to which FICC has the largest exposure in extreme but plausible market conditions.[39] FICC would activate the CCLF if, upon a member default, FICC determines that its non-CCLF liquidity resources would not generate sufficient cash to satisfy FICC's payment obligations to its non-defaulting members. In simple terms, a CCLF repo is equivalent to a non-defaulting member financing FICC's payment obligation under the original trade, thereby providing FICC with time to liquidate the securities underlying the original trade. More specifically, upon activating the CCLF, members would be called upon to enter into repo transactions (as cash lenders) with FICC (as cash borrower) up to a pre-determined capped dollar amount, thereby providing FICC with sufficient liquidity to meet its payment

[28] Each member's margin consists of a number of applicable components. The VaR Charge is typically the largest component of a member's margin requirement. The VaR Charge is designed to capture the potential market price risk associated with the securities in a member's portfolio. The VaR Charge is designed to provide an estimate of FICC's projected liquidation losses with respect to a defaulted member's portfolio at a 99 percent confidence level. *See* Rule 1 (definition of ''VaR Charge''), *supra* note 4; Securities Exchange Act Release No. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (SR–FICC–2018–001).

[29] *See* Rule 3A, Section 10, *supra* note 4.

[30] Specifically, these restrictions apply to Category 2 Sponsoring Members, which are other members that meet certain financial requirements as compared to Category 1 Sponsoring Members, which are bank netting members that are well-capitalized with $5 billion in equity capital. *See* Rule 3A, Section 2(a), *supra* note 4.

[31] *See* Rule 3A, Section 2(b), *supra* note 4.

[32] *See* Rule 3A, Section 2(h), *supra* note 4.

[33] This GC Interest Rate Mark would be calculated in the same manner as the GCF Interest Rate Mark is for GCF Repo transactions. For a detailed description of the calculation, *see* Notice of Filing, *supra* note 5 at 29837.

[34] 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 currently processed), and (iii) the accrued repo interest on Sponsored GC Trades would be passed on a daily basis, as described above.

[35] *See* Rule 3A, Section 14(c), *supra* note 4. *See also* Rule 22A, Section 2, *supra* note 4.

[36] *See* Rule 3A, Section 11, *supra* note 4.

[37] *See* Securities Exchange Act Release No. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR–FICC–2017–008).

[38] *See id.*

[39] FICC designed the CCLF to meet the regulatory requirement for a covered clearing agency to measure, monitor, and manage its liquidity risk by maintaining sufficient liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation for the clearing agency in extreme but plausible market conditions. 17 CFR 240.17Ad–22(e)(7)(i); *see* Securities Exchange Act Release No. 82090 (November 15, 2017), 82 FR 55427, 55430 (November 21, 2017) (SR–FICC–2017–002); Rule 22A, Section 2a, *supra* note 4.

obligations. For a non-defaulting member to whom FICC has a payment obligation disrupted by a member default, a CCLF repo would extinguish and replace the original trade that gave rise to FICC's payment obligation.

FICC determines the total size of the CCLF based on FICC's potential cash settlement obligations that would result from the default of the member (including affiliates) presenting the largest liquidity need to FICC over a specified look-back period, plus an additional liquidity buffer. Under the proposal in the Advance Notice, FICC would not change the method by which it determines the total size of the CCLF.

FICC uses a tiered approach to allocate the total size of the CCLF among its members to arrive at the amount of each member's CCLF obligation. FICC allocates $15 billion of the total size of the CCLF among all members.[40] FICC allocates the remainder of the total size of the CCLF among members that generate liquidity needs above the $15 billion threshold based on the frequency that such members generate daily liquidity needs over $15 billion across supplemental liquidity tiers in $5 billion increments. Specifically, FICC calculates a dollar amount for the CCLF obligation applicable to each supplemental liquidity tier. FICC allocates the CCLF obligation for each supplemental liquidity tier to members on a pro-rata basis corresponding to the number of times each member generates liquidity needs within each supplemental liquidity tier.[41]

2. Current CCLF Allocation Methodology for the Sponsored Service

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 to determine a Sponsoring Member's CCLF obligation, FICC nets all of the positions recorded in the Sponsoring Member's omnibus account (regardless of whether they relate to the same Sponsored Member) and separately nets all of the positions in the Sponsoring Member's netting account.[42] As a result, to the extent a Sponsoring Member enters into perfectly offsetting Sponsored Member trades (*i.e.,* the matched book scenario), the settlement obligations of those trades net out in the omnibus account and the netting account, with no resulting CCLF obligation for the Sponsoring Member.

However, if a Sponsoring Member enters into a Sponsored Member trade without entering into an offsetting transaction, the Sponsoring Member is subject to CCLF obligations for the position of its Sponsored Member recorded in its omnibus account as well as its own position arising from the Sponsored Member trade recorded in its netting account. Although the positions in the Sponsoring Member's omnibus account and netting account offset each other, FICC does not currently net such positions for CCLF purposes because CCLF allocations are determined at the participant account level.[43] FICC believes the foregoing scenario should not contribute to the Sponsoring Member's CCLF obligation because, as described above in Section I.B, such offsetting obligations do not present liquidity risk to FICC.

3. Proposed CCLF Allocation Methodology for the Sponsored Service

As described above, trades between a Sponsoring Member and its Sponsored Member do not independently create liquidity risk for FICC, and, therefore, FICC believes that such trades should not affect the Sponsoring Member's CCLF obligation. To ensure that a Sponsoring Member's CCLF obligation is calculated to reflect the lack of liquidity risk to FICC associated with Sponsored Member trades, FICC proposes to take into account, for CCLF calculation purposes, any offsetting settlement obligations between a Sponsoring Member's netting account and its omnibus account. This proposed change would ensure that all Sponsored Member trades, whether perfectly offset by other Sponsored Member trades (*i.e.,* the matched book scenario) or not, would be recognized for CCLF purposes as not affecting FICC's liquidity risk. This proposed change would also apply to trades in the new Sponsored GC Service.[44]

Although, as noted above, the proposal in the Advance Notice would not affect the method by which FICC determines the total CCLF amount, FICC's proposal to net offsetting trades between a Sponsoring Member and its Sponsored Member for CCLF calculation purposes would affect the allocation of CCLF obligations over $15 billion to other members. Specifically, as described above, under the current Rules, if a Sponsoring Member enters into a Sponsored Member trade without entering into an offsetting transaction, the Sponsoring Member is subject to CCLF obligations for the position of its Sponsored Member recorded in its omnibus account as well as its own position arising from the Sponsored Member trade recorded in its netting account. Under the proposal, the Sponsoring Member would not incur CCLF obligations for such transactions. Therefore, a Sponsoring Member's peak daily liquidity is currently higher than it would be under the proposal. This, in turn, may decrease the frequency with which a Sponsoring Member's daily peak liquidity reaches into higher supplemental liquidity tiers. As a result,

[40] FICC has determined that $15 billion is an appropriate amount for allocation to all members because the average member's liquidity need from 2015–2016 was approximately $7 billion, with a majority of members (approximately 85 percent) having liquidity needs less than $15 billion. *See* Securities Exchange Act Release No. 82090 (November 15, 2017), 82 FR 55427, 55430 (November 21, 2017) (SR–FICC–2017–002).

[41] For example, a member that generates daily liquidity needs in the $15–$20 billion supplemental liquidity tier would incur a pro-rata share for the $15–$20 billion supplemental liquidity tier only. Another member that generates daily liquidity needs in the $20–$25 billion supplemental liquidity tier would incur a pro-rata share for both the $15–$20 and $20–$25 billion supplemental liquidity tiers. A third member that generates daily liquidity needs in the $65–$70 billion supplemental liquidity tier would incur a pro-rata share for every supplemental liquidity tier. Each member's pro-rata share is based on the frequency with which the member generates daily liquidity needs in each supplemental liquidity tier. *See* Securities Exchange Act Release No. 80234 (March 14, 2017), 82 FR 14401, 14404–05 (March 20, 2017) (SR–FICC–2017–002).

[42] *See* Rule 3A, Section 8(b) and Rule 22A, Section 2a(b), *supra* note 4.

[43] 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. However, FICC notes an important difference between Sponsored Member trades and other FICC repo activity. *See* Notice of Filing, *supra* note 5 at 29842. Specifically, as mentioned above in Section I.A.2., the Sponsored Service requires a Sponsoring Member to maintain an omnibus account that is separate from its netting account. In contrast, for all other repo activity, members have the option to collapse all of their 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. Therefore, 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. *Id.*

[44] For Sponsored GC Trades, 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. For example, a Sponsoring Member may enter into a Sponsored GC Trade on a Generic CUSIP Number and a separate offsetting Sponsored Member trade in a specific CUSIP Number. Although the specific CUSIP Number might also be an eligible security under the Generic CUSIP Number underlying the Sponsored GC Trade, the Sponsored GC Clearing Agent Bank could allocate to the Sponsored GC Trade a different eligible CUSIP Number from the list of eligible securities. FICC's proposed change would offset these positions across the Sponsoring Member's netting account and omnibus account to ensure that the CCLF obligation applicable to the Sponsoring Member accurately reflects the liquidity risk associated with those positions.

the pro-rata allocation of CCLF obligations among members with daily peak liquidity in those supplemental liquidity tiers would increase.[45] When fewer members generate peak liquidity needs in a supplemental liquidity tier, the remaining members that generate peak liquidity in that tier bear a larger pro-rata share of the CCLF allocations for that tier.

## II. 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–2020–802 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 such filings will also be available for inspection and copying at the principal office of FICC and FICC's website at *https://www.dtcc.com/legal.*

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 September 17, 2021.

## III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[46]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[47] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[48]

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.[49]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[50] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[51] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[52] and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(7) and (21).[53]

### *A. Consistency With Section 805(b) of the Clearing Supervision Act*

#### 1. Reducing Systemic Risks and Supporting the Stability of the Broader Financial System

The Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act because the changes proposed in the Advance Notice are consistent with reducing systemic risks, supporting the stability of the broader financial system, promoting robust risk management, and promoting safety and soundness.[54]

The Commission believes that FICC's proposal to add the Sponsored GC Service to the existing Sponsored Service is consistent with the principles of reducing systemic risk and supporting the stability of the broader financial system. As described above in Section I.B., FICC proposes to add the Sponsored GC Service to facilitate centrally cleared tri-party repo trading between a Sponsored Member and its Sponsoring Member within FICC's Sponsored Service. The Sponsored GC Service is designed to enable a greater number of tri-party repo transactions to be eligible for FICC's netting services and subject to FICC's guaranteed settlement, novation, and risk management, which should help decrease the settlement and operational risk of such transactions relative to those made outside of central clearing. This risk reduction should, in turn, enhance the stability of the tri-party repo market.[55] Furthermore, by enabling

[45] The proposals in the Advance Notice would not change FICC's current methodology for calculating the total amount of the CCLF.

[46] *See* 12 U.S.C. 5461(b).

[47] 12 U.S.C. 5464(a)(2).

[48] 12 U.S.C. 5464(b).

[49] 12 U.S.C. 5464(c).

[50] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). FICC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[51] 17 CFR 240.17Ad–22.

[52] 12 U.S.C. 5464(b).

[53] 17 CFR 240.17Ad–22(e)(7) and (21).

[54] 12 U.S.C. 5464(b).

[55] FICC notes that the centrally cleared repo market has functioned well during periods of extreme market volatility, as evidenced during the

Continued

FICC to provide CCP services covering a greater number of tri-party repo transactions, the Sponsored GC Service would enable FICC to control the liquidation of a greater number of positions in a member default scenario, which in turn, should help protect against the risk of a large-scale exit by institutional firms from the U.S. financial market in a stress scenario.[56] Accordingly, the Commission believes that an increase in centrally cleared tri-party repo activity via the Sponsored GC Service would help reduce systemic risks and support the stability of the broader financial system, consistent with Section 805(b) of the Act.[57]

The Commission also believes that FICC's proposal to change the CCLF allocation methodology is consistent with the principles of reducing systemic risks and supporting the stability of the broader financial system. As discussed above in Section I.C., trades between a Sponsoring Member and its Sponsored Member do not independently create liquidity risk for FICC. However, under the current Rules, if a Sponsoring Member enters into a Sponsored Member trade without entering into an offsetting transaction, the Sponsoring Member is subject to CCLF obligations for the Sponsored Member's position in the Sponsoring Member's omnibus account as well as its own position arising from the Sponsored Member trade recorded in its netting account. Although the positions in the Sponsoring Member's omnibus account and netting account offset each other, FICC does not currently net such positions for CCLF purposes because CCLF allocations are determined at the participant account level. FICC proposes to change the Rules to allow netting, for CCLF allocation purposes, of offsetting positions in a Sponsoring Member's omnibus account and netting account. FICC designed this proposal to ensure that a Sponsoring Member's CCLF obligation aligns more closely with the actual liquidity risk its trading activity presents to FICC. This, in turn, may decrease the frequency with which a Sponsoring Member's daily peak liquidity needs reach into higher CCLF supplemental liquidity tiers, resulting in a larger pro-rata allocation of CCLF obligations among other members whose daily peak liquidity needs reach into those supplemental liquidity tiers.

Based on the foregoing, FICC's current CCLF allocation methodology subjects Sponsoring Members to CCLF obligations beyond the level of risk presented by their trading activity, essentially requiring those Sponsoring Members to partially subsidize the CCLF obligations of other members who would otherwise bear larger CCLF obligations under the proposal.[58] As a result, Sponsoring Members must currently direct capital towards CCLF obligations that could otherwise be used to support the trading activity of their clients.

FICC's proposal to change the CCLF allocation methodology would result in a distribution of CCLF obligations that better aligns with the liquidity risk each member's trading activity presents to FICC. Market stability is enhanced when market participants are incentivized to manage the actual risks presented by their trading activity. Accordingly, the Commission believes that FICC's proposal to change the CCLF allocation methodology would help reduce systemic risk and support the stability of the broader financial system, consistent with Section 805(b) of the Act.[59]

2. Promoting Robust Risk Management and Safety and Soundness

The Commission believes that FICC's proposals in the Advance Notice are consistent with the objectives of promoting robust risk management and promoting safety and soundness at FICC. With respect to the proposed Sponsored GC Service, FICC would leverage its existing risk management tools to manage the risks associated with repos transacted. For example, FICC would manage its market risk with respect to Sponsored GC Trades similar to the manner in which FICC manages existing trades within the Sponsored Service. Specifically, FICC would calculate the VaR Charge for each Sponsored Member based on its activity in the Sponsored Service, including its activity in the proposed Sponsored GC Service. The VaR Charge for the Sponsoring Member's omnibus account would continue to be the sum of the individual VaR Charges for each Sponsored Member client (*i.e.,* gross-margined). Additionally, FICC would risk manage the mark-to-market risk associated with unaccrued repo interest on a Sponsored GC Trade through a proposed new interest rate mark, calculated in the same manner that FICC currently calculates the interest rate mark for GCF Repo transactions.

Moreover, the Advance Notice includes a proposal for a new risk management feature for the Sponsored Service. Specifically, FICC would assign a symbol to each Sponsored Member to facilitate FICC's ability to surveil the Sponsored Member's activity across its Sponsored GC Trades as well as its other Sponsored Member Trades within the existing Sponsored Service. In addition, the new Sponsored GC Service would continue to apply certain heightened requirements on particular types of Sponsoring Members. The foregoing risk management measures would help FICC prevent and otherwise manage the risks presented by the potential default of a member within Sponsored GC Service. Accordingly, the Commission believes that the proposed Sponsored GC Service would promote robust risk management and safety and soundness at FICC, consistent with Section 805(b) of the Act.[60]

The Commission also believes that FICC's proposals in the Advance Notice are consistent with the objective of promoting safety and soundness in the tri-party repo market. As discussed above, the Sponsored GC Service would make the risk-reducing benefits of central clearing available to a greater portion of trades in the tri-party repo market. Also, as described above in Section III.A.1., FICC's proposed CCLF allocation methodology would reduce CCLF obligations for Sponsoring Members with respect to Sponsored Member trades entered into without offsetting (*i.e.,* matched book) trades. As a result, the proposed CCLF allocation methodology would reduce costs for Sponsoring Members and thereby provide an additional incentive for eligible market participants to join the Sponsored Service and offer the Sponsored GC Service to a potentially broader segment of the tri-party market. By bringing a greater portion of tri-party

unprecedented market volatility in March–April 2020. *See* Notice of Filing, *supra* note 5 at 29835.

[56] *See* Letter from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (June 18, 2021) at 2 (commenting that the proposed Sponsored GC Service should incentivize more central clearing of tri-party repos, thereby contributing to enhancing the capacity and resiliency of the repo market and mitigating the risk of a large-scale exit by institutional firms from the market in a stress scenario). 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).

[57] 12 U.S.C. 5464(b).

[58] In reaching this conclusion, the Commission reviewed and analyzed an impact analysis filed by FICC, comparing the changes in CCLF allocations under the current Rules and under the proposal. As part of the Advance Notice, FICC filed Exhibit 3—FICC/GSD CCLF Allocations Impact Study. (Pursuant to 17 CFR 240.24b–2, FICC requested confidential treatment of Exhibit 3.

[59] 12 U.S.C. 5464(b).

[60] *Id.*

repo trades into central clearing, the proposals in the Advance Notice would help to decrease the settlement and operational risk present when such trades are conducted outside of central clearing. The Sponsored GC Service would thereby contribute to the stability of the tri-party repo market. Furthermore, the Sponsored GC Service would enable FICC to centralize and control the liquidation of a greater number of tri-party repo transactions in the event of a member default, which in turn, would help protect the tri-party repo market against the destabilizing risk of a large-scale exit by institutional firms from the U.S. financial market in a stress scenario. Accordingly, the Commission believes that the proposed Sponsored GC Service would promote safety and soundness in the tri-party repo market, consistent with Section 805(b) of the Act.[61]

Additionally, the Commission also believes that FICC's proposal to change the CCLF allocation methodology is consistent with the principle of promoting robust risk management. As described above in Section II.C., FICC's proposal to change the CCLF allocation methodology would not impact FICC's current methodology for determining the total amount of the CCLF. As a result, FICC would retain its current level of liquid resources. FICC's proposal would only change the allocation of CCLF obligations among FICC's members. As described above in this Section III.A.1., FICC's proposed CCLF allocation methodology would result in a CCLF obligation for each member that better corresponds to the actual liquidity risk each member's trading activity presents to FICC. Accordingly, the Commission believes FICC's proposed CCLF allocation methodology would promote robust risk management because it would better align the costs for a member to participate in FICC with the level of risk the member's trading activity presents to FICC, while still maintaining the same overall level of liquidity resources at FICC.

*B. Consistency With Rule 17Ad–22(e)(7)*

Rule 17Ad–22(e)(7) under the Exchange Act requires a covered clearing agency 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.[62] As described above in Section I.C.3., FICC proposes to change the Rules to allow netting, for CCLF allocation purposes, of offsetting positions in a Sponsoring Member's omnibus account and netting account.

FICC's proposal would not impact FICC's current methodology for determining the total amount of the CCLF as a liquidity resource. As discussed above in Section III.A.1., FICC proposes to change the Rules regarding CCLF allocation to ensure that a Sponsoring Member's CCLF obligation aligns more closely with the actual liquidity risk its trading activity presents to FICC. As a result, FICC's proposed CCLF allocation methodology represents more efficient liquidity risk management than the current methodology. Accordingly, the Commission believes that FICC's proposed CCLF allocation methodology is consistent with Rule 17Ad–22(e)(7).[63]

*C. Consistency With Rule 17Ad–22(e)(21)*

Rule 17Ad–22(e)(21) under the Exchange Act requires a covered clearing agency 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, including the clearing agency's clearing and settlement arrangements and the scope of products cleared or settled.[64] As described above in Section I.B., FICC's current Sponsored Service does not accommodate the trading of tri-party repos. FICC proposes to expand the Sponsored Service to allow tri-party repo trading to meet the needs of market participants that currently transact tri-party term repos outside of central clearing because they are not operationally equipped to perform the collateral management and other functions associated with term DVP repos. By expanding the Sponsored Service to facilitate tri-party repo trading, FICC seeks to provide a viable option for its members to transact term tri-party repos in central clearing. Sponsored GC Trades would settle in a manner similar to the way Sponsoring Members and Sponsored Members currently settle tri-party repos with each other outside of central clearing, thereby making it more operationally efficient for the parties to transact term repos with each other using FICC as the CCP. The Commission believes that the proposed Sponsored GC Service is consistent with Rule 17Ad–22(e)(21)[65] because it is responsive to the requests from FICC's members for the ability to trade centrally cleared term tri-party repos in a manner that is efficient and effective in meeting the operational requirements of FICC's members.

## IV. Conclusion

*It is therefore noticed,* pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–FICC–2021–801) and that FICC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving Proposed Rule Change SR–FICC–2021–003, whichever is later.

By the Commission.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18950 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

[61] *Id.*

[62] 17 CFR 240.17Ad–22(e)(7).

[63] *Id.*

[64] 17 CFR 240.17Ad–22(e)(21).

[65] *Id.*

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92795; File Nos. SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, SR–NYSENAT–2021–04]**

## Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

August 27, 2021.

On February 12, 2021, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (''Mahwah Data Center''); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule changes were published for comment in the **Federal Register** on March 4, 2021.[3] On April 7, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.[5] On May 26, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule changes.[6] The Commission has received comment letters on the proposed rule changes.[7]

Section 19(b)(2) of the Act[8] 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 changes were published for notice and comment in the **Federal Register** on March 4, 2021.[9] August 31, 2021 is 180 days from that date, and October 30, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the proposed rule changes, the issues raised in the comment letter that has been submitted in connection therewith, and the Exchanges' response to the comment letter. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates October 30, 2021 as the date by which the Commission should either approve or disapprove the proposed rule changes (File Nos. SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, SR–NYSENAT–2021–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18946 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* Securities Exchange Act Release Nos. 91217 (February 26, 2021), 86 FR 12715 (March 4, 2021) (SR–NYSE–2021–14); 91218 (February 26, 2021), 86 FR 12744 (March 4, 2021) (SR–NYSEAMER–2021–10); 91216 (February 26, 2021), 86 FR 12735 (March 4, 2021) (SR–NYSEArca–2021–13); 91219 (February 26, 2021), 86 FR 12724 (March 4, 2021) (SR–NYSECHX–2021–03); and 91215 (February 26, 2021), 86 FR 12752 (March 4, 2021) (SR–NYSENAT–2021–04) (collectively, the ''Notices'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 91490 (April 7, 2021), 86 FR 19313 (April 13, 2021). The Commission designated June 2, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.

[6] *See* Securities Exchange Act Release No. 92033 (May 26, 2021), 86 FR 29601 (June 2, 2021).

[7] Comments received on the Notices are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-14/srnyse202114.htm.*

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Notices, *supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92793; File No. SR-FINRA–2021–020]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Form CMA (Continuing Membership Application Form)

August 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 August 20, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) amend Form CMA (Continuing Membership Application Form) required under Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to conform to amendments to the Membership Application Program (''MAP'') rules[4] as described in File No. SR–FINRA–2020–011, which become effective on September 1, 2021;[5] and (2) make non-substantive and technical changes to Form CMA.[6] The proposed rule change does not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Background

The MAP rules require an applicant for continuing membership to file an application that includes a Form CMA.[7] Form CMA is organized into sections that align with the standards for admission set forth in Rule 1014(a) (Standards for Admission). Each section begins with a description of the applicable standard in Rule 1014(a), followed by a series of questions related to that standard that are intended to help the applicant provide the responses needed to demonstrate that it

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The MAP rules consist of Rules 1011 through 1019, which reside under the Rule 1000 Series (Member Application and Associated Person Registration).

[5] *See* Securities Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (Order Approving File No. SR–FINRA–2020–011, as Modified by Amendment No. 1) (''SEC Order''). *See also Regulatory Notice* 21–09 (March 2021) (announcing September 1, 2021, as the effective date of the amendments to the MAP rules, and different effective dates of the amendments to other FINRA rules to address brokers with a significant history of misconduct).

[6] FINRA is separately developing comprehensive changes to the MAP rules in connection with the retrospective review of this rule set, which will also require conforming amendments to the standardized forms. *See Regulatory Notice* 18–23 (July 2018) (requesting comment on a proposal regarding the MAP rules).

[7] *See* Rule 1017(b)(2).

can meet each of the standards described under Rule 1014(a), and to facilitate FINRA's review of the application.[8] An applicant is able to provide its documents and information by attaching files in various formats (*e.g.,* .docx, .pdf, .xlsx) or by entering free form text in text boxes, and making selections through screen components such as drop-down menus and radio buttons, among others.

Recent Amendments to the MAP Rules

On December 10, 2020, FINRA amended the MAP rules, among other FINRA rules, to address the issue of persons with a significant history of misconduct and the member firms that employ them.[9] As amended, Rule 1017 includes new paragraph (a)(7), which requires a member to file a continuing member application (''CMA'') whenever a natural person seeking to become an owner,[10] control person,[11] principal or registered person of a member has, in the prior five years, one or more ''final criminal matters'' (as defined in new Rule 1011(h) [12]) or two or more ''specified risk events'' (as defined in new Rule 1011(p) [13]), and the member is not otherwise required to file a Form CMA in accordance with Rule 1017, unless the member has submitted a written request to FINRA seeking a materiality consultation for such contemplated activity. As part of the materiality consultation, Rule 1017(a)(7) also provides that FINRA will determine in the public interest and the protection of investors that either the member is not required to file a Form CMA and may effect the contemplated activity, or the member is required to file a Form CMA in accordance with Rule 1017 and the member may not effect the contemplated activity unless FINRA approves the Form CMA. In addition, Rule 1017(a)(7) provides that Interpretative Material (''IM'')–1011–1 (Safe Harbor for Business Expansions) is not available to the member when a materiality consultation is required under Rule 1017(a)(7).[14]

Proposed Conforming Amendments to Form CMA

As a result of the recent amendments to the MAP rules, FINRA is proposing to amend Form CMA to: (1) List in the section of the form entitled ''Type of Continuing Membership Application'' all of the events under Rule 1017(a) that require a member to file Form CMA; (2) incorporate questions into Form CMA that relate specifically to Rule 1017(a)(7); and (3) make other non-substantive and technical changes in the form for clarity and consistency, and to promote efficiency. FINRA believes that these proposed conforming changes to Form CMA and the non-substantive and technical changes will help guide an applicant to provide the responses needed to demonstrate that it can meet the standards set forth under Rule 1014(a), and to facilitate FINRA's review of the application in light of the recent admendments to the MAP rules.

*A. Amend Form CMA's ''Type of Continuing Membership Application'' Section To List All of the Events Specified in Paragraphs (a)(1) Through (a)(7) Under Rule 1017*

As noted above, Form CMA is organized into sections that correspond to the standards for admission set forth in Rule 1014(a), with each section containing its own set of questions, some of which are mandatory, related to that particular standard for admission.[15] But before an applicant proceeds with completing those sections, Form CMA requests the applicant to identify all applicable types of changes in ownership, control, or business operations in the section titled, ''Type of Continuing Membership Application.'' This section currently bears two headers that categorize some Rule 1017(a) events as either ''Ownership of asset transfer changes,'' covering the events described under Rule 1017(a)(1) through Rule 1017(a)(4), or ''Change(s) in business operations,'' covering the events described under Rule 1017(a)(5).[16] Currently, Form CMA's ''Type of Continuing Membership Application'' section presents the events under Rule 1017(a)(1) through Rule 1017(a)(5), some of which appear in a summary fashion, without rule references.[17] FINRA is proposing to amend this section of Form CMA so that all the events described under Rule 1017(a), including those set forth in paragraphs (a)(6) and (a)(7), and their respective rule references would be listed in the form. In addition, FINRA is proposing to delete the two headers—''Ownership of asset transfer changes'' and ''Change(s) in business operations''—for clarity and to facilitate presenting the events under Rule 1017(a)(1) through 1017(a)(7) sequentially.

Specifically, the proposed changes to Form CMA's ''Type of Continuing Membership Application'' section would add the following three types of changes in ownership, control, or business operations that an applicant may select, as applicable, with references to the corresponding provisions in Rule 1017(a)(6) [18] and (a)(7):

[8] The sections of Form CMA that are marked with a red asterisk require the applicant to provide a response.

[9] *See supra* note 5.

[10] For purposes of Rule 1017(a)(7) only, the term ''owner'' has the same meaning as ''direct owner'' and ''indirect owner'' on the Uniform Application for Broker-Dealer Registration (''Form BD'') Schedules A and B, as amended from time to time. *See* Rule 1017(a)(7).

[11] For purposes of Rule 1017(a)(7), the term ''control person'' means a person who would have ''control'' as defined on Form BD, as amended from time to time. *See* Rule 1017(a)(7).

[12] *See* paragraph (h) under Rule 1011 (defining ''final criminal matter'') as amended by SR–FINRA–2020–011, *supra* note 5.

[13] *See* paragraph (p) under Rule 1011 (defining ''specified risk event'') as amended by SR–FINRA–2020–011, *supra* note 5. *See also* Securities Exchange Act Release No. 92710 (August 19, 2021) (Order Approving File No. SR–FINRA–2021–011) (amendment to the ''specified risk event'' definition).

[14] Relatedly, new IM–1011–3 (Business Expansions and Persons with Specified Risk Events) provides that IM–1011–1 is not available to any member that is seeking to add a natural person who has, in the prior five years, one or more final criminal matters or two or more specified risk events and seeks to become an owner, control person, principal, or registered person of the member. In general, IM–1011–1 creates a safe harbor for specified categories of business expansions, subject to certain thresholds, that a member may undergo without filing a CMA.

[15] *See supra* note 8.

[16] Rule 1017(a)(5) provides that a member shall file a CMA for approval of a ''material change in business operations,'' which is defined in Rule 1011(m). Currently on Form CMA, the ''Change(s) in business operations'' category lists five options that an applicant may select to further identify the type of material change involved. Three of those options correspond to changes that are set forth in subparagraphs (1), (2) and (3) under the definition of ''material change in business operations'' in Rule 1011(m). A fourth option describes an expansion of Associated Persons, offices, or number of markets made. A fifth ''other'' option also is included because the definition of ''material change in business operations'' is not exhaustive. *See generally* paragraph (m) under Rule 1011 as amended by SR–FINRA–2020–011 (renumbering from paragraph (l) to paragraph (m)), *supra* note 5; IM–1011–1; Rule 1017(b)(2)(C).

[17] For example, Rule 1017(a)(1) provides that a CMA is required for ''a merger of the member with another member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc[.]'' Form CMA, in the Type of Continuing Membership Application section, summarizes this event as ''Merger of the member with another member.'' In another example, while Rule 1017(a)(2) states that a CMA is required for ''a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the New York Stock Exchange, Inc.[,]'' Form CMA summarizes such event as a ''[d]irect or indirect acquisition by the member of another member.'' Except for one technical change pertaining to the event that corresponds to Rule 1017(a)(3), FINRA is not proposing to change the descriptions of Rule 1017(a)(1) through Rule 1017(a)(5) as they currently appear in Form CMA.

[18] FINRA recently made changes to Form CMA to account for Rule 1017(a)(6). *See* Securities Exchange Act Release No. 89867 (September 15, 2020), 85 FR 58404 (September 18, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–028).

☐ Any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an Associated Person of the transferring member has a ''covered pending arbitration claim,'' an unpaid arbitration award or an unpaid settlement related to an arbitration (FINRA Rule 1017(a)(6)(A))

☐ Business expansion to add one or more Associated Persons involved in sales and one or more of those Associated Persons has a ''covered pending arbitration claim,'' an unpaid arbitration award or an unpaid settlement related to an arbitration (FINRA Rule 1017(a)(6)(B))

☐ Natural person seeks to become an owner, control person, principal or registered person of a member and has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events'' (FINRA Rule 1017(a)(7))

These proposed conforming changes to this section of Form CMA will list all of the events under Rule 1017(a). Additionally, the specific references on Form CMA to the applicable subsections of Rule 1017 will give applicants clarity about which events require them to submit Form CMA to FINRA for approval.

*B. Incorporate Questions To Conform Form CMA to Rule 1017(a)(7)*

Rule 1017(i) provides that in rendering a decision on a CMA, FINRA must consider whether the applicant and its associated persons meet each of the standards in Rule 1014(a). FINRA is proposing to amend two sections in Form CMA, which are ''Standard 1: Overview of the Applicants,'' corresponding to Rule 1014(a)(1) (''Standard 1''), and ''Standard 3: Compliance with securities laws, just and equitable principles of trade,'' corresponding to Rule 1014(a)(3) (''Standard 3''). FINRA believes that these proposed changes would conform Form CMA to, and are necessary to effectively account for, Rule 1017(a)(7). The proposed amendments to Form CMA are described in further detail below.

1. Form CMA's ''Standard 1: Overview of the Applicants'' Section

Standard 1 requires FINRA to determine whether the application and all supporting documents are complete and accurate. Form CMA's Standard 1 section has several questions that, in general, focus on understanding the circumstances surrounding the contemplated change or event set forth under Rule 1017(a), and are intended to elicit from the applicant the information necessary for FINRA to assess whether Standard 1 is met. For example, the applicant is required to provide a complete description of the contemplated change, the persons or entities that will become associated or affiliated with the applicant as a result of the contemplated change, and to the extent applicable, a description of the liabilities that will not be included in a transfer of assets or a line of business.[19]

FINRA is proposing to add several new questions to this section that would require the applicant to provide information necessary to support compliance with Rule 1017(a)(7). These proposed questions are intended to collect the necessary information in an efficient manner, as further explained below.

Proposed new Question 5 would require, as marked by the asterisk, the applicant to provide a ''yes'' or ''no'' answer to the following question:

5. Is this application required because the Applicant seeks to add a natural person as an owner, control person, principal or registered person who, in the prior five years, has one or more ''final criminal matters'' or two or more ''specified risk events'' (as defined in FINRA Rule 1011)?* (As Rule 1017(a)(7) provides, the term ''owner'' has the same meaning as ''direct owner'' and ''indirect owner'' on Form BD Schedules A and B, as amended from time to time, and the term ''control person'' means a person who would have ''control'' as defined on Form BD, as amended from time to time.)

If the applicant's answer to proposed Question 5 is ''yes,'' proposed Question 5.a. would prompt the applicant to identify in a chart, for each ''final criminal matter'' or ''specified risk event,'' the subject party, that person's CRD number, and, if the matter or event has not been reported on a Uniform Registration Form, a description of the nature of the activity, any findings, any fine or other dispositions.[20] Specifically, proposed Question 5.a. would ask: [21]

a. If the answer to Question 5 is ''yes,'' for each ''final criminal matter'' or ''specified risk event,'' if the matter or event has been reported on a Uniform Registration Form (*i.e.,* Forms U4, U5, U6, BD), please provide the subject party and that person's CRD number. If the matter or event has not been reported on a Uniform Registration Form, please also provide a description of the nature of the activity, any findings, any fine or other dispositions.

If the applicant's answer to proposed Question 5 is ''no,'' the applicant would not be prompted to answer proposed Question 5.a.

The proposed conforming changes to Standard 1 of Form CMA are intended to collect necessary information efficiently. Proposed Question 5.a. would reduce the burden on firms to provide FINRA with duplicate information by not requiring applicants to describe each ''final criminal matter'' or ''specified risk event'' that was already described on a Uniform Registration Form. Thus, if the matter or event has already been reported on a Uniform Registration Form, the applicant would only need to provide the subject party and that person's CRD number. If the matter or event has not been reported on a Uniform Registration Form, the applicant also would be required to provide a description of the nature of the activity, any findings, any fine or other dispositions, to support compliance with Rule 1017(a)(7). Further, requiring firms to provide the subject party's CRD number would facilitate FINRA's coordination of information entered on Form CMA with information that has been entered on a Uniform Registration Form or provided in a related materiality consultation, and thus enable FINRA to more efficiently monitor for compliance with Rule 1017(a)(7).

Form CMA's Standard 1 section also requests the applicant to provide information on contemplated changes in direct ownership and indirect ownership. For example, the applicant is currently prompted to provide, as applicable, the proposed direct or indirect owner's CRD number, name, roles, the date the role was acquired, the person's ownership percentage, and whether the person is a ''control person,'' among other information. Rule 1017(a)(7) applies when a natural person seeking to become an ''owner'' or ''control person'' (among other roles) has, in the prior five years, ''one or more final criminal matters or two or more specified risk events.'' Rule 1017(a)(7) further provides that, for purposes of

[19] *See generally* Exhibit 3 (Form CMA, Standard 1, Questions 1, 2, and 3, within the category titled ''Overview of the proposed change'').

[20] *See* Exhibit 3 (Form CMA, Standard 1, chart accompanying Proposed Question 5.a., within the category titled ''Overview of the proposed change''). This proposed chart would be similar to how members, when submitting a request for a materiality consultation pursuant to Rule 1017(a)(7), would need to provide information about individuals' ''final criminal matters'' and ''specified risk events.'' *See* Rule 1017(a)(7) (providing that the member's written request for a materiality consultation ''must address the issues that are central to the materiality consultation''); Securities Exchange Act Release No. 88600 (April 8, 2020), 85 FR 20745, 20753 (April 14, 2020) (Notice of Filing of File No. SR–FINRA–2020–011) (explaining that a member submitting a request for a materiality consultation would need to provide information relating to the individuals' ''final criminal matters'' and ''specified risk events'').

[21] The following quoted material includes references to the Uniform Application for Securities Industry Registration or Transfer (''Form U4''), the Uniform Termination Notice for Securities Industry Registration (''Form U5''), the Uniform Disciplinary Action Reporting Form (''Form U6''), and the Central Registration Depository (''CRD'').

Rule 1017(a)(7), the term ''owner'' has the same meaning as ''direct owner'' and ''indirect owner'' on Form BD Schedules A and B, as amended from time to time. To conform with Rule 1017(a)(7), FINRA is proposing to add a question about whether the contemplated direct or indirect owner of the applicant is a ''FINRA Rule 1017(a)(7) Person (*i.e.* , whether such person has one or more 'final criminal matters' or two or more 'specified risk events' in the prior five years).'' [22]

2. Form CMA's ''Standard 3: Compliance with securities laws, just and equitable principles of trade'' Section

Standard 3 requires FINRA to determine whether an applicant and its associated persons ''are capable of complying with'' the applicable securities laws and regulations, and with applicable FINRA rules. Standard 3 sets forth several factors, including past and current disciplinary actions and customer claims, that FINRA must consider in making that determination. The existence of certain factors that ''[raise] a question of capacity to comply with the federal securities laws and the rules of [FINRA]'' results in a rebuttable presumption to deny the application.[23] In general, Form CMA's Standard 3 section currently includes questions that require an applicant to indicate whether it or any of its associated persons are subject to any of the specified factors described in Standard 3, direct the applicant to provide additional information about those factors, require the applicant to explain, even with the existence of the specified factors, how it will be able to comply with applicable securities laws and regulations and with applicable FINRA rules, ask arbitration-related questions, and prompt the applicant to provide supporting documents.[24]

FINRA is proposing to add new questions to Form CMA's Standard 3 section for the same reason that FINRA is proposing new questions to Form CMA's Standard 1 section, which is to require the applicant to provide information necessary to support compliance with Rule 1017(a)(7). These proposed questions are intended to collect the necessary information in an efficient manner, as further explained below.

FINRA is proposing to add new Question 5 to Form CMA's Standard 3 section, using language similar to proposed Question 5 in Form CMA's Standard 1 section. A similar question in Form CMA's Standard 3 section is needed because information concerning a person described in Rule 1017(a)(7) would be relevant to a CMA filed pursuant to other subparagraphs of Rule 1017(a).[25] Specifically, proposed Question 5 would require the applicant to provide a ''yes'' or ''no'' answer to the following:

5. Does this application propose to add a natural person as an owner, control person, principal or registered person who, in the prior five years, has one or more ''final criminal matters'' or two or more ''specified risk events''?* *See* FINRA Rule 1017(a)(7). (For purposes of Rule 1017(a)(7), the term ''owner'' has the same meaning as ''direct owner'' and ''indirect owner'' on Form BD Schedules A and B, as amended from time to time, and the term ''control person'' means a person who would have ''control'' as defined on Form BD, as amended from time to time.)

If the applicant answers ''yes,'' the applicant would then be asked in proposed Question 5.a. whether the information was provided above in the section concerning Standard 1, Question 5.a. If the answer to Standard 3, Question 5.a. is ''yes,'' then the applicant would not be required to complete Question 5.b. If the answer to Standard 3, Question 5.a. is ''no,'' then the applicant would be required to respond to proposed Question 5.b.:

b. If the answer to Question 5.a. is ''no,'' for each ''final criminal matter'' or ''specified risk event,'' if the matter or event has been reported on a Uniform Registration Form (*i.e.,* Forms U4, U5, U6, BD), please provide the subject party and that person's CRD number. If the matter or event has not been reported on a Uniform Registration Form, please also provide a description of the nature of the activity, any findings, any fine or other dispositions.

The applicant would be able to provide the information requested in proposed Question 5.b. in a chart identical to the chart proposed to follow Question 5.a. in Form CMA's Standard 1 section.[26]

The proposed conforming changes to Standard 3 of Form CMA are intended to collect necessary information efficiently. Proposed Questions 5.a. and 5.b. and the accompanying chart to Form CMA's Standard 3 section would reduce the burden on firms to provide FINRA with duplicate information already provided earlier on Form CMA or separately in a Uniform Registration Form. If the matter or event has already been described in Form CMA's Standard 1 section, the applicant would be able to cross-reference that description. If the matter or event was not already described in Form CMA's Standard 1 section but was already reported on a Uniform Registration Form, the applicant would only need to provide the subject party and that person's CRD number. If the matter or event has not been reported in Form CMA's Standard 1 section or on a Uniform Registration Form, the applicant would also be required to provide a description of the nature of the activity, any findings, any fine or other dispositions, to support compliance with Rule 1017(a)(7). Further, requiring firms to provide a CRD number would enable FINRA to facilitate FINRA's coordination of information entered on Form CMA with information that has been entered on a Uniform Registration Form or provided in a related materiality consultation, and therefore enable FINRA to more efficiently gather relevant information.

*C. Other Proposed Non-Substantive, Technical Amendments to Form CMA*

FINRA is also proposing several non-substantive, technical changes to Form CMA. First, FINRA is proposing to include in Form CMA's Standard 1 section and Standard 3 section a reminder to the applicant that, ''[e]very Form U4 shall be kept current at all times by supplementary amendments to the original Form U4. See FINRA By-Laws, Art. V, Sec. 2(c).'' Form U4 is one of the ''Uniform Registration Forms,'' as defined by amendments to the MAP rules.[27] Second, FINRA is proposing to amend Form CMA's ''Type of Continuing Membership Application'' section to change ''comprising'' to

[22] Member firms also would identify these direct and indirect owners in materiality consultations pursuant to Rule 1017(a)(7). *See* Rule 1017(a)(7) (providing that a written request for a materiality consultation ''must address the issues that are central to the materiality consultation''); Securities Exchange Act Release No. 88600 (April 8, 2020), 85 FR 20745, 20753 (April 14, 2020) (Notice of Filing of File No. SR–FINRA–2020–011) (explaining that a member submitting a request for a materiality consultation would need to provide information relating to the subject person), *supra* note 20.

[23] *See Notice to Members* 04–10 (February 2004) (announcing amendments to Rules 1011, 1014, and 1017); and Rule 1017(i) (setting forth the events that create a rebuttable presumption to deny a CMA).

[24] *See generally* Form CMA, Standard 3, Questions 1, 2, 3, and 4 (within the category titled ''Explain how this Standard is met.''). In 2020, some questions in Form CMA's Standard 3 section underwent adjustments to align with the arbitration-related amendments to the MAP rules as described in File No. SR–FINRA–2019–030. *See supra* note 18.

[25] Rule 1017(a)(7) requires a member to file a CMA only when ''the member is not otherwise required to file a Form CMA in accordance with Rule 1017.''

[26] *See* Exhibit 3 (Form CMA, Standard 3, chart accompanying Proposed Question 5.b., within the category titled ''Explain how this Standard is met'').

[27] *See* paragraph (r) under Rule 1011 (defining ''Uniform Registration Forms'') as amended by SR–FINRA–2020–011, *supra* note 5.

''composing'' to match the language used in Rule 1017(a)(3).[28]

Finally, FINRA is proposing to add within Form CMA's Standard 1 section new Questions 4.a., 4.b. and 4.c that would efficiently collect the information needed to monitor for compliance with Rule 1017(a)(6). Proposed Questions 4.a. and 4.b. would ask the applicant to indicate whether the CMA is required under Rule 1017(a)(6)(A) or Rule 1017(a)(6)(B), respectively.[29] If the applicant answers ''yes'' to either question, then proposed Question 4.c. would prompt the applicant to list, for each covered pending arbitration claim, unpaid arbitration award, or unpaid settlement related to an arbitration, the subject party and that person's CRD number in a chart. FINRA believes that adding these proposed questions and the accompanying chart to Form CMA's Standard 1 section would efficiently collect the information needed to monitor for compliance with Rule 1017(a)(6).[30] The proposed questions would also achieve parity with the manner FINRA is proposing to elicit information needed to monitor for compliance with Rule 1017(a)(7). Additionally, proposed Question 4 would allow FINRA to readily coordinate information entered on Form CMA with information that may have been entered on a Uniform Registration Form or provided in a materiality consultation.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on September 1, 2021, to coincide with the effective date of the amendments to the MAP rules as announced in *Regulatory Notice* 21–09.[31] The proposed changes to Form CMA conform to the recently amended MAP rules. To facilitate member firm compliance with the amended rules on the date they become effective, it is necessary for the amendments to Form CMA to become effective on the same date.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed changes to Form CMA will conform the form to the amendments to Rule 1017(a)(7), as described in the SEC Order. The proposed changes to Form CMA will also help ensure that applicants for continuing membership provide the information and documentation to produce a complete application package for FINRA's review.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA's recent amendments to the MAP rules, which specify additional events that require a CMA for FINRA's approval, necessitate conforming changes to the sections of Form CMA pertaining to the type of CMA, Standard 1 and Standard 3. The proposed conforming changes—*i.e.,* listing in Form CMA's ''Type of Continuing Membership Application'' section all of the events under Rule 1017(a) that require a member to file Form CMA, and incorporating in Form CMA's Standard 1 and Standard 3 sections questions that would require the applicant to provide information about an individual's ''final criminal matters'' and ''specified risk events'' that is necessary to support compliance with Rule 1017(a)(7)—are derived from, and effectuate, recent amendments to the MAP rules concerning persons with a significant history of misconduct and the broker-dealers that employ them, as described in the SEC Order. In addition, the proposed changes to Form CMA's Standard 1 section pertaining to Rule 1017(a)(6) would efficiently collect the information needed to monitor for compliance with that rule in the same manner that FINRA proposes to collect information needed to monitor for compliance with Rule 1017(a)(7). FINRA considered and discussed the potential economic impact of the recent amendments in File No. SR–FINRA–2020–011, including the burden imposed on some applicants to seek a materiality consultation with FINRA, and noted the potential requirement to file a Form CMA and certain associated costs.[33] FINRA believes that the proposed conforming changes to Form CMA and the proposed technical changes described herein would not result in new material economic effects.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

*Because the foregoing proposed rule change does not:* (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[34] and Rule 19b–4(f)(6) thereunder.[35]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[36] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay requirement so that the proposed rule change may become operative on September 1, 2021. The Commission hereby grants the request. The

[28] *See* Rule 1017(a)(3) (requiring, in pertinent part, a member to file an application for approval of ''direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues *composing* 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis'') (Emphasis added).

[29] *See generally* Exhibit 3 (Form CMA, Standard 1, proposed Questions 4, 4.a., 4.b., 4.c. and accompanying chart, within the category titled ''Overview of the proposed change'').

[30] The requested information is similar to the information that member firms would provide in a materiality consultation pursuant to Rule 1017(a)(6). *See* Rule 1017(a)(6)(A) and (B) (providing that the written request for a materiality consultation ''must address the issues that are central to the materiality consultation''); *see also* Checklist for Mandatory Materiality Consultations Under Rule 1017(a)(6), *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process/checklist-under-rule-1017a6* (providing guidance to firms to provide, among other things, the name, title and CRD number of associated persons with a covered pending arbitration claim, unpaid arbitration award or unpaid settlement related to an arbitration).

[31] FINRA notes that the proposed rule change would impact all members, including members that have elected to be treated as capital acquisition brokers (''CABs''), given that CAB Rule 116 (Application for Approval of Change in Ownership, Control, or Business Operations) incorporates, by reference, Rule 1017, which requires that a member's application for approval of changes to its ownership, control, or business operations include a Form CMA. *See* Rule 1017(b)(2).

[32] 15 U.S.C. 78o–3(b)(6).

[33] *See* Securities Exchange Act Release No. 88600 (April 8, 2020), 85 FR 20745, 20755–62 (April 14, 2020) (Notice of Filing of File No. SR–FINRA–2020–011).

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

Commission finds that the proposed changes to Form CMA conform to the recently amended MAP rules.[37] The Commission therefore finds that the proposed rule change is consistent with the goals set forth by the Commission when it approved amendments to the MAP rules as described in File No. SR–FINRA–2020–011, which become effective on September 1, 2021.[38] The Commission finds that waiving the 30-day operative delay would facilitate firm compliance with the amended MAP rules on the date they become effective.[39] Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay requirement. Therefore the Commission designates the proposed rule change as operative on September 1, 2021.

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–2021–020 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–2021–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2021–020 and should be submitted on or before August 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18945 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

[37] *See supra* note 5.

[38] *Id.*

[39] Similarly, the Commission finds that the non-substantive and technical changes to Form CMA are consistent with the protection of investors and the public interest.

[40] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92797; File No. SR–PEARL–2021–32]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the MIAX Pearl Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

August 27, 2021.

## I. Introduction

On July 1, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–PEARL–2021–32) to amend the MIAX Pearl Options Fee Schedule (''Fee Schedule'') to remove certain credits and increase monthly Trading Permit fees for Exchange Members.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on July 15, 2021.[5] The Commission has received no comment letters on the proposed rule change. Under Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (i) Temporarily suspending File Number SR–PEARL–2021–32; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR–PEARL–2021–32.

## II. Description of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to: (1) Delete the definition of and remove the credits applicable to the Monthly Volume Credit for Members; (2) and; (3) amend Section (3)(b) of the Fee Schedule to increase the amount of monthly Trading Permit Fees.

*Remove ''Monthly Volume Credit''*

The Exchange proposes to amend the Definitions section of its Fee Schedule to delete the definition of ''Monthly Volume Credit'' and remove the credits applicable to the Monthly Volume Credit for Members.[7] The Exchange states that the Monthly Volume Credit was established in 2018 to encourage Members to send increased Priority

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Notice, *infra* note 5, at 37379. The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See id.*

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (''Notice'').

[6] 15 U.S.C. 78s(b)(3)(C).

[7] *See* Notice, *supra* note 5, at 37379–80.

Customer[8] order flow to the Exchange. The Monthly Volume Credit is provided to Members whose executed Priority Customer volume along with that of its Affiliates,[9] not including Excluded Contracts,[10] is at least 0.30% of Exchange-listed Total Consolidated Volume (''TCV'')[11] and is $250 for Members that connect via the FIX Interface and $1,000 for Members that connect via the MEO Interface (or both interfaces).[12] The Monthly Volume Credit is a single once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

*Remove Trading Permit Fee Credit*

The Exchange also proposes to amend Section (3)(b) of the Fee Schedule to remove a Trading Permit fee credit of $100 that is provided to Members who connect via both the MEO and FIX Interfaces and is a monthly credit towards the Trading Permit fees applicable to the MEO Interface use.[13]

*Increase Monthly Trading Permit Fees*

The Exchange also proposes to amend Section (3)(b) of the Fee Schedule to increase the amount of the monthly Trading Permit fees that are charged to Exchange Members that are Electronic Exchange Members or Market Makers.[14] These fees are assessed in a tier-based fee structure based on the monthly total volume executed by a Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to all Exchange-listed options and are also assessed based upon the type of interface used by the Member to connect to the Exchange, specifically the FIX Interface and/or the MEO Interface.[15]

The Exchange proposes to increase fees for Trading Permits as follows:

For Members that connect via the FIX Interface, if the Member's relevant monthly volume falls within the parameters of:

- Tier 1 (up to 0.30% TCV): The monthly fee would increase from $250 to $500;
- Tier 2 (above 0.30%, up to 0.60% TCV): The monthly fee would increase from $350 to $1,000; and
- Tier 3 (above 0.60% TCV): The monthly fee would increase from $450 to $1,500.

For Members that connect via the MEO interface, if the Member's relevant monthly volume falls within the parameters of:

- Tier 1 (up to 0.30% TCV): The monthly fee would increase from $300 to $2,500;
- Tier 2 (above 0.30%, up to 0.60% TCV): The monthly fee would increase from $400 to $4,000; and
- Tier 3 (above 0.60% TCV): The monthly fee would increase from $500 to $6,000.

## III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[16] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[17] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

In support of the proposed fee changes, the Exchange principally argues that these fees are constrained by competitive forces, and that this is supported by their revenue and cost analysis. In particular, the Exchange states that it operates in a ''highly competitive market'' in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive.[18] In further support of its argument that competitive forces constrain its proposed fee changes, Exchange further states that if it were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.[19] In addition, the Exchange states that it is not aware of any reason why market participants could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange, and claims that no options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange, which the Exchange believes is illustrated by the fact that it is unaware of any one options exchange whose membership includes every registered broker-dealer.[20]

The Exchange also states that these fees are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange believes that Trading Permits are a means to directly access the Exchange and thus offers meaningful value (and without a Trading Permit a Member cannot directly trade on the Exchange). The Exchange provides an analysis of its revenues, costs, and profitability associated with these fees, which it references as ''Proposed Access Fees.''[21] The Exchange states that this analysis reflects an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services.[22] The Exchange states that this analysis shows that the Proposed Access Fees will not result in excessive pricing or supra-competitive profit when compared to the Exchange's annual expense associated with providing the services

[8] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* Notice, *supra* note 5, at 37380 n.6.

[9] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). *See* Notice, *supra* note 5, at 37380 n.9.

[10] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* Notice, *supra* note 5, at 37380 n.10.

[11] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* Notice, *supra* note 5, at 37380 n.11.

[12] The ''FIX Interface'' and ''MEO Interface'' are different interfaces for certain order types as set forth in Exchange Rule 516. *See* Notice, *supra* note 5, at 37380 n.7–8.

[13] *See* Notice, *supra* note 5, at 37380.

[14] *See* Notice, *supra* note 5, at 37380–81.

[15] *See* Notice, *supra* note 5, at 37380.

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 15 U.S.C. 78s(b)(1).

[18] *See* Notice, *supra* note 5, at 37387; *see also id.* at 37382.

[19] *See* Notice, *supra* note 5, at 37382.

[20] *See* Notice, *supra* note 5, at 37387.

[21] *See* Notice, *supra* note 5, at 37381–86.

[22] *See* Notice, *supra* note 5, at 37382. In addition, the Exchange notes that the expenses discussed within their filing only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing. *See id.* at 37384.

associated with the Proposed Access Fees versus the annual revenue the Exchange will collect for providing those services.[23]

The Exchange states that for 2021, the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $844,741.[24] The $844,741 in projected total annual expense is comprised of the following, all of which the Exchange states are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees. The Exchange states that the $844,741 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange.

The Exchange states that the total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees is projected to be $188,815 for 2021.[25] The Exchange represents that it determined whether third-party expenses related to the access services associated with the Proposed Access Fees, and, if such expense did so relate, determined what portion (or percentage) of such expense represents the cost to the Exchange to provide access services associated with the Proposed Access Fees. This includes allocating a portion of fees paid to: (1) Equinix, for data center services (approximately 8% of the Exchange's total applicable Equinix expense); (2) Zayo Group Holdings, Inc. for network services (approximately 4%); (3) Secure Financial Transaction Infrastructure and various other services providers (approximately 3%); and (4) various other hardware and software providers (approximately 5%).

In addition, the Exchange states that the total internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $655,925 for 2021.[26] The Exchange represents that: (1) The Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $549,824, which is a portion of the Exchange's total projected expense of $9,163,894 for employee compensation and benefits (approximately 6%); (2) the Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $66,316, which is a portion of the Exchange's total projected expense of $1,326,325 for depreciation and amortization (approximately 5%); and (3) the Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $39,775, which is a portion of the Exchange's total projected expense of $497,180 for occupancy (approximately 8%).

The Exchange states that this cost and revenue analysis shows that the proposed rule change will not result in excessive pricing or supra-competitive profit.[27] The Exchange projects that, on a fully-annualized basis, the Proposed Access Fees will have an expense of $844,741 per year and a projected revenue of $1,170,000 per year, resulting in a projected profit margin of 28% ($1,170,000 in projected revenue minus $844,741 in projected expense = $325,259 profit per year). The Exchange states that this estimated profit margin is well below the operating profit margins of other competing exchanges based on financial statements provided by them in Form 1 filings.[28] The Exchange also claims that the Trading Permit fees are reasonable and equitable because ''they are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.'' [29]

The Exchange further states that its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, Miami International Securities Exchange, LLC and MIAX Emerald, LLC, are still recouping the initial expenditures from building out their systems while the ''legacy'' exchanges have already paid for and built their systems.[30] The Exchange also believes that removal of the Monthly Volume Credit and Trading Permit fee credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory.[31] In addition, the Exchange states that these credits were offered in order to attract order flow and membership after the Exchange first launched operations, and it is now appropriate to remove these credits in light of the current operating conditions of the Exchange.[32]

The Exchange states that the proposed fees are equitably allocated, not unfairly discriminatory, and do not impose an unnecessary or inappropriate burden on competition because the Proposed Access Fees do not favor certain categories of market participants,[33] the difference in Trading Permit fees for FIX versus MEO Interface users reflects the fact FIX Interface utilizes less capacity and resources of the Exchange while the MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange; [34] and options market participants are not forced to connect to (and purchase Trading Permits) all options exchanges.[35]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[36] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [37]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [38] (2) perfect the mechanism of a free and open market and a national

[23] *See* Notice, *supra* note 5, at 37382, 37386.

[24] *See* Notice, *supra* note 5, at 37383–84.

[25] *See* Notice, *supra* note 5, at 37384–85.

[26] *See* Notice, *supra* note 5, at 37385–86.

[27] *See* Notice, *supra* note 5, at 37386.

[28] *See* Notice, *supra* note 5, at 37386. The Exchange states that Nasdaq ISE, LLC's operating profit margin for 2019 was 83% and Nasdaq PHLX LLC's operating profit margin for 2019 was 67%.

[29] *See* Notice, *supra* note 5, at 37387. The Exchange cites fees from NYSE Arca, NYSE American, and CBOE BZX Options Exchange in support of this statement. *See id.* at 37381 n.18. For a more detailed description of the Exchange's justifications for the proposed rule change, *see* Notice, *supra* note 5, at 37381–88.

[30] *See* Notice, *supra* note 5, at 37386.

[31] *See* Notice, *supra* note 5, at 37382–83.

[32] *See* Notice, *supra* note 5, at 37382–83.

[33] *See id.* at 37387.

[34] *See* Notice, *supra* note 5, at 37381.

[35] For a more detailed description of the Exchange's justifications for the proposed rule change, *see* Notice, *supra* note 5, at 37381–88.

[36] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[37] *Id.*

[38] 15 U.S.C. 78f(b)(4).

market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [39] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[40]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed rule change is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[41]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[42]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [43] and 19(b)(2)(B) of the Act [44] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[45] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [46]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [47] and
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [48]

As discussed in Section III above, the Exchange makes various arguments in support of the proposal. The Commission believes that there are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposal to remove certain credits and increase monthly Trading Permit fees is consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [49] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[50] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[51]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act; [52] as well as any other provision of the Act, or the rules and regulations thereunder.

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 23, 2021. Rebuttal comments should be submitted by October 7, 2021. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[53]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(8).

[41] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[42] For purposes of temporarily suspending the 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).

[43] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[44] 15 U.S.C. 78s(b)(2)(B).

[45] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] 17 CFR 201.700(b)(3).

[50] *See id.*

[51] *See id.*

[52] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[53] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposal 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–PEARL–2021–32 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–PEARL–2021–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–32 and should be submitted on or before September 23, 2021. Rebuttal comments should be submitted by October 7, 2021.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,[54] that File Number SR–PEARL–2021–32 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18948 Filed 9–1–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No: SSA–2021–0034]**

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes an extension and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

*Comments: https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2021–0034].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0034].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 1, 2021. Individuals can obtain copies of the collection instrument by writing to the above email address.

*Registration for Appointed Representative Services and Direct Payment—0960–0732.* SSA uses Form SSA–1699 to register appointed representatives of claimants before SSA who:

- Want to register for direct payment of fees;
- Registered for direct payment of fees prior to 10/31/09, but need to update their information;
- Registered as appointed representatives on or after 10/31/09, but need to update their information; or
- Received a notice from SSA instructing them to complete this form.

By registering these individuals, SSA: (1) Authenticates and authorizes them to do business with us; (2) allows them to access our records for the claimants they represent; (3) facilitates direct payment of authorized fees to appointed representatives; and, (4) collects the information we need to meet Internal Revenue Service (IRS) requirements to issue specific IRS forms if we pay an appointed representative in excess of a specific amount ($600). The respondents are appointed representatives who want to use Form SSA–1699 for any of the purposes cited in this Notice.

*Type of Request:* Revision of an OMB-approved information collection.

[54] 15 U.S.C. 78s(b)(3)(C).

[55] 17 CFR 200.30–3(a)(57) and (58).

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–1699 | 10,382 | 1 | 20 | 3,461 | * $71.59 | ** $247,773 |

* We based this figure on average Lawyers hourly wages, as reported by Bureau of Labor Statistics data (*www.bls.gov/oes/current/oes231011.htm*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than October 4, 2021. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Request for Withdrawal of Application—20 CFR 404.640—0960–0015.* Form SSA–521, Request for Withdrawal of Application, allows claimants to specify which application they want to withdraw and the reason for the withdrawal. Form SSA–521 is our preferred instrument for a withdrawal request; however, any written request for withdrawal signed by the claimant or a proper applicant on the claimant's behalf will suffice. Individuals who wish to withdraw their applications for benefits complete Form SSA–521, or sign the completed form for each request to withdraw. SSA uses the information from Form SSA–521 to process the request for withdrawal. The respondents are applicants for Retirement, Survivors, Disability, and Health Insurance benefits.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| Respondents applying for or receiving Retirement, Survivors, or Health Insurance benefits | 60,753 | 1 | 5 | 5,063 | * $10.95 | ** $55,440 |
| Respondents applying for or receiving Disability benefits | 14,374 | 1 | 5 | 1,198 | * 10.95 | ** 13,118 |
| Totals | 75,127 | ..... | ..... | 6,261 | ..... | ** 68,558 |

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. *Statement of Employer—20 CFR 404.801–404.803—0960–0030.* When workers report they were paid wages but cannot provide proof of those earnings, and the wages do not appear in SSA's records of earnings, SSA uses Form SSA–7011–F4, Statement of Employer, to document the alleged wages. Specifically, the agency uses the form to resolve discrepancies in the individual's Social Security earnings record and to process claims for Social Security benefits. We only send Form SSA–7011–F4 to employers if we are unable able to locate the earnings information within our own records. The respondents are employers who can verify wage allegations made by wage earners.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–7011–F4 | 500 | 1 | 30 | 250 | * $27.07 | ** $6,768 |

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. *Request for Workers' Compensation/Public Disability Benefit Information—20 CFR 404.408(e)—0960–0098.* Individuals who received both Social Security disability payments and Worker's Compensation/Public Disability Benefits (WC/PDB) must notify SSA about their WC/PDB, so that the agency can reduce the claimants' Social Security disability payments accordingly. Recipients may submit evidence of their WC/PDB, such as a copy of their award notice or benefit check, or have their WC/PDB provider complete Form SSA–1709 to document their WC/PDB to SSA. The respondents are Federal, State, and local agencies, insurance carriers, and public or private self-insured companies administering WC/PDB benefits to disability recipients.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–1709 | 120,000 | 1 | 15 | 30,000 | * $26.65 | ** $799,500 |

* We based this figure by averaging both the average Federal, State, and Local Government hourly wages (*https://www.bls.gov/oes/current/naics3_999000.htm*), and the average Insurance Claims and Policy Processing Clerks hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes439041.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. *A Statement of Care and Responsibility for Beneficiary—20 CFR 404.2020, 404.2025, 408.620, 408.625, 416.620, and 416.625—0960–0109.* SSA uses the information from Form SSA–788, Statement of Care and Responsibility for Beneficiary, to verify payee applicants' statements of concern, and to identify other potential payees. SSA is concerned with selecting the most qualified representative payee who will use Social Security benefits in the beneficiary's best interest. SSA considers factors such as the payee applicant's capacity to perform payee duties; awareness of the beneficiary's situation and needs; demonstration of past, and current concern for the beneficiary's well-being. If the payee applicant does not have custody of the beneficiary, SSA obtains information from the custodian for evaluation against information the applicant provides. Respondents are individuals who have custody of the beneficiary in cases where someone else has filed to be the beneficiary's representative payee.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–788 | 134,000 | 1 | 10 | 22,333 | * $27.07 | ** $604,554 |

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-00000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. *Third Party Liability Information Statement—42 CFR 433.136–433.139—0960–0323.* To reduce Medicaid costs, Medicaid state agencies identify third party insurers liable for medical care or services for Medicaid beneficiaries. Regulations at 42 CFR 433.136–433.139 require Medicaid state agencies to obtain this information on Medicaid applications and redeterminations as a condition of Medicaid eligibility. States may enter into agreements with the Commissioner of Social Security to make Medicaid eligibility determinations for aged, blind, and disabled beneficiaries in those states. Applications for and redeterminations of Supplemental Security Income (SSI) eligibility in jurisdictions with such agreements are applications and redeterminations of Medicaid eligibility.

Under these agreements, SSA obtains third party liability information using Form SSA–8019–U2, Third Party Liability Information Statement, and provides that information to the Medicaid state agencies. The Medicaid state agencies use the information to bill third parties liable for medical care, support, or services for a beneficiary to guarantee that Medicaid remains the payer of last resort. The respondents are SSI claimants and recipients.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–8019–U2 (Paper) | 200 | 1 | 6 | 20 | * $19.01 | ..... | *** $380 |
| SSI Claims System (Intranet) | 35,257 | 1 | 6 | 3,526 | * 19.01 | ** 21 | *** 301,613 |
| Totals | 35,457 | ..... | ..... | 3,546 | ..... | ..... | *** 301,993 |

* We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on averaging both the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. *Certificate of Election for Reduced Spouse's Benefits—20 CFR 404.421—0960–0398.* SSA cannot pay reduced Social Security benefits to an already entitled spouse unless the spouse elects to receive reduced benefits and is (1) at least age 62, but under full retirement age; and (2) no longer caring for a child. In this situation, spouses who decide to elect reduced benefits must file Form SSA–25, Certificate of Election for Reduced Spouse's Benefits. SSA uses the information to pay qualified spouses who elect to receive reduced benefits. Respondents are entitled spouses seeking reduced Social Security benefits.

*Type of Request:* Revision of an OMB approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–25 | 30,000 | 1 | 13 | 6,500 | * $27.07 | ** $175,955 |

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-00000*)

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. *Coverage of Employees of State and Local Governments—20 CFR part 404, subpart M—0960–0425.* The regulations at 20 CFR part 404, subpart M prescribe the rules for States to submit reports of deposits and recordkeeping to SSA. SSA requires States (and interstate instrumentalities) to provide wage and deposit contribution information for pre-1987 tax years. Since not all States have completely satisfied their pending wage report and contribution liability with SSA for pre-1987 tax years, SSA needs these regulations until we collect all pending items with the States, and to allow for collection of this information in the future, if necessary. The respondents are State and local governments or interstate instrumentalities.

*Type of Request:* Extension of an OMB-approved information collection.

| Regulation section | Number of respondents | Frequency of response | Average burden per response (minutes) | Total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| 404. 1204 (a) & (b) | 52 | 1 | 30 | 26 | * $28.74 | ** $747 |
| 404.1215 | 52 | 1 | 60 | 52 | * 28.74 | ** 1,494 |
| 404. 1216 (a) & (b) | 52 | 1 | 60 | 52 | * 28.74 | ** 1,494 |
| Totals | 156 | | | 130 | | ** 3,735 |

* We based this figure on an average of both the State Government hourly wages (*https://www.bls.gov/oes/current/naics4_999200.htm*), and the average Local Government hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/naics4_999300.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. *Permanent Residence in the United States Under Color of Law (PRUCOL)—20 CFR 416.1615 and 416.1618—0960–0451.* Under 20 CFR 416.1415 and 416.1618, SSA requires claimants or recipients to submit evidence of their alien status when they apply for SSI payments, and periodically thereafter as part of the eligibility determination process for SSI. When SSA cannot verify evidence of alien status through the regular claimant interview process, SSA verifies the validity of the evidence of PRUCOL for grandfathered nonqualified aliens with the Department of Homeland Security (DHS) using the DHS Systemic Alien Verification for Entitlements (SAVE) program. SSA determines if the individual qualifies for PRUCOL status based on the SAVE program response. SSA does not maintain any forms or applications for respondents to use, rather, the regulations listed in 20 CFR 416.1615 and 416.1618 specify the information respondents need to submit to SSA to show evidence of PRUCOL. Without this information, SSA is unable to determine whether the PRUCOL individual is eligible for SSI payments. Respondents are qualified and unqualified aliens who apply for SSI payments under PRUCOL.

*Type of Request:* Extension of an OMB-approved information collection.

| Modality of completion | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| Personal Interview | 1,049 | 1 | 5 | 87 | * $27.07 | ** $2,355 |

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. *Request for Deceased Individual's Social Security Record—20 CFR 402.130—0960–0665.* The Freedom of Information Act (FOIA), at 5 U.S.C. 552(a)(3) of the U.S. Code, provides instructions for members of the public to request records from Federal Agencies. When a member of the public requests an individual's Social Security record under FOIA, SSA needs the name and address of the requestor as well as a description of the requested record to process the request. SSA uses the information the respondent provides on Form SSA–711, Request for Deceased Individual's Social Security Record, or via an internet request through SSA's electronic Freedom of Information Act (eFOIA) website, to: (1) Verify the wage earner is deceased; and (2) access the correct Social Security record.

Respondents are members of the public requesting deceased individuals' Social Security records.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| Internet Request through eFOIA | 49,800 | 1 | 7 | 5,810 | * $27.07 | | *** $157,277 |
| SSA–711 (paper) | 200 | 1 | 7 | 23 | * 27.07 | ** 24 | *** 2,788 |
| Total | 50,000 | | | 5,833 | | | *** 160,065 |

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).
** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

10. *Representative Payment—20 CFR 404.2011, 404.2025, 416.611, and 416.625—0960–0679.* The regulations at 20 CFR 404.2011 and 416.611 allow SSA to make payments to recipients' representative payees if it may cause substantial harm for the beneficiaries to receive their payments directly. The regulations allow beneficiaries to dispute a finding that substantial harm exists by providing SSA with evidence to reevaluate the determination. In addition, sections 20 CFR 404.2025 and 416.625 describe the information representative payees must provide SSA about their continuing relationship and responsibility for the recipients, and explain how they use the recipients' payments to verify payee performance. The respondents are Title II and Title XVI recipients, and their representative payees.

*Type of Request:* Revision of an OMB-approved information collection.

| Regulation section | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| 404.2011(a)(1); 416.611(a)(1) | 260 | 1 | 15 | 65 | * $19.01 | ** $1,236 |
| 404.2025; 416.625 | 3,090 | 1 | 6 | 309 | * 19.01 | ** 5,874 |
| Totals | 3,350 | | | 374 | | ** 7,110 |

* We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

11. *Function Report—Adult—20 CFR 404.1512 & 416.912—0960–0681.* Individuals receiving or applying for Social Security disability insurance (SSDI) or SSI must provide medical evidence and other proof SSA requires to prove their disability. SSA staff, and, on SSA's behalf, State Disability Determination Services' (DDS) employees, collect the information via paper Form SSA–3373, or through an in-person or telephone interview for cases where we need information about a claimant's activities and abilities to evaluate the claimant's disability. We use the information to document how claimants' disabilities affect their ability to function, and to determine eligibility, or continued eligibility, for SSI and SSDI claims. The respondents are adult Title II and Title XVI claimants, or current recipients undergoing redeterminations of benefits.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–3373 | 1,734,635 | 1 | 61 | 1,763,546 | * $10.95 | ** 21 | *** $25,958,815 |

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** We based this figure on averaging both the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

12. *Request for Business Entity Taxpayer Information—0960–0731.* SSA requires law firms or other business entities to complete Form SSA–1694, Request for Business Entity Taxpayer Information, if they wish to serve as appointed representatives and receive direct payment of fees from SSA. SSA uses the information to issue a Form 1099–MISC. SSA also uses the information to allow business entities to designate individuals to serve as entity administrators authorized to perform certain administrative duties on their behalf, such as providing bank account

information, maintaining entity information, and updating individual affiliations. Respondents are law firms or other business entities with attorneys or other qualified individuals as partners or employees who represent claimants before SSA.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–1694 (Paper) | 366 | 1 | 20 | 122 | *$61.03 | **$7,446 |
| BSO online submission | 103 | 1 | 20 | 34 | *61.03 | **2,075 |
| Totals | 469 | | | 156 | | **9,521 |

*We based this figure on the average legal occupation's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-00000*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

13. *Financial Disclosure for Civil Monetary Penalty (CMP) Debt—20 CFR 498—0960–0776.* When SSA imposes a CMP on individuals for various fraudulent conduct related to SSA-administrated programs, those individuals may request to pay the CMP through benefit withholding, or an installment agreement. To negotiate a monthly payment amount, fair to both the individual and the agency, SSA needs financial information from the individual. SSA uses Form SSA–640, to obtain the information necessary to determine a monthly installment repayment rate for individuals owing a CMP. The respondents are recipients of Social Security benefits and non-entitled individuals who must repay a CMP to the agency and choose to do so using an installment plan.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–640 | 10 | 1 | 120 | 20 | *$19.01 | **24 | ***$456 |

*We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

**We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.

***This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: August 30, 2021.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2021–18988 Filed 9–1–21; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 11528]**

### United States Passports Invalid for Travel to, in, or Through the Democratic People's Republic of Korea (DPRK)

**AGENCY:** Department of State.

**ACTION:** Notice of extension of passport travel restriction.

**SUMMARY:** On September 1, 2017, all U.S. passports were declared invalid for travel to, in, or through the Democratic People's Republic of Korea (DPRK), unless specially validated for such travel. The restriction was extended for one year in 2018, 2019, and 2020. This notice extends the restriction until August 31, 2022, unless extended or revoked by the Secretary of State.

**DATES:** The extension of the travel restriction is in effect on September 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Kovaciny, Bureau of Consular Affairs, Passport Services, Office of Adjudication, 202–485–8800.

**SUPPLEMENTARY INFORMATION:** On September 1, 2017, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.63(a)(3), all U.S. passports were declared invalid for travel to, in, or through the DPRK unless specially validated for such travel. The restriction was renewed on September 1, 2018, September 1, 2019, and again for another year effective September 1, 2020.

The Department of State has determined there continues to be serious risk to U.S. citizens and nationals of arrest and long-term detention constituting imminent danger to their physical safety, as defined in 22 CFR 51.63(a)(3). Accordingly, all U.S. passports shall remain invalid for travel to, in, or through the DPRK unless specially validated for such travel under the authority of the Secretary of State. This extension to the restriction of travel to the DPRK shall be effective upon publication of this notice in the **Federal Register** and shall expire on August 31, 2022, unless extended or revoked by the Secretary of State.

Dated: August 30, 2021.

**Brian P. McKeon,**

*Deputy Secretary of State for Management and Resources.*

[FR Doc. 2021–19140 Filed 9–1–21; 8:45 am]

**BILLING CODE 4710–13–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36536]**

### Tulsa Base Railroad, L.L.C.—Lease and Operation Exemption—Base, Inc.

Tulsa Base Railroad, L.L.C. (TBR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease and to operate 745 feet of track that extends south of the point-of-switch with BNSF Railway Company

(BNSF) at BNSF milepost 419.05 in Tulsa, Okla. (the Line).

TBR states that the Line is owned by BNSF, which operated it as spur track. According to TBR, BNSF leases the premises that include the Line to Base, Inc. (Base), the sole equity member of TBR, which in turn has subleased the Line to TBR for an initial term of seven years.[1] TBR further states that the agreements between BNSF and Base and between Base and TBR do not include any provision or agreement that would limit future interchange with a third-party connecting carrier.

TBR certifies that its anticipated annual revenue will not exceed that of a Class III rail carrier and will not exceed $5 million.

The transaction may be consummated on or after September 16, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 9, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36536, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on TBR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to TBR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 30, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Brendetta Jones,**

*Clearance Clerk.*

[FR Doc. 2021–19008 Filed 9–1–21; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The verified notice states that because Base does not currently control any rail carriers, no Board authority is required for Base to control TBR once TBR becomes a rail carrier.

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 1317X]**

### Kiski Junction Railroad, Inc.—Abandonment Exemption—in Armstrong and Westmoreland Counties, Pa.

Kiski Junction Railroad, Inc. (KJRR), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon two segments of rail line: (1) Line Code 2229, from at or near milepost 30.0 in Alladin, Pa., to milepost 28.8, in Armstrong and Westmoreland Counties, Pa.; and (2) Line Code 2242, from milepost 0.0 at the connection of Line Code 2229, to milepost 4.0, in Armstrong County (together, the Line). The Line traverses U.S. Postal Service Zip Codes 15656, 15682, 15690, and 16226.

KJRR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line that would need to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on October 2, 2021, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by September 10, 2021.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 13, 2021.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 22, 2021.

All pleadings, referring to Docket No. AB 1317X, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on KJRR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Avenue NW, Suite 1300 South, Washington, DC 20004.

If the verified notice contains false or misleading information, the exemption is void ab initio.

KJRR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by September 7, 2021. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), KJRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by KJRR's filing of a notice of consummation by September 2, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: August 30, 2021.

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Raina White,**

*Clearance Clerk.*

[FR Doc. 2021–18972 Filed 9–1–21; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Safety Advisory 2021–01]**

### Positive Train Control Interface Design Issue With Locomotive and Cab Car Braking Systems

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Safety Advisory.

**SUMMARY:** FRA is issuing Safety Advisory 2021–01 to make the rail industry, including railroads and railroad employees, aware of a recently identified interface design issue relating to how positive train control (PTC) systems in use throughout the United States interface with locomotive and cab car braking systems. This recently identified interface design issue allows a train crewmember to circumvent a PTC enforcement by manually cutting out the pilot valve/brake stand, commonly known as the cut-out valve, prior to the PTC system initiating the brakes. This interface design issue poses a significant safety risk by allowing a PTC system to be disabled and unable to initiate the brakes to prevent a train-to-train collision, over-speed derailment, incursion into an established work zones, or the movement of a train through a switch left in the wrong position. This Safety Advisory recommends that all railroads operating with PTC systems immediately remind crewmembers that circumventing a PTC enforcement is subject to civil penalty or disqualification for the locomotive engineer or conductor responsible; audit the designs of PTC systems as implemented on all types of locomotives and cab cars; assess the extent to which the design of the system could allow a locomotive or cab car's PTC system to be circumvented by a crewmember; develop and implement a plan to mitigate and/or correct this design issue; and provide FRA with a schedule for completion of the identified actions.

**FOR FURTHER INFORMATION CONTACT:** Gabe Neal, Staff Director, Signal, Train Control and Crossings Division, Office of Railroad Systems and Technology, at telephone: (816) 516–7168 or email: *gabe.neal@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Positive train control (PTC) systems must be designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zones, and the movement of a train through a switch left in the wrong position.[1] PTC accomplishes this by using technology to monitor train speed and train locations, provide warnings for the traincrew to take action, and automatically initiate braking if the traincrew does not take action.

FRA is aware of a recently identified design issue relating to how PTC systems in use throughout the United States interface with locomotive and cab car braking systems. This interface design issue allows a crewmember to circumvent a PTC enforcement by manually cutting out the pilot valve/brake stand, commonly known as the cut-out valve, prior to the PTC system initiating the brakes. If a PTC system is allowed to be disabled by the actions of a crewmember, the PTC system can no longer prevent a train-to-train collision, over-speed derailment, incursion into an established work zone, or the movement of a train through a switch left in the wrong position.

Although FRA has found that all PTC systems are potentially impacted by this interface design issue, FRA notes that only some interface designs between the PTC system and the locomotive or cab car braking system allow a PTC enforcement to be disabled. FRA believes that the interface designs of most concern are limited to a number of older locomotives equipped with mechanical braking systems, and the interface design is likely not an issue on most newer locomotives equipped with electronic braking systems. On PTC-equipped locomotives and cab cars with interface designs with this issue, manually cutting out the pilot valve/brake stand disables the PTC system enforcement capability. FRA recognizes that a locomotive or cab car PTC system is considered a ''safety device'' under FRA's regulations [2] and that it is unlawful for a railroad employee to operate the equipment with such a safety device disabled without authorization. Accordingly, a system that allows such interference in its operation does not comply with the applicable statutory or regulatory requirements.[3] In addition, a PTC system that allows such interference presents a significant safety risk in that it can no longer perform its required functions.

FRA became aware of this issue through three recent events:

- On May 27, 2021, during testing of the Advanced Civil Speed Enforcement System II (ACSES II) PTC system aboard a freight train, an FRA PTC Specialist witnessed an engineer circumvent a penalty brake application while operating in an overspeed condition. The engineer placed the pilot valve/brake stand in the cut-out position prior to PTC system enforcement of the overspeed condition. When the overspeed condition no longer existed, the pilot valve/brake stand was returned to the cut-in position, and the train continued without a PTC system penalty.
- On July 13, 2021, during testing of the Interoperable Electronic Train Management System (I–ETMS) PTC system on a freight locomotive, FRA conducted a test in which a zero speed temporary speed restriction (TSR) was issued to the train and the pilot valve/brake stand was placed into the cut-out position prior to PTC system enforcement of the TSR. This action allowed the train to circumvent PTC system enforcement.
- On July 21, 2021, during testing of the ACSES II PTC system on a passenger train, FRA conducted a similar test in which a zero speed temporary speed restriction (TSR) was issued to the train and the pilot valve/brake stand was placed into the cut-out position prior to PTC system enforcement of the TSR. This action achieved similar results, allowing the train to circumvent the PTC system enforcement with one exception; after placing the pilot valve/brake stand back into the cut-in position, the train encountered a PTC penalty brake application.

#### Safety Advisory 2021–01

As shown by the incidents described above, rail operations face a safety risk due to the interface design issue that allows PTC enforcement to be circumvented by cutting out the pilot valve/brake stand. Such risks must be addressed to provide for the safety of train operations, and thus FRA recommends that railroads do the following:

(1) Immediately remind railroad crewmembers that, along with the unauthorized disabling of a PTC system, circumventing PTC enforcement by manually cutting out the pilot valve/brake stand when not authorized is a revocable event for the locomotive engineer or conductor responsible, and

[1] 49 CFR 236.1005.

[2] 49 CFR part 218.

[3] 49 CFR 236.1005.

subjects any other crewmember responsible to individual liability proceedings, including disqualification and/or civil penalties. See 49 CFR 240.117(e)(5), 240.305(a)(5), and 242.403(b) and (e)(5).

(2) Immediately conduct a complete audit of the PTC onboard design of all locomotives and cab cars equipped with PTC to determine how the onboard PTC equipment is integrated into each railroad's locomotive and cab car's braking system, to ascertain what percentage of the locomotive and cab car fleet is subject to the interface design issue described above;

(3) Within ten (10) days of the publication of this Safety Advisory, provide FRA, via the SIR site, with a report of the number and type of locomotives and cab cars that have this interface design issue;

(4) Upon completion of item (2) above, determine the mitigating measures and/or corrective actions necessary to address the safety risk presented by the design issue, and provide FRA, via the SIR site, with a report documenting the planned measures and/or actions, including a schedule for completion; and

(5) Immediately commence implementation of the planned measures and/or actions to address the safety risk presented by the design issue per the documented schedule, and provide FRA, via the SIR site, confirmation of completion.

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2021–18997 Filed 9–1–21; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2019–0132; Notice 2]**

### Hankook Tire America Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Hankook Tire America Corporation (Hankook) has determined that certain Hankook Ventus V2 Concept 2 tires manufactured by Hankook's indirect subsidiary, Hankook Tire Manufacturing Tennessee, LP, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Hankook filed a noncompliance report dated November 19, 2019, and subsequently petitioned NHTSA on December 5, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces and explains the grant of Hankook's petition.

**FOR FURTHER INFORMATION CONTACT:** Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–3081.

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* Hankook has determined that certain Hankook Ventus V2 Concept 2 tires, do not fully comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Hankook filed a noncompliance report dated November 19, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on December 5, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Hankook's petition was published with a 30-day public comment period, on April 17, 2020, in the **Federal Register** (85 FR 21504). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/, and* then follow the online search instructions to locate docket number ''NHTSA–2019–0132.''

*II. Tires Involved:* Approximately 467 Hankook Ventus V2 Concept 2 tires, size 235/45R17V XL H457, manufactured between October 7, 2019, and October 12, 2019, are potentially involved.

*III. Noncompliance:* Hankook explains that the noncompliance is due to a mold error in which the subject tires, were marked with the date-code in the Tire Identification Number (TIN) inverted and; therefore, they do not meet the requirements of paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the date code was printed upside down.

*IV. Rule Requirements:* Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to the petition. Each tire must be labeled with the TIN required by 49 CFR part 574.5 on the intended outboard sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the TIN required by 49 CFR part 574.5 on one sidewall and with either the TIN or a partial TIN, containing all characters in the TIN except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall. Each tire must be marked on each sidewall with the TIN required by 49 CFR part 574.5 as listed in the documents and publications specified in paragraph (b) TIN content requirement.

*V. Summary of Hankook's Petition:* Hankook describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, Hankook offers the following reasoning:

1. The purpose of the labeling requirements in Part 574 is to ''facilitate notification to purchasers of defective or nonconforming tires.'' *See* Part 574.2. The date code portion of the TIN is required so that purchasers can identify the week and year of the tire's manufacture in the event the tire is subject to a safety recall.

2. The date-code characters reflect the correct week and year of the tires' manufacture, but the date code is technically out of compliance because the characters are inverted. Despite the inversion, the date code meets the character height requirements of Part 574 and is readily identifiable, permitting tire owners to easily determine the week and year of manufacture.

3. NHTSA has previously granted a petition for inconsequential noncompliance for a similar issue. In granting a petition from Cooper Tire & Rubber Company, 81 FR 43708 (July 5, 2016), the Agency explained:

The Agency believes that in the case of a tire labeling noncompliance, one measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's or consumer's ability to identify the mislabeled tires properly, should the tires be recalled for performance-related noncompliance. In this case, the nature of the labeling error does not prevent the correct identification of the affected tires. 49 CFR 574.5 requires the date code portion of the tire identification number to be placed in the last or correct position. In Cooper's case, it is in the right-most position, however, the manufacture date code is upside down.

Because the label is located on the tire sidewall, it is not likely to be misidentified. A reader will be able to read the date code, by spinning the tire, and therefore inverting the date code will allow it to easily be read.

The petitioner argues that, as with the Cooper tires, the date code on the subject tires is located on the sidewall, is not likely to be misidentified, and a reader will be able to read and understand the date code. Hankook communicated in an email to the agency on November 19, 2020, that a partial TIN is labeled on at least one sidewall of the tire. The subject tires otherwise meet the marking and performance requirements of FMVSS No. 139.

4. Hankook is not aware of any complaints, claims, or incidents related to the subject noncompliance.

Hankook concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

*VI. NHTSA's Analysis:* In evaluating this tire labeling noncompliance issue, NHTSA considered if the incorrectly marked date code could mislead a consumer about the actual age of the tire or make it difficult to correctly determine if the tire has been recalled. The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such performance-related noncompliances inconsequential.[1] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[5] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[6] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

In the instant case, the date code required by FMVSS No. 139 is properly located in the right-most position and shows the correct week and year of manufacture but has been imprinted upside-down, and the upside-down font cannot be confused with right-side up font. If a consumer reads the label as it is, the fact that the date code is inverted would become self-evident. In such a case, it would not be difficult to rotate the tire to a position where the code could be read and deciphered. The tire's age would then be available as needed and the tire could also be identified if recalled.

*VII. NHTSA's Decision:* In consideration of the foregoing, NHTSA finds that Hankook has met its burden of persuasion that the subject FMVSS No. 139 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Hankook's petition is hereby granted, and Hankook is exempted from the obligation of providing notification of, and a remedy for, the noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that Hankook no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hankook notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke, III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2021–18953 Filed 9–1–21; 8:45 am]

**BILLING CODE 4910–59–P**

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[6] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0219]**

## Agency Information Collection Activity Under OMB Review: CHAMPVA Benefits—Application, Claim, Other Health Insurance, Potential Liability & Miscellaneous Expenses

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0219.

**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:**

*Authority:* 44 U.S.C. 3501–21.

*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. Sections 501 and 1781, and 10 U.S.C. Sections 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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 86 FR 105 on June 3, 2021, pages 29883 and 29884.

*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.

**Dorothy Glasgow,**

*VA PRA Clearance Officer, Alt. Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021–18952 Filed 9–1–21; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 86 Thursday,
No. 168 September 2, 2021

Part II

## Securities and Exchange Commission

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92796; File No. SR–BOX–2021–06]**

## Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

August 27, 2021.

On May 12, 2021, BOX Exchange LLC (''Exchange'' or ''BOX'') 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 adopt rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC (''BSTX''). The proposed rule change was published for comment in the **Federal Register** on June 2, 2021.[3] On July 13, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On August 18, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

### I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (''Exchange Act''),[8] BOX Exchange LLC (''BOX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (''BSTX''). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of ''Securities,'' which would be equity securities that meet BSTX listing standards and for which certain information regarding orders and executions on BSTX would be recorded and disseminated on a proprietary market data feed that BSTX operates using a proprietary blockchain system (''BSTX Market Data Blockchain''). The proposed additions to the Exchange's Rules setting forth new Rule Series 17000–29000 have been submitted with the proposal as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange's rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, have been submitted with the proposal as Exhibits 3A through 3L.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM–8050–3, 11010, 11030 and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange's Rules.[9]

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to adopt a series of rules to govern the trading of certain equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system (''BSTX System'') for the trading of certain equity securities that would be considered ''Securities'' under the proposed rules. The

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92017 (May 25, 2021), 86 FR 29634 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-box-2021-06/srbox202106.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92387 (July 13, 2021), 86 FR 38140 (July 19, 2021). The Commission designated August 31, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange revised the proposal to: (i) Eliminate the proposed suspension of unlisted trading privileges for thinly traded securities; (ii) modify proposed rule text regarding the order parameter that would allow participants to indicate a preference for same day (''T+0'') or next day (''T+1'') settlement to clarify that, based on how the preferences of the two sides of an executed trade compare, the Exchange will transmit matched order information to a registered clearing agency for settlement as indicated to the extent that such settlement timing may be permitted under the rules, policies, and procedures of the registered clearing agency; (iii) modify aspects of the proposed market data blockchain to remove the Exchange's ability to change the content of the market data blockchain through a regulatory circular, remove the unique identification number from the types of member-specific market data, specify that anonymized, general market data will pertain to displayed orders, and add that the Exchange may provide permission for non-members to view the anonymized, general market data; (iv) add rule text regarding the Exchange's proposed market data products; (v) eliminate a proposed rule regarding issuer conversion of a security to listing on BSTX; (vi) provide additional description of several aspects of the proposal, including the market data blockchain and the possibility to settle on a T+0 or T+1 basis; and (vii) make technical and conforming changes. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-box-2021-06/srbox202106-9159349-247726.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] 15 U.S.C. 78s(b)(1).

[9] The Exchange's Rules can be found on the Exchange's public website: *https://boxoptions.com/regulatory/rulebook-filings/.*

''Securities'' [10] under the proposed rules would be equity securities that meet BSTX listing standards and that trade on the BSTX System. The Exchange would operate the BSTX Market Data Blockchain, which would record certain information regarding orders and transactions occurring on BSTX with respect to Securities. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies and issuers of exchange traded products (''ETPs'') that wish to issue their registered securities as Securities. Securities would trade as NMS stock.[11] The Exchange is not proposing rules that would support its extension of unlisted trading privileges (''UTP'') to other NMS stock, and accordingly the Exchange does not intend to extend any such UTP in connection with this proposal. The Exchange would therefore only trade Securities listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of UTP to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

Guide to the Scope of the Proposed Rule Change

The proposal for trading of Securities through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (''BSTX Rules''). In addition, the Exchange plans to submit a separate proposed rule change pertaining to BSTX's corporate governance documents. To support the trading of Securities through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 29000.[12] Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a discussion of notable differences between the source rule and the proposed BSTX Rule. The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

- Section 17000—General Provisions of BSTX;
- Section 18000—Participation on BSTX;
- Section 19000—Business Conduct for BSTX Participants;
- Section 20000—Financial and Operational Rules for BSTX Participants;
- Section 21000—Supervision;
- Section 22000—Miscellaneous Provisions;
- Section 23000—Trading Practice Rules;
- Section 24000—Discipline and Summary Suspension;
- Section 25000—Trading Rules;
- Section 25200—Market Making on BSTX;
- Section 26000—BSTX Listing Rules Other Than for Exchange Traded Products;
- Section 27000—Suspension and Delisting;
- Section 27100—Guide to Filing Requirements;
- Section 27200—Procedures for Review of Exchange Listing Determinations; and
- Section 28000—Trading and Listing of Exchange Traded Products;
- Section 29000—Dues, Fees, Assessments and Other Charges.

Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Securities

The Joint Venture and Ownership of BSTX

On June 19, 2018, t0.com Inc. (''tZERO'') and BOX Digital Markets LLC (''BOX Digital'') announced a joint venture to facilitate the trading of Securities on the Exchange.[13] As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of the voting class of equity and over 45% economic interest of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture will be the subject of a separate proposed rule change that the Exchange will submit to the Commission.

BSTX Would Be a Facility of BOX That Would Support Trading in the New Asset Class of Securities for BOX

BSTX would operate as a facility [14] of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX's operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations.[15] Currently, BOX functions as an exchange only for standardized options. At the time that BSTX commences operations it would support trading in Securities that are equity securities (including certain ETPs), as descried in more detail below. Accordingly, the proposal represents a new asset class for BOX, and the discussion below sets forth the changes and additions to the Exchange's Rules to support the trading of equity securities as Securities on BSTX.

The Exchange proposes to use the term ''Security'' [16] to describe a NMS stock trading on the BSTX system. The legal significance, therefore, of a ''Security'' is that it would be an equity security that is approved for listing on BSTX and that trades on the BSTX System. A security that is offered by an issuer with the intent of it becoming listed on BSTX would therefore not become a ''Security'' under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System.[17]

Securities Would Be NMS Stocks

The Securities would qualify as NMS stocks pursuant to Regulation NMS,[18] which defines the term ''NMS security'' in relevant part to mean ''any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan

[10] As discussed further below, BSTX proposes to use the term ''Security'' to refer to BSTX-listed securities to distinguish them from other securities issued by an issuer that the issuer does not list on BSTX.

[11] 17 CFR 242.600(b)(48).

[12] The proposed changes to BOX Rules and the proposed BSTX Rules have been submitted with this proposal as Exhibits 5B and 5A, respectively.

[13] *See* tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), *https://www.businesswire.com/news/home/20180619005897/en/tZERO-and-BOX-Digital-Markets-Sign-Deal-to-Create-Joint-Venture.*

[14] 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that ''the term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' Because BSTX will share certain systems of the Exchange, BSTX would be a facility of the Exchange.

[15] 15 U.S.C. 78f; 15 U.S.C. 78s.

[16] The Exchange proposes to define the term ''Security'' to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. *See* proposed Rule 17000(a)(31).

[17] *Id.*

[18] 17 CFR 242.600 through 613.

. . . .'' [19] The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of Security quotation and transaction reporting.[20] The term ''NMS stock'' means ''any NMS security other than an option'' [21] and therefore Securities traded on BSTX would be classified as NMS stock.

Securities would meet the definition of NMS stock and would trade, clear, and settle in the same manner as all other NMS stocks traded today. As described in further detail below, the operation of the BSTX Market Data Blockchain would in no way modify or alter market participants' obligations under Regulation NMS.

BSTX Would Support Trading of Registered Securities

All Securities traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act [22] and Section 6 of the Securities Act of 1933 (''Securities Act'').[23] BSTX would not support trading of Securities offered under an exemption from registration for public offerings, with the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

Issuance and Clearance and Settlement of Securities

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with Securities. All transactions in Securities would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time it commences operations, Securities that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (''DTC'') and that DTC would serve as the securities depository [24] for such Securities. It is also expected that confirmed trades in Securities on BSTX would be transmitted to National Securities Clearing Corporation (''NSCC'') for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange-traded equity securities. Importantly, for purposes of NSCC's clearing activities and DTC's settlement activities in respect of the Securities, the relevant Securities would be cleared and settled by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock.

The operation of the BSTX Market Data Blockchain will have no impact or effect on the manner in which a Security clears and settles. The BSTX Market Data Blockchain would be implemented through the operation of the proposed BSTX Rules and would occur separate and apart from the clearance and settlement process. The Security would be an ordinary equity security for NSCC's and DTC's purposes. The BSTX Market Data Blockchain would be a separate set of market data that uses distributed ledger technology to record certain order and transaction information regarding orders and transactions in Securities on BSTX.

Issuance of Equity Securities Eligible To Become a Security

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all Securities traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the Securities will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX would be a facility of a national securities exchange, all Securities would be registered under Section 12(b) of the Exchange Act, thereby subjecting all of these issuers to the reporting regime in Section 13(a) of the Exchange Act.

All offerings of securities that are intended to be listed as Securities on BSTX would be conducted in the same general manner in which offerings of exchange-listed equity securities are conducted today under the federal securities laws. An issuer will enter into a firm commitment or best efforts underwriting agreement with a sole underwriter or underwriting syndicate; the underwriter(s) will market the securities and distribute them to purchasers; and secondary trading in the securities (that are intended to trade on BSTX as Securities) will thereafter commence on BSTX.

Issuers on BSTX could include both (1) new issuers who do not currently have any class of securities registered on a national securities exchange, and (2) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a separate class of equity securities for listing on BSTX as Securities.

BSTX does not intend for Securities listed, or intended to be listed, on BSTX to be fungible with any other class of securities from the same issuer.[25] If an issuer sought to list securities on BSTX that are not a separate class of an issuer's securities, BSTX does not intend to approve such a class of security for listing on BSTX as a Security, pursuant to BSTX's authority under BSTX Rule 26101. However, an issuer would be free to pursue listing of the same class of the Security on another national securities exchange if it so chose, just as the Exchange understands issuers are able to do in respect of their securities today. At the commencement of BSTX's operations, certain equities (including ETPs) would be eligible for listing as Securities. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Securities), 26105 (Warrant Securities) and the Rule 28000 Series (Trading and Listing of Exchange Traded Products), which would be part of BSTX's listing rules and would contemplate that only

[19] 17 CFR 242.600(b)(47).

[20] 17 CFR 242.601(a)(1). The Rule states in relevant part that ''every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities . . . .''

[21] 17 CFR 242.600(b)(47).

[22] 15 U.S.C. 78l.

[23] 15 U.S.C. 77f.

[24] 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to include ''any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.''

[25] The Exchange notes that distinct classes of securities issued by an issuer that are Securities would not be fungible with another class of securities of the same issuer because no class of an issuer's securities is fungible with a separate class of its securities—otherwise they would be the same class of security. To the extent that two classes of an issuer's shares had identical voting and economic rights but were registered with the Commission as separate classes (*e.g.,* Class A shares and Class B shares), the two classes of shares could be economically fungible with one another insofar as they convey the same economic and beneficial rights and interests to investors, but this would not mean that ownership of a Class A share is the same as ownership of a Class B share notwithstanding that each class provides the same economic benefits. In any case, nothing herein proposes any change to the existing framework for different classes of securities.

those specified types of equity securities would be eligible for listing.

Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which Securities would be held in ''street name'' with DTC.[26] BSTX Rule 26137 would require that for an issuer's security to be eligible to be a Security, BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.[27] In practice, BSTX Rule 26137 requires the Security to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.[28]

Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26135 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.[29] Proposed BSTX Rule 26135 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (''FINRA'').[30] Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings and ''thereby reduce settlement risk'' in the U.S. national market system.[31]

Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (''CNS'') system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) A requirement that each Security transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a Security transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a Security transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor's Exchange, LLC (''IEX''), which, in turn, is consistent with the rules of other equities exchanges.[32]

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which Securities that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry. The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX's operations, Securities would be securities that have been made eligible for services by DTC, including book-entry settlement services.

Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in Securities. Security trades that result from orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. As noted above in connection with the description of proposed BSTX Rule 25140, the Exchange expects that at the commencement of operations by BSTX it would transmit confirmed trade details to NSCC regarding Security trades that occur on BSTX and that NSCC would be the registered clearing agency that clears Security trades for settlement at DTC.

As described in greater detail below in Part II.H, the Exchange is also proposing that BSTX Participants would be able to include parameters in orders submitted to BSTX to indicate a preference to use faster settlement cycles that are currently available through NSCC and DTC under certain circumstances. BSTX believes that allowing BSTX Participants to use these faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities due to faster settlement. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.[33] Furthermore, BSTX

[26] The term ''street name'' refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26136 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

[27] Proposed BSTX Rule 26137 is based on current NYSE Rule 777.

[28] *See* Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

[29] FINRA is currently the only national securities association registered with the SEC.

[30] *See e.g.,* FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

[31] These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. *See* Securities Exchange Act Release Nos 35774 (May 26, 1995) (SR–NASD–95–24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR–NYSE–95–19).

[32] *See* IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX's application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); *see also* Cboe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

[33] 17 CFR 240.15c6–1. Under SEC Rule 15c6–1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless

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understands that NSCC does already clear trades in accordance with this authority, and supporting data from The Depository Trust & Clearing Corporation (''DTCC'') regarding clearance and settlement activity on such shorter settlement cycles is provided in Section II.H. below.

The BSTX Market Data Blockchain

BSTX will make available to BSTX Participants certain market data related to trading activity occurring on BSTX through the use of a private, permissioned blockchain maintained by the Exchange. As described further below, a BSTX Participant would have the ability to see through an online portal provided by the Exchange the market data information on the private blockchain consisting of detailed information about its trading activity on BSTX and anonymized information with respect to the trading activity of other BSTX Participants.[34] BSTX Participants would have no obligations with respect to providing information to, accessing, maintaining, or using the BSTX Market Data Blockchain. The Exchange believes that the information made available on the BSTX Market Data Blockchain would be generally similar to Daily Trade and Quote (''TAQ'') data made available by New York Stock Exchange LLC except that the Exchange would use distributed ledger or ''blockchain'' technology to record such information, a BSTX Participant would be able to see non-anonymized information about its own trading activity on BSTX, and the market data would pertain only to trading activity on BSTX and not the broader market (*e.g.,* an over-the-counter (''OTC'') [35] transaction in a Security reported to the consolidated tape).[36]

Background on Blockchain Technology

In general, a blockchain is essentially a ledger that can maintain digital records of assets, transactions, or other information. A blockchain's central function is to encode transitions or changes to the ledger. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition.

There are broadly two types of blockchains: (i) Public blockchains that are decentralized, open to anyone running the same protocol; [37] and (ii) a private, permission-based blockchains where only those granted access may view or take other actions with respect to the blockchain.

BSTX Market Data Blockchain As a Private Permissioned Network

The BSTX Market Data Blockchain would operate as a private, permission-based blockchain that would be accessible through an application program interface (''API'') available through the internet. The Exchange would control all aspects of the BSTX Market Data Blockchain and the associated API. Pursuant to proposed Rule 17020(b), each BSTX Participant would be assigned a BSTX Market Data Blockchain address that corresponds to the BSTX Participant's trading activity on BSTX. The Exchange will also issue login credentials to each BSTX Participant through which the BSTX Participant may access the BSTX Market Data Blockchain through the API to see its order and transaction information on BSTX as well as certain anonymized market data from other BSTX Participants, as discussed further below. Similarly, the Exchange has the ability to issue login credentials to any non-BSTX Participant to allow access to the BSTX Market Data Blockchain through the API, but a non-BSTX Participant accessing the Market Data Blockchain would be limited to viewing only anonymized market data, as also explained below. BSTX Participants (and any non-BSTX Participants to which the Market Data Blockchain is made available by the Exchange) would only be able to access the information contained on the BSTX Market Data Blockchain through the API, and only the Exchange would have direct access to the underlying data on the private blockchain.

The BSTX Market Data Blockchain would generally operate by collecting information from two sources, which the Exchange would then translate into information capable of being recorded to the BSTX Market Data Blockchain. Specifically, the data inputs for the BSTX Market Data Blockchain would come from (i) the BSTX System [38] to capture information such as executed transactions and (ii) each BSTX Participant's order/message information passing through the financial information exchange (''FIX'') gateway through which all orders and messages pass in order to connect to the BSTX System.[39] For example, if a BSTX Participant sends an order to buy 100 shares of Security XYZ, when that order is sent to the Exchange, the Exchange would capture this information as it passes through the FIX gateway in an automated process that results in the BSTX Participant being able to see that order on the BSTX Market Data Blockchain through its login credentials once the information is recorded on the BSTX Market Data Blockchain.

The BSTX Market Data Blockchain does not require any affirmative action on the part of a BSTX Participant in order for its information to be recorded to the BSTX Market Data Blockchain. Rather, the BSTX Market Data Blockchain captures trading activity that occurs on BSTX in the normal course and is made available to BSTX Participants as an additional resource that they may choose to use in their discretion in the same general manner that a market participant might use TAQ data.

Information Available on the BSTX Market Data Blockchain

As set forth in proposed Rule 17020(c), there are two types of information that would be available on the BSTX Market Data Blockchain: (i) A BSTX Participant's own order and transaction information related to its trading activity on BSTX (''Participant Proprietary Data''); and (ii) anonymized, general market data available to all BSTX Participants and non-BSTX Participants permissioned by the Exchange (''General Market Data'').[40] With respect to Participant Proprietary Data, a BSTX Participant would be able to see the following information with respect to all orders and messages and executions submitted to and occurring on BSTX:

(1) Symbol, side (buy/sell), limit price, quantity, time-in-force
(2) Order type (*e.g.,* limit order, ISO)
(3) Order capacity (principal/agent)
(4) Short/long sale order marking
(5) Message type (*e.g.,* order, modification, cancellation)

Participant Proprietary Data would effectively contain a record of all of a

otherwise expressly agreed to by the parties at the time of the transaction.

[34] Additionally, as also explained below, non-BSTX Participants would have the ability to see the anonymized market data relating to trading on BSTX.

[35] OTC in this context refers to trading occurring otherwise than on a national securities exchange.

[36] *See e.g.,* NYSE, Daily TAQ Fact Sheet, *https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.*

[37] A ''protocol'' in this context generally means a set of rules governing the format of messages that are exchanged between the participants.

[38] The ''BSTX System'' refers to the automated trading system used by BSTX for the trading of Securities. *See* proposed Rule 17000(a)(15).

[39] The Exchange notes that the FIX Gateway and the BSTX System are the same sources of information from which information is taken to be provided as part of consolidated market data.

[40] The Exchange notes that the BSTX Market Data Blockchain is effectively just the repository for these two categories of information (*i.e.,* Participant Proprietary Data and General Market Data), and it is through the Exchange-provided API that this information is able to be viewed and searched.

BSTX's Participant's trading activity on BSTX. Participant Proprietary Data would only be available to the BSTX Participant from which such data derived. That is, a BSTX Participant would not have access to the Participant Proprietary Data of another BSTX Participant, nor would any non-BSTX Participant provided access to the Market Data Blockchain have access to Participant Proprietary Data. As a result, no BSTX Participant (or non-BSTX Participant) would be provided with access to trading information of another BSTX Participant in a manner that would allow for reverse engineering of trading strategies or otherwise compromise the confidential nature of each BSTX Participant's trading information. Through the API, a BSTX Participant can run searches of its previous order and trading activity. The Participant Proprietary Data would be visible to the BSTX Participant to which it corresponds in sequential order of when each action occurred, though the BSTX Participant would have the ability to filter the different information fields or run searches for particular items (*e.g.,* only showing cancel orders or only showing activity in a particular symbol).

General Market Data is the second type of information that would be available on the BSTX Market Data Blockchain, which would consist of:

(1) All displayed orders,[41] modifications, cancellations, and executions occurring on BSTX in an anonymized format.

(2) Administrative data and other information from the Exchange (*e.g.,* trading halts, or technical messages).

General Market Data would allow viewers to be able to observe the historical orders, executions, and other events (*e.g.,* cancellations) received by and occurring on BSTX. Similar to the format and presentation of Participant Proprietary Data, the General Market Data would generally be visible in sequential order of when each action occurred, though viewers would have the ability to filter the different information fields or run searches for particular items (*e.g.,* only showing cancel orders or only showing activity in a particular symbol). The Exchange notes that the General Market Data that would be available on the BSTX Market Data Blockchain would contain substantively similar information as would be available through the Exchange's proprietary market data feeds, so access to the BSTX Market Data Blockchain would not provide substantive information that is not otherwise available through the Exchange's proprietary market data feeds.[42] In other words, accessing General Market Data on the BSTX Market Data Blockchain would not provide any informational advantage over proprietary market data that could be used to make trading decisions in real time. The Exchange believes that this is particularly true given that market data (both Participant Proprietary Data and General Market Data) will be posted to the BSTX Market Data Blockchain on a delay of at least five minutes, as discussed further below. Similar to Participant Proprietary Data, persons accessing the General Market Data through the Exchange-provided API could run configurable searches of the available information.

General Market Data would be anonymized, meaning that a BSTX Participant would not be able to determine the identity of another BSTX Participant's orders, quotes, cancellations, or other messages. For the avoidance of doubt, the alphanumeric address assigned to each BSTX Participant to facilitate the BSTX Market Data Blockchain would not be visible as part of General Market Data.[43] As a result, there should not be cause for concern regarding potential trading information leakage or the ability to reverse engineer another BSTX Participant's trading strategies given the anonymous nature of General Market Data. BSTX Participants (and any non-BSTX Participant provided access to General Market Data by the Exchange) would generally have available to them via the BSTX Market Data Blockchain the same information they would have today with respect to other BSTX Participants' trading activity in subscribing to proprietary data feeds of other exchanges.

The Exchange proposes to append timestamps to the information made available. Timestamps related to all information on the BSTX Market Data Blockchain would indicate the time to the microsecond at which an order posted to the BSTX Book or that the BSTX System took other action with respect to an order (*e.g.,* effects a cancellation, execution, modification). As noted above, information would be posted to the BSTX Market Data Blockchain on a delayed basis of at least five minutes.[44] As a result, the BSTX Market Data Blockchain would not function as a substitute for real-time market data, and, accordingly the Exchange does not believe that market participants with access to the delayed market data available on the BSTX Market Data Blockchain would have any real time trading advantage over participants that continue to use real-time market data to make trading decisions.[45] A BSTX Participant would

[41] The Exchange notes that it is not proposing any non-displayed or hidden order functionality for BSTX.

[42] General Market Data would differ from the Exchange's proprietary market data feed in that the proprietary market data feed provides real time snapshots of the order book, including depth of book quotations and the quantity of shares available at each price point. In contrast, General Market Data would generally show sequential events occurring on the Exchange for each symbol (*e.g.,* order posted to order book, then the order is executed in part, then the remaining amount of the order executed, then a new order posts to the order book *etc.*). In addition, proprietary market data generally does not show each individual newly posted order or cancellation of a resting order, but rather shows subscribers an updated snapshot that increases or decreases the available quantity at a given price point as new orders come in and modifications or executions of existing orders occur. In contrast, General Market Data available on the Market Data Blockchain would show viewers, in an anonymized format, the sequential entry of each order, modification, or cancellation in the order book in each symbol as historical order and transaction information rather than real time snap shots. In this respect, General Market Data is more akin to a historical market data product like TAQ data, except that it pertains only to activity occurring on BSTX rather than the entire market.

[43] For example, in looking at General Market Data, BSTX Participant X would not be able to determine by name, address, or otherwise that a particular order, modification to an existing order, or executed transaction involved BSTX Participant Y or any other BSTX Participant.

[44] The practical purpose behind this five minute delay is for the Exchange to accrue sufficient data and information to record to the BSTX Market Data Blockchain. As the name ''blockchain'' suggests, data is recorded onto a ledger in discrete blocks that are chained together at different intervals. The Exchange could record information to the BSTX Market Data Blockchain over a shorter time interval in much smaller blocks, each of which would contain less data than a longer interval and a larger block. However, as proposed, the Exchange would only record information to the BSTX Market Data Blockchain after at least five minutes, and each block would contain the market data and information that had accrued over the preceding five minutes on a rolling basis. Accordingly, a viewer of the BSTX Market Data Blockchain would be able to see the preceding five minutes of market data (as detailed above) after each five-minute interval. The Exchange believes that a five minute interval is appropriate to allow the Exchange to operate the BSTX Market Data Blockchain efficiently (*i.e.,* sufficient market data will have accrued over five minutes to publish an update to the blockchain) and to ensure that the BSTX Market Data Blockchain does not provide a real-time trading advantage over consumers of consolidated market data or proprietary market data—both of which are disseminated on sub-second, or sub-millisecond, timescales. *See e.g.,* Exchange Act Release No. 90610, 86 FR 18596, 18603 (Apr. 9, 2021) (''Today, markets rely on highly sophisticated electronic trading systems that can consume many points of data at speeds measured in sub-second increments.''); *see also id.* at n.679 (noting that even the consolidated securities information processors 99th percentile of quote latency are today below 100 microseconds).

[45] According to data available on the Commission's market structure website, even small capitalization stocks and exchange traded products generally have quote lifetimes of much shorter

Continued

have the ability to download market data from the BSTX Market Data Blockchain, which it could use to, for example, back test trading strategies or evaluate executions received on BSTX.

Finally, in order to promote clarity with respect to how a BSTX Participant may use the BSTX Market Data Blockchain, the Exchange proposes to provide in Rule 17020(c)(3) that the information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant. The Exchange notes that broker-dealers recordkeeping obligations generally require a much broader set of records covering the entirety of a broker-dealers trading activity across all trading centers.[46] As a result, the Exchange would not expect that a BSTX Participant would ever rely on the BSTX Market Data Blockchain, which would contain only its trading activity on BSTX, as a substitute for its independent recordkeeping obligations.

With respect to information security considerations, the Exchange notes that as a system of the Exchange, the BSTX Market Data Blockchain will be subject to the requirements of the Exchange Act, including Regulation Systems Compliance and Integrity (''Reg. SCI'')[47] and that the Exchange has in place robust safeguards to protect against any possible systems intrusion to the market data blockchain. To the extent a BSTX Participant were to share its credentials for accessing the API with third parties deliberately or inadvertently, it is possible that those third parties could gain access to its Participant Proprietary Data.[48] The Exchange would be able to issue new credentials upon request from a BSTX Participant (or non-BSTX Participant) that believes their credentials may have been compromised and implement additional security controls. In any case, however, unauthorized access to the API through which data on the BSTX Market Data Blockchain may be accessed would not allow for any intruder to modify, delete, or otherwise change any data on the BSTX Market Data Blockchain. As a result, the Exchange does not believe that the BSTX Market Data Blockchain presents information security risks and that the Exchange has appropriate safeguards in place to mitigate any such risks.

Periodic Audit of the BSTX Market Data Blockchain by the Exchange

To help ensure the proper functioning of the BSTX Market Data Blockchain and accuracy of information thereon, the Exchange proposes in Rule 17020(c)(3) to periodically audit the BSTX Market Data Blockchain. Specifically, the Exchange proposes to perform the audit at least bi-annually to ensure that that the BSTX Market Data Blockchain accurately captures order and transaction data on BSTX. The Exchange expects that it will initially audit the BSTX Market Data Blockchain more frequently (*e.g.,* monthly) during the first year of operation to make sure the BSTX Market Data Blockchain operates as intended during the period of time when the Exchange expects BSTX Participants to be familiarizing themselves with the BSTX Market Data Blockchain. In particular, the Exchange plans to evaluate whether the information recorded to the BSTX Market Data Blockchain is accurate (*i.e.,* that it corresponds to the Exchange's FIX trading logs of the relevant market data) and captures all of the elements of market data specified in proposed Rule 17020(c). To the extent any issues or discrepancies are identified in the course of the audit, the Exchange will promptly remediate such issues and provide notice, as may be required, to impacted users of the BSTX Market Data Blockchain and the Commission.[49]

Benefits of the BSTX Market Data Blockchain

The Exchange believes that there are two primary benefits related to the BSTX Market Data Blockchain. First, the Exchange believes that a BSTX Participant may find the information useful to them for a variety of purposes such as to review the BSTX Participant's trading activity on BSTX, determine what the market was at a particular point in time on BSTX for a given Security, evaluate execution quality on BSTX, help confirm the accuracy of their internal trading data,[50] or download the data to back-test trading strategies. As proposed, the BSTX Market Data Blockchain requires no affirmative obligation on the part of the BSTX Participant. As a result, if a BSTX Participant does not find the BSTX Market Data Blockchain to be of use to it, it could simply ignore it without cost or penalty. In addition, non-BSTX Participants granted access to General Market Data may find the data useful for academic studies. The Commission could also be granted access by the Exchange, which would allow the Commission to examine how and when orders arrived at the Exchange, how and when they were modified, and how and when they were executed.[51]

Second, the Exchange believes that the BSTX Market Data Blockchain will help familiarize BSTX Participants with the use and capabilities of blockchain technology in a manner that does not impose any burden on them or other market participants. The Commission has stated that it is ''mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . .''[52] stating further that ''[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.''[53] Regarding the judgment of whether the benefits of

durations than five minutes. For example, 71.32% of executions and 78.7% of cancellations occurred in small capitalization stocks during Q1 2021 within 100 seconds (1.67 minutes) of being received by a market center. *See* Commission, Market Structure Data Visualizations, Conditional Frequency: Small Stocks (Q1 2021), *https://www.sec.gov/marketstructure/datavis/quotelife_stocks_sm.html#.YP8Q245KhPY.* Given that over two-thirds of orders are executed or canceled within 1.67 minutes (approximately one-third of the five minutes the Exchange proposes to delay publication of information to the BSTX Market Data Blockchain), the Exchange does not believe that there would be any real time trading advantage provided to those who use the BSTX Market Data Blockchain over subscribers to the Exchange's proprietary feeds or subscribers to consolidated market data. The data metrics also reveal that over 11% of executions and nearly 12% of cancellations occurred in small capitalization stocks during Q1 2021 within 1 second (1/300th of the duration of the proposed five minute delay). This data makes clear that the speed of markets is such that using the BSTX Market Data Blockchain to gain a real time trading advantage would not be possible as over 10% of trades and cancels occur within one second.

[46] *See e.g.,* 17 CFR 240.17a–3.

[47] 17 CFR 240.1000–1007.

[48] The Exchange notes that any such unauthorized access would not provide any real time order and transaction information of the BSTX Participant because of the five minute delay in publishing information to the BSTX Market Data Blockchain.

[49] *See generally* Rule 1002 of Regulation SCI (describing notification requirements related to ''SCI events'' and ''de minimis SCI events''—*i.e.,* those that would have no or a de minimis impact on the Exchange's operations or market participants). 17 CFR 242.1002.

[50] As previously discussed, however, the BSTX Market Data Blockchain could not be used as a substitute for a BSTX Participant's recordkeeping obligations. *See supra* note 46 and proposed Rule 17020(c)(3).

[51] The Exchange notes that it is initially proposing a relatively simple exchange model without hidden orders or the numerous other types of complex orders available on certain other exchanges (*e.g.,* peg orders, hide-not-slide, discretionary peg orders *etc.*). Consequently, BSTX presents an opportunity to study, using the data available on the BSTX Market Data Blockchain, how a more simplified market structure operates as well as the evolution of this model over time as additional features might be added (or removed).

[52] Securities and Exchange Commission, The Impact of Recent Technological Advances on the Securities Markets (Sep. 1997), *https://www.sec.gov/news/studies/techrp97.htm.*

[53] *Id.*

certain technologies are meritorious, the Commission has explained its view that ''[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.'' [54] Consistent with these statements, the Exchange believes that promoting use of blockchain technology through the BSTX Market Data Blockchain, accessed through an exchange-provided API, will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and that the proposal will thereby advance and protect the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.[55] Moreover, the Exchange believes that new technology, such as blockchain technology, may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[56] At a minimum, the Exchange believes that the use of blockchain technology to store historical market data, accessible through an API, may be a more efficient and effective mechanism for consuming historical market data. Rather than having to download a file of historical market data as is typically the case today, users of the BSTX Market Data Blockchain would be able to query and search the blockchain for particular information of interest to them through the API. The Exchange notes that it is not proposing to offer a separate historical market data feed other than the BSTX Market Data Blockchain, so the BSTX Market Data Blockchain would be the Exchange's historical market data product offering.[57]

Currently, the Exchange believes that market participants, such as prospective BSTX Participants, are able to obtain and review their own order and trade information as well as historical market data on one or more exchanges through a combination of using their own books and records and through acquiring historical market data products (*e.g.,* TAQ data). Depending on how a market participant might organize these sources of data or use historical market data, they may be able to run searches or filters to examine the market data in a manner similar to what will be available using the BSTX Market Data Blockchain. The BSTX Market Data Blockchain is essentially an Exchange-offered tool accessible through an API that provides the features of searching and filtering of BSTX market data to a BSTX Participant (and non-BSTX Participants with respect to anonymized data only). In other words, market participants have available to them today through other resources (*i.e.,* their books and records and historical data products where available) the same data elements that the Exchange proposes to make available through the BSTX Market Data Blockchain, but they may not have the information readily accessible or searchable in the same manner that it would be available using the BSTX Market Data Blockchain. In the event of any disruption to the BSTX Market Data Blockchain or a BSTX Participant's access to the BSTX Market Data Blockchain, there would be no impact on the ability of market participants to trade Securities, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[58] There would also no be disruption in the distribution of market data related to Securities because the BSTX Market Data Blockchain operates as a separate and distinct service of the Exchange independently of the Exchange's other market data products.

Trading Securities on Other National Securities Exchanges

Securities would be eligible for trading on other national securities exchanges that extend UTP to them. As described above in Part II.E, Securities would be held in ''street name'' at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (*i.e.,* NSCC and DTC respectively). As a result, Securities would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would generally be able to extend UTP to Securities in accordance with Commission rules. The BSTX Market Data Blockchain would not impact the ability of Securities to trade on other exchanges or OTC.

Ability for BSTX Participants To Include a Parameter for a Preference for Settlement of Transactions in Securities Faster Than T+2

As described above in Section II.E.5., and based on discussions with representatives from DTCC, BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.[59] Furthermore, BSTX understands from representatives of DTCC that NSCC does already clear trades in accordance with this authority.

The Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.[60] Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater

[54] *Id.*

[55] Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 8 (1975) (expressing Congress' finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated ''[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (*e.g.,* internal audit, public auditors) with the opportunity to leverage the technology to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions.'' Financial Industry Regulatory Authority, *Distributed Ledger Technology: Implications of Blockchain for the Securities Industry* (January 2017), *available at: https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf.* Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including ''greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency . . . .'' *See* Letter from Jeffrey S. Mooney, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), *https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.* The Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology.

[56] 15 U.S.C. 78f(b)(5).

[57] *See infra* notes 147–152 and accompanying text, describing the Exchange's proposed market data offerings.

[58] *Id.*

[59] *See supra* note 33.

[60] *See* proposed Rule 25060(h).

detail below, however, orders in a Security that include a parameter indicating a preference for settlement on a T+0 basis (''Order with a T+0 Preference'') or on a T+1 basis (''Order with a T+1 Preference'') would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted by BSTX to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.[61] Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis, as described in more detail below. This means that at the time of order entry all orders in Securities would be regular-way orders that would be presumed to settle on a T+2 basis. Faster settlement consistent with the rules, policies and procedures of a registered clearing agency would occur if and only if two orders execute against each other in a manner that meets the conditions in Rule 25060(h).

As proposed, an Order with a T+0 Preference will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on a standard settlement cycle (T+2) except where: (i) The Order with a T+0 Preference executes against another Order with a T+0 Preference, in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the trade date as may be permitted by the rules, policies and procedures of the registered clearing agency, or (ii) the Order with a T+0 Preference executes against an Order with a T+1 Preference, in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the next trading day after the trade date (*i.e.,* T+1) as may be permitted by the rules, policies and procedures of the registered clearing agency. Similarly, as proposed, an Order with a T+1 Preference will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on a standard settlement cycle (T+2) except where: (i) The Order with a T+1 Preference executes against another Order with a T+1 Preference or an Order with a T+0 Preference, in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the next trading day after the trade date (*i.e.,* T+1) as may be permitted by the rules, policies and procedures of the registered clearing agency. In all cases, an order not marked with a preference for either T+0 or T+1 settlement would be assured under the settlement timing logic in proposed Rule 25060(h) of settlement on T+2. The possibility of a shortened settlement time would have no impact on the Exchange's proposed price time priority structure for order matching.[62]

As a result of this structure, all orders in Securities would be eligible to match and execute against any order against which they are marketable with settlement to occur at the later settlement date of any two matching orders. Only where an Order with a T+1 Preference or an Order with a T+0 Preference match with another Order with a T+1 Preference or Order with a T+0 Preference will those orders (or matching portions thereof) be eligible to settle more quickly than the standard settlement cycle of T+2.

As previously noted in Part II.E above, the Exchange expects at the commencement of its operations that it would transmit confirmed trade details to NSCC regarding trades in Securities that occur on BSTX and that NSCC would be the registered clearing agency that clears trades in Securities and produces related settlement obligations for settlement at DTC. The Exchange believes that NSCC and DTC already have appropriate approvals from the SEC for authority in their rules, policies and procedures to be able to clear and settle settlement obligations using such shortened settlement times. Furthermore, the Exchange understands that NSCC and DTC in fact already are using this authority for shortened settlement times. For example, based on information provided by representatives of DTCC to outside counsel for BSTX, the Exchange understands that on average for each business day for the months of November and December 2019, NSCC cleared over 19,000 trades designated for T+1 settlement and over 2,000 trades designated for T+0 settlement.[63] In addition, the Exchange understands that DTCC makes data regarding T+0 and T+1 clearance and settlement through NSCC and DTC available on the DTCC website for review by the public.[64] As provided in proposed Rules 26136 and 26137, all trades in Securities occurring on BSTX that are cleared by NSCC, including those that BSTX transmits to NSCC for T+0 or T+1 settlement as may be permitted pursuant to NSCC's rules, policies and procedures, will be settled through book-entry settlement at DTC pursuant to its rules, policies and procedures.

The Exchange is also aware of the recent announcement by DTCC, the Securities Industry and Financial Markets Association (''SIFMA'') and the Investment Company Institute (''ICI'') that they plan to collaborate to help the industry reduce the standard settlement cycle from T+2 to T+1, identify a target timeframe for that transition (*e.g.,* by 2023 as recently suggested by DTCC),[65] and support market participants in their efforts to obtain requisite regulatory approvals for such a reduction in the standard settlement cycle, including from the SEC.[66] The Exchange fully supports this collaboration by SIFMA, DTCC and ICI and efforts by market participants and regulators, including the SEC, to move the standard settlement cycle to T+1. The time frame for the transition, however, remains uncertain and is likely to take years, as suggested by DTCC. The Exchange strongly believes that this proposal to allow BSTX Participants for trades in

[61] *See* proposed Rule 25100(d). For example, the Exchange understands that under its current rules, policies and procedures NSCC accepts trades for T+0 settlement through its continuous net settlement system provided that they are received by NSCC before a cut-off time of 11:30 a.m. ET. Matched T+0 trades on BSTX that are not received by NSCC prior to that cut-off time would not be eligible for T+0 clearance and settlement through NSCC's continuous net settlement system. DTCC provides on its website an overview of the cut-off times and other procedural considerations under its rules, policies and procedures that are associated with processing trades for accelerated settlement on a T+0 or T+1 basis. The overview can be accessed here: *https://www.dtcc.com/sds.*

[62] For example, assume Order A is marked as an Order with a T+0 Preference and it is sent to BSTX and is marketable against both resting Order B (standard T+2 settlement, with time priority over Order C) and resting Order C (marked as an Order with a T+0 Preference but with priority second to that of Order B). Order A will interact first with Order B, notwithstanding that Order C is also marketable against Order A and is also marked as an Order with a T+0 Preference.

[63] Mike McClain, Managing Director and General Manager of Equity Clearing and DTC Settlement Services at DTCC provided this information to BSTX's outside counsel, Andrew Blake, Partner, Sidley Austin LLP during a telephone conference on February 13, 2020.

[64] *See* DTCC website, *Settlement by the Numbers, https://www.dtcc.com/ust1/by-the-numbers.*

[65] DTCC White Paper, *Advancing Together: Leading the Industry to Accelerated Settlement* (February 2021) (''DTCC Accelerated Settlement White Paper''), *https://www.dtcc.com/-/media/Files/PDFs/White%20Paper/DTCC-Accelerated-Settle-WP-2021.pdf.*

[66] Sifma Press Release, *Sifma, ICI and DTCC Leading Effort to Shorten U.S. Securities Settlement Cycle to T+1, Collaborating with the Industry on Next Steps* (April 28, 2021), *https://www.sifma.org/resources/news/sifma-ici-and-dtcc-leading-effort-to-shorten-u-s-securities-settlement-cycle-to-t1-collaborating-with-the-industry-on-next-steps/.*

Securities on BSTX to access the shorter settlement cycles of T+1 and T+0 that are already being used by NSCC and DTC today represents a change that is both entirely consistent with and in furtherance of broader industry efforts to move the standard settlement cycle to T+1 and that could also incrementally and immediately provide market participants with the benefit of shorter settlement cycles that T+2 where BSTX Participants seek those benefits as provided in proposed Rule 25060(h). The Exchange agrees with DTCC representatives who have recently stated that ''[t]he time to settlement equals counterparty risk which can become elevated during market shocks. It can also lead to the need for higher margin requirements, which are critical to protecting the financial system and investors against a firm default.'' [67] The Exchange believes that BSTX Participants should be permitted to manage these settlement and margin risks through the structure that is provided in proposed Rule 25060(h). The Exchange also believes, as described in more detail below, that the structure in proposed Rule 25060(h) would allow them to do so in a manner that is consistent with Section 6(b)(5) of the Exchange Act and the requirement for the rules of the Exchange to be designed to perfect the mechanism of a free and open market [68] because under proposed Rule 25060(h), any Order with a T+1 Preference or Order with a T+0 Preference will continue to interact with any other order in the Security against which it is marketable (including any order in the Security that does not include a parameter indicating a preference for settlement faster than T+2) and a resulting execution will always settle using the latest settlement timing associated with two matching orders.

The Exchange believes that facilitating shorter settlement cycles as permitted under the rules, policies, and procedures of a registered clearing agency is consistent with Section 6(b)(5) of the Exchange Act [69] because it is in the public interest and furthers the protection of investors as well as helps perfect the mechanism of a free and open market and the national market system. Specifically, the Exchange believes that BSTX Participants have an interest in being able to access risk-reducing market functionality that is presently available and compatible with market structure, such as shorter settlement cycles, and that this can reduce costs for market participants settling trading obligations in that Security and reduce settlement risk. For example, market participants settling trades in a Security on a T+2 basis must post margin collateral to NSCC for two trading days. The margin collateral cannot otherwise be used until settlement on T+2. In addition, and as reflected in statements by DTCC described above, by shortening the timing of settlement from T+2 to T+1 or T+0, the risk horizon for a potential default in settling the trade is correspondingly shortened as well. This means that market participants engaged in a transaction settling transactions on shorter settlement cycles than T+2 receive the benefits of not having to encumber collateral assets for as long and facing a shorter period of settlement risk. The Exchange believes that these benefits in turn free up assets to be used elsewhere in financial markets, thereby helping to promote the efficient allocation of capital and perfecting the mechanism of a free and open market.[70] All else being equal, the Exchange believes that a BSTX Participant may find that between two otherwise identical stocks, one for which it may be able to settle the transaction more quickly is more attractive than one that settles over a longer duration and potentially requires collateral to be held for a longer period.

The Exchange notes that the proposed potential for shortened settlement timing for an Order with a T+0 Preference or an Order with a T+1 Preference will in no way impact or prevent any market participant that desires to effect a trade in a Security on BSTX from doing so. This is because under proposed Rule 25060(h), any Order with a T+1 Preference or Order with a T+0 Preference will continue to interact with any other order in the Security against which it is marketable (including any order in the Security that does not include a parameter indicating a preference for settlement faster than T+2) and a resulting execution will always settle using the latest settlement timing associated with two matching orders. Accordingly, non-BSTX Participants seeing a quote in a Security on BSTX will remain able to execute against that quote posted on BSTX even if that quote includes a latent parameter for a preference for T+0 or T+1 settlement where consistent with the rules, policies and procedures of a registered clearing agency. In this way, the Exchange believes that the proposal is fully compatible with the current market structure and would help perfect the mechanism of a free and open market consistent with the requirement in Section 6(b)(5) of the Exchange Act [71] by allowing for shorter settlement times than T+2 where consistent with the rules, policies and procedures of a registered clearing agency and where both parties to a transaction in a Security indicate a preference for faster settlement than T+2.

Finally, because all orders in Securities submitted to BSTX would at the time of the order entry be presumed to settle on a regular way T+2 basis and would interact with any other order against which the order is marketable, the Exchange believes that Orders with a T+0 Preference and Orders with a T+1 Preference would be considered ''protected'' within the meaning of Rule 611 of the Exchange Act.[72] Orders with a T+0 Preference and Orders with a T+1 Preference would not fall within the exception for protected quotation status set forth in Rule 611(b)(2) of the Exchange Act because they will only settle more quickly than T+2 where all of the conditions in Rule 25060(h) are met, as described above, where settlement faster than T+2 is consistent with the rules, policies and procedures of a registered clearing agency.[73]

In adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central counterparty [74] (''CCP'') services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting ''reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP's risk management process . . .'' and that ''[t]his reduction

[67] DTCC Press Release, *DTCC Proposes Approach to Shortening U.S. Settlement Cycle to T+1 Within 2 Years,* (February 24, 2021) (quoting Murray Pozmanter, Head of Clearing Agency Services and Global Business Operations at DTCC), *https://www.dtcc.com/news/2021/february/24/dtcc-proposes-approach-to-shortening-us-settlement-cycle-to-t1-within-two-years.*

[68] 15 U.S.C. 78(f)(b)(5).

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] 17 CFR 242.611.

[73] 17 CFR 242.611(b)(2).

[74] *See* 17 CFR 240.17Ad–22(a)(2) (defining the term ''central counterparty'' to mean ''a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer'').

in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.'' [75] The Commission went on to state its belief that shortening the settlement cycle ''would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors'' such as ''quicker access to funds and securities following trade execution'' and ''reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]'' [76] The Commission also ''noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]'' [77] BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rules 25060(h) and 25100(d) in a form that would promote the benefits of available, shorter settlement cycles.[78]

Proposed BSTX Rules

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 29000.

General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of Securities and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term ''customer.'' [79] The Exchange proposes to set forth new definitions for certain terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.[80] The Exchange also proposes to define certain unique terms relating to the trading of Securities, including the term ''Security'' itself,[81] as well as for other features of BSTX such as the ''BSTX Market Data Blockchain.'' [82]

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 29000 Series apply to the trading, listing, and related matters pertaining to the trading of Securities. Proposed Rule 17010(b) provides that, unless specific Rules relating to Securities govern or unless the context otherwise requires, the provisions of any Exchange Rule (*i.e.,* including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.[83] This is intended to make clear that BSTX Participants are subject to all of the Exchange's Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading Securities. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act [84] because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without clearly defining terms used in the Exchanges Rules and providing clarity as to the Exchange Rules that may apply, market participants could be confused as to the application of certain rules, which could cause harm to investors.

Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes ''BSTX Participants'' as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement; [85] (ii) be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.[86] Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3–1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear Security transactions through another BSTX Participant that is a member/participant of a registered clearing agency.[87] Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent

[75] Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570–71 (March 29, 2017).

[76] *Id.* at 15571.

[77] *Id.* at 15582.

[78] As described in this Part II.I, an order for a Security marked for T+0 or T+1 could still interact with any other order, including an order with the default T+2 settlement, with settlement to occur at the later of any two matched orders (*e.g.,* if a T+1 order matches with a T+2 order, the orders would settle T+2). Only where an order marked for a shorter settlement time matches with another order similarly marked would a shorter settlement time occur. Consequently, the proposed use of shorter settlement times would not adversely impact any market participant seeking T+2 settlement in a transaction for a Security.

[79] Proposed Rule 17000(a)(17) defines the term ''customer'' to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. *See e.g.,* IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term ''Regular Trading Hours'' as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* proposed Rule 17000(a)(29) *cf.* IEX Rule 1.160(gg) (defining ''Regular Market Hours'' in the same manner).

[80] For example, the Exchange proposes to define the term ''BSTX'' to mean the facility of the Exchange for executing transaction in Securities, the term ''BSTX Participant'' to mean a Participant or Options Participant (as those terms are defined in the Exchange's Rule 100 Series) that is authorized to trade Securities, and the term ''BSTX System'' to mean the automated trading system used by BSTX for the trading of Securities. *See* proposed Rule 17000(a)(8), (11), and (15).

[81] Proposed Rule 17000(a)(31) provides that the term ''Security'' means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a ''security'' or ''securities'' in the Rules may include Securities.

[82] Proposed Rule 17000(a)(9) provides that the term ''BSTX Market Data Blockchain'' means the private, permissioned blockchain network through which a BSTX Participant may access certain order and transaction data related to trading activity on BSTX. *See* Part II.F for further discussion of the BSTX Market Data Blockchain.

[83] Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of Securities contained in Rule 17000 Series to Rule 29000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to Security trading shall control.

[84] 15 U.S.C. 78f(b)(5).

[85] The BSTX Participant Application, Participation Agreement, and User Agreement have been submitted as Exhibits 3A, 3B, and 3C to the proposal respectively.

[86] Proposed Rule 18000 also sets forth the Exchange's review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (*e.g.,* in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM–2040–5, which specifies continuing education requirements of Exchange Participants and their associated persons.

[87] Proposed Rule 18010(b) is similar to the rules of existing exchanges. *See e.g.,* IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. *See e.g.,* IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

with Section 6(b)(5) of the Exchange Act[88] because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under proposed Rule 18000, a BSTX Participant must first become an Exchange Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.[89]

Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.[90] The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable principles of trade; [91] (ii) adherence to law; [92] (iii) use of fraudulent devices; [93] (iv) false statements; [94] (v) know your customer; [95] (vi) fair dealing with customers; [96] (vii) suitability; [97] (viii) the prompt receipt and delivery of securities; [98] (ix) charges for services performed; [99] (x) use of information obtained in a fiduciary capacity; [100] (xi) publication of transactions and quotations; [101] (xii) offers at stated prices; [102] (xiii) payments involving publications that influence the market price of a security; [103] (xiv) customer confirmations; [104] (xv) disclosure of a control relationship with an issuer of Securities; [105] (xvi) discretionary accounts; [106] (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts; [107] (xviii) the extent to which sharing in accounts is permissible; [108] (xix) communications with customers and the public; [109] (xx) gratuities; [110] (xxi) telemarketing; [111] and (xxii) mandatory systems testing.[112] The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain other provisions that would not apply to the trading of Securities on the BSTX System.[113]

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act [114] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or

[88] 15 U.S.C. 78f(b)(5).

[89] The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. *See* Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

[90] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[91] Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

[92] Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

[93] Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

[94] Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

[95] Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

[96] Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (*e.g.,* churning or overtrading in relation to the objectives and financial situation of a customer).

[97] Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

[98] Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer's purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

[99] Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

[100] Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (*e.g.,* as a trustee).

[101] Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction or quotation information unless the BSTX Participant believes it to be bona fide.

[102] Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

[103] Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

[104] Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b–10 of the Exchange Act. 17 CFR 240.10b–10.

[105] Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

[106] Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

[107] Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

[108] Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

[109] Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

[110] Proposed Rule 19190 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

[111] Proposed Rule 19200 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

[112] Proposed Rule 19210 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

[113] For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (*e.g.,* higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. *See e.g.,* IEX Rule 3.290, Cboe BZX Rule 3.21.

[114] 15 U.S.C. 78f(b)(5).

their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.[115]

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.[116] The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books and records; [117] (ii) financial reports; [118] (iii) net capital compliance; [119] (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act; [120] (v) authority of the Chief Regulatory Officer to impose certain restrictions; [121] (vi) margin; [122] (vii) day-trading margin; [123] (viii) customer account information; [124] (ix) maintaining records of customer complaints; [125] and (x) disclosure of financial condition.[126]

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act [127] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping, disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (''SRO'') by reference.

Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially similar to supervisory rules of other exchanges.[128] The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) Enforcing written procedures to appropriately supervise the BSTX Participant's conduct and compliance with applicable regulatory requirements; [129] (ii) designation of an individual to carry out written supervisory procedures; [130] (iii) maintenance and keeping of records carrying out the BSTX Participant's written supervisory procedures; [131] (iv) review of activities of each of a BSTX Participant's offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses; [132] (v) the prevention of the misuse of material non-public information; [133] and (vi) implementation of an anti-money laundering (''AML'') compliance program.[134] These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act [135] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors

[115] *See supra* note 90.

[116] *See* Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

[117] Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

[118] Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

[119] Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

[120] 17 CFR 240.17a–11. Proposed Rule 20030 (''Early Warning'' Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a–11 under the Exchange Act (17 CFR 240.17a–11) or similar ''early warning'' requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements.

[121] Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange's Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances.

[122] Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer's margin account.

[123] Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

[124] Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

[125] Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

[126] Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant's financial condition upon request of a customer.

[127] 15 U.S.C. 78f(b)(5).

[128] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[129] Proposed Rule 21000 (Written Procedures).

[130] Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX's written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

[131] Proposed Rule 21020 (Records).

[132] Proposed Rule 21030 (Review of Activities).

[133] Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

[134] Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

[135] 15 U.S.C. 78f(b)(5).

and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant's business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.[136] In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.[137]

Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are substantially similar to rules of other exchanges.[138] These miscellaneous provisions relate to: (i) Comparison and settlement requirements; [139] (ii) failures to deliver and failures to receive; [140] (iii) forwarding of proxy and other issuer-related materials; [141] (iv) commissions; [142] (v) regulatory services agreements; [143] and (vi) transactions involving Exchange employees.[144] These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to incorporate by reference Rule 200–203 of Regulation SHO.[145] The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act [146] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO [147] as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.[148] Similarly, proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

In addition, the Exchange proposes to adopt Rule 22060 to provide a high-level description of the market data products that the Exchange will offer. Specifically, proposed Rule 22060 sets forth a brief description of: (i) BSTX Depth-of Book data,[149] (ii) BSTX Top-of-Book,[150] (iii) BSTX Last Sale,[151] and (iv) the BSTX Market Data Blockchain.[152] The Exchange believes that providing a brief description of the market data product offerings by the Exchange in the rulebook promotes clarity to market participants with respect to the Exchange's different market data product offerings, which the Exchange believes helps may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act,[153] by ensuring market participants are adequately informed of the Exchange's offerings. The Exchange notes that proposed Rule 22060 is substantially similar to a rule of another national securities exchange.[154]

Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.[155] The proposed Rule 23000 Series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the

[136] *Id.*

[137] *See supra* note 128.

[138] *See* Cboe BZX Chapter 13 rules. *See also* IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

[139] Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participant that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

[140] Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200–203 of Regulation SHO by reference into the rule (17 CFR 242.200–203).

[141] Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

[142] Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

[143] Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

[144] Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant providing loans or supporting the account of an Exchange employee (*e.g.,* promptly obtaining and implementing an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

[145] 17 CFR 242.200–203.

[146] 15 U.S.C. 78f(b)(5).

[147] 17 CFR 242.203.

[148] 15 U.S.C. 78f(e)(1).

[149] BSTX Depth-of-Book would be a data feed that contains all displayed orders for Securities trading on the Exchange, order executions, order cancellations, order modifications, and administrative messages.

[150] BSTX Top-of-Book would be an uncompressed data feed that offers top of book quotations and execution information based on orders entered into the BSTX System.

[151] BSTX Last Sale would be an uncompressed data feed that offers only execution information based on orders entered into the BSTX System.

[152] The BSTX Market Data Blockchain is described in proposed Rule 22060(d) as historical market data with respect to trading on the BSTX System, as set forth in Rule 17020.

[153] 15 U.S.C. 78f(b)(5).

[154] *See* MEMX LLC Rule 13.8.

[155] *See* Cboe BZX Chapter 12 rules.

trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.[156] Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.[157] Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.[158]

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other exchanges,[159] and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.[160] Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of $0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below $1, the Exchange proposes to adopt a uniform price improvement requirement of $0.01 for Securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of $0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges[161] except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is in an amount other than a round lot (*i.e.,* 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for Securities pursuant to proposed Rule 25020 is one Security. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 Securities (*i.e.,* trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act[162] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of Securities. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in Securities and are not necessary for the Exchange to carry out its functions of facilitating Security transactions and regulating BSTX Participants.

Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule

[156] Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly managing or financing a manipulative operation.

[157] Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX Participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research report and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel to trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule 5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

[158] In addition, proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX Participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

[159] *See e.g.,* Cboe BZX Rule 12.6.

[160] *See e.g.,* Cboe BZX Rule 12.6.07.

[161] *See e.g.,* Cboe BZX Rule 12.5.05.

[162] 15 U.S.C. 78f(b)(5).

24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.[163]

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

Trading Rules and the BSTX System (Rule 25000 Series)

Rule 25000—Access to and Conduct on the BSTX Marketplace

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restate provisions that are already set forth in Exchange Rule 7000, generally providing that BSTX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act[164] because it is designed to protect investors and the public interest and promote just and equitable principles of trade by ensuring that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

Rule 25010—Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would be not be open (*e.g.,* New Year's Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person's designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any Securities, close some or all of BSTX's facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[165] by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

Rule 25020—Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one Security. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act[166] because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of Securities on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.[167]

Rule 25030—Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for Securities shall be $0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for Securities and promotes compliance with Rule 612 of Regulation NMS.[168] Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Where a bid or offer or order is priced less than or equal to $1.00 per share, the minimum acceptable increment is $0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all Securities of $0.01 irrespective of whether the Security is trading below $1.00.

Rule 25040—Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed Securities and non-BSTX-listed securities. For BSTX-listed Securities, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.[169] Similar to how the Exchange's opening process works for options trading, BSTX would disseminate a theoretical opening price (''TOP'') to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.[170] Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in

[163] The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 24010 are discussed below in Part IV.

[164] 15 U.S.C. 78f(b)(5).

[165] 15 U.S.C. 78f(b)(5).

[166] 15 U.S.C. 78f(b)(5).

[167] *See e.g.,* IEX Rule 11.180.

[168] 17 CFR 242.611.

[169] As a result, orders marked IOC submitted during the Pre-Opening Phase would be rejected by the BSTX System. *See* proposed Rule 25040(a)(7).

[170] The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. *See* proposed Rule 25040(a)(2).

addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) ''Paired Securities,'' which is the quantity of Securities that would execute at the TOP; (ii) the ''Imbalance Quantity,'' which is the number of Securities that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the ''Imbalance Side,'' which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, ''Broadcast Information'').[171] Broadcast Information would be recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Securities to change. With respect to priority during the opening match for all Securities, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed Security would be opened by calculating the optimum number of Securities that could be matched at a price, taking into consideration all the orders on the BSTX Book.[172] Proposed Rule 25040(a)(6) provides that the opening match price is the price which results in the matching of the highest number of Securities. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting Securities in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest Securities in the BSTX Book, the price closest to the previous day's closing price will be selected.[173] The opening price must also be within the ''Collar Price Range'' as set forth in proposed Rule 25040(a)(5), which is designed to ensure that a Security opens in an fair and orderly manner and under market conditions where there is sufficient quotation interest (*e.g.,* a national best bid and offer), the market is not crossed, and where the opening price will not drastically depart from the market at the time of the auction or the preceding day's closing price.[174] Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time priority.[175] When the BSTX System cannot determine an opening price of a BSTX-listed Security at the start of regular trading hours, BSTX would nevertheless open the Security for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.[176]

For initial public offerings of Securities (''Initial Security Offerings''), the process would be generally the same as regular market openings. However, in advance of an Initial Security Offering auction (''Initial Security Offering Auction''), the Exchange shall announce a ''Quote-Only Period'' that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the Initial Security Offering Auction.[177] The Quote-Only Period may be extended in certain cases.[178] As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or Paired Securities to change.[179] In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.[180] Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.[181] Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).[182]

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (''Halt Auctions''). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.[183] This Quote-Only Period may be extended in certain circumstances.[184] The Exchange proposes to disseminate the same Broadcast Information as it does for an Initial Security Offering Auction and would similarly provide notification of any extension to the quote-only period as with an Initial Security Offering Auction.[185] The transition to normal trading would also occur in the same manner as Initial Security Offering Auctions, as described above.[186]

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an Initial Security Offering Auction the Exchange will publicly announce the Quote-Only Period for the Initial Security Offering Auction, and the Exchange will then cancel all orders on the BSTX Book and

[171] Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (*i.e.,* bid higher or offer lower) than the TOP would be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

[172] *See* proposed Rule 25040(a)(4)(ii).

[173] With respect to an initial public offering of a Security where there is no previous day's closing price, the opening price would be the price assigned to the Security by the underwriter for the offering, referred to as the ''Initial Security Offering Reference Price.'' *See* Proposed Rule 25040(a)(5)(ii)(3).

[174] *See* proposed Rule 25040(a)(5). The Exchange notes that the auction collars proposed in Rule 25040(a)(5) are substantially similar to those of Cboe BZX. *See* Cboe BZX Rule 11.23.

[175] *See* proposed Rule 25040(a)(7).

[176] *Id.*

[177] *See* proposed Rule 25040(b)(1).

[178] Such cases are when: (i) There is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the Initial Security Offering or of the Exchange to complete the Initial Security Offering. *See* proposed Rule 25040(b)(2).

[179] *See* proposed Rule 25040(b)(3).

[180] *See* proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. *Id.*

[181] *See* proposed Rule 25040(b)(5).

[182] As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an Initial Security Offering Auction would be rejected. *See* proposed Rule 25040(b)(6).

[183] *See* proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected. In addition, Halt Auctions would be subject to the proposed Halt Auction Collar, as set forth in proposed Rule 25040(c)(2)(i) and (ii). These proposed collars for Halt Auctions are substantially similar to those provided by Cboe BZX, and are designed to make sure that the Exchange is able to reopen trading in a Security in a fair and orderly manner. *See* Cboe BZX Rule 11.23(d). To the extent an Halt Auction would occur at an ''Impermissible Price'' (*i.e.,* a price outside of the proposed Halt Auction collars), the Exchange would extend the period of Halt Auction and gradually expand the scope of the collar price range over time until it is able to re-open trading in the Security in a manner consistent with proposed Rule 25040(c)(2).

[184] *See* proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (''Initial Extension Period''). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (''Additional Extension Period'') until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. *Id.*

[185] *See* proposed Rule 25040(c)(3)–(5).

[186] *Id.*

disseminate a new scheduled time for the Quote-Only Period and opening match.[187] Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted Security on the BSTX Book will be canceled after which the Exchange will open the Security for trading without an auction.[188]

The opening process with respect to non-BSTX-listed securities is set forth in proposed Rule 25040(e). Pursuant to that Rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (''Opening Process''). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.[189] Generally, the price of the Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for re-opening a non-BSTX-listed security subject to a halt.[190] The proposed opening process for Securities listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading Securities, or the equivalent thereof, given that there are no other exchanges currently trading Securities. The proposed process for opening Securities listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.[191]

Consistent with Section 6(b)(5) of the Exchange Act,[192] the Exchange believes that the proposed process for opening trading in BSTX-listed Securities and Securities listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of Securities.[193] Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in Securities listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed Security, the Exchange will proceed by opening regular hours trading in the Security anyway, which is consistent with the manner in which other exchanges open trading in securities.[194] With respect to initial public offerings of Securities and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to an initial public offering of a Security, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest.[195] Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

Rule 25050—Trading Halts

BSTX proposes to adopt rules relating to trading halts[196] that are substantially similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (''LULD Plan''), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading Securities. Below is an explanation of BSTX's approach to certain categories of orders during a trading halt:

- *Short Sales*—BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.
- *Pegged Orders*—BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.
- *Routable Orders*—Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.
- *Limit Orders*—Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.[197]
- *Auction Orders, Market Orders, and FOK Orders*—BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.[198]

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security subject to a trading halt, reject any incoming orders in that Security, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.[199]

BSTX believes that it is in the public interest and furthers the protection of

[187] *See* proposed Rule 25040(d)(1).

[188] *See* proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (*see e.g.,* IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an Initial Security Offering Auction or Halt Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[189] *See* proposed Rule 25040(e)(2).

[190] *See* proposed Rule 25040(e)(5).

[191] *See e.g.,* Cboe BZX Rule 11.24.

[192] 15 U.S.C. 78f(b)(5).

[193] The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a Security on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is a simple and fair way to establish the closing price of a Security that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. *Id.* This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. *Id.*

[194] *See e.g.,* BOX Rule 7070.

[195] The Exchange notes that its proposed opening, Initial Security Offering Auction, and Halt Auction processes are substantially similar to those of another exchange. *See* Cboe BZX Rule 11.23. The key differences between the Exchange's proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex.

[196] The Exchange notes that rules on opening trading for non-BSTX-listed security are set forth in proposed Rule 25040(e).

[197] *See e.g.,* Cboe BZX 11.18(e)(5)(B).

[198] IOC orders would be handled pursuant to proposed Rule 25050(g)(5).

[199] Trading would resume pursuant to proposed Rule 25040(e)(5). *See* proposed Rule 25050(g)(7).

investors, consistent with Section 6(b)(5) of the Exchange Act [200] to provide for a mechanism to halt trading in Securities during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act [201] because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

Rule 25060—Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders.[202] Orders that do not designate a limit price would be rejected.[203] The BSTX System would also only support two time-in-force (''TIF'') designations initially: (i) DAY; and (ii) immediate or cancel (''IOC''). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.[204] All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100. The Exchange has also proposed an additional order parameter for BSTX Participants to indicate a preference for T+0 or T+1 settlement, as previously described in Item 3, Part II.I.

Consistent with Section 6(b)(5) of the Exchange Act,[205] the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very simple exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

Rule 25070—Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange's oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (*e.g.,* exercise price) because Securities are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[206] because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (*i.e.,* above) the best bid, unless the sell order is marked ''short exempt'' pursuant to Regulation SHO.

Rule 25080—Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.[207]

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act [208] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for Security transactions. Numerous other exchanges similarly operate a price-time priority

[200] 15 U.S.C. 78f(b)(5).

[201] *Id.*

[202] The BSTX System will also accept incoming Intermarket Sweep Orders (''ISO'') pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. *See e.g.,* Cboe BZX Rule 11.9(d).

[203] Proposed Rule 25060(c)(1).

[204] Proposed Rule 25060(d)(1).

[205] 15 U.S.C. 78f(b)(5).

[206] 15 U.S.C. 78f(b)(5).

[207] *See e.g.,* Cboe BZX Rule 11.13(a)(2)–(3) governing regular trading hours.

[208] 15 U.S.C. 78f(b)(5).

structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market ''short exempt,'' is consistent with the Exchange Act because it is intended promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

Rule 25090—BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however may set default values for this control. The proposed rule also provides a means by which all of a BSTX Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act [209] because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

Rule 25100—Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an ''automated market center'' within the meaning of Regulation NMS and will display ''automated quotations'' at all times except in the event of a system malfunction.[210] In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.[211] BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX Participants to satisfy these obligations.[212]

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act [213] because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in Securities, consistent with Section 6(b)(5) of the Exchange Act.[214]

Rule 25110—Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (''Official'').[215] BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and

[209] 15 U.S.C. 78f(b)(5).

[210] 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an ''automated trading center'' displaying ''automated quotations'' relates to whether or not an exchange's quotations may be considered protected under Regulation NMS. *See* Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to Securities.

[211] 17 CFR 242.602.

[212] These proposed provisions are substantially similar to those of exchanges. *See e.g.,* Nasdaq Rule 4627 and IEX Rule 10.250.

[213] 15 U.S.C. 78f(b)(5).

[214] *Id.*

[215] A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous would be removed from the Consolidated Tape. Proposed Rule 25110(a).

must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.[216] Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the ''Reference Price'' [217] by an amount that equals or exceeds specified ''Numerical Guidelines.'' [218] The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.[219] Similar to other exchanges' clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.[220] Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.[221] The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,[222] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act.[223] The proposed rule is substantially similar to the clearly erroneous rules of other exchanges.[224] For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for Securities will not route to other exchanges.[225] Securities would also only trade during regular trading hours (*i.e.,* 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in unlisted trading privileges securities that are subject to an initial public offering.[226]

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act [227] because it promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.[228] In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

To the extent Securities become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act [229] at such future date.

Rule 25120—Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.[230] Specifically,

[216] Proposed Rule 25110(b). The Official may also consider certain ''outlier'' transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60) minutes after the transaction. Proposed Rule 2511(d).

[217] The Reference Price would be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

[218] The proposed Numerical Guidelines are 10% where the Reference Price ranges from $0.00 to $25.00, 5% where the Reference Price is greater than $25.00 up to and including $50.00, and 3% where the Reference Price ranges is greater than $50. Proposed Rule 25110(c)(1).

[219] Proposed Rule 25110(c)(1).

[220] *See* proposed Rule 25110(f)–(j). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (*e.g.,* replacing the term ''security'' with ''Security'').

[221] Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of invests and the public interest. Proposed Rule 25110(d)(2).

[222] 15 U.S.C. 78f(b)(5).

[223] *Id.*

[224] *See e.g.,* Cboe BZX Rule 11.17. Similar to other exchanges' comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more (but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, securities subject to the LULD Plan, and for leveraged ETP Securities.

[225] Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because Security transactions would be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the ''Consolidated Tape'' and provides that clearly erroneous Security transactions will be removed from ''all relevant data feeds disseminating last sale information for Security transactions.'' *See* proposed Rule 25110(a).

[226] The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. *See* IEX Rule 11.270.

[227] 15 U.S.C. 78f(b)(5).

[228] *See* BOX Rule 7170(n).

[229] 15 U.S.C. 78s.

[230] *See e.g.,* IEX Rule 11.290.

proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a ''covered security'' [231] at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security's closing price on the listing market as of the end of Regular Trading Hours on the prior day (the ''Trigger Price''). The proposed rule further specifies the duration of the ''Short Sale Price Test'' and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.[232]

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,[233] because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,[234] and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.[235] Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

Rule 25130—Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.[236] Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX Participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act [237] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

Rule 25140—Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act [238] because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.[239]

Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200–25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (''DMMs'') in a given Security, allocation of a DMM to a particular Security, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange's discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker's registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.[240]

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each Security in which itis registered as a Market Maker.[241] The Exchange proposes that such quotes must be entered within a certain percentage, called the ''Designated Percentage,'' of the National Best Bid (Offer) price in such Security (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.[242] The Exchange proposes that the Designated Percentage would be 30%.[243] The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).[244] The Exchange believes that the

[231] Proposed Rule 25120(b) provides that the terms ''covered security,'' ''listing market,'' and ''national best bid'' shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

[232] Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that Security on the most recent day on which the Security traded.

[233] 15 U.S.C. 78f(b)(5).

[234] 17 CFR 242.200(g).

[235] 17 CFR 242.201(b)(1).

[236] *See* IEX Rule 11.310.

[237] 15 U.S.C. 78f(b)(5).

[238] 15 U.S.C. 78f(b)(5).

[239] *See e.g.,* IEX Rule 11.250.

[240] Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

[241] *See* proposed Rule 25210(a)(1).

[242] *See* proposed Rule 25210(a)(1)(ii)(A).

[243] *See* proposed Rule 25210(a)(1)(ii)(B).

[244] *See* NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the

Continued

proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer (''NBBO'') in Securities and to ensure fair and orderly markets. The Exchange notes that pursuant to proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM's quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the ''Defined Limit,'' in a Security for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that Security. The Exchange proposes that the Defined Limit shall be 31.5%.[245] Under the proposed Rules, a Market Maker's quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.[246] Under the proposed Market Maker and DMM Rules, Market Makers and DMMs' two-sided quotation obligations must be maintained for a quantity of a ''normal unit of trading'' which is defined as one Security.[247] The Exchange believes that Securities may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one Security will be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) The modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be $0.01; and (iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of Securities pursuant to proposed Rule 25230, which is described below.[248] For Securities in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all Securities in which such Participant serves as DMM.[249] The proposed Rule provides, among other things, that a there will be no more than one DMM per Security and that a DMM must maintain information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market Maker in the same Security (to the extent applicable).[250] The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker[251] and similar to the same process for DMMs on other exchanges.[252] The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchanges proposes to add a provision stating that the Exchange is not required to assign a DMM if the Security has an adequate number of BSTX Market Makers assigned to such Security. The purpose of this requirement is to acknowledge the possibility that a Security need not necessarily have a DMM provided that each Security has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular Security. Proposed Rule 25230(a) sets forth the basic eligibility criteria for a when a Security may be allocated to a DMM, providing that this may occur when the Security is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the Security.[253] Proposed Rule 2530(a) also specifies that a DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.[254]

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a Security. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to selects its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing must be assigned to its Security consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a DMM for a Security for at least one year unless compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these

Designated Percentage for Tier 2 NMS stocks priced below $1.00 is 30% and for Tier 2 NMS stocks priced above $1.00 is 28%).

[245] *See* proposed Rule 25210(a)(1)(ii)(3).

[246] *See* proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM, may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such a demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

[247] *See* proposed Rule 25210(a)(1).

[248] *See* proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an [sic].

[249] *See* proposed Rule 25220(c).

[250] *See* proposed Rule 25220(b).

[251] *See* proposed Rule 25210(d).

[252] *See e.g.,* NYSE American Rule 7.24E(b)(4).

[253] As previously noted, pursuant to proposed Rule 26106, a Security may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a Security might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

[254] *See* proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)–(3), with the exception that the Exchange may shorten the one year DMM commitment period in compelling circumstances.[255] Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity Security listing after preferred Security, listed company mergers, target Securities, and closed-end management investment companies.[256] Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)–(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similarly to corresponding provisions in NYSE American Rule 7.25E(c). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.[257] Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a Security as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)–(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act[258] because they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,[259] and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.[260] The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in Securities. Although the corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all Security trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of Security investors, which the Exchange believes promotes the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[261]

The Exchange has also proposed that the minimum quotation size of Market Makers will be one Security. As noted above, the Exchange believes that Securities may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one Security would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

BSTX Listing Rules Other Than for Exchange Traded Products and Suspension and Delisting Rules (Rule 26000 and 27000 Series)

The BSTX Listing Rules Other than for Exchange Traded Products (the ''Non-ETP Listing Rules'') in the Rule Series 26000 and the Suspension and Delisting Rules in the Rule 27000 Series have been adapted from, and are substantially similar to, Parts 1–12 of the NYSE American LLC Company Guide.[262] Except as described below, each proposed Rule in the BSTX 26000 and 27000 Series is substantially similar to a Section of the NYSE American Company Guide.[263] Below is further detail.

- The BSTX Rule 26100 Series are based on the NYSE American Original Listing Requirements (Sections 101–146).[264]
- The BSTX Original Listing Procedures (26200 Series) are based on the NYSE American Original Listing Procedures (Sections 201–222).
- The BSTX Additional Listings Rules (26300 Series) are based on the NYSE American Additional Listings Sections (Sections 301–350).
- The BSTX Disclosure Policies (26400 Series) are based on the NYSE American Disclosure Policies (Sections 401–404).
- The BSTX Dividends and Splits Rules (26500 Series) are based on the

[255] The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

[256] *See* proposed Rule 25230(b)(4)–(11).

[257] In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

[258] 15 U.S.C. 78f(b)(5).

[259] *See* NYSE American Rule 7, Section 2.

[260] In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[261] 15 U.S.C. 78f(b)(5).

[262] All references to various ''Sections'' in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

[263] The Exchange notes that while the numbering of BSTX's Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (*i.e.,* bonds, debentures, securities of foreign companies (other than Canadian companies), investment trusts, and securities such as equity-linked term notes). The Exchange also proposes to modify cross-references in the proposed Non-ETP Listing Rules to accord with its Rules.

[264] Pursuant to proposed Rule 26136, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q–1.

NYSE American Dividends and Stock Splits Sections (Sections 501–522).

- The BSTX Accounting; Annual and Quarterly Reports Rules (26600 Series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603–624).
- The BSTX Shareholders' Meetings, Approval and Voting of Proxies Rules (26700 Series) are based on the NYSE American Shareholders' Meetings, Approval and Voting of Proxies Sections (Sections 701–726).[265]
- The BSTX Corporate Governance Rules (26800 Series) are based on the NYSE American Corporate Governance Sections (Sections 801–809).
- The BSTX Additional Matters Rules (26900 Series) are based on the NYSE American Additional Matters Sections (Sections 920–994).
- The BSTX Suspension and Delisting Rules (27000 Series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001–1011).
- The BSTX Guide to Filing Requirements (27100 Series) are based on the NYSE American Guide to Filing Requirements (Section 1101).
- The BSTX Procedures for Review of Exchange Listing Determinations (27200 Series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201–1211).

Notwithstanding that the proposed Rule 26000 and 27000 Series are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Rule 26000 and 27000 Series. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of these Rule Series by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[266]

With respect to initial listing standards for non-ETP Securities, which begin at proposed Rule 26101, the Exchange proposes to adopt listing standards that are substantially similar to the NYSE American listing rules.[267] The Exchange believes that adopting listing rules similar to those in place on other national securities exchanges will facilitate more uniform standards across exchanges, which helps foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[268] Market participants that are already familiar with NYSE American's listing standards will already be familiar with most of the substance of the proposed listing rules. The Exchange also believes that adopting proposed listing standards that closely resemble those of NYSE American may also foster competition among listing exchanges for companies seeking to publicly list their securities. The Exchange is proposing an addition (relative to the NYSE American listing rules) to the initial listing standards for preferred Securities.[269] Specifically, the Exchange proposes an additional standard for preferred Securities to list on the Exchange based on NASDAQ Rule 5510.[270] The Exchange believes a proposed rule providing an additional initial listing standard for preferred Securities consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred Securities. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving issuers an additional means by which it could list a different type of security (*i.e.,* a preferred Security) and investors the opportunity to trade in such preferred Securities.[271] Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Non-ETP Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Non-ETP Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[272]

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.[273] The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[274]

The Exchange's proposed Rules provide additional flexibility for listed

[265] The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (*e.g.,* proxy follow-up mailings) are the same as those charged by NYSE American. *See e.g.,* proposed IM–26722–8 *cf.* NYSE American Section 722.80.

[266] 15 U.S.C. 78f(b)(5).

[267] *See* NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51–1. 17 CFR 240.3a51–1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as ''penny stocks'' and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51–1 and therefore has clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million Securities, 400 public Security holders, and a minimum market price of $4 per Security. These provisions meet the requirements in SEC Rule 3a51–1 and are consistent with the rules of other national securities exchanges. *See, e.g.,* Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter's Letter that has been submitted as Exhibit 3L to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205.

[268] 15 U.S.C. 78f(b)(5).

[269] *See* proposed Rule 26103.

[270] *See* proposed Rule 26103(b)(2). Preferred Security Distribution Standard 2 requires that a preferred Security listing satisfy the following conditions: Minimum bid price of at least $4 per Security; at least 10 Round Lot holders; at least 200,000 Publicly Held Securities; and Market Value of Publicly Held Securities of at least $3.5 million.

[271] 15 U.S.C. 78f(b)(5).

[272] *Id.*

[273] *See* Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

[274] 15 U.S.C. 78f(b)(5).

companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.[275] Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.[276] Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of three (3) market makers would be assigned to the Security at initial listing; such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[277] The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing and only two for continued listing.[278] In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for Securities.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a ''specialist,'' since BSTX will not have a specialist,[279] or references to certificated equities, since Securities will be uncertificated equities.[280] As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.[281] In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.[282] In its proposed Rules, the Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules;[283] instead, these forms will be included in the BSTX Listing Supplement.[284] The Exchange is not proposing to adopt provisions relating to future priced securities at this time.[285] In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies,[286] or to allow for issuers to transfer their existing securities to BSTX.[287] Similarly, the Exchange is not proposing at this time to support debt securities (other than those that may be ETPs), so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt

[275] *See* proposed Rule 26205. BSTX-listed Securities must meet the criteria specified in proposed Rule 26106, which provides that unless otherwise provided, all Securities listed pursuant to the BSTX Listing Standards must meet one of the following requirements: (1) The DMM Requirement whereby a DMM must be assigned to a given Security; or (2) the Active Market Maker Requirement which states that (i) for initial inclusion the Security must have at least three registered and active Market Makers, and (ii) for continued listing, a Security must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

[276] Exchange personnel responsible for managing the listing and onboarding process would be responsible for determining to which DMM a Security would be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each Security is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel would be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a ''Listing Qualifications Analyst'' that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a ''Listing Qualifications Analyst,'' but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to relevant rules related to listing.

[277] 15 U.S.C. 78f(b)(5).

[278] *See e.g.,* IEX Rule 14.206.

[279] *See e.g.,* NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

[280] *See e.g.,* NYSE American Section 117 including a clause relating to paired securities for which ''the stock certificates of which are printed back-to-back on a single certificate''). Similarly, the Exchange has proposed to replace certain references to the ''Office of General Counsel'' contained in certain NYSE American Listing Rule (*see e.g.,* Section 1205) with references to the Exchange's ''Legal Department'' to accommodate differences in BSTX's organizational structure. *See* proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange's ''Hearing Committee'' as defined in Section 6.08 of the Exchange's By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

[281] *See* proposed Rule 26623.

[282] Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX's Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American's corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (*e.g.,* requiring that a member state the actual number of shares for which a proxy is given—NYSE American Rule 578) or, in some cases, relate to certificated securities (*e.g.,* NYSE American Rule 579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578–585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. *See e.g.,* Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange's other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants' obligations with respect to proxies.

[283] The forms found in NYSE American Section 722.20 and 722.40 would be included in the BSTX Listing Supplement.

[284] The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms. Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has submitted as Exhibit 3G. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American's sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM–26722–2 and IM–26722–4. The Exchange expects that these proposed materials in the BSTX Listing Supplement would be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

[285] *See e.g.,* NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of Securities. The Exchange notes that numerous other listing exchanges do not have a similar provision to NYSE American Section 950. *See e.g.,* IEX Listing Rules.

[286] *See* proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers of Securities, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers—*e.g.,* NYSE American Section 801(f).

[287] Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

securities [288] or the trading of units.[289] The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (*e.g.,* by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.[290]

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional Securities and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in Securities.[291] The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[292]

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's Security is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that Security trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[293]

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 Series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a director may serve [294] and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.[295] The Exchange also notes that, unlike the current NYSE American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-backed securities and foreign issues (other than those from Canada), since the Exchange does not proposed to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 Series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since Securities listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 Series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.[296]

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act.[297]

Trading and Listing Rules for Exchange-Trade Products (Rule 28000 Series)

The Exchange proposes as the Rule 28000 Series rules related to trading and listing ETPs. These proposed Rules allow for an array of different types of ETPs to be traded and listed on the Exchange and would provide individuals and institutions with diverse range of products in which to invest. The proposed Rules would set forth requirements and initial as well as continued listing standards for a variety of ETPs noted in the bulleted list below. The proposed Rules have been adapted from, and are substantially similar to, rules found in the NYSE Arca Inc. (''NYSE Arca'') rulebook. Below is a list of the proposed Rules in the 28000 Series and the NYSE Arca rules on which it is based:

- Proposed Rule 28000 (Investment Company Units) is based on NYSE Arca Rule 5.2–E(j)(3).
- Proposed Rule 28001 (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities) is based on NYSE Arca Rule 5.2–E(j)(6).
- Proposed Rule 28002 (Exchange-Traded Fund Shares) is based on NYSE Arca Rule 5.2–E(j)(8).
- Proposed Rule 28003 (Trust Issued Receipts) is based on NYSE Arca Rule 8.200–E.
- Proposed Rule 28004 (Commodity-Based Trust Shares) is based on NYSE Arca Rule 8.201–E.
- Proposed Rule 28005 (Managed Fund Shares) is based on NYSE Arca Rule 8.600–E.
- Proposed Rule 28006 (Active Proxy Portfolio Shares) is based on NYSE Arca Rule 8.601–E.
- Proposed Rule 28007 (Managed Portfolio Shares) is based on NYSE Arca Rule 8.900–E.

[288] *See e.g.,* NYSE American Sections 1003(b)(iv) and (e).

[289] *See e.g.,* NYSE American Sections 106(f), 401(i), and 1003(g).

[290] 15 U.S.C. 78f(b)(5).

[291] The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in Securities are not permitted by the Exchange.

[292] 15 U.S.C. 78f(b)(5).

[293] *Id.*

[294] *See* proposed Rule 26802(d).

[295] *See* proposed Rule 26801(b).

[296] As with all sections of the proposed rules, references to ''securities'' have been changed to ''Securities'' where appropriate and, in the Rule 27000 Series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

[297] 15 U.S.C. 78f(b)(5).

For each Rule in the 28000 Series, the Exchange proposes provisions that are substantially similar to provisions in the NYSE Arca rulebook, with adjustments made to ensure appropriate reference to concepts in other parts of the BSTX Rulebook. For example, in cases where the precedent NYSE Arca rule referred to a specific provision regarding delisting procedures, the Exchange has modified the proposed Rules to reference to the proposed Rule 27000 Series, which set forth the Exchange's proposed Rules governing suspension and delisting.[298] As another example, the proposed definition of ''ETP Holder,'' which closely parallels the same definition in the NYSE Arca Rulebook, but is located in a different place in the proposed BSTX Rulebook as compared to the NYSE Arca rulebook.[299] In addition, certain products or concepts that are supported by NYSE Arca but are not supported by the Exchange have not been included in the proposal. For example, the Exchange notes that the NYSE Arca rulebook provides for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares,[300] whereas the Exchange will not support trading in these specific ETPs and therefore has not included provisions relating to the listing and trading of such products in its proposal. The discussion below describes other notable variations from the NYSE Arca rules set forth in the proposed Rule Series 28000.

The Exchange believes that the proposals in the Rule 28000 Series help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general promote the protecting of investors and the public interest because they will facilitate an additional exchange on which ETPs can be listed and traded. This adds competition to the marketplace for the listing of ETPs, providing greater choice for issuers of ETPs and an additional trading venue on which market participants can trade such products. As noted, the proposed Rule 28000 Series is substantially similar to the rules of NYSE Arca relating to ETPs, with only non-substantive differences, which differences appropriately reflect the differences between the two exchanges (*e.g.,* internal cross-references within each rule book or excluding provisions related to products that the Exchange will not support).

Fees (Rule 29000 Series)

The Exchange proposes to set forth as its Rule 29000 Series (Fees) the Exchange's authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate. As provided in proposed Rule 29000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.[301] Proposed Rule 29010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 29000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 29000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act[302] because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the Exchange's facilities. The Exchange notes that the proposed Rule 29000 Series is substantially similar to the existing rules of another exchange.[303] The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX and market data products in advance of the launch of BSTX.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange's Minor Rule Violation Plan (''MRVP'') specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Exchange Act[304] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[305] The Exchange's MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.[306] Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the

[298] As another example, the concept of ''Core Trading Hours'' in the NYSE Arca Rulebook (as defined therein) has no analog in the BSTX Rulebook. The BSTX Rulebook only allows for Regular Trading Hours and thus the proposal references the concept of Regular Trading Hours.

[299] *See* proposed IM–28000–1g. In the NYSE Arca rule book, the comparable definition is set forth in NYSE Arca Rulebook Rule 1.

[300] Specifically, Section 2 of Rule 8–E in the NYSE Arca rulebook allows for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares.

[301] Proposed Rule 29000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

[302] 15 U.S.C. 78f(b)(5).

[303] *See* Cboe BZX Rules 15.1 and 15.2.

[304] 17 CFR 240.19d–1(c)(1).

[305] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered ''final'' for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[306] *See e.g.,* IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,[307] which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.[308]

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act,[309] because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in Securities= [sic] on the Exchange, the Exchange proposes to amend those Exchange Rules that would apply to BSTX Participants, but that currently only contemplate trading in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B submitted with the proposal:

- *Rule 100(a) (Definitions) ''Options Participant'' or ''Participant'':* The Exchange proposes to change the definition of ''Options Participant or Participant'' to ''Participant'' to reflect Options Participants and BSTX Participants and to amend the definition as follows: ''The term 'Participant' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an 'Options Participant' and 'BSTX Participant.' ''
- *Rule 100(a) (Definitions) ''Options Participant'':* The Exchange proposes to add a definition of ''Options Participant'' that would be defined as follows: ''The term 'Options Participant' is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.'' [310]
- *Rule 2020(g)(2) (Participant Eligibility and Registration):* The Exchange proposes to delete subsection (g)(2) and replace it with the following: ''(2) persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.'' [311]
- *Rule 2060 (Revocation of Participant Status or Association with a Participant):* The Exchange proposes to amend Rule 2060 to refer to ''securities transactions'' rather than ''options securities transactions.''
- *Rule 3180(a) (Mandatory Systems Testing):* The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.
- *Rule 7130(a)(2)(v) Execution and Price/Time Priority:* The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term ''Request for Quote'' or ''RFQ'' under the Rules after the proposed renumbering.
- *Rule 7150(a)(2) (Price Improvement Period):* The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.
- *Rule 7230 (Limitation of Liability):* The Exchange proposes to amend the references in Rule 7230 to ''Options Participants'' to simply ''Participants.''
- *Rule 7245(a)(4) (Complex Order Price Improve Period):* The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term ''Professional'' after the proposed renumbering.
- *IM–8050–3:* The Exchange proposes to update the cross reference to Rule 100(a)(56) to refer to Rule 100(a)(57), which defines the term ''quote'' or ''quotation'' after the proposed renumbering.
- *Rule 11010(a) ''Investigation Following Suspension'':* The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to ''in BOX options contracts'' and to modify the word ''position'' with the word ''security'' as follows: ''. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.''
- *Rule 11030 (Failure to Obtain Reinstatement):* The Exchange proposes to amend Rule 11030 to replace the reference to ''Options Participant'' to simply ''Participant.''
- *Rule 12140 (Imposition of Fines for Minor Rule Violations):* The Exchange proposes to amend Rule 12140 to replace references to ''Options Participant'' to simply ''Participant.'' In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange's MRVP. New paragraph (f) of Rule 12140 would provide: ''(f) Transactions on BSTX. Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).''

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with

[307] 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

[308] 15 U.S.C. 78f(b)(7).

[309] 17 CFR 240.19d–1(c)(2).

[310] In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetically order.

[311] In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. *See e.g.,* IEX Rule 2.160(m).

Section 6(b)(5) of the Exchange Act [312] because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act [313] because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange's rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion.

Forms To Be Used in Connection With BSTX

In connection with the operation of BSTX, the Exchange proposes to uses a series of new forms to facilitate becoming a BSTX Participant and for issuers to list their Securities. These forms have been submitted with the proposal as Exhibits 3A–3L. Each are described below.

BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which has been submitted with the proposal as Exhibit 3A. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicants name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository (''CRD'') number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant's current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker. Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant's trading representatives (including a copy of each representative's Form U4), a copy of the applicant's written supervisory procedures relating to market making, a description of the source and amount of the applicant's capital, and information regarding the applicant's other business activities and information barrier procedures.

BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement has been submitted with the proposal as Exhibit 3B. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.

2. Participant acknowledges that BSTX Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange.

3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants. Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, submitted with the proposal as Exhibit 3C, includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (*boxoptions.com*).

BSTX Security Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Designated Market Maker Selection Form, which has been submitted with the proposal as Exhibit 3D. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Market Designated Market Maker Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

[312] 15 U.S.C. 78f(b)(5).

[313] *Id.*

Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (submitted with the proposal as Exhibit 3E) or the BSTX Participant Clearing Authorization (Market Maker) form (submitted with the proposal as Exhibit 3F). Each form would be maintained by BSTX and each form specifies that the BSTX Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, ''listing documentation''). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of Securities. All listing documentation will be available on the Exchange's website (*boxoptions.com*). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b–4.[314]

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (submitted with the proposal as Exhibit 3G) or the BSTX Additional Listing Application (submitted with the proposal as Exhibit 3H) to apply for the listing of Securities on BSTX.[315] The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,[316] for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of Securities. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.

2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of Securities outstanding or offered, total Securities unissued, but reserved for issuance, date authorized, purpose of Securities to be issued, number of Securities authorized, and information relating to payment of dividends. This information is required of all applicants listing Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.

6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.

7. For original listing applications only, type of Security listing, including the type of transaction (initial public offering of a Security, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment banker/financial advisor contacts. This information is necessary in order for the Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any Security and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's Security inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's listing standards for listing on the BSTX Security Market, it does not necessarily mean that its application will be

[314] The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

[315] Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its Security must also provide a legal opinion that the applicant's Security is a security under applicable United States securities laws.

[316] 15 U.S.C. 78l(b).

approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.

9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).

11. For additional listing applications only, transaction details, including the purpose of the issuance, total Securities, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any Securities in the future above the amount they are currently applying for. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse Security splits and changes in states of incorporation. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward Security split or Security dividend, including forward Security split ratios and information related to Security dividends. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order to determine the rights associated with the Securities.

15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review.

16. For additional listing applications only, reconciliation for technical original listing, including Securities issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

Checklist for Original Listing Application

In order to assist issuers seeking to list its Securities on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, submitted with the proposal as Exhibit 3I, provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, underwriter's letter (for an initial public offering of a Security only) and relevant SEC filings (*e.g.,* 8–A, 10, 40–F, 20–F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

BSTX Security Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the Exchange, a company must execute the BSTX Security Market Listing Agreement (the ''Listing Agreement''), which has been submitted with this proposal as Exhibit 3J. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.

2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed Securities or in the rights, benefits, and privileges of the holders of such Securities.

3. Company understands that the Exchange may remove its Securities from listing on the BSTX Security Market, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

4. In order to publicize the Company's listing on the BSTX Security Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange (''Corporations'') of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.

6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.

8. Company agrees to pay when due all fees associated with its listing of Securities on the BSTX Security Market, in accordance with the Exchange's Rules.

9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1–3 and 6–8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service markets, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

BSTX Security Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Market Corporate Governance Affirmation, submitted with this proposal as Exhibit 3K, enables a company to confirm to the Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial public offering of a Security must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and submitted with this proposal as Exhibit 3L, is necessary to assist the Exchange's regulatory staff in assessing the offering's compliance with BSTX listing standards for an initial public offering of a Security.

Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.[317] Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform Security listing regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of Security trading on the BSTX System.

Section 17(d) of the Exchange Act[318] and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[319] the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.[320]

Rule 17d–2 under the Exchange Act[321] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.[322] The Exchange may choose to join certain Rule 17d–2 agreements such as the agreement allocating responsibility for insider trading rules.[323]

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange's options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including

[317] 15 U.S.C. 78f.

[318] 15 U.S.C. 78q(d).

[319] 17 CFR 240.17d–1.

[320] *See* Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

[321] 17 CFR 240.17d–2.

[322] Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

[323] Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018).

those applicable to BSTX. Finally, as it does with options, the Exchange will perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating ''clearly erroneous trades'' pursuant to proposed Rule 25110.

NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plan(s) for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,[324] the Exchange believes that joining the same set of NMS plans that all other national securities exchanges that trade equities must join fosters cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,[325] in general and with Section 6(b)(5) of the Exchange Act,[326] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. BSTX would also make available to BSTX Participants the BSTX Market Data Blockchain, which provides certain order and transaction information with respect to a BSTX Participant's trading activity on BSTX, as well as anonymized order and transaction data with respect to all trading activity occurring on BSTX. The Exchange believes that the content of information available on the BSTX Market Data Blockchain would generally be similar to TAQ data made available by NYSE today, except that (i) the BSTX Market Data Blockchain would use a private, permissioned network controlled by the Exchange to make the market data available to BSTX Participants; (ii) a BSTX Participant would be able to certain see non-anonymized information about its own trading activity on BSTX; [327] and (iii) the BSTX Market Data Blockchain would include market data only with respect to trading activity occurring on BSTX, while the Exchange understands that TAQ data includes certain trading and quotation data that may occur on other markets.[328] The Exchange believes that the use of blockchain technology, through a private permissioned network accessible through an API that operates in manner that is fully compatible with the existing regulatory structures for trading, recordkeeping, and clearance and settlement that market participants are familiar with is an appropriate way to introduce blockchain to the current market structure. BSTX Participants would not have affirmative obligations to provide information to the blockchain nor would they be required to access or use it. The data inputs to the BSTX Market Data Blockchain would be captured in the ordinary course as BSTX Participants' orders and messages are sent to the Exchange through the FIX gateway. The BSTX Market Data Blockchain, therefore, would be optional functionality available to all BSTX Participants on equal terms, and therefore is not unfairly discriminatory, consistent with Section 6(b)(5) of the Exchange Act.[329]

The Exchange has proposed to make anonymized General Market Data on the BSTX Market Data Blockchain available to both BSTX Participants and non-BSTX Participants through the same means of an API. Accordingly, the Exchange believes that because General Market Data available on the BSTX Market Data Blockchain would be available to both BSTX and non-BSTX Participants, the BSTX Market Data Blockchain is not unfairly discriminatory and does not impose a burden on competition, consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act.[330] Non-BSTX Participants would not be provided access to any Participant Proprietary Data to protect the private trading information of each BSTX Participant (and each BSTX Participant would only have access to its own Participant Proprietary Data), which the Exchange believes is consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act because providing the Participant Proprietary Data of a given BSTX Participant to non-BSTX Participants (or other BSTX Participants) would unfairly discriminate against the BSTX Participant whose information is being shared and could place that BSTX Participant at an unfair competitive disadvantage if its order and trading information were shared with other market participants.

In addition, because the BSTX Market Data Blockchain only captures information with respect to trading activity on BSTX, it would have no effect or impact on other exchanges, promoting consistency with Section 6(b)(8) of the Exchange Act, which prohibits an exchange's rules from imposing a burden on competition not necessary or appropriate in furtherance of the Exchange Act.[331] The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of

[324] 15 U.S.C. 78f(b)(5).

[325] 15 U.S.C. 78a *et seq.*

[326] 15 U.S.C. 78f(b)(5).

[327] All non-anonymized information would be available only to the BSTX Participant who provided such information to the Exchange through its trading activity on BSTX.

[328] *See e.g.,* NYSE, Daily TAQ Fact Sheet, (noting that TAQ data ''provides users access to all trades and quotes for all issues traded on NYSE, Nasdaq and the regional exchanges for a single trading day'' and is ''a comprehensive history of daily activity from NYSE markets and the U.S. Consolidated Tape covering U.S. Equities instruments (CTA and UTP participating markets'') *https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.*

[329] 15 U.S.C. 78f(b)(5).

[330] 15 U.S.C. 78f(b)(5) and (8).

[331] 15 U.S.C. 78f(b)(8).

Securities using a price-time priority model and the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an additional feature in connection with Securities traded on the Exchange.

In connection with the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency, the Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.[332] Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail above, however, an Order with a T+0 Preference or an Order with a T+1 Preference would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.[333] Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis.

The Exchange believes that the proposed ability for BSTX Participants to indicate a preference for shorter settlement times as described above is consistent with the Exchange Act and in particular Section 6(b)(5) of the Exchange Act because it would help remove impediments to and perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between or among market participants.[334] Specifically, allowing for BSTX Participants to potentially reduce the settlement time for transactions on BSTX pursuant to the rules, policies and procedures of a registered clearing agency helps remove impediments to and perfects a free and open market by allowing greater choice for BSTX Participants who may want to avail themselves of currently available functionality at registered clearing agencies. Moreover, the Commission has previously noted a number of positive effects relating to the liquidity risks and costs faced by members in a clearing agency, and the Exchange believes that this proposed functionality on BSTX would help realize such positive effects.[335] Proposed Rule 25060(h) is not designed to permit unfair discrimination between market participants consistent with Section 6(b)(5)[336] because the Rule would allow all orders that are marketable against one another—regardless of the settlement preference of the BSTX Participant submitting the order (or their customer)—to execute against each other. A BSTX Participant that would like settlement of T+2 could still interact with orders on BSTX that indicate a preference for a shorter settlement cycle and vice-versa and, in all cases, the trade would settle pursuant to the rules, policies and procedures of a registered clearing agency. Only where two orders that both indicate a preference for a shorter settlement cycle match on BSTX would a shorter settlement cycle be possible pursuant to the rules, policies and procedures of a registered clearing agency.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[337] The Exchange operates in an intensely competitive global marketplace for transaction services. The Exchange competes for the privilege of providing market services to broker-dealers through the Exchange's service offerings and associated benefits it is able to provide. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to market participants who evaluate the Exchange on, among other things, speed, reliability, the likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change could potentially result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants may access BSTX as a facility of the Exchange and use its services including the BSTX Market Data Blockchain, (3) Security transactions may be cleared and settled, (4) Security transactions would occur OTC (5) Security transactions would occur on other exchanges through an extension of UTP to Securities.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Non-ETP Listing Rules in the 26000 Series and Suspension and Delisting Rules in the 27000 Series that affect issuers and their ability to list Securities for trading are based substantially on the current rules of NYSE American. Additionally, the BSTX Trading and Listing of ETPs Rules in the 28000 Series that concern issuers and their ability to list Securities that are exchange-traded products are based substantially on the current rules of NYSE Arca. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: Participation on BSTX (Rule 18000 Series); business conduct for BSTX Participants (Rule 19000 Series); financial and operational rules for BSTX Participants (Rule 20000 Series); supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 [sic] Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC.

Regarding consideration (2) and use of the BSTX Market Data Blockchain, the terms on which BSTX would operate

[332] *See* proposed Rule 25060(h).

[333] *See* proposed Rule 25100(d).

[334] 15 U.S.C. 78f(b)(5).

[335] *See supra* notes 75–78 and accompanying text.

[336] 15 U.S.C. 78f(b)(5).

[337] 15 U.S.C. 78f(b)(8).

the BSTX Market Data Blockchain under Rule 17020 would apply equally to all BSTX Participants (and non-BSTX Participants accessing anonymized General Market Data) and would therefore not impose any different burden on one BSTX Participant compared to another (or between and among non-BSTX Participants). As described in detail in Item 3, BSTX would issue login credentials to each BSTX Participant or non-BSTX Participant through which users may access the BSTX Market Data Blockchain. Accessing the BSTX Market Data Blockchain would not be required. If a BSTX Participant chooses to access the BSTX Market Data Blockchain, it would be able to see its order and transaction information on BSTX as well as anonymized General Market Data from other BSTX Participants and a non-BSTX Participant would only be able to see the anonymized General Market Data. Because the General Market Data would be anonymized, the Exchange believes that there would not be cause for concern regarding potential trading information leakage or the ability for a BSTX Participant to reverse engineer another BSTX Participant's trading strategies.[338] Moreover, the BSTX Market Data Blockchain would not require any affirmative action on the part of a BSTX Participant for its information to be recorded to the BSTX Market Data Blockchain. Rather the Exchange would control all aspects of the BSTX Market Data Blockchain as a private, permission-based blockchain accessible to BSTX Participants, and the BSTX Market Data Blockchain would capture order and execution activity that occurs in the normal course on BSTX and is made available to BSTX Participants (and non-BSTX Participants with respect to anonymized General Market Data) as an additional resource that they may use in their discretion. The BSTX Market Data Blockchain would functionally provide market data similarly to what NYSE offers through TAQ data, but would simply provide it using distributed ledger technology. Accordingly, although capturing a different set of market data than captured by NYSE TAQ data, the BSTX Market Data Blockchain is pro-competitive by offering a similar type of market data and using an innovative technology to do so. For these reasons, the Exchange believes that the BSTX Market Data Blockchain would not impose any burden on competition.

In addition to not imposing any burden on competition, the Exchange believes that the BSTX Market Data Blockchain would provide two primary benefits to BSTX Participants. First, the Exchange believes that BSTX Participants that choose to access the BSTX Market Data Blockchain may find the information useful as a focused source of market data regarding order and transaction information on BSTX.[339] Second, the Exchange believes that the BSTX Market Data Blockchain would help familiarize BSTX Participants that access the market data with the capabilities of blockchain technology in a manner that does not impose any burden on competition on them or others. The Commission has stated that it is ''mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . .'' stating further that ''[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.'' [340] Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that ''[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.'' [341] Consistent with these statements, the Exchange believes that promoting use of the functionality of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and thereby advances and protects the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.[342]

Regarding consideration (3) and the manner in which Security transactions may be cleared and settled, the Exchange proposes under BSTX Rule 25100(d) to clear and settle transactions in Securities in accordance with the rules, policies and procedures of a registered clearing agency. The Exchange believes that this is consistent with how other exchange-listed equity securities are cleared and settled today. Therefore, BSTX's rules regarding clearance and settlement of Security transactions do not impose any relative burden on competition regarding the manner in which trades may be cleared and settled because market participants would be able to clear and settle Security transactions in the same manner as they already do in other types of NMS stock. The Exchange believes that this is equally true regarding the proposed ability of BSTX Participants to submit to BSTX orders in Securities in which they include a parameter expressing a preference for T+1 or T+0 settlement, consistent with the rules, policies and procedures of a registered clearing agency, as proposed in the operation of proposed BSTX Rules 25060(h) and 25100(d). As described in detail in Item 3 above, BSTX believes that NSCC and DTC already have authority under their rules policies and procedures to clear and settle certain trades on a T+1 or T+0 basis and that these clearing agencies do already clear and settle trades in accordance with this authority.

The Exchange believes that answering the question of whether a burden on competition is imposed by the proposal to allow BSTX Participants to specify an order parameter indicating a preference for potential settlement on a T+0 or T+1 basis requires an assessment under three general circumstances for order submissions and executions. The first possible circumstance contemplates orders that BSTX Participants would submit to the BSTX System and that would result in an execution on BSTX. Here, it would be entirely the choice of any BSTX Participant regarding whether to include an order parameter indicating a preference for T+0 or T+1 settlement where possible under the settlement logic in BSTX Rule 25060(h) and subject to functionality permitted by the rules, policies and procedures of a registered clearing agency. If no such additional parameter is included in the order or the matched orders are not eligible for shortened settlement pursuant to the rules, policies and procedures of a

[338] Non-BSTX Participants accessing the BSTX Market Data Blockchain would have access to the same anonymized General Market Data as BSTX Participants. While a non-BSTX Participant would be treated differently than a BSTX Participant in that they would not be able to access any proprietary market data of a BSTX Participant, the reason for this difference is to prevent a non-BSTX Participant from being able to see the confidential trading information of a BSTX Participant. If the Exchange were to provide non-BSTX Participants with access to one or more BSTX Participants' proprietary market data, the Exchange would impose an undue burden on competition against BSTX Participants whose confidential trading information would be shared. Accordingly, non-BSTX Participants may only access anonymized, General Market Data.

[339] For example, a BSTX Participant may wish to use the market data to review its trading activity on BSTX, determine what the market quality was at a particular time for a given Security or to evaluate execution quality on BSTX.

[340] *See supra* n. 52–54 and accompanying text.

[341] *Id.*

[342] *See supra* n.55 and accompanying text.

registered clearing agency (*e.g.,* the trade is not received by NSCC for T+0 clearance and settlement through NSCC's contiuous net settlement system in advance of the applicable cut-off time), the order defaults to settle on a regular-way T+2 basis under the settlement logic in proposed BSTX Rule 25060(h). As described in Part II.H of Item 3, an order that includes a parameter indicating a preference for potential T+0 settlement will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on a standard settlement cycle of T+2 except where: (i) The order with the parameter for potential settlement on T+0 executes against another order with a parameter for potential settlement on T+0 (in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the trade date if the transaction is also eligible for settlement on T+0 under the rules, policies and procedures of a registered clearing agency) or (ii) the order with a parameter for potential settlement on T+0 executes against an order with a parameter for potential settlement on T+1 (in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on T+1 if the transaction is also eligible for settlement on T+1 under the rules, policies and procedures of a registered clearing agency). Similarly, as proposed, an order that includes a parameter for potential settlement on T+1 will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on standard settlement cycle of T+2 except where an order that includes a parameter for potential settlement on T+1 executes against another such order or an order that includes a parameter for potential settlement on T+0 (in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on T+1 if the transaction is also eligible for settlement on T+1 under the rules, policies and procedures of a registered clearing agency). In all cases under the settlement logic in proposed BSTX Rule 25060(h), an order that does not include an optional parameter indicating a preference for potential settlement on T+0 or T+1 would be a regular way order that would always receive T+2 settlement if it executes against any other order in the BSTX System. In this way, all of the orders submitted to BSTX would be regular way orders that in and of themselves would be presumed to settle on T+2. Only where a BSTX Participant includes the optional parameters to express a preference for potential T+0 or T+1 settlement (where consistent with and eligible for shortened settlement under the rules, policies and procedures of a registered clearing agency) and the order matches against another order seeking a shorter settlement time than T+2 could a transaction settle more quickly than T+2 under the settlement logic in proposed BSTX Rule 25060(h) and as described immediately above. Thus, every market participant seeking T+2 settlement for an execution on BSTX would be able to interact with any order against which their order is marketable, including those marked for possible T+0 or T+1 settlement. In addition, the possibility of shortened settlement timing would have no impact on the Exchange's price time priority.[343] For these reasons, the Exchange believes that no burden on competition is imposed in this first possible circumstance.

The second possible circumstance arises when an order that would be required under Exchange Act Rule 611,[344] the Commission's ''order protection rule'', to be routed to BSTX from a third party exchange that extends UTP to a Security. This required routing of the order in such a Security would occur in this setting because the NBBO existed on BSTX at the time of the entry of the order. Under proposed BSTX Rule 25060(h), the order routed to BSTX would execute against any order against which it is marketable without regard to whether a BSTX Participant may have included an optional parameter for potential T+0 or T+1 settlement where the order executes against another order that also has an optional parameter for potential T+0 or T+1 settlement under the settlement logic in BSTX Rule 25060(h). In the event the order routed to BSTX executes against another order on BSTX against which it is marketable, that executed transaction in the Security would be bound for regular way T+2 settlement under BSTX Rule 25060(h) because the Exchange believes that the routed order from a third party exchange would not include a parameter for T+0 or T+1 settlement. This is because the Exchange believes that no other exchange currently includes any such optional parameters to be able to indicate a preference for potential T+0 or T+1 settlement. This structure means that any non-BSTX Participant that sees a quote in a Security on BSTX would remain able to execute against that quote even if that quote includes an optional parameter indicating a preference for T+0 or T+1 settlement where an executed order becomes eligible for any such settlement on a basis that is faster that T+2 under the settlement logic in BSTX Rule 25060(h). The Exchange believes that no burden on competition results in this second possible circumstance because an order routed to BSTX would interact against any order on BSTX against which it is marketable. All orders in a Security that are submitted directly to BSTX by BSTX Participants or that may be routed to BSTX would be regular way orders that when viewed in isolation would be presumed to settle on a T+2 basis at the time of order entry. It would only be upon execution against another order that also includes an order parameter expressing a preference for settlement on a T+0 or T+1 basis that the executed transaction (*i.e.,* not the initial orders) would become eligible for settlement faster than T+2 under the settlement logic in Rule 25060(h) pursuant to the rules, policies and procedures of a registered clearing agency. The Exchange believes this imposes no burden on competition on BSTX Participants because inclusion of any T+0 or T+1 parameter would be entirely optional and any BSTX Participant that includes such a parameter would do so with an ex-ante understanding of the settlement logic in BSTX Rule 25060 that could cause an executed transaction to settle more quickly that T+2. As noted, the Exchange believes that orders in a Security that would be required to be routed to BSTX, for example under the Commission's Order Protection Rule, would also not impose any burden on competition because other exchanges do not have rules that similarly contemplate the inclusion of a T+0 or T+1 parameter, such routed orders would therefore result in T+2 settlement if executed against any other order on BSTX against which the order is marketable (regardless of whether the order against which it executes includes an optional parameter indicating a preference for T+0 or T+1 settlement). Therefore, any order routed to BSTX would be able to interact with any other order on BSTX against which it is marketable and would settle on a regular way T+2 basis just as occurs today regarding any order in an NMS stock that is routed to a national securities exchange.

The third possible circumstance contemplates an order that must be routed under the order protection rule from BSTX to a third party exchange

[343] *See supra* n.62 and accompanying text.

[344] 17 CFR 242.611.

that extends UTP for a Security because the third party exchange has the NBBO at that time. The Exchange believes that this setting is not relevant under the proposed rules of BSTX. Specifically, the Exchange believes that it is not relevant because proposed BSTX Rule 25130(d) states that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry. Therefore, any such orders that would otherwise be required to be routed by BSTX to another exchange will instead be rejected by the BSTX System. Accordingly, any specification by a BSTX Participant of a T+0 or T+1 settlement timing parameter for an order in this setting could not create any burden on competition because the order will be rejected and would never lead to an execution.

In addition to not imposing any burden on competition, the Exchange believes that allowing BSTX Participants to use faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities, consistent with the benefits the Commission has noted in this area. Namely, in adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs CCP services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting ''reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP's risk management process . . .'' and that ''[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.'' [345] The Commission went on to state its belief that shortening the settlement cycle ''would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors'' such as ''quicker access to funds and securities following trade execution'' and ''reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]'' [346] The Commission also ''noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]'' [347] The Exchange agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of shorter settlement cycles for Securities without imposing burdens on other national securities exchanges or market participants that are not BSTX Participants.

With respect to consideration (4) above, as previously noted, market participants would not be limited in their ability to trade Securities OTC because Securities could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. Thus, the Exchange does not believe that its proposal will place any new burden on competition with respect to OTC trading, given that trading, clearance and settlement will take place in the same manner as for other NMS stocks.

With respect to consideration (5) noted above regarding other exchanges extending UTP to Securities, the Exchange does not believe that the proposed Rules would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This is because other national securities exchanges would be able to extend UTP to Securities in accordance with Commission rules just as they can regarding any other NMS stock.

*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. Summary of the Comment Letters Received**

Several commenters express support for the proposal's proposed use of a shortened settlement cycle under certain circumstances.[348] One commenter states in support of the proposal that the proposed BSTX exchange would provide significant advantages over existing exchanges by providing fairer conditions to market participants through reduced settlement times and more transparency.[349] This commenter states that T+0 settlement would improve market conditions for retail investors by reducing risk of failure to deliver on highly shorted stocks, and would reduce actual and opportunity costs by eliminating margin lending for the period before settlement and lost opportunities to reinvest.[350] Two commenters refer to recent problems that they characterize as arising from T+2 settlement and short selling,[351] and state that the proposal for a shorter settlement cycle would level the playing field for retail investors.[352]

One commenter states that the United States should support blockchain technologies like BSTX to be competitive globally, and that blockchain affords more efficiency and transparency.[353] Another commenter states that blockchain will bring the advantages of better security, higher transparency, more trust, and a fairer marketplace to the sector.[354] This commenter also states that blockchain would afford savings in time and money, make the market safer against fraud, and help United States markets keep up with other global systems.[355] Another commenter states that it would like to see the development of financial institutions and securities exchanges that allow access to financial instruments and investments without the burdens and controls placed by traditional exchanges, and that the proposal represents the first steps in a free and equitable publicly auditable financial system.[356]

Finally, one commenter states that the proposal does not specifically address how participants shall access BSTX and

[345] *See supra* n.75–78 and accompanying text.

[346] *Id.*

[347] *Id.*

[348] *See* Letter from Meagan Darata, Utah Salt Supplements (June 21, 2021) (''Darata Letter''); Letter from Mark Nelson (June 10, 2021) (''Nelson Letter''); Letter from Robert Shaw (June 11, 2021) (''Shaw Letter''); Letter from Neil Skinner (June 11, 2021) (''Skinner Letter'').

[349] *See* Nelson Letter, *supra* note 348.

[350] *See id.* This commenter also states that the commenter expects the reduced costs of operating the exchange to be passed on to prospective companies and issuers, thereby creating more opportunities for companies and asset holders to offer securities, and resulting in a market boom as new market participants join the exchange. *See id.*

[351] *See* Letter from Anonymous (June 15, 2021) (''Anonymous Letter I''); Skinner Letter, *supra* note 348. *See also* Shaw Letter, *supra* note 348 (stating that, with the current issues regarding settlement time, the proposal to offer speedy settlement is one answer to improving the system).

[352] *See* Anonymous Letter I, *supra* note 351; Skinner Letter, *supra* note 348. *See also* Darata Letter, *supra* note 348 (stating that there is a wide power differential between retail and institutional traders).

[353] *See* Letter from Anonymous (June 15, 2021) (''Anonymous Letter II'').

[354] *See* Letter from Anonymous (June 21, 2021).

[355] *See id.*

[356] *See* Letter from Tyler Hess (June 17, 2021).

that, by comparison, with respect to the trading of options, the Exchange does not currently enforce equidistant cabling among and between participants and its matching engine located in the same data center.[357] This commenter states that, absent confirmation that access to BSTX will be offered on an equal and non-discriminatory basis, the commenter urges the Commission to disapprove the proposal.[358] In response, the Exchange states that BSTX will provide for equidistant cabling arrangements to ensure that all co-located BSTX Participants are on a level playing field in connecting to the BSTX matching engine.[359] The Exchange also states that BSTX plans to have equidistant cabling arrangements within the area of the data center that it controls, and that it will make technical details regarding those arrangements available to prospective BSTX Participants in certain specification documents after approval of BSTX as a new facility of the Exchange.[360]

## IV. Proceedings To Determine Whether To Approve or Disapprove SR–BOX–2021–06, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [361] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,[362] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange proposes to adopt rules to govern the trading of equity securities on the Exchange through the BSTX facility. Among other things, the Exchange proposes to operate the BSTX Market Data Blockchain and to submit trades to NSCC for settlement on a T+0 or T+1 basis under certain conditions. As stated above, the Commission has received comment letters on the proposal and a response letter from the Exchange. Moreover, on August 18, 2021, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change, as modified by Amendment No. 1, with the Act and, in particular, with Section 6(b)(5) of the Act, 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 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 to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [363] Section 6(b)(7) of the Act, which requires that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange; [364] and Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[365]

The Exchange proposes to make available the BSTX Market Data Blockchain, which would operate as a private, permission-based blockchain that would be accessible through an API available through the internet. Through use of the API, BSTX Participants would be able to see detailed information about their own trading activity on BSTX and anonymized, general information with respect to the trading activity of other BSTX Participants.[366] Non-BSTX Participants permissioned by the Exchange would be able to view only the anonymized, general market data through login credentials provided by the Exchange, although it is not clear what conditions, if any, the Exchange may place on non-BSTX Participants before granting this access.[367] The Exchange proposes to post information to the BSTX Market Data Blockchain on a delayed basis of at least five minutes. This five minute delay distinguishes the BSTX Market Data Blockchain from sources of real-time market data, but is much shorter than the delay used by other historical market data products, such as the New York Stock Exchange's TAQ data, to which the Exchange draws a comparison.[368] The Exchange states that posting five minute blocks of data would allow the Exchange to accrue sufficient information to record to the BSTX Market Data Blockchain.[369] The Commission believes there are questions as to whether the Exchange's proposed use of the BSTX Market Data Blockchain is consistent with Sections 6(b)(5), 6(b)(7), and 6(b)(8) of the Act, and, in particular, the requirements that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; provide a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Exchange proposes to allow BSTX Participants to utilize an order parameter to indicate a preference

[357] *See* Letter from Andrew Stevens, General Counsel, IMC Chicago, LLC and Richard McDonald, Compliance Coordinator, Susquehanna International Group, LLP (June 28, 2021), at 2.

[358] *See id.* at 3.

[359] *See* Letter from Lisa J. Fall, President, BOX Exchange LLC (July 1, 2021), at 1.

[360] *See id.* at 2. The Exchange states that its options trading platform is an entirely separate facility of the Exchange with a separate ownership structure from BSTX, and BSTX will use separate data center operations and a different technology provider. *See id.* at 3.

[361] 15 U.S.C. 78s(b)(2)(B).

[362] *Id.*

[363] 15 U.S.C. 78f(b)(5).

[364] 15 U.S.C. 78f(b)(7).

[365] 15 U.S.C. 78f(b)(8).

[366] The Exchange states that BSTX Participants may find the BSTX Market Data Blockchain useful to review their trading activity on BSTX, determine what the market for a given Security was at a particular time, evaluate execution quality on BSTX, help confirm the accrual of internal trading data, or back test trading strategies. *See* Amendment No. 1, *supra* note 6, at 27.

[367] *See id.* at 18–20. The Exchange states that non-BSTX Participants may find the data useful for academic study. *See id.* at 27.

[368] *See id.* at 17, 22 n.35, 128. The New York Stock Exchange's TAQ data is produced as a daily file that becomes available after the close of U.S. equities markets on the same day. *See* New York Stock Exchange, Daily TAQ Client Specifications (August 31, 2020), *available at https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Client_Spec_v3.3a.pdf.*

[369] *See* Amendment No. 1, *supra* note 6, at 23 n.37.

for settlement on a T+0 or T+1 basis. An executed trade would settle more quickly than on a T+2 basis if certain conditions are met and the execution is eligible for T+0 or T+1 settlement under the rules, policies, and procedures of a registered clearing agency. According to the Exchange, NSCC has authority under its rules, policies, and procedures to clear certain trades on a T+0 or T+1 basis, and NSCC does clear trades in accordance with this authority.[370] The Exchange also states that certain industry participants have announced plans to collaborate to help the industry to reduce the standard settlement cycle from T+2 to T+1.[371] The Exchange states that it believes that no other national securities exchange currently includes in its rules optional parameters that allow market participants to indicate a preference for potential T+0 or T+1 settlement.[372] The Exchange has provided information regarding trades that NSCC clears on a T+0 or T+1 basis, but has not indicated whether these trades involved exchange-traded NMS stocks.[373] It is also unclear whether not having certainty that an order would receive faster settlement at the time of order entry would reduce the ability of a market participant to reap the potential benefits of faster settlement. Further, the Exchange has not addressed whether introducing the possibility for T+0 or T+1 settlement for on-exchange trades in NMS stocks pursuant to the rules of a single national securities exchange, at a time when the industry standard is still T+2 settlement, might have any adverse market effects. Accordingly, the Commission believes that there are questions as to whether the Exchange's proposal to provide BSTX Participants with the ability to preference T+0 or T+1 settlement is consistent with Sections 6(b)(5) and 6(b)(8) of the Act, including the requirements that the rules of the Exchange be 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 to protect investors and the public interest; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [374] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[375] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[376]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal, as modified by Amendment No. 1, should be approved or disapproved.

## V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(5),[377] 6(b)(7),[378] and 6(b)(8) [379] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[380] any request for an opportunity to make an oral presentation.[381]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment No. 1, should be approved or disapproved by September 23, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 7, 2021.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[382] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2021–06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2021–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

[370] *See id.* at 31.

[371] *See id.* at 34–35.

[372] *See id.* at 140.

[373] *See id.* at 34.

[374] 17 CFR 201.700(b)(3).

[375] *See id.*

[376] *See id.*

[377] 15 U.S.C. 78f(b)(5).

[378] 15 U.S.C. 78f(b)(7).

[379] 15 U.S.C. 78f(b)(8).

[380] 17 CFR 240.19b–4.

[381] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[382] *See* Amendment No. 1, *supra* note 6.

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2021–06 and should be submitted by September 23, 2021. Rebuttal comments should be submitted by October 7, 2021.

[383] 17 CFR 200.30–3(a)(57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[383]

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–18947 Filed 9–1–21; 8:45 am]

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# FEDERAL REGISTER

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Part III

## The President

Memorandum of August 27, 2021—Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

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# Presidential Documents

**Title 3—**

## The President

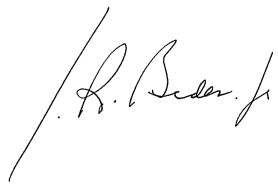
**Memorandum of August 27, 2021**

## Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the Foreign Assistance Act of 1961 to direct the drawdown of up to $60 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
*Washington, August 27, 2021*

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

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