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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2021–0668; Project Identifier MCAI–2021–00457–T; Amendment 39–21896; AD 2022–01–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes; Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Airbus SAS Model A310 series airplanes. This AD was prompted by reports of incorrect installation of the fire shut-off valves (FSOV) actuator, which was found to rotate around its pivot axis. This AD requires a one-time detailed inspection of the FSOV actuator for rotation around its pivot axis, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective March 8, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 8, 2022.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0668.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0668; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0106, dated April 15, 2021 (EASA AD 2021–0106) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A300, A310, and A300–600 series airplanes, and A300–600ST airplanes. Model A300–600ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300–600 series airplanes and Model A310 series airplanes. The NPRM published in the **Federal Register** on October 6, 2021 (86 FR 55542). The NPRM was prompted by reports of incorrect installation of the FSOV actuator, which was found to rotate around its pivot axis. The NPRM proposed to require a one-time detailed inspection of the FSOV actuator for rotation around its pivot axis, and replacement if necessary, as specified in EASA AD 2021–0106.

### Discussion of Final Airworthiness Directive

#### Comments

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

#### Conclusion

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

### Related Service Information Under 1 CFR Part 51

EASA AD 2021–0106 describes procedures for a one-time detailed inspection of the FSOV actuator for rotation around its pivot axis, and replacement. EASA AD 2021–0106 also describes procedures for reporting inspection results to Airbus.

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

### Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $85 per hour = $85 | $0 | $85 | $10,880 |

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $10,880, or $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 3 work-hours × $85 per hour = $255 | $28,000 | $28,255 |

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2022–01–08 Airbus SAS:** Amendment 39–21896; Docket No. FAA–2021–0668; Project Identifier MCAI–2021–00457–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective March 8, 2022.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(5) Model A300 F4–605R and F4–622R airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 29, Hydraulic power.

**(e) Reason**

This AD was prompted by reports of incorrect installation of the fire shut-off valves (FSOV) actuator, which was found to rotate around its pivot axis. The FAA is

issuing this AD to address incorrect installation of the FSOV actuator. This condition, if not addressed, could lead to FSOV failure, and consequent risk of a temporary uncontrolled engine fire, possibly resulting in damage to, and reduced control of, the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0106, dated April 15, 2021 (EASA AD 2021–0106).

**(h) Exceptions to EASA AD 2021–0106**

(1) Where EASA AD 2021–0106 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0106 does not apply to this AD.

(3) Paragraph (4) of EASA AD 2021–0106 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(4) Where the service information referenced in EASA AD 2021–0106 specifies to send the FSOV actuator for repair if it moves (rotates around its pivot axis) during the inspection, this AD requires replacing any FSOV actuator that moves (rotates around its pivot axis) during the inspection with a serviceable actuator, as specified in EASA AD 2021–0106.

**(i) Additional AD Provisions**

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(j) Related Information**

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**(k) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0106, dated April 15, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0106, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on December 29, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022–01961 Filed 1–31–22; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0945; Project Identifier MCAI–2021–01033–T; Amendment 39–21895; AD 2022–01–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2021–11–23, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–11–23 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, and, for certain airplanes, updating the hydraulic monitoring system to include additional redundancy. Since the FAA issued AD 2021–11–23, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also revises the applicability to include different airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective March 8, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 8, 2022.

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by

searching for and locating Docket No. FAA–2021–0945.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0945; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0209, dated September 15, 2021 (EASA AD 2021–0209) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–11–23, Amendment 39–21585 (86 FR 40932, July 30, 2021) (AD 2021–11–23). AD 2021–11–23 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on October 29, 2021 (86 FR 59896). The NPRM was prompted by the FAA's determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0209. The airworthiness limitations include updating the hydraulic monitoring system to include additional redundancy, which was a separate action in AD 2021–11–23. The NPRM also proposed to revise the applicability to include different airplanes.

The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. See the MCAI for additional background information.

**Discussion of Final Airworthiness Directive**

**Comments**

The FAA received a comment from the Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

**Conclusion**

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

**Related Service Information Under 1 CFR Part 51**

EASA AD 2021–0209 describes new or more restrictive airworthiness limitations related to fuel tank ignition prevention and fuel tank flammability reduction. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 24 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the maintenance or inspection program revision to be $7,650 (90 work-hours × $85 per work-hour).

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–11–23, Amendment 39–21585 (86 FR 40932, July 30, 2021); and

■ b. Adding the following new AD:

**2022–01–07 Airbus SAS:** Amendment 39–21895; Docket No. FAA–2021–0945; Project Identifier MCAI–2021–01033–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective March 8, 2022.

**(b) Affected ADs**

This AD replaces AD 2021–11–23, Amendment 39–21585 (86 FR 40932, July 30, 2021) (AD 2021–11–23).

**(c) Applicability**

This AD applies Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category; with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**(f) Compliance**

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

**(g) Maintenance or Inspection Program Revision**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0209, dated September 15, 2021 (EASA AD 2021–0209).

**(h) Exceptions to EASA AD 2021–0209**

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0209 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2021–0209 specifies revising ''the AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2021–0209 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0209 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2021–0209, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0209 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2021–0209 does not apply to this AD.

**(i) Provisions for Alternative Actions, Intervals, and CDCCLs**

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and critical design configuration control limitations (CDCCLs) are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0209.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(k) Related Information**

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0209, dated September 15, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0209, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on December 23, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022–01954 Filed 1–31–22; 8:45 am]

BILLING CODE 4910–13–P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

## 29 CFR Part 2702

## Freedom of Information Act Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the Commission) is adopting revised rules as final rules implementing the Freedom of Information Act (FOIA) in light of the FOIA Improvement Act of 2016, its experience under the rules, the need to update its fee schedule, and the need to update and clarify a number of its FOIA procedures. These revised rules will ensure rapid and effective procedures for requesting information and processing requests under the FOIA. The Commission published a notice of proposed rulemaking that permitted public comment on the rules. The Commission has determined that it will make two changes to its proposed rules in light of comments received and that it will adopt those rules as final.

**DATES:**

*Effective date:* These revised rules are effective on March 3, 2022.

*Applicability date:* The final rules will apply to requests initiated after the rules take effect. The final rules will also apply to further proceedings regarding requests pending on the effective date, except to the extent that such application would be infeasible or unfair, in which event the present procedural rules would continue to apply.

**ADDRESSES:** Questions may be sent by any of the following methods:

- *Email: MMccord@fmshrc.gov.*
- *Mail:* Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General Counsel, 202–434–9900, *MMccord@fmshrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Commission is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''). Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate.

In accordance with the amendments made by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538, to the Freedom of Information Act, 5 U.S.C. 552, the Commission is revising its rules on procedures for the disclosure of records under the FOIA, including procedures for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services (''OGIS'') and the requirement that requesters be given a minimum of 90 days to file an administrative FOIA appeal.

Additionally, the revisions include clarification on the types of information that a requester must provide in order to facilitate a FOIA search of the agency's records, additional circumstances under which expedited processing will be granted, and increases in certain fees. Based on its years of experience in implementing the FOIA, the Commission is adopting the changes set forth below in its FOIA rules to better reflect agency practice under the rules and to clarify our FOIA processes to the requester community. Lastly, while the revised rules retain much of the substantive practices and procedures in effect prior to these revisions, they have been extensively reorganized under new section headers and paragraph headers. The Commission is also adding two new procedural rules, one addressing confidential commercial information and the other addressing the preservation of records.

In August 2021, the Commission published a notice of proposed rulemaking (''NPRM''). 86 FR 48346, Aug. 30, 2021. Although the proposed rules were procedural in nature and did not require notice and comment publication (see 5 U.S.C. 553(b)(3)(A)), the Commission invited comment from the interested public until September 29, 2021. The Commission received comments from several individual members of the FOIA requester community. While all commenters expressed general agreement with the Commission's proposed revisions, one commenter expressed concern regarding a fee increase in one rule and suggested the inclusion of additional language to another rule. Both comments are discussed in further detail below. In response to the comments received and after further reflection by the Commission, several changes were made to the proposed rules.

## II. Section-by-Section Analysis

Set forth below is an analysis of the comments received on the Commission's proposed rules and the final actions taken.

*Part 2702—Regulations Implementing the Freedom of Information Act*

§§ 2702.3 through 2702.8 [Redesignated]

| Old section | New section(s) |
|---|---|
| 2702.3(b) | 2702.4(a) and (d)(1), 2702.5 |
| 2702.3(c) | 2702.4(b) and (c) |
| 2702.3(d) | 2702.4(b)(2) |
| 2702.3(e) | 2702.4(b)(3) |
| 2702.3(f) | 2702.4(d)(3), 2702.5(e) |
| 2702.3(g) | 2702.4(d)(2) |
| 2702.4 | 2702.7 |
| 2702.5 | 2702.8 |
| 2702.6 | 2702.9 |
| 2702.7 | 2702.10 |
| 2702.8 | 2702.11 |

*29 CFR 2702.1*

The Commission is revising 29 CFR 2702.1 to explain that the purpose of these rules is to establish procedures to implement the FOIA as amended by the FOIA Improvement Act of 2016. The Commission is also amending 29 CFR 2702.1 to make three non-substantive revisions: (1) Adding the short name of ''the Mine Act'' for the Mine statute; (2) clarifying that the Commission reviews legal disputes between private parties ''arising under the Mine Act;'' and (3) updating reference to the Commission's website to include that the FOIA guide is located specifically at the web address *https://www.fmshrc.gov/guides/foia-guide.*

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.3*

The Commission is revising 29 CFR 2702.3 to limit the section's focus to the proper procedure for making a FOIA request and to reorganize the information provided in the rule so that the requirements are more reader friendly. In addition, new paragraph headers have been added.

The information in § 2702.3(a), which was previously provided in paragraph form, has been enumerated, thereby making it easier to identify the number of requirements that must be met and to distinguish each requirement.

Pursuant to the authority of 5 U.S.C. 552(a)(3)(A), a new requirement has been added at newly added § 2702.3(a)(3), which requires requesters seeking information from cases that have come before or are currently before the Commission to provide the Commission assigned docket number (beginning with CENT, KENT, LAKE, PENN, SE, VA, WEST, WEVA or YORK) and/or the related Mine Safety and Health Administration (MSHA) issued citation or order number (not to be confused with the MSHA case number) when making a request. This change is consistent with long-standing Commission practice and is necessary in order to effectively search the Commission's docketing database.

In newly added § 2702.3(a)(4), the language ''shall describe the particular record requested to the fullest extent possible'' has been replaced with ''reasonably describe the particular record(s) requested.'' ''Reasonably describe'' is taken directly from the FOIA, 5 U.S.C. 552(a)(3)(A).

The information previously contained in § 2702.3(b), (f), and (g), which explained the Commission's procedure for responding to requests and the FOIA appeals process, has been redesignated as new §§ 2702.4 and 2702.5. New § 2702.3(b) now briefly explains the format and timing of requests for expedited processing and for fee waivers.

The information previously contained in § 2702.3(c), which explained the Commission's procedure for taking additional time to process requests involving ''unusual circumstances,'' has

been redesignated as new § 2702.4. New § 2702.3(c) advises individuals to refer to the Commission's Privacy Act regulations for instructions if seeking records on him or herself that do not include cases currently or previously on review before the Commission.

The information previously contained in § 2702.3(d) discussing additional time to respond has been redesignated as new § 2702.4(b). New § 2702.3(d) now explains the procedure for properly submitting a FOIA request to the Commission.

The information previously contained in § 2702.3(e) discussing expedited processing has been redesignated as newly added § 2702.4(b)(3).

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.4*

The information previously contained in § 2702.4, which explained the types of records generally maintained by the Commission and how they may be publicly accessed, has been redesignated as new § 2702.7.

Section 2702.4 now contains language previously found in § 2702.3. This section now clarifies the Commission's procedures for responding to requests, processing requests, and making request determinations, and explains its long-standing multi-track processing system. Much of this information was relocated from § 2702.3.

The information in § 2702.4(a) generally explains the Commission's timetable for making a determination on a FOIA request. It notes that, generally, the Commission will respond to requests in the order they are received. This is not intended as a restriction on the Commission's ability to prioritize requests differently, if necessary.

Consistent with 5 U.S.C. 552(a)(6)(D)(i), § 2702.4(b) details the agency's longstanding, three-tier multitrack processing system, which includes simple, complex, and expedited processing. Section 2702.4(b)(2) explains the ''unusual circumstances'' that may warrant a delayed response by the Commission.

Pursuant to 5 U.S.C. 552(a)(6)(E)(i)(II), newly added § 2702.4(b)(3) explains the time requirements for making requests for expedited processing and includes a new agency-specific criterion for requesters seeking expedited processing. The new criterion, paragraph (b)(3)(iii), allows parties engaged in litigation before the Commission to request expedited processing if the record is required to meet a fast-approaching deadline set by a Commission Administrative Law Judge (ALJ) or the Commission. This criterion will be particularly helpful for parties requesting hearing transcripts needed to prepare post-hearing briefs.

Newly added § 2702.4(c) contains the information previously contained in § 2702.3(c)(2) explaining the aggregation of requests.

Newly added § 2702.4(d) explains the various determinations that a Commission FOIA officer can reach when processing a request under the FOIA.

In accordance with the FOIA Improvement Act of 2016, newly added § 2702.4(e) explains the dispute resolution and mediation services available to requesters and the process for attaining these services.

While the Commission received no objections to these proposed changes, the Commission adopts the rule with one minor modification. The Commission adds a reference to § 2702.10(a), which discusses related fee restrictions.

*29 CFR 2702.5*

The information previously contained in § 2702.5 under header ''Fees applicable—categories of requesters,'' which explained the Commission's categories of requesters for purposes of determining the appropriate fees, has been redesignated as new § 2702.8.

Section 2702.5 now contains language previously found in § 2702.3 and added language explaining the procedures surrounding the various types of FOIA appeals, including the format and timing of appeals and the Commission's process for reviewing appeals. The appeal language was taken from former §§ 2702.3(b), (e)(2), and (f) and 2702.7(b)(2) and consolidated under this new section.

In accordance with the Improvement Act 2016, paragraph (a) reflects the new time period in which a requester has to appeal an adverse determination, that is not more than 90 days after the date of such determination. Paragraphs (a) through (d) include new instructions regarding the required content when filing an appeal. In paragraph (a), we also removed the word ''Chairman'' and added, in its place, the word ''Chair.''

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.6*

The information previously contained in § 2702.6 under header ''Fee schedule,'' has been redesignated as newly added § 2702.9 under the same header. Section 2702.6 now contains the Commission's procedure for the handling of confidential commercial information. While requests for confidential commercial information is not an issue the Commission has typically had to deal with in the past, in recent years it has seen an increase in FOIA requests that in some way relate to potentially sensitive records that mine operators may not want released to the public.

The language was adopted from the regulation template provided by the Department of Justice's Office of Information Policy (''OIP'') in its ''Template for Agency FOIA Regulations,'' published on February 22, 2017. The section mirrors OIP's sample language.

Section 2702.6(a) defines ''confidential commercial information'' and ''submitter.'' Section 2702.6(b) informs submitters what steps they must take to protect information they believe should be withheld from disclosure. This provision will be most useful for mining companies submitting sensitive commercial records during the course of litigation before the Commission.

Section 2702.6(c) explains the circumstances under which a submitter of confidential commercial information must be notified that the information has been requested and may be disclosed. It describes the different ways the Commission may satisfy the notice requirement and describes the content that must be included in the notice.

Section 2702.6(d) explains the exceptions to the submitter notice requirements. Section 2702.6(e) sets forth the process for submitters to object to disclosures. The section goes on to explain the Commission's process for addressing objected disclosures and the notices it will provide to both submitter and requester.

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.7*

The information previously contained in § 2702.7 under header ''No fees; waiver or reduction of fees,'' has been redesignated as newly added § 2702.10. Section 2702.7 now contains the information previously found in § 2702.4 discussing the types of records maintained by the Commission and available to the public, as well as how records may be accessed without the need to file a FOIA request. It additionally explains what records are available to the public upon request and generally how the Commission will search for requested records.

Specifically, under FOIA, each agency must make available for public inspection and copying (without the need for a formal FOIA request) the

following items: Final opinions and orders issued in the adjudication of administrative cases; policy statements and interpretations that have been adopted by the agency but which were not published in the **Federal Register**; administrative staff manuals that affect members of the public; and records processed and disclosed in response to a FOIA request which the agency has determined have or will become the subject of similar requests for substantially the same records (often referred to as ''FOIA-processed records''). See 5 U.S.C. 552(a)(2).

Historically, agencies have generally provided access to these records in reading rooms located at one or more of the agency's offices. However, with the increased reliance on technology, agencies have eliminated full-time reading rooms and switched to posting the records online where they are easily accessible by the public. While the Commission will continue to permit in-office inspection of records, if requested, it will primarily rely on its e-reading room to satisfy this requirement under the FOIA.

There is one substantive change to this section, which includes a new paragraph (a) that generally describes the availability of the Commission's records. Former paragraphs (a) and (b) have been transposed and relettered as paragraphs (b) and (c). The term ''FOIA Reading Room'' has been replaced with the term ''FOIA in-office review.''

The rule continues to model the statutory language in the FOIA. Additionally, a more detailed listing of materials available at the Commission is provided in the Commission's FOIA Guide, also available on its website.

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.8*

The information previously contained in § 2702.8 under header ''Advance payment of fees; interest; debt collection procedures,'' has been redesignated as newly created § 2702.11.

Section 2702.8, under revised header ''Categories of requesters and applicable fees,'' now contains the information previously found in § 2702.5 discussing fee requester categories. This section includes newly added paragraph (f), which explains that the FOIA office may require clarification from the requester at times in order to determine proper fee category. The remainder of the section contains several minor stylistic changes to sentence structure, and descriptive headers/titles have also been added to each paragraph.

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.9*

Newly added § 2702.9 contains the information previously found in § 2702.6 under the same header, ''Fee schedule.'' This transferred content continues to outline the various fees charged by the Commission for its FOIA services. Substantively, the language of the section remains largely the same. There are minor revisions to paragraphs (a) and (b) to reflect a more accurate website location and paragraph (b) to reflect the proper rule citation in light of these amendments. The website address in paragraphs (a) and (b) has been modified to include the direct website address for the Commission's FOIA Guide. In paragraph (b), we also removed the word ''Chairman'' and added, in its place, the word ''Chair.''

The Commission is amending the language of paragraph (c) to state that duplication fees will be charged for records that are not routinely kept in electronic format and must be scanned for purposes of satisfying a FOIA request. Additionally, the Commission initially sought to amend the duplication fee from $0.15 per page to $0.25 per page to account for the cost of inflation. However, during the public comment period, a commenter challenged a proposed increase to 25 cents per page, contending that the Commission's proffered rationale of inflation was insufficient to justify the increase because the commercial cost of photoduplication has fallen over the years.

The Commission notes that duplication fees may incorporate the cost of labor, as well as material. The Commission established the 15 cent per page duplication fee in 1996. Since that time, labor costs have risen due to inflation (as reflected, for example, in adjustments to the general schedule pay scale which govern the salaries of the Commission's FOIA personnel). The Commission maintains that labor cost inflation is a valid rationale for increasing duplication fees. However, the Commission also acknowledges that any increase must be commensurate and may be partially offset by decreased material costs. Upon further analysis, duplication costs are set at 20 cents per page. As the vast majority of our records are in electronic format, we expect this increase to have very little impact on the requester community.

*29 CFR 2702.10*

Newly added § 2702.10 contains the information previously found in § 2702.7 under former header ''No fees; waiver or reduction of fees.'' Now under revised header ''Waivers and reduction of fees,'' this section continues to explain the circumstances under which fees will not be charged and under what circumstances a fee waiver will be granted. The section also includes the restriction that prohibits an agency from assessing search fees or duplication fees, should it fail to comply with the extended time limit.

Substantively, the language of the section remains largely the same. Paragraph (a) has been revised to include fee restrictions when the agency fails to comply with extended time limits. Paragraph (b) has been minimally revised to include additional information on the proper Commission procedure for requesting a fee waiver, which is also stated in amended § 2702.3(b). Paragraph (b) has been revised to reflect the proper rule citation in light of these amendments and descriptive headers/titles have been added to paragraphs (a) and (b).

During the public comment period, a commenter noted that the newest change to 30 U.S.C. 552(a)(4)(A)(viii)(II)(aa) states that ''If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees).'' The commenter noted that a section respecting and restating the statutory provision was missing from the proposed rules. In lieu of placing this new fee requirement in its rules, the Commission intended to include a full explanation of the fee adjustment in the Commission's updated FOIA guide, which has historically provided additional context to the agency's fee set-up. However, in light of the commenter's suggestion and after further consideration, the Commission has amended the associated regulations at §§ 2702.4(b)(2)(ii) and 2702.10(a) to reflect the new fee restriction. The fee restriction is also discussed in the Commission's FOIA Guide.

*29 CFR 2702.11*

Newly added § 2702.11 under header ''Payment of fees; advance payments; interest, debt collection,'' contains the information previously found in § 2702.8 under former header ''Advance payment of fees; interest; debt collection procedures.'' This section continues to explain when advance payment of fees could be required, when interest charges could be assessed, and that delinquent payments would be referred to debt collection.

Substantively, the language of the section remains the same with one key exception. New paragraph (a) now explains the process for remitting payment to the Commission for FOIA services rendered. Additionally, paragraph (b), formerly paragraph (a), has been reworded for concision, but substantively remains the same. Descriptive headers/titles have also been added to each paragraph.

The Commission received no comments on the proposed changes and adopts the rule as proposed.

*29 CFR 2702.12*

Newly added § 2702.12 under header ''Preservation of records,'' is a new addition to the Commission's FOIA rules. This section explains the Commission's procedure and time frames for the maintenance of its FOIA records. We believe this section will be very helpful for FOIA requesters who seek records going back a certain number of years and who are trying to determine the scope of their request prior to submission. This is a relatively common occurrence with Commission FOIA requests. This rule is intended to decrease processing times by eliminating the added correspondence that often ensues as a result of a requester seeking records that are outside of the required maintenance period.

The Commission received no comments on the proposed change here and adopts the rule as proposed.

## III. Matters of Regulatory Procedure

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of Executive Order (''E.O.'') 12866 (Sept. 30, 1993; 58 FR 51735, Oct. 4, 1993); E.O. 13563 (Jan. 18, 2011; 76 FR 3821, Jan. 21, 2011); E.O. 13771 (Jan. 30, 2017; 82 FR 9339, Feb. 3, 2017); or E.O. 13777 (Jan. 30, 2017; 82 FR 12285, Mar. 1, 2017). The regulatory amendments also do not have Federal implications or ''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.'' Therefore, E.O. 13132 is not applicable.

The Commission's Chair has determined that this rule will not ''have a significant economic impact on a substantial number of small entities'' under the Regulatory Flexibility Act (''RFA'') (5 U.S.C. 605) due to the limited scope of the rule and its impact of streamlining the procedures required under FOIA. The Commission has also determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB).

### List of Subjects in 29 CFR Part 2702

Administrative practice and procedure, Appeals, Confidential commercial information, Freedom of information, Privacy.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission revises 29 CFR part 2702 to read as follows:

## PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

2702.1 Purpose and scope.
2702.2 Location of offices.
2702.3 Making a request for information.
2702.4 Response to request; processing; determinations.
2702.5 Right to appeal.
2702.6 Confidential commercial information.
2702.7 Materials available.
2702.8 Categories of requesters and applicable fees.
702.9 Fee schedule.
2702.10 Waivers and reduction of fees.
2702.11 Payment of fees; advance payments; interest; debt collection.
2702.12 Preservation of records.

**Authority:** 30 U.S.C. 801 *et seq.;* 5 U.S.C. 551, 552, and 552a and 44 U.S.C. 3102 as amended by Pub. L. 104–231, 110 Stat. 3048, Pub. L. 110–175, 121 Stat. 2524, and Pub. L. 114–185, 130 Stat. 538; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

### § 2702.1 Purpose and scope.

The Federal Mine Safety and Health Review Commission (Commission), pursuant to the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''), 30 U.S.C. 801 *et seq.,* is an independent adjudicative agency that provides administrative trial and appellate review of legal disputes arising between the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) and private parties, as well as certain disputes solely between private parties arising under the Mine Act. The purpose of the rules in this part is to establish procedures for implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, 110 Stat. 3048, the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524, and the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538; to provide guidance for those seeking to obtain information from the Commission; and to make all information subject to disclosure pursuant to this subchapter and FOIA, and not otherwise protected by law, readily available to the public. Additional guidance on obtaining information from the Commission can be found in the document entitled ''FOIA Guide,'' which is available for viewing and download on the Commission's website at *https://www.fmshrc.gov/guides/foia-guide.* Hard copies are also available upon written request to the Commission's FOIA Office. The rules in this part apply only to records or information of the Commission or in the Commission's custody. Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's rules of procedure in 29 CFR part 2700.

### § 2702.2 Location of offices.

The Commission maintains its headquarters office at 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710. The locations of other Commission offices may be obtained from the Commission's website (*http://www.fmshrc.gov*).

### § 2702.3 Making a request for information.

(a) *Content of request.* All requests for information must:

(1) Be in writing;

(2) Include the words ''Freedom of Information Act Request'' or ''FOIA'' on the face of the request;

(3) Include, if concerning a case that has come before the Commission or a Commission Administrative Law Judge, the Commission case docket number or, in the alternative, the related MSHA citation or order number(s);

(4) Reasonably describe the particular record(s) requested; and

(5) Specify the preferred form or format in which the requester wishes to receive the response. The Commission shall accommodate requests as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) *Optional content considerations.* If the requester desires expedited processing or a waiver or reduction of fees, such requests must be in writing and should be included in the initial

request for information filed in accordance with paragraph (a) of this section. See §§ 2702.4(b)(3) and 2702.10 for additional requirements.

(c) *Personal records.* For individuals seeking access to their records, not including Commission files generated in adversary proceedings under the Mine Act, please see the Commission's Privacy Act rules at 29 CFR part 2705.

(d) *Submitting a request.* Requests must be submitted via:

(1) The Commission's FOIA Request form located on the Commission's website at *https://www.fmshrc.gov/foia/foia-request-form;* or by

(2) Email, mail, fax, or hand delivery to the Chief FOIA Officer at *FOIA@FMSHRC.gov,* Federal Mine Safety and Health Review Commission, Attn: Chief FOIA Officer, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710, Fax: 202–434–9944.

**§ 2702.4 Response to request; processing; determinations.**

(a) *Response to request.* Upon receipt of a request, a determination to grant, deny, or partially grant the request will be made within 20 business days by the Commission's FOIA Office, except in unusual circumstances, as described in paragraph (b) of this section. Generally, the Commission will respond to requests according to their order of receipt.

(b) *Processing time*—(1) *Simple track.* Except in circumstances described in paragraph (b)(2) or (3) of this section, upon receipt of a request, a Commission FOIA officer will reach a determination to grant, deny, or partially grant the request within 20 business days after receipt by the Commission's FOIA Office.

(2) *Complex track.* In unusual circumstances, it may not be possible for the agency to reach a determination within 20 business days. When additional time is needed to respond to the initial request, the Commission shall notify the requester in writing within the 20 business day period, describe the circumstances causing the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional business days, except as provided in paragraph (b)(2)(i) of this section.

(i) Unusual circumstances that may warrant delay include:

(A) The need to search for and collect the requested records from facilities that are separate from the office processing the request;

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; and

(D) The need to consult with the submitter of the records being requested.

(ii) With respect to a request for which a written notice has extended the time limit by 10 additional business days, if the Commission determines that it cannot make a response determination within that additional 10 business day period, the requester will be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. See § 2702.10 for fee adjustments applicable to processing time delays.

(3) *Expedited track.* While it is recommended that a request for expedited services be submitted with the initial § 2702.3(a) request, such request may be made at any time. A person may request expedited processing of a § 2702.3(a) request for records in cases where the requester can demonstrate a compelling need for said records. Requesters will be notified of the determination in accordance with paragraph (d)(4) of this section. A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of his or her knowledge and belief. For purposes of this paragraph (b)(3), a ''compelling need'' means:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity; or

(iii) The records are necessary to assist with meeting an impending deadline set by a Commission Judge or the Commission in a pending case to which the requester is a party.

(c) *Aggregated requests.* Whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the unusual circumstances specified in this section, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph (c). Multiple requests involving unrelated matters will not be aggregated.

(d) *Determinations*—(1) *Full grant of request.* Unless a Commission FOIA officer reasonably foresees that disclosure would harm an interest protected by one of the nine statutory exemptions found at 5 U.S.C. 552(b) or determines that disclosure is prohibited by law, all relevant records obtained through reasonable search efforts shall be provided within the relevant time period described in paragraph (b) of this section.

(2) *Partial grant/denial of request.* Any reasonably segregable portion(s) of a record shall be provided to the person requesting it after the deletion of any exempt portion(s) of the record. The applicable exemption(s) and the amount of information deleted shall be indicated on the released portion(s) of the record, at the place in the record the deletion is made if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

(3) *Denial of request.* In denying a request for records, the Commission shall state the reason for the denial and the applicable exemption; set forth the name and title or position of the person responsible for the denial of the request; make a reasonable effort to estimate the volume of the records denied; and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied.

(4) *Determination of request to expedite.* Notice of the determination whether to grant expedited processing in response to a requester's claim of compelling need shall be provided to the person making the request within 10 days after receipt of the request for expedited processing.

(5) *Determination of fee waiver/reduction request.* The Chief FOIA Officer or designated employee, upon request, shall determine whether a waiver or reduction of fees is warranted. See § 2702.10 for additional information.

(e) *Dispute resolution.* At any time during the processing of a request, requesters may seek dispute resolution assistance from the Commission's FOIA Public Liaison at *FOIA-Liaison@fmshrc.gov.* In the event of an adverse determination, requesters may file an appeal in accordance with § 2702.5 and/

or obtain mediation and dispute resolution services from the Commission's FOIA Public Liaison, as well as from the Office of Government Information Services (''OGIS'') at *https://archives.gov/ogis.* Additional information regarding dispute resolution can be found on the Commission's website at *https://www.fmshrc.gov/content/foia-public-liaison.*

**§ 2702.5 Right to appeal.**

(a) *Generally.* Any requester adversely affected by a final decision of the Commission's FOIA Office may file an appeal of that decision within 90 days of the initial determination. All FOIA appeals must be in writing and shall be made to the Chair of the Commission. Sitting Commissioners will decide appeals within 20 business days after receipt. In the event that a sitting Commissioner is the subject of the disputed FOIA records or has a substantial interest in the disputed records, that Commissioner should be recused from consideration of said FOIA appeal. In the event of a tie vote of those Commissioners, the FOIA Office's initial determination will be deemed approved by the Commission. Appeals must be submitted via email, mail, fax or hand delivery to *FOIA-appeals@fmshrc.gov,* Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710, Fax: 202–434–9944.

(b) *Appeal of denial or partial denial of information request.* The appeal must include a copy of the initial FOIA request, a copy of the determination denying the request in whole or in part, and a detailed statement explaining why the initial determination should be reversed. Any records to be disclosed by the Commission to the requester shall be provided with the letter setting forth the determination as to the appeal or shall be sent as soon as possible thereafter.

(c) *Appeal of denial of request to expedite.* The appeal must include a copy of the initial request to expedite, a copy of the determination denying the request, and a detailed explanation demonstrating a compelling need as stated in § 2702.4(b)(3). The Commission will provide expeditious consideration of administrative appeals of determinations on whether to provide expedited processing. Once a determination has been made to grant expedited processing, the Commission will process the request as soon as practicable.

(d) *Appeal of denial of fee waiver or reduction.* The appeal must include a copy of the initial fee waiver/reduction request, a copy of the determination denying the request, and a detailed statement explaining how the request satisfies one or more requirements in § 2702.10(b).

(e) *Denial of appeal.* If an appeal is denied, the Commission's notice of denial shall inform the requester of the right to obtain judicial review of the Commission's action under 5 U.S.C. 552(a)(4)(B)–(G). The requester may appeal the Commission's decision by filing a complaint in the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in which the agency records are situated, or in the District of Columbia.

**§ 2702.6 Confidential commercial information.**

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by the agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 52(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) The Commission will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the Commission determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Commission has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The Commission determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, the Commission will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a date specified for disclosure.

(e) *Opportunity to object to disclosure.* (1) If the submitter objects to disclosure of any of the requested information, a written response to the notice issued under paragraph (c) of this section must be submitted to the Commission within 30 calendar days of the date of the notice.

(2) The response must include a detailed statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 of the FOIA as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(3) A submitter who fails to respond within 30 calendar days will be considered to have no objection to disclosure of the information. The Commission is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this part may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The Commission will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever the Commission decides to disclose information over the objection of a submitter, the Commission will provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Commission intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the agency must promptly notify the submitter.

(i) *Requester notification.* The Commission will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(j) *Effect of disclosure.* Once a record has been disclosed by the Commission to any requester, that record will no longer be deemed confidential commercial information and protected under this section.

**§ 2702.7 Materials available.**

(a) *Records.* Except for records and information under seal or exempted from disclosure, all records of the Commission or in its custody are available to any person who requests them in accordance with § 2702.3. Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Commission in any format, including electronic format. In response to FOIA requests, the Commission will search for records manually or by automated means, except when an automated search would significantly interfere with the operation of the Commission's automated information system.

(b) *FOIA e-reading room.* Materials created on or after November 1, 1996, under this paragraph (b) may be accessed electronically through the Commission's website at *https://www.fmshrc.gov/foia/e-reading-room.* Materials available include, but are not limited to:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under this part and which, because of the nature of their subject matter, the Commission has determined have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of records referred to under this paragraph (b).

(c) *FOIA in-office review.* Materials are also available for inspection and copying at the Commission's headquarters located at 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.

**§ 2702.8 Categories of requesters and applicable fees.**

(a) *Commercial requesters.* When documents are requested for commercial use, the requester will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) *Educational or noncommercial scientific institutions requesters.* When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) *News media requesters.* When records are being requested by representatives of the ''news media,'' as defined by 5 U.S.C. 552(a)(4)(A)(ii) of the FOIA, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) *Other requesters.* For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that no charge will be made for the first two hours of manual search time and the first 100 paper pages of reproduction.

(e) *Requesters acting in concert.* For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester, or a group of requesters acting in concert, is attempting to break down a single request into a series of requests relating to the same subject matter for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

(f) *Clarification of records use.* Where the FOIA officer has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the FOIA officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.

**§ 2702.9 Fee schedule.**

(a) *Search fee.* The fee for searching for information and records shall be the salary rate (that is, basic pay plus 16%) of the employee making the search. This hourly rate is listed in the Commission's FOIA Guide at *https://www.fmshrc.gov/guides/foia-guide.* Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $300 per hour. This fee includes machine time and that of the operator and clerical personnel. If search charges are likely to exceed $50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Fees may be charged even if the documents are not located or if they are located but withheld on the basis of an exemption.

(b) *Review fee.* The review fee shall be charged for the Chief FOIA Officer's initial examination of documents located in response to a request in order to determine if they may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chair or the Commissioners. See § 2702.5. The review fee is the salary rate (that is, basic pay plus 16%) of the Chief FOIA Officer or the employee designated to perform the review. This hourly rate is listed in the Commission's FOIA Guide at *https://www.fmshrc.gov/guides/foia-guide.*

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½″ x 14″, including the scanning of pages not routinely stored in electronic format, shall be $.20 per page. When the use of third-party services is required, the fee will be the actual direct cost incurred by the Commission. For copies of records produced on tapes, disks, or other media, the Commission shall charge the direct costs of production of the material, including operator time. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If duplication charges are likely to exceed $50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated.

**§ 2702.10 Waivers and reduction of fees.**

(a) *Automatic fee waiver.* No fees shall be charged to any requester, including commercial use requesters, if the anticipated cost of processing and collecting the fee would be equal to or greater than the fee itself. Accordingly, the Commission has determined that fees of less than $20 shall be waived. If the Commission fails to comply with the time limits in § 2702.4(b), including the requirements related to the 10-day extension for unusual circumstances, search fees will not be assessed and, for requesters described in 30 U.S.C. 552(a)(4)(A)(ii)(II), duplication fees will not be assessed. See Commission's FOIA Guide for further information.

(b) *Request for fee waiver or reduction.* A request for fee waiver or reduction shall be made in writing and shall address the criteria outlined in paragraphs (b)(1) through (6) of this section. The request should be submitted with the original request for information filed pursuant to § 2702.3(a). If the request is granted, the documents shall be furnished without any charge, or at a charge reduced below the fees otherwise applicable. A waiver or reduction of fees will be granted only if disclosure of the information is determined to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(1) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the Government;''

(2) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding;''

(4) The significance of contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of Government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) The primary interest in disclosure: Whether the magnitude of any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(c) *Determination.* The Chief FOIA Officer, upon request, shall determine whether a waiver or reduction of fees is warranted.

**§ 2702. 11 Payment of fees; advance payments; interest; debt collection.**

(a) *Payment of fees.* Upon receipt of the invoice or statement detailing the charges incurred for processing, the requester shall make payment within 30 calendar days to the Federal Mine Safety and Health Review Commission or FMSHRC, Attention: Office of the Executive Director, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.

(b) *Advance payment.* Before work is commenced or continued on a request, advance payment may be required if the charges are likely to exceed $250.

(c) *Delinquent requesters.* Requesters who have previously failed to pay FOIA processing fees associated with a prior request, within the time mandated by paragraph (a) of this section, and are unable to demonstrate that the fee was previously paid, may be required to first pay the unpaid balance plus any applicable interest and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

(d) *Interest charges.* Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of billing.

(e) *Debt collection.* The Debt Collection Act of 1982, Public Law 97–365, including disclosure to consumer credit reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

**§ 2702.12 Preservation of records.**

Pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration, the Commission preserves all correspondence pertaining to requests received under this part, as well as copies of all requested records for 6 years following final agency action or 3 years after final adjudication by the courts, whichever is later. The Commission will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Dated: January 20, 2022.

**Arthur R. Traynor, III,**

*Chair, Federal Mine Safety and Health Review Commission.*

[FR Doc. 2022–01449 Filed 1–31–22; 8:45 am]

BILLING CODE 6735–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2022–0015]**

## Drawbridge Operation Regulation; Grand Canal, Indian Harbour Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Lansing Island Bridge across Grand Canal, mile 0.7 at Indian Harbour Beach, FL. A request was made to the Coast Guard to allow the drawbridge to remain closed to navigation and untended during the overnight hours due to a lack of requested openings. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding these temporary changes.

**DATES:** This deviation is effective from 12:01 a.m. on February 1, 2022 through 11:59 p.m. on July 30, 2022.

Comments and related material must reach the Coast Guard on or before April 1, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0015 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this test deviation, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District, telephone 305–415–6740, email *Jennifer.N.Zercher@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Background, Purpose and Legal Basis

The Lansing Island Bridge across Grand Canal, mile 0.7, at Indian Harbour Beach, FL is a single-leaf

bascule bridge with a 16 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.285(a). Navigation on the waterway consists mainly of recreational mariners.

The bridge owner, Lansing Island Homeowners Association, Inc. requested the Coast Guard consider allowing the drawbridge to remain closed to navigation and untended during the overnight hours due to a lack of requested openings. We requested a copy of the bridge logs from January 1, 2021 through November 30, 2021. After reviewing the logs, the Coast Guard found the drawbridge provided three openings between the hours of 10:00 p.m. and 6:00 a.m. Two channels provide alternate access to Grand Canal. Vessels that can pass beneath the bridge without an opening may do so at any time.

Under this test deviation, from 10 p.m. until 6 a.m. daily, the draw need not open for the passage of vessels and will be untended. At all other times the bridge shall operate on its normal schedule.

The Coast Guard will also inform waterway users of the change to the operating schedule via the Local Notice to Mariners so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

## II. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0015 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 your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this proposed 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 proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

Dated: January 25, 2022.

**Randall D. Overton,**

*Director, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 2022–01880 Filed 1–31–22; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 7

**[NPS–PIRO–32442; PPMWPIRON0 PPMRSNR1Z.Y00000 200P103601]**

**RIN 1024–AE53**

## Pictured Rocks National Lakeshore; Snowmobiles

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service amends its special regulations for Pictured Rocks National Lakeshore to clarify where snowmobiles may be used within the boundaries of the Lakeshore by naming several snowmobile routes that are not currently identified. The rule replaces general language allowing snowmobiles on unplowed roads and the shoulders of plowed roads with a comprehensive list of designated snowmobile routes. The changes will provide greater certainty to the public by removing ambiguity in the current regulations about where snowmobiles are allowed. The use of snowmobiles within areas of the National Park System is prohibited except on routes and water surfaces designated by special regulation.

**DATES:** This rule is effective March 3, 2022.

**ADDRESSES:** The comments received on the proposed rule are available on *http://www.regulations.gov* in Docket ID: NPS–2020–0005.

**FOR FURTHER INFORMATION CONTACT:** David Horne, Superintendent, Pictured Rocks National Lakeshore, (906) 387–2607 ext. 1202, *david_horne@nps.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

*Significance of the Lakeshore*

Colorful sandstone cliffs tower 50 to 200 feet above the vast and glistening fresh water of Lake Superior. Deep shoreline forests open onto sparking inland lakes, gurgling streams, and waterfalls. Sand dunes perch atop miles of high sand bluffs and unspoiled beaches. Beaver-chewed tree stumps, a raven's nest balanced high on a rocky ledge, and cloven deer tracks imprinted in the mud hint at the abundance of wildlife that inhabit the beautiful and diverse landscape. These features create the spectacular setting that is Pictured Rocks National Lakeshore. Congress established this location as the country's first national lakeshore in 1966 to preserve the shoreline, cliffs, beaches, and dunes, and to provide an extraordinary place for recreation and discovery. Little more than 6 miles across at its widest point, the Lakeshore hugs Lake Superior's shoreline for nearly 40 miles. The Lakeshore consists of two zones: The Lakeshore Zone, federal land managed by the National Park Service (NPS); and the Inland Buffer Zone, a mixture of federal, state, and private land. Together these zones encompass nearly 73,000 acres of protected land and water that stretch from Munising to Grand Marais, Michigan. Attractions at the Lakeshore include a lighthouse and former Coast Guard stations, along with old farmsteads and orchards. The Lakeshore is a year-round recreational destination where hiking, camping, hunting, nature study, and winter activities abound.

*NPS Management Authority Over Snowmobile Use*

The NPS manages the Lakeshore under the NPS Organic Act (54 U.S.C. 100101 *et seq.*), which gives the NPS broad authority to regulate the use of the lands and waters under its jurisdiction. The Organic Act authorizes the

Secretary of the Interior, acting through the NPS, to ''make and publish such regulations the Secretary considers necessary or proper for the use and management of [National Park] System units.'' In the Lakeshore's enabling act, Congress directed the Secretary of the Interior, acting through the NPS, to preserve the Lakeshore for the benefit, inspiration, education, recreational use, and enjoyment of the public. 16 U.S.C. 460s.

Executive Order 11644, ''Use of Off-Road Vehicles on the Public Lands,'' issued in 1972 and amended by Executive Order 11989 in 1977, requires federal agencies to issue regulations for the designation of specific areas and routes on public lands where off-road vehicles, including snowmobiles, may be used. The NPS implemented the Executive Order as it relates to snowmobiles in 36 CFR 2.18. Under 36 CFR 2.18(c), the use of snowmobiles is prohibited, except on designated routes and water surfaces used by motor vehicles or motorboats during other seasons. These routes and water surfaces must be designated by special regulation and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; and park management objectives; and will not disturb wildlife or damage park resources.

*Management of Snowmobiles at the Lakeshore*

Snowmobiling is a popular activity in and around the Lakeshore. In the winter, a number of unplowed roads lead to major points of interest, particularly the rock formations at Miners Castle and the tall dunes at Log Slide. Existing special regulations for the Lakeshore at 36 CFR 7.32 allow snowmobiles on the frozen waters of Lake Superior and Grand Sable Lake. They also state that snowmobiles are allowed on the major visitor use roads that are unplowed, or on road shoulders of plowed roads. Snowmobiles are prohibited elsewhere in the Lakeshore, including cross-country travel and travel on non-motorized trails. After this general statement about where snowmobiles are allowed in the Lakeshore, the special regulations list nine ''designated snowmobile routes'' that are roads used by motor vehicles during other seasons.

In 2018, the NPS met with the Alger Road County Commission about rerouting a snowmobile route from an unplowed, paved county road (County Highway H–58) to an unplowed, scenic dirt road, part of which runs through the Lakeshore. During this meeting, the NPS recognized that although there is a general designation in the special regulations allowing snowmobiles on all unplowed roads within the Lakeshore, the rerouted trail was not on the list of designated snowmobile routes. This led to a discussion about whether the special regulations for the Lakeshore could be revised to identify, for the benefit of the public, each route within the Lakeshore where snowmobiles are allowed. This would remove ambiguity in the existing regulations about whether snowmobiles are allowed on unplowed roads or the shoulders of plowed roads that are not identified in the list of ''designated snowmobile routes.'' This would also bring the special regulations for the Lakeshore into full compliance with 36 CFR 2.18, which requires that snowmobiles routes be promulgated as special regulations. Clarifying where snowmobiles are allowed would have the added benefit of making it easier for NPS law enforcement officers to enforce the prohibition of snowmobile use off designated routes. This would help the NPS meet its statutory mandates to preserve the resources of the Lakeshore.

**Final Rule**

This rule revises the special regulations for the Lakeshore at 36 CFR 7.32 to identify all routes and water surfaces within the Lakeshore where snowmobiles may be used. Some of these routes are already identified in the special regulations in paragraphs (a)(1)(i)–(ix) and remain as designated routes. Other routes are not identified in the special regulations and are added in paragraphs (a)(1)(x)–(xv). All designated routes are roads used by motor vehicles during other seasons. If a route is plowed, the rule limits snowmobiles to road shoulders consistent with existing regulations. The rule continues to identify the frozen waters of Lake Superior and Grand Sable Lake as open to snowmobiles, redesignating paragraph (a)(1)(x) as (a)(1)(xvi). These waters are open to motorboats during other seasons.

The rule removes the general designation of all unplowed roads and shoulders of plowed roads to make it clear that if a location is not on the list of designated routes and water surfaces, snowmobiles are prohibited. The NPS does not expect these changes to affect visitor use patterns within the Lakeshore because the NPS already allows snowmobiles on the unplowed roads and shoulders of plowed roads consistent with the general designation in the special regulations. The public may become aware of legal snowmobile routes that are not listed in the existing special regulations which could lead to increased recreation and access. On the other hand, the public may become aware that snowmobiles are not allowed in locations where before it had been unclear. The NPS expects these circumstances to be exceptional and not notable consequences of the rule. The goal of the changes is to provide the public with simple and easy-to-understand rules about snowmobile use that minimize the potential for uncertainty.

The rule also states that the Superintendent may open or close designated routes and water surfaces, or portions thereof, to snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The rule requires the Superintendent to notify the public of any such actions using one or more of the methods in 36 CFR 1.7(a).

Finally, the rule makes minor changes to the descriptions of three routes that are already designated in the special regulations. In paragraph (a)(1)(v), the rule fixes a typo by replacing the term ''Country Road'' with the term ''County Road.'' In paragraphs (a)(1)(viii) and (a)(1)(ix), the rule clarifies that the designated roads no longer go directly to the Log Slide, and instead terminate at the Log Slide parking area.

**Summary of Public Comments**

The NPS published a proposed rule in the **Federal Register** on November 6, 2020 (85 FR 71017) and accepted comments through the mail, by hand delivery, and through the Federal eRulemaking Portal at *http://www.regulations.gov.* The comment period closed on January 5, 2021. The NPS received four comments on the proposed rule. Below are summaries of the pertinent issues raised in the comments and responses from the NPS. After considering the public comments and after additional review, the NPS did not make any changes to the proposed rule.

*1. Comment:* Several commenters raised concerns about the impacts of snowmobile use on wildlife, undersnow plants, and other park visitors.

*NPS Response:* This rule does not change where snowmobiles are allowed within the Lakeshore. It clarifies where snowmobiles are already allowed by identifying each legal snowmobile route within the Lakeshore. This replaces the existing regulations which have an incomplete list of snowmobile routes coupled with a general statement allowing snowmobiles on unplowed roads and shoulders of plowed roads. The NPS did not evaluate the impacts

of snowmobile use on resources and visitors in connection with this rule because the rule does not change the allowed level of use.

Visitors use the Lakeshore for a variety of recreational experiences. Snowmobiling on designated routes will not prevent access to the Lakeshore for other recreational uses including backcountry skiing, camping, snowshoeing, and wildlife viewing. The NPS believes that visitors should have the opportunity to experience the unique resources and values for which the Lakeshore was established during the winter season. Snowmobiles provide visitors with an efficient means of winter transport onto and through the park. Some form of over-snow travel is necessary to allow visitors to access areas of the park that cannot reasonably be reached using non-motorized means of transportation. Restricting snowmobile travel to designated routes confines potential wildlife disturbance and resource impacts to specific corridors. This rule gives the Superintendent the authority to open or close routes and water surfaces, or portions thereof, to snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors.

*2. Comment:* One commenter called for a complete ban on snowmobiles in the Lakeshore.

*Response:* Much of the snowmobile use within the boundaries of the Lakeshore occurs on roads that are not under NPS jurisdiction but do provide access to routes on NPS-administered land. The routes not under NPS jurisdiction include but are not limited to H–58, Miners Castle Road, and Chapel Road. The Lakeshore has approximately 17 miles of designated routes under its jurisdiction. There are about 50 miles of snowmobile roads within the boundaries of the Lakeshore that are not under NPS jurisdiction. Banning snowmobile use on NPS-administered land would make the contiguous use of snowmobile routes within the boundaries of the Lakeshore impossible.

The NPS has managed snowmobile use in the Lakeshore for several decades. Snowmobiles have been an integral part of the winter experience at the Lakeshore since they first entered in 1982. At that time, the NPS prepared an Environmental Assessment and a Determination of Effects of Rules. These documents concluded that snowmobile use at the Lakeshore is consistent with the Lakeshore's natural, cultural, scenic, and aesthetic values, safety considerations, and management objectives, and will not disturb wildlife or damage national lakeshore resources. This determination was affirmed in 2004 when the NPS released the current General Management Plan for the Lakeshore. The document can be found online at *https://www.nps.gov/piro/learn/management/gmp.htm.*

## Compliance With Other Laws, Executive Orders and Department Policy

### Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action as defined by Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

### Regulatory Flexibility Act

The rule modifies special regulations for the Lakeshore to designate snowmobile routes on roads and water surfaces that are used by motor vehicles or motorboats during other seasons. For the reasons explained above, the rule is administrative in nature and not expected to change visitor use patterns at the Lakeshore because the NPS would not be allowing any new uses. The costs and benefits of a regulatory action are measured with respect to its existing baseline conditions. No changes are anticipated compared to baseline conditions because this regulatory action is administrative in nature with the intent to clarify existing regulations. In addition, this action will not impose restrictions on local businesses in the form of fees, training, record keeping, or other measures that would increase costs. Given those findings, this regulatory action will not impose a significant economic impact on a substantial number of small entities.

### Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### Takings (Executive Order 12630)

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

### Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A federalism summary impact statement is not required.

### Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation With Indian Tribes (Executive Order 13175 and Department Policy)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

**Paperwork Reduction Act**

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act**

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. The NPS has determined the rule is categorically excluded under NPS NEPA Handbook 2015 Section 3.3(A)(8) because this rule revises existing regulations for the Lakeshore in a manner that would not (i) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it; (ii) introduce noncompatible uses that might compromise the nature and characteristics of the area or cause physical damage to it; (iii) conflict with adjacent ownerships or land uses; or (iv) cause a nuisance to adjacent owners or occupants. The rule does not change the allowed level of snowmobile use at the Lakeshore. It clarifies where snowmobiles are already allowed by replacing an incomplete list of routes and a general statement allowing snowmobiles on unplowed roads and shoulders of plowed roads with a comprehensive list of legal snowmobiles routes. The NPS has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

**Effects on the Energy Supply (Executive Order 13211)**

This rule is not a significant energy action under the definition in Executive Order 13211. The rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OIRA has not designated the rule as a significant energy action. A Statement of Energy Effects is not required.

**List of Subjects in 36 CFR Part 7**

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

**Authority:** 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

■ 2. Amend § 7.32 by:
■ a. Revising paragraph (a)(1) introductory text and paragraphs (a)(1)(v), (viii), and (ix);
■ b. Redesignating paragraph (a)(1)(x) as paragraph (a)(1)(xvi);
■ c. Adding new paragraph (a)(1)(x) and paragraphs (a)(1)(xi) through (xv);
■ d. Revising newly redesignated paragraph (a)(1)(xvi);
■ e. Revising paragraph (a)(3); and
■ f. Adding paragraph (a)(4).

The revisions and additions to read as follows:

**§ 7.32 Pictured Rocks National Lakeshore.**

(a) * * *

(1) Snowmobiles are allowed on the following routes and water surfaces within Pictured Rocks National Lakeshore:

* * * * *

(v) The road from County Road H–58 at the park boundary to the Little Beaver Lake Campground.

* * * * *

(viii) The road from County Road H–58 to the Log Slide parking area.

(ix) The section of Michigan Dimension Road from the park boundary to the Log Slide parking area.

(x) The South Grand Sable Lake Road, starting at Towes Creek (T49N, R14W, Sections 14 and 23), heading south in and out of the fee zone area.

(xi) Portions of County Road H–58 that are within park boundaries between Twelvemile Beach and Log Slide scenic overlook (T49N, R15W, Sections 9, 10, 11, 13, 14, and 16 and T49, 14W, Section 18).

(xii) Portions of County Road H–58 that are within park boundaries between Log Slide Scenic Overlook and the Grand Sable Visitor Center (T49N, R14W, Sections 10, 11, 15, 16, and 17).

(xiii) County Road H–58 between Grand Sable Visitor Center to the eastern extent of the park boundary (T49N, R14W, Sections 1, 11, and 12).

(xiv) Portions of Lowder Road that are within park boundaries from M77 to Grand Sable Lake Boat Ramp (T48N, R16W, Sections 21 and 29).

(xv) Portions of Beaver Basin Overlook Road from County Road H–58 to the Beaver Basin Overlook (T49N, R14W, Sections 11, and 12).

(xvi) The frozen water surfaces of Lake Superior and Grand Sable Lake.

* * * * *

(3) Snowmobile use outside designated routes and frozen water surfaces is prohibited. Snowmobiles are restricted to the road shoulders of routes that are plowed. The prohibitions in this paragraph do not apply to emergency administrative travel by employees of the National Park Service or law enforcement agencies.

(4) The Superintendent may open or close these routes and water surfaces, or portions thereof, to snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

* * * * *

**Shannon A. Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2022–02015 Filed 1–31–22; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 220124–0032]**

**RIN 0648–BK55**

### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2021–2023 Small-Mesh Multispecies Specifications

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

**ACTION:** Final rule.

**SUMMARY:** NMFS approves and implements final small-mesh multispecies specifications for the 2021 fishing year, and projected specifications for fishing years 2022 and 2023, as recommended by the New England Fishery Management Council. This action also increases the whiting possession limit for certain trips and restores the in-season adjustment trigger for northern red hake. This action is necessary to establish allowable harvest levels and other management measures consistent with the most recent scientific information. This rule informs the public of these final fishery specifications for the 2021 fishing year.

**DATES:** Effective February 1, 2022.

**ADDRESSES:** The New England Fishery Management Council prepared an environmental assessment (EA) for these specifications that describes the action and other considered alternatives. The EA provides an analysis of the biological, economic, and social impacts of the preferred measures and other considered alternatives; a Regulatory Impact Review; and economic analysis. Copies of these specifications, including the EA, Regulatory Flexibility Act Analyses, and other supporting documents for the action are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also accessible via the internet at *https://www.nefmc.org/management-plans/small-mesh-multispecies.*

**FOR FURTHER INFORMATION CONTACT:** Shannah Jaburek, Fishery Policy Analyst, (978) 282–8456.

**SUPPLEMENTARY INFORMATION:**

## Background

The New England Fishery Management Council manages the small-mesh multispecies fishery within the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is made up of three species of hakes that are managed as five stocks: Northern and southern silver hake; northern and southern red hake; and offshore hake. Southern silver hake and offshore hake are often grouped together for management purposes and collectively referred to as ''southern whiting.'' Amendment 19 to the FMP (April 4, 2013; 78 FR 20260) established a process for specifying catch limits for the small-mesh multispecies fishery stocks; including values for an overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), and total allowable landings (TAL). The FMP requires that this specifications process be implemented on an annual basis for up to 3 years at a time with each fishing year running from May 1 through April 30. This action implements catch limit specifications for the 2021 small-mesh multispecies fishery, and announces projected specifications for fishing years 2022 and 2023 based on the Council's recommendations. This action also revises some management measures to reduce regulatory discards in the fishery and increase the opportunity to achieve optimum yield.

The proposed rule for this action published in the **Federal Register** on June 11, 2021 (86 FR 31262), and comments were accepted through June 28, 2021. NMFS received no comments from the public.

## Final Specifications

This action implements the Council's recommendations for 2021 and projected 2022–2023 small-mesh multispecies catch specifications, as well as revised management measures to reduce regulatory discards, as outlined in the proposed rule. Specifications for fishing years 2022 and 2023 are projected to be the same as the 2021 limits (Table 1).

TABLE 1—SMALL-MESH MULTISPECIES SPECIFICATIONS FOR FISHING YEARS 2021–2023 (METRIC TONS), WITH THE PERCENT CHANGE IN THE TAL FROM FISHING YEAR 2020

| | OFL | ABC | ACL | TAL | Percent change |
|---|---|---|---|---|---|
| Northern Red Hake | Unknown | 3,452 | 3,278 | 1,405 | +413 |
| Northern Silver Hake | 39,930 | 20,410 | 19,387 | 17,457 | −34 |
| Southern Red Hake | N/A | 1,505 | 1,429 | 422 | +89 |
| Southern Whiting | 72,160 | 40,990 | 38,941 | 28,742 | +99 |

* Southern whiting includes both southern silver hake and offshore hake.

In a separate action (Framework Adjustment 62 to the Northeast Multispecies FMP), the Council adopted a 10-year rebuilding program for southern red hake because this stock was declared overfished in 2018 (see the final rule at 87 FR 3694, January 25, 2022). Although the quota for southern red hake implemented in the action will increase while this stock enters a rebuilding period, this adjustment is intended to reduce regulatory discards by converting more catch to landings and allow continued operation of the fishery while still enhancing the rebuilding potential for southern red hake. The Council's recommended ABC for southern red hake is 75 percent of what was recommended by the Council's Scientific and Statistical Committee, in accordance with the rebuilding plan.

This action also revises management measures within the small-mesh multispecies fishery to reduce regulatory discards and improve fishery operations. The possession limit for whiting (silver hake and offshore hake) on trips using gear with less than 3-inch (7.6-cm) mesh is increasing from 3,500 lb (1,587.6 kg) and 7,500 lb (3,401.9 kg) to 15,000 lb (6,803.9 kg). Additionally, the in-season adjustment trigger for northern red hake is being restored to 90 percent of the annual quota from the current 37.9-percent trigger. This is intended to allow the fishery to harvest the TAL without being prematurely restricted by a reduced possession limit by bringing the starting point for the post-season ACL overage accountability measure back to the original trigger level. The Council will review the projected 2022 and 2023 specifications to determine if any changes need to be made prior to their final implementation. NMFS will publish a notice prior to the start of each fishing year to confirm the projected specifications or announce any necessary changes.

## Changes From the Proposed Rule

NMFS has not made any changes to the proposed regulatory text and there are no changes from the proposed rule.

## Classification

Pursuant to section 304(b)(3) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant

Administrator has determined that these final specifications are necessary for the conservation and management of the small-mesh multispecies fishery, and that they are consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Council reviewed the regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

This final rule is effective upon the date of publication in the **Federal Register** February 1, 2022. This final rule is not subject to the Administrative Procedure Act (APA) provision requiring a 30-day delay in the date of effectiveness because this rule falls within two of the APA exceptions (5 U.S.C. 553(d)(1) and (3)). The first exception, at 5 U.S.C. 553(d)(1), applies for a substantive rule that relieves a restriction. This action relieves a restriction by increasing annual quota catch and possession limits for several stocks in the small-mesh multispecies fishery. Specifically, in order to provide additional flexibility to the fishing industry and reduce unnecessary regulatory discards, this final rule increases commercial quotas for three of the four hake stocks managed in this fishery, increases the possession limit of whiting for vessels using a certain mesh size to 15,000 lb (6,803.9 kg), and increases the threshold trigger to 90 percent of the TAL for when northern red hake inseason accountability measures must be implemented.

In addition, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in this rule's effective date for the following reasons. Waiving the delay in the date of effectiveness ensures that these final specifications are in place as close as practicable to the start of the 2021 small-mesh multispecies fishing year, which began on May 1, 2021. Although the 2020 catch limits have rolled over in the absence of implementation of these new specifications, the 2020 catch limits are not based on the most recent stock assessment data and are unnecessarily restrictive. A 30-day delay in the date of effectiveness that further postpones the implementation of the increase in whiting possession limits would be contrary to the public interest, as the lost economic opportunity during the period of the additional 30-day delay could cause potential economic harm to participants in the small-mesh multispecies fishery. Currently, unfavorable market conditions in the whiting fishery is the main reason that whiting catch is being discarded rather than being sold; however, market conditions can change at any time and become more favorable to landing whiting causing a higher percentage of vessels to be constrained by the lower power possession limit. Additional delay also could risk the unnecessary triggering of accountability measures for northern red hake during the remainder of the fishing year under the current catch threshold of 37.9 percent before this action can raise the catch threshold to 90 percent. Finally, the additional time afforded by a 30-day delay in the date of effectiveness is not necessary in order for participants in the fishery to come into compliance with this rule. Vessels fishing for small-mesh multispecies will not be required to purchase new equipment or expend time or money to comply with these management measures. Compliance with this final rule does not require an adjustment period, because complying simply means adhering to the new catch limits and management measures set for the fishing year. In addition, fishery stakeholders have been involved in the development of this rule and are anticipating the implementation of this action.

This final 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none was prepared.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 26, 2022.

**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 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.86, revise paragraph (d)(1)(i) and remove and reserve paragraph (d)(1)(ii).

The revision reads as follows:

### § 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(i) *Vessels possessing on board or using nets of mesh size smaller than 3 in (7.62 cm).* Owners or operators of a vessel may possess and land not more than 15,000 lb (6,804 kg) of combined silver hake and offshore hake, if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

* * * * *

■ 3. In § 648.90, revise paragraph (b)(5)(iii) to read as follows:

### § 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(b) * * *

(5) * * *

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies in-season accountability measure adjustment triggers are as follows:

| Species | In-season adjustment trigger (percent) |
|---|---|
| Northern Red Hake | 90 |
| Northern Silver Hake | 90 |
| Southern Red Hake | 40.4 |
| Southern Silver Hake | 90 |

* * * * *

[FR Doc. 2022–02000 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 87, No. 21
Tuesday, February 1, 2022

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.

## OFFICE OF SPECIAL COUNSEL

### 5 CFR Chapter VIII

### Prohibited Personnel Practices, Disclosures of Information Evidencing Wrongdoing, FOIA, Privacy Act, and Disability Regulations To Conform With Changes in Law and Filing Procedures and Other Technical Changes

**AGENCY:** U.S. Office of Special Counsel.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Office of Special Counsel (OSC) proposes to revise its regulations regarding the filing of complaints and disclosures with OSC, to update the prohibited personnel practice provisions, Freedom of Information Act (FOIA) provisions, Privacy Act provisions, provisions concerning nondiscrimination based on disability, and to make other technical revisions. These revisions are intended to streamline OSC's filing procedures and reflect changes in law.

**DATES:** Interested parties should submit comments to the Office of Special Counsel at one of the addresses shown below on or before March 3, 2022 to be considered in the formulation of a final rule.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: frliaison@osc.gov.* Include ''FY2022 Proposed Reg Comments'' in the subject line of the email.

Comments received may be posted to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Susan Ullman, General Counsel, U.S. Office of Special Counsel, by telephone at 202–804–7000, or by email at *sullman@osc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

OSC is proposing to revise its regulations pursuant to OSC's authority at 5 U.S.C. 1212(e).

*I. Changes Concerning the Filing of Complaints and Disclosures of Information Evidencing Wrongdoing*

The proposed rulemaking adds a new scope and purpose section at 5 CFR 1800.1 and redesignates the current §§ 1800.1–1800.3 as §§ 1800.2–1800.4 respectively. The proposed rule revises the language at the new § 1800.2(c)(1) through (5) and (d), and § 1800.3(b)(1) and (2) by replacing references to various OSC complaint forms with references to a general complaint form established by OSC, currently ''Form 14,'' that OMB approved on March 6, 2020. The proposed rule also adds a paragraph at the new § 1800.2(c)(3) to define when a complaint contains sufficient information for OSC to investigate the allegations.

*II. Changes Concerning Prohibited Personnel Practices and Hatch Act*

The proposed rulemaking updates the prohibited personnel practice provisions to use more consistent terminology throughout. It also amends new § 1800.2(a)(9) to conform with amendments made to 5 U.S.C. 2302(b)(9)(D) by the Follow the Rules Act, Public Law 115–40, and sec. 1097(c)(1)(A) of Public Law 115–91. It also adds two new paragraphs at the new § 1800.2(a)(13)–(14), based on amendments made to 5 U.S.C. 2302(b)(13)–(14) which concern the use of agency nondisclosure agreements and the access of employee medical files in furtherance of a different PPP. The proposed rulemaking also moves the procedures for filing a Hatch Act complaint and requesting a Hatch Act advisory opinion into the same section.

*III. Changes Concerning Disclosures of Information Evidencing Wrongdoing*

The proposed rulemaking amends the new § 1800.3(a) to add language from sec. 110 of the Whistleblower Protection Enhancement Act of 2012, which clarified that censorship of scientific or technical information could qualify as a type of agency wrongdoing under 5 U.S.C. 2302(b)(8).

*IV. Clarification of OSC's Investigative Authority*

Based on sec. 1097(a) of Public Law 115–91, the proposed rulemaking adds a new section at 5 CFR 1810.2 to clarify OSC's right to timely access to all agency records, even if those records contain privileged information. Providing privileged information to OSC does not waive the agency's privilege with respect to nongovernment third parties. OSC is required to submit a report to Congress if an agency fails to comply with a request for documents from OSC. The proposed rule adds a new section at 5 CFR 1810.3 based on sec. 1097(f) of Public Law 115–91, which delineates OSC's authority to promptly terminate investigations if certain criteria are met. Finally, the proposed rule adds a new section at 5 CFR 1810.4 that states that, to protect the integrity of an OSC investigation, agencies should use liaisons that do not have perceived or actual involvement with the personnel actions at issue.

*V. Changes Concerning FOIA and Privacy Act Regulations*

The proposed rule revises OSC's FOIA regulations at part 1820 by updating the various methods for making a FOIA request, defining ''unusual circumstances,'' and clarifying that no fees will be assessed if OSC fails to make a timely response. The proposed rule also revises OSC's Privacy Act regulations by creating several new sections at 5 CFR part 1830 to add a scope and purpose section, a definitions section, and other sections concerning the management of records at OSC.

*VI. Changes Concerning the Enforcement of Nondiscrimination Provisions*

The proposed rule revises OSC's regulations implementing the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments to the Rehabilitation Act, codified at subchapter V of chapter 16 of title 29 of the U.S. Code, to update various definitions, processes, and procedures.

## Procedural Determinations

*Administrative Procedure Act (APA):* This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the **Federal Register**.

*Executive Orders 12866 and 13771:* This proposed rule is not a regulatory action under Executive Order (E.O.) 13771 because OSC does not anticipate that this proposed rule will have significant economic impact, raise novel issues, and/or have any other significant

impacts. Thus, this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

*Congressional Review Act (CRA):* OSC has determined that this proposed rule is not a major rule under the Congressional Review Act, as it is unlikely to result in an annual effect on the economy of $100 million or more; is unlikely to result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; and is unlikely to have a significant adverse effect on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete in domestic and export markets. Pursuant to 5 U.S.C. 801(a), OSC will transmit a copy of the proposed rule to each House of the Congress and the Comptroller General.

*Regulatory Flexibility Act (RFA):* The Regulatory Flexibility Act does not apply, even though this proposed rule is being offered for notice and comment procedures under the APA. This proposed rule will not directly regulate small entities. OSC therefore need not perform a regulatory flexibility analysis of small entity impacts.

*Unfunded Mandates Reform Act (UMRA):* This proposed revision does not impose any federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

*National Environmental Policy Act (NEPA):* This proposed rule will have no physical impact upon the environment and therefore will not require any further review under NEPA.

*Paperwork Reduction Act (PRA):* This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the PRA.

**List of Subjects**

*5 CFR Parts 1800 and 1810*

Administrative practice and procedure.

*5 CFR Parts 1820 and 1830*

Archives and records, Reporting and recordkeeping requirements.

*5 CFR Part 1850*

Administrative practice and procedure, Buildings and facilities, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Approved: January 21, 2022.

**Travis G. Millsaps,**

*Deputy Special Counsel for Public Policy.*

For the reasons stated in the preamble, the U.S. Office of Special Counsel proposes to amend chapter VIII of title 5 of the Code of Federal Regulations as follows:

■ 1. Revise part 1800 to read as follows:

## PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

Sec.
1800.1 Scope and purpose.
1800.2 Filing complaints of prohibited personnel practices or other prohibited activities.
1800.3 Filing disclosures of information evidencing wrongdoing.
1800.4 Filing complaints of Hatch Act violations and requesting advisory opinions.

**Authority:** 5 U.S.C. 1212(e).

### § 1800.1 Scope and purpose.

The purpose of this part is to implement the U.S. Office of Special Counsel's (OSC) authorities at 5 U.S.C. 1212–1216. This part does not create new individual rights but instead is intended to inform individuals of filing options they may be entitled to under 5 U.S.C. 1212–1216, and 2302. Individuals are encouraged to go to OSC's website at *https://osc.gov* at for more information about the OSC complaint form that should be used when filing with OSC.

### § 1800.2 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) *Prohibited personnel practices.* Pursuant to 5 U.S.C. 1214 and 1215, OSC has investigative and prosecutorial jurisdiction over allegations that one or more of the following prohibited personnel practices were committed against current or former Federal employees and applicants for Federal employment:

(1) Discrimination, including discrimination based on marital status or political affiliation (*see* § 1810.1 of this chapter for information about OSC's deferral policy for discrimination complaints);

(2) Soliciting or considering improper recommendations or statements about any individual requesting, or under consideration for, a personnel action;

(3) Coercing political activity, or engaging in retaliation for refusal to engage in political activity;

(4) Deceiving or obstructing any individual with respect to competition for employment;

(5) Influencing any individual to withdraw from competition to improve or injure the employment prospects of another individual;

(6) Granting an unauthorized preference or advantage to any individual to improve or injure the employment prospects of another individual;

(7) Nepotism involving a covered relative as defined at 5 U.S.C. 3110(a)(3);

(8) Retaliation for whistleblowing (whistleblowing is generally defined as the disclosure of information by an individual who reasonably believes that the information evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or the integrity of the scientific process if the censorship will cause one of the aforementioned categories of wrongdoing);

(9) Retaliation for:

(i) Exercising certain grievance, complaint, or appeal rights;

(ii) Providing testimony or other assistance to any individual exercising such grievance, complaint, or appeal rights;

(iii) Cooperating with the Special Counsel, an Inspector General, or any other agency component responsible for internal investigation or review; or

(iv) Refusing to obey an order that would require the violation of law, rule, or regulation;

(10) Discrimination based on conduct that would not adversely affect job performance;

(11) Violating a veterans' preference requirement;

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2301(b);

(13) Implementing or enforcing any nondisclosure policy, form, or agreement that fails to include the statement found at 5 U.S.C. 2302(b)(13) or fails to inform any individual that they retain their whistleblowing rights; and

(14) Accessing the medical record of any individual as part of, or otherwise in furtherance of, any other prohibited personnel practice.

(b) *Other prohibited activities.* Pursuant to 5 U.S.C. 1216, OSC also has investigative and prosecutorial jurisdiction over any allegation concerning the following:

(1) Prohibited political activity by Federal employees covered by the Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Prohibited political activity by State and local officers and employees

covered by the Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decision-making;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless OSC determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Pursuant to 38 U.S.C. 4324, violations of the Uniformed Services Employment and Reemployment Rights Act, codified at 38 U.S.C. 4301, *et seq.*

(c) *Procedures for filing complaints alleging prohibited personnel practices or other prohibited activities (other than the Hatch Act).* (1) Anyone may file a complaint with OSC alleging one or more prohibited personnel practices, or other prohibited activities within OSC's investigative jurisdiction. The OSC complaint form must be used to file all such complaints.

(2) OSC will not process a complaint filed in any format other than the completed OSC complaint form designated in paragraph (c)(1) of this section. If a complainant does not use this form to submit a complaint, OSC will provide the complainant with information about the form. The OSC complaint form will be considered to be filed on the date on which OSC receives a completed form.

(3) The OSC complaint form requests that the complainant provide basic information about the alleged prohibited personnel practices or other prohibited activities. A complaint may be amended to clarify or include additional allegations. A complaint is sufficient for investigation when OSC receives information identifying the parties, identifying any relevant personnel action(s), and describing generally the practices or activities at issue.

(4) The OSC complaint form is available:

(i) Online at: *https://osc.gov* (to print out and complete on paper, or to complete online);

(ii) By writing to OSC at: Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or

(iii) By calling OSC at: (800) 872–9855 (toll-free), or (202) 804–7000 (in the Washington, DC area).

(5) A complainant can file a completed OSC complaint form:

(i) Electronically at: *https://osc.gov;*

(ii) By email to: *info@osc.gov;* or

(iii) By mail to: Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

**§ 1800.3 Filing disclosures of information evidencing wrongdoing.**

(a) *General.* Pursuant to 5 U.S.C. 1213, OSC is authorized to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment to disclose information that they reasonably believe evidences wrongdoing by a Federal agency. OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or the integrity of the scientific process if the censorship will cause one of the aforementioned categories of wrongdoing. If it does, the law requires OSC to refer the information to the appropriate agency head for an investigation and a written report on the findings to the Special Counsel. It is OSC's policy to maintain the anonymity of individual filers throughout the disclosure process, unless they consent to their identity being revealed. The law does not authorize OSC to investigate any disclosure.

(b) *Procedures for filing disclosures.* Current or former Federal employees and applicants for Federal employment may file a disclosure of the type of information described in paragraph (a) of this section with OSC. Such disclosures must be filed in writing.

(1) Filers are encouraged to use the OSC complaint form to file a disclosure of the type of information described in paragraph (a) of this section with OSC. This form provides more information about OSC jurisdiction, and procedures for processing whistleblower disclosures. The OSC complaint form is available:

(i) Online at: *https://osc.gov* (to print out and complete on paper, or to complete online);

(ii) By writing to OSC at: Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or

(iii) By calling OSC at: (800) 572–2249 (toll-free), or (202) 804–7004 (in the Washington, DC area).

(2) Filers may use another written format to submit a disclosure to OSC, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the individual(s) making the disclosure(s);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A statement as to whether the filer consents to disclosure of the filer's identity by OSC to the agency involved, in connection with any OSC referral to that agency.

(3) An individual can file a disclosure with OSC:

(i) Electronically at: *https://osc.gov;*

(ii) By email at *info@osc.gov;* or

(iii) By mail to: Office of Special Counsel, Disclosure Unit, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

**§ 1800.4 Filing complaints of Hatch Act violations and requesting advisory opinions.**

(a) *Procedures for filing complaints alleging Hatch Act violations.* (1) Complainants are encouraged to use the OSC complaint form to file Hatch Act complaints. The OSC complaint form is available:

(i) Online at: *https://osc.gov* (to print out and complete on paper, or to complete online); or

(ii) By writing to OSC at: Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(2) Complaints alleging a violation of the Hatch Act may be submitted in any written form, and should include:

(i) The complainant's name, mailing address, and telephone number (unless the matter is submitted anonymously);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A concise description of the actions complained about, names and positions of employees who took the actions, if known to the complainant, and dates of the actions, preferably in chronological order, together with any documentary evidence that the complainant can provide.

(3) A written Hatch Act complaint can also be filed with OSC:

(i) By email to: *hatchact@osc.gov;* or

(ii) By mail to: Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(b) *Procedures for requesting Hatch Act advisory opinions.* Pursuant to 5 U.S.C. 1212(f), OSC is authorized to issue advisory opinions only about political activity of Federal officers and employees, and political activity of State or local officers and employees. An individual can seek an advisory opinion from OSC:

(1) By email to: *hatchact@osc.gov;*

(2) By mail to: Office of Special Counsel, Hatch Act Unit, 1730 M Street

NW, Suite 218, Washington, DC 20036–4505; or

(3) By phone at: (800) 854–2824 (toll-free), or (202) 804–7002 (in the Washington, DC area).

■ 2. Revise part 1810 to read as follows:

## PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

Sec.
1810.1 Investigative policy in certain discrimination and retaliation complaints.
1810.2 Access to agency information in investigations.
1810.3 Termination of certain OSC investigations.
1810.4 Investigative policy regarding agency liaisons.

**Authority:** 5 U.S.C. 1212(e).

### § 1810.1 Investigative policy in certain discrimination and retaliation complaints.

OSC is authorized to investigate allegations of discrimination and retaliation prohibited by law, as defined in 5 U.S.C. 2302(b)(1) and (b)(9)(A)(ii). Because procedures for investigating discrimination and retaliation complaints have already been established in the agencies and the Equal Employment Opportunity Commission, OSC will usually avoid duplicating those procedures and will defer to those procedures rather than initiating an independent investigation.

### § 1810.2 Access to agency information in investigations.

(a) Pursuant to 5 U.S.C. 1212(b)(5), OSC is authorized to have timely access to all agency records, data, reports, audits, reviews, documents, papers, recommendations, information, or other material that relate to an OSC investigation, review, or inquiry.

(b) A claim of common law privilege, such as the attorney-client privilege, may not be used by any agency, or officer or employee of any agency, to withhold information from OSC. By providing such information to OSC, an agency will not be deemed to have waived the common law privilege against a non-Federal entity or against any individual in any other proceeding.

(c) In the event of contumacy or failure of an agency to comply with any request under this section, the Special Counsel shall submit a report to the committees of Congress with jurisdiction over OSC and the applicable agency.

### § 1810.3 Termination of certain OSC investigations.

(a) Pursuant to 5 U.S.C. 1214(a)(6), within 30 days of receiving a complaint alleging that a prohibited personnel practice occurred, OSC may terminate an investigation of the allegation without further inquiry if:

(1) The same allegation, based on the same set of facts and circumstances, had previously been:

(i) Made by the individual and investigated by OSC; or

(ii) Filed by the individual with the Merit Systems Protection Board;

(2) OSC does not have jurisdiction to investigate the allegation; or

(3) The individual knew or should have known of the alleged prohibited personnel practice more than 3 years before the allegation was received by OSC.

(b) Within 30 days of terminating an investigation described in paragraph (a) of this section, OSC shall notify the individual, in writing, of the basis for terminating the investigation.

### § 1810.4 Investigative policy regarding agency liaisons.

Agency liaisons facilitate their agency's cooperation with OSC's investigations by ensuring that agencies timely and accurately respond to OSC's requests for information and witness testimony, as well as by assisting with the resolution of complaints. To maintain the integrity of OSC's investigations and to avoid actual or perceived conflicts, agency liaisons should not have current or past involvement in the personnel actions at issue in the assigned case.

■ 3. Revise part 1820 to read as follows:

## PART 1820—FREEDOM OF INFORMATION ACT REQUESTS; PRODUCTION OF RECORDS OR TESTIMONY

Sec.
1820.1 General provisions.

**Subpart A—FOIA Regulations**

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1820.4 Timing of responses to requests.
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1820.22 Final determination.
1820.23 Penalties.
1820.24 Conformity with other laws.

**Authority:** 5 U.S.C. 552, 301, and 1212(e).

### § 1820.1 General provisions.

This part contains rules and procedures followed by the U.S. Office of Special Counsel (OSC) in processing requests for records under the Freedom of Information Act (FOIA), codified at 5 U.S.C. 552. These rules and procedures should be read together with the FOIA and the FOIA page of OSC's website (*https://osc.gov/FOIA*), which set forth additional information about access to agency records and information routinely provided to the public as part of a regular OSC activity. For example, forms, press releases, records published on OSC's website, or public lists maintained at OSC headquarter offices pursuant to 5 U.S.C. 1219, may be requested and provided to the public without following this part. This part also addresses responses to demands by a court or other authority to an OSC employee or former employee for production of official records or testimony in legal proceedings.

## Subpart A—FOIA Regulations

### § 1820.2 Requirements for making FOIA requests.

(a) *Submission of requests.* (1) A request for OSC records under the FOIA must be made in writing. The request must be sent:

(i) By email to: *foiarequest@osc.gov* or other electronic means described on the FOIA page of OSC's website (*https://osc.gov/FOIA*);

(ii) Electronically to: The National FOIA Portal for the entire federal government at *www.foia.gov;* or

(iii) By mail to: U.S. Office of Special Counsel, FOIA Officer, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(2) Both the request letter and envelope or email subject line should be clearly marked ''FOIA Request.''

(3) A FOIA request will not be considered to have been received by OSC until it reaches the FOIA Officer.

(b) *Description of records sought.* Requests must state in the letter, email, or other prescribed electronic method the words ''FOIA Request'' or ''FOIA/Privacy Request.'' The request must also describe the records sought in enough detail for them to be located with a reasonable amount of effort. When requesting records about an OSC case file, the case file number, name, and

type (for example, prohibited personnel practice (PPP), Hatch Act, USERRA, Hatch Act advisory opinion, or whistleblower disclosure) should be provided, if known. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter. OSC requires proof of identification from requestors seeking their own case files. OSC requires a signed release of information from requestors seeking another individual's case file.

(c) *Agreement to pay fees.* By making a FOIA request the requestor agrees to pay all applicable fees chargeable under § 1820.7 unless the Special Counsel waives fees, the requestor is exempt, or the requestor otherwise qualifies for a waiver of fees.

**§ 1820.3 Consultations and referrals.**

When OSC receives a FOIA request for a record in its possession, it may determine that another Federal agency or entity is better able to decide whether the record is exempt from disclosure under the FOIA. If so, OSC will either respond to the request for the record after consulting with the other Federal agency or entity or refer the responsibility for responding to the request to the other Federal agency or entity deemed better able to determine whether to release it. OSC will ordinarily respond promptly to consultations and referrals from other Federal agencies or entities.

**§ 1820.4 Timing of responses to requests.**

(a) *In general.* OSC ordinarily will respond to FOIA requests in order of receipt. In determining which records are responsive to a request, OSC ordinarily will include only records in its possession on the date that it begins its search. OSC will inform the requestor if it uses any other date.

(b) *Multitrack processing.* (1) OSC may use two or more processing tracks to distinguish between simple and more complex requests based on the amount of work and/or time estimated to process the request.

(2) When using multitrack processing, OSC may provide requestors in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the faster track(s).

(c) *Expedited processing.* (1) OSC will take requests and appeals out of order and provide expedited treatment whenever OSC has established to its satisfaction that:

(i) Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency exists to inform the public about an actual or alleged federal government activity and the requestor is primarily engaged in disseminating information; or

(iii) The requestor with a personal interest in a case for which they face an imminent filing deadline with the Merit Systems Protection Board or other administrative tribunal or court of law in an individual right of action, or in a USERRA case referred to OSC under title 38 of the U.S. Code. Expedited status granted under this provision will apply only to the following requested records: PPP case closure and notice of appeal rights letters sent to the complainant by OSC, and the official complaint form submitted to OSC by a USERRA complainant or the original referred USERRA complaint if referred to OSC under title 38 of the U.S. Code.

(2) A request for expedited processing must be made in writing and sent to OSC's FOIA Officer. The expedited request is deemed received when it reaches the FOIA Officer.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. OSC may waive a certification as a matter of administrative discretion.

(4) OSC shall decide whether to grant a request for expedited processing and notify the requestor of its decision within ten (10) calendar days of the FOIA Officer's receipt of the request. If OSC grants the request for expedited processing, it will process the request as soon as practicable. If OSC denies the request for expedited processing, OSC shall rule expeditiously on any administrative appeal of that decision.

(d) *Aggregated requests.* OSC may aggregate multiple requests by the same requestor, or by a group of requestors acting in concert, if it reasonably believes that such requests actually constitute a single request that would otherwise create ''unusual circumstances'' as defined in § 1820.5, and that the requests involve clearly related matters.

**§ 1820.5 Responses to requests.**

(a) *General.* Ordinarily, OSC has twenty (20) business days from receipt to determine whether to grant or deny a FOIA request.

(1) In unusual circumstances, OSC may extend the twenty (20) business-day deadline by written notice to the requestor setting forth the unusual circumstances justifying the extension. OSC shall notify the requestor if OSC cannot process the request in 20 days and provide the requestor an opportunity to modify the request so that OSC can process the request within the 20-day time limit. OSC and the requestor can also negotiate an alternative time frame for processing the request or modified request. OSC's FOIA Public Liaison is available to assist in the resolution of any disputes between the requestor and OSC. OSC must also advise the requestor of the requestor's right to seek dispute resolution services from the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS). OSC may consider a requestor's refusal to reasonably modify the request or to negotiate an alternative time frame as a factor in determining whether unusual and/or exceptional circumstances exist.

(2) *Unusual circumstances* means—

(i) The need to search for and collect the requested records from OSC field offices, NARA storage facilities, or other locations away from OSC's FOIA office;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(iii) The need for consultation and/or referral with another OSC unit where the information also concerns two or more components of OSC or with a Federal entity that has an interest in the information requested.

(3) *Exceptional circumstances* means—

(i) OSC has a backlog of pending requests and is making reasonable progress in reducing the backlog; and

(ii) OSC estimates a search yield of more than 5,000 pages.

(b) *Denial of request.* OSC will notify the requestor in writing of its determination to grant or deny in full or in part a FOIA request.

(c) *Adverse determinations.* Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; that a requested record does not exist or cannot be located; that a record is not readily reproducible in the form or format sought by the requestor; that the request does not seek a record subject to the FOIA; a determination on any disputed fee matter; or a denial of a request for expedited treatment. A notification to a requestor of an adverse determination on a request shall include:

(1) A brief statement of the reason(s) for the denial of the request, including any FOIA exemption applied by OSC in denying the request; and

(2) A statement that the denial may be appealed under § 1820.6(a), with a description of the requirements of that subsection.

(d) *Dispute resolution program.* OSC shall inform FOIA requestors at all stages of the FOIA process of the availability of dispute resolution services provided by the FOIA Public Liaison or by NARA's OGIS.

**§ 1820.6 Appeals.**

(a) *Appeals of adverse determinations.* A requestor may appeal an adverse determination to OSC's Office of General Counsel. The appeal must be in writing, and must be submitted either:

(1) *By email to: foiaappeal@osc.gov,* or other electronic means as described on the FOIA page of OSC's website (*https://osc.gov/FOIA*); or

(2) *By mail to:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(b) *Submission and content.* The Office of General Counsel must receive the appeal within ninety (90) calendar days of the date of the adverse determination letter. The appeal letter and envelope or email subject line should be clearly marked ''FOIA Appeal.'' The appeal must clearly identify the OSC determination (including the assigned FOIA request number, if known) being appealed. OSC will not ordinarily act on a FOIA appeal if the request becomes a matter of FOIA litigation.

(c) *Responses to appeals.* Ordinarily, OSC must issue a written appeal decision within twenty (20) business days from receipt of the appeal. A decision affirming a denial in whole or in part shall inform the requestor of the provisions for judicial review of that decision, and of the availability of dispute resolution services. If OSC's appeal decision reverses or modifies its denial, OSC's notice will state that OSC will reprocess the request in accordance with that appeal decision.

**§ 1820.7 Fees.**

(a) *In general.* OSC provides the first two hours of search time and the first 100 pages of duplication free of charge to all requestors. In exceptional circumstances, OSC may charge fees after determining that unusual circumstances exist. At the discretion of the Special Counsel, OSC may exempt certain requestors from search and duplication fees, including PPP complainants and subjects; Hatch Act complainants and subjects; Hatch Act advisory opinion requestors; whistleblowers; and USERRA complainants. OSC charges commercial users for search, review, and duplication fees under the FOIA in accordance with paragraph (c) of this section, except where a waiver or reduction of fees is granted under paragraph (h) of this section. OSC charges duplication fees, but not search fees, to educational or non-commercial scientific institutions; and to representative of the news media or news media requestors. OSC charges both search fees and duplication fees to all other requestors. If an exempted requestor abuses its exempt fee status to file numerous, duplicative, and/or voluminous FOIA requests, OSC may suspend the requestor's exempt status and charge search and duplication fees. OSC may require up-front payment of fees before sending copies of requested records to a requestor. Requestors must pay fees by submitting to OSC's FOIA Officer a check or money order made payable to the Treasury of the United States. *See generally Uniform Freedom of Information Act Fee Schedule and Guidelines* (hereinafter *OMB Fee Guidelines*), 52 FR 10012 (Mar. 27, 1987).

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of an individual who seeks information for a use or purpose that furthers commercial, trade, or profit interests, which can include furthering those interests through litigation. If OSC determines that the requestor seeks to put the records to a commercial use, either because of the nature of the request or because OSC has reasonable cause to doubt a requestor's stated use, OSC shall provide the requestor with a reasonable opportunity to clarify.

(2) *Direct costs* mean those expenses that OSC incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as rent, heating, or lighting the record storage facility.

(3) *Duplication* means the reasonable direct cost of making copies of documents.

(4) *Educational institution* means any school that operates a program of scholarly research. *See* OMB Fee Guidelines, 52 FR 10019. To be in this category, a requestor must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) *Non-commercial scientific institution* means an entity that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and are not for commercial use.

(6) *Representative of the news media* or *news media requestor* means any individual or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A non-exhaustive list of news media entities includes print newspapers, electronic outlets for print newspapers, broadcast and cable television networks and stations, broadcast and satellite radio networks and stations, internet-only outlets, and other alternative media as methods of news delivery evolve. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization, whether print or electronic. A requestor seeking to qualify as a news media requestor must not be seeking the requested records for a commercial use. The requestor's news-dissemination function is not considered to be a commercial use.

(7) *Review* means the process of examining a record located in response to a request in order to determine whether any portion of the record is exempt from release. Review includes redacting exempt material, and otherwise evaluating and preparing the records for release. Review includes time spent obtaining and considering any formal objection to release made by a business submitter under § 1820.8(f). Review does not include time spent resolving general legal or policy issues about the application of exemptions. OSC may charge for review costs in connection with commercial use requests even if a record ultimately is not released.

(8) *Search* means the process of looking for and retrieving records or information responsive to a FOIA request, as well as page-by-page or line-by-line identification of responsive information within records.

(c) *Fees.* OSC charges the following fees for responding to FOIA requests:

(1) *Search.* (i) The first two hours of search are free. OSC may charge for time spent searching even if it fails to locate responsive records, or even if OSC

determines that located records are exempt from release.

(ii) OSC charges $5.50 per quarter hour spent by clerical personnel in searching for and retrieving a requested record; $9.00 per quarter hour of search time spent by professional personnel; and $17.50 per quarter hour for search assistance from managerial personnel.

(iii) OSC charges the direct costs of conducting electronic searches, including the costs of operator or programmer staff time apportionable to the search.

(iv) OSC may charge additional costs in accordance with the applicable billing schedule established by NARA for requests requiring the retrieval of records from any Federal Records Center.

(2) *Duplication.* OSC charges all non-exempt requestors duplication fees after the first 100 pages. OSC's duplication fee for a standard paper photocopy of a record will be 25 cents per page. For copies produced by computer, such as discs or printouts, OSC will charge the direct costs, including staff time, of producing the copy. For other forms of duplication, OSC will charge the direct costs of that duplication.

(3) *Review.* OSC charges review fees to commercial use requestors. OSC will not charge for review at the administrative appeal level.

(d) *Notice of anticipated fees in excess of $25.00.* OSC shall notify the requestor of the actual or estimated fees when OSC determines or estimates that fees charged under this section would exceed $25.00, unless the requestor has indicated a willingness to pay fees at that level. The fee notice will offer the requestor an opportunity to work with OSC to reformulate or narrow the request to try to lower the anticipated fees. OSC will not conduct a search or process responsive records until the requestor agrees to pay the anticipated total fee in excess of $25.00.

(e) *Charges for other services.* OSC will ordinarily charge an additional fee when OSC chooses as a matter of administrative discretion to provide a special service, such as shipping records by other than ordinary mail.

(f) *Aggregating separate requests.* OSC may aggregate requests and charge appropriate fees where OSC reasonably believes that a requestor or a group of requestors seek to avoid fees by dividing a request into a series of requests. OSC may presume that multiple such requests made within a 30-day period were divided in order to avoid fees. OSC will aggregate requests separated by more than 30 days only where a reasonable basis exists for determining that aggregation is warranted under the circumstances involved.

(g) *Advance payments.* (1) For requests other than those described in paragraphs (g)(2) and (3) of this section, OSC will not require the requestor to make an advance payment before work is begun or continued on a request. Payment owed for work already completed (that is, pre-payment after processing a request but before copies are sent to the requestor) is not an advance payment.

(2) OSC may require advance payment up to the amount of the entire anticipated fee before beginning to process the request if OSC determines or estimates that a total fee to be charged under this section will exceed $250.00.

(3) OSC may require the requestor to make an advance payment in full of the anticipated fee where a requestor has previously failed to pay a properly charged FOIA fee within 30 business days of the date of billing.

(h) *Requirements for waiver or reduction of fees.* (1) OSC will furnish records responsive to a request without charge or at a charge reduced below that established under paragraph (c) of this section where OSC determines, based on all available information, that the requestor has demonstrated that:

(i) Release of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Release of the records is not primarily in the commercial interest of the requestor.

(2) To determine whether the first fee waiver requirement is met, OSC will consider the following factors:

(i) Whether the subject of the requested records concerns a direct and clear connection to ''the operations or activities of the government,'' not remote or attenuated.

(ii) Whether the release is ''likely to contribute''' to an understanding of government operations or activities. The releasable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The release of records already in the public domain is unlikely to contribute to such understanding.

(iii) Whether release of the requested records will contribute to ''public understanding.'' The release must contribute to the understanding of a reasonably broad audience of individuals interested in the subject. OSC shall consider a requestor's expertise in the subject area and ability and intention to effectively convey information to the public. A representative of the news media presumptively satisfies this consideration.

(iv) Whether the release is likely to contribute ''significantly'' to public understanding of government operations or activities. The requestor must demonstrate that the release would significantly enhance the public's understanding of the subject in question.

(3) To determine whether the second fee waiver requirement is met, OSC will consider the following factors:

(i) Whether the requestor has a commercial interest that would be furthered by the requested release. OSC shall consider any commercial interest of the requestor (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any individual on whose behalf the requestor may be acting, that would be furthered by the requested release. Requestors shall be given an opportunity to provide explanatory information about this consideration.

(ii) Whether any identified public interest is greater in magnitude than that of any identified commercial interest in release. OSC ordinarily shall presume that a news media requestor has satisfied the public interest standard. Release to data brokers or others who merely compile and market government information for direct economic return shall be presumed not to primarily serve the public interest.

(4) Where only a portion of the records to be released satisfies the requirements for a waiver of fees, a waiver shall be granted for that portion.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (h)(1), (2), and (3) of this section, insofar as they apply to each request. OSC fee reduction or waiver decisions may consider the cost-effectiveness of its allocation of administrative resources.

(i) *No assessment of fees.* OSC may not assess any search fees if it misses the statutory 20 business-day deadline to respond to the request, except under paragraphs (i)(1) and (2) of this section.

(1) If OSC determined that unusual circumstances apply and OSC provided a timely written notice to the requestor, OSC may extend the 20-day deadline by 10 business days. OSC may not assess any search fees, however, if it misses the extended deadline.

(2) OSC may charge search fees if the search yield would exceed 5,000 pages, and if OSC provides a timely written notice to the requestor.

**§ 1820.8 Business information.**

(a) *In general.* Business information obtained by OSC from a submitter may be released only pursuant to this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means trade secrets and commercial or financial information obtained by OSC from a submitter that may be protected from release under FOIA Exemption 4. 5 U.S.C. 552(b)(4).

(2) *Submitter* means any individual or entity from whom OSC obtains business information, directly or indirectly.

(c) *Designation of business information.* A submitter of business information must use good-faith efforts to designate, by appropriate markings, any portion of its submission that it considers to be protected from release under exemption 4.

(d) *Notice to submitters.* OSC shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that appears to seek confidential business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to release of any specified portion of those records under paragraph (f) of this section. The notice shall either describe the confidential business information requested or include copies of the requested records or record portions containing the information.

(e) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The submitter designated the records in good faith as considered protected from release under exemption 4; or

(2) OSC has reason to believe that the records or portions of records may be protected from release under exemption 4.

(f) *Opportunity to object to release.* OSC will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. The submitter must submit any objections to release in a detailed written statement. The statement must specify all grounds for withholding any portion of the records under any exemption of the FOIA and, in the case of exemption 4, it must show why the information contained in the record is privileged or confidential. Submitters who fail to respond timely to the notice are deemed to have consented to release of the records. Information provided by a submitter under this paragraph may itself be subject to release under FOIA.

(1) *Notice of intent to release.* OSC shall consider a submitter's objections and specific grounds for non-release in deciding whether to release business information. If OSC decides to release business information over the objection of a submitter, OSC shall provide written notice including the reason(s) why OSC overruled the submitter's objections; a description of the business information to be released; and a reasonable specified release date.

(2) [Reserved]

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (e) of this section shall not apply if:

(1) OSC determines that the information should not be released;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Release of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, OSC shall, within a reasonable time prior to a specified release date, give the submitter written notice of any final decision to release the information.

(h) *Notice of FOIA lawsuit.* OSC shall promptly notify a submitter if a requestor files a lawsuit seeking to compel the release of the submitter's business information.

(i) *Corresponding notice to requestors.* OSC shall notify requestor(s): That it provided business submitters the opportunity to object to release under paragraph (d) of this section; if OSC subsequently releases the requested records under paragraph (g) of this section; and whenever a submitter files a lawsuit seeking to prevent OSC's release of business information.

**§ 1820.9 Other rights and services.**

This subpart does not create a right or entitlement for any individual to any service or to the release of any record other than those available under FOIA.

## Subpart B—Touhy Regulations

**§ 1820.10 Scope and purpose.**

(a) This subpart establishes policy, assigns responsibilities, and prescribes procedures with respect to the production of official information, records, or testimony by current and former OSC employees, contractors, advisors, and consultants in connection with Federal or State litigation or administrative proceedings in which OSC is not a party.

(b) OSC intends this part to:

(1) Conserve OSC employee time for conducting official business;

(2) Minimize OSC employee involvement in issues unrelated to OSC's mission;

(3) Maintain OSC employee impartiality in disputes between non-OSC litigants; and

(4) Protect OSC's sensitive, confidential information and deliberative processes.

(c) OSC does not waive the sovereign immunity of the United States when allowing OSC employees to provide testimony or records under this part.

**§ 1820.11 Applicability.**

This subpart applies to demands and requests from non-OSC litigants for testimony from current and former OSC employees, contractors, advisors, and consultants relating to official OSC information and/or for production of official OSC records or information in legal proceedings in which OSC is not a party.

**§ 1820.12 Definitions.**

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or other competent authority for OSC's production or release of records or for an OSC employee's appearance and testimony in a legal proceeding.

(b) *Request* means any request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

(c) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, and interviews made by an individual in connection with a legal proceeding.

(d) *Records* or *official records and information* means all information in OSC's custody and control, relating to information in OSC's custody and control, or acquired by an OSC employee in the performance of official duties.

(e) *Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding.

(f) *General Counsel* means OSC's General Counsel or an individual to whom the General Counsel has delegated authority under this part.

(g) *OSC employee* or *employee* means any current or former OSC employee or contractor, including but not limited to OSC: Temporary employees, interns,

volunteers, consultants, and/or other advisors.

**§ 1820.13 General prohibition.**

No OSC employee may testify or produce official records or information in response to a demand or request without the General Counsel's prior written approval.

**§ 1820.14 Factors OSC will consider.**

The General Counsel has discretion to grant an employee permission to testify on matters relating to official information or produce official records and information, in response to a demand or request. The General Counsel may consider whether:

(a) The purposes of this subpart are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice; would assist or hinder OSC in performing its statutory duties; or would be in the best interest of OSC or the United States;

(c) The records or testimony can be obtained from other sources;

(d) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(e) Release would violate a statute, Executive Order, or regulation; would reveal trade secrets, confidential, sensitive, or privileged information, or information that would otherwise be inappropriate for release; or would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(f) Allowing such testimony or production of records would result in OSC appearing to favor one litigant over another;

(g) A substantial government interest is implicated;

(h) The demand or request is within the authority of the party making it; and/or

(i) The demand or request is sufficiently specific to be answered.

**§ 1820.15 Service of requests or demands.**

Requests or demands for official records or information or testimony under this subpart must be served by mail to the U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or by email to *ogc@osc.gov.* The subject line should read ''Touhy Request.''

**§ 1820.16 Requirements for litigants seeking documents or testimony.**

A litigant must comply with the following requirements when submitting a request for testimony or official records and information under this subpart. A request should be submitted before a demand is issued.

(a) The request must be in writing (email suffices) and must be submitted to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal or administrative proceeding, docket number, and name and address of the court or other administrative or regulatory authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal or administrative proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement addressing the factors set out in § 1820.14;

(5) A statement indicating that the information sought is not available from another source;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requestor and other parties will require of each OSC employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) OSC reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 14 days before the date that records or testimony is required.

(e) The General Counsel may deny a request for records or testimony based on a requestor's failure to cooperate in good faith to enable the General Counsel to make an informed decision.

(f) The request should state that the requestor will provide a copy of the OSC employee's testimony free of charge and that the requestor will permit OSC to have a representative present during the employee's testimony.

**§ 1820.17 Processing requests or demands.**

(a) Absent exigent circumstances, OSC will issue a determination within 10 business days after the General Counsel received the request or demand.

(b) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of OSC or the United States, or for other good cause.

(c) On request, OSC may certify that records are true copies in order to facilitate their use as evidence.

**§ 1820.18 Restrictions that apply to testimony.**

(a) The General Counsel may impose conditions or restrictions on OSC employee testimony including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requestor and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested.

(b) OSC may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify under this part, employees may testify as to facts within their personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not;

(1) Reveal confidential or privileged information; or

(2) For a current OSC employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OSC unless testimony is being given on behalf of the United States (*see also* 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to OSC's approval.

**§ 1820.19 Restrictions that apply to released records.**

(a) The General Counsel may impose conditions or restrictions on the release of official OSC records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure.

(b) If the General Counsel so determines, original OSC records may be presented for examination in response to a request, but they may not

be presented as evidence or otherwise used in a manner by which they could lose their identity as official OSC records, nor may they be marked or altered.

**§ 1820.20 Procedure in the event a decision is not made prior to the time a response is required.**

If a requestor needs a response to a demand or request before the General Counsel makes a determination whether to grant the demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents at this time, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

**§ 1820.21 Fees.**

(a) *Witness fees.* OSC may assess fees for attendance by a witness. Such fees will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based on 28 U.S.C. 1821, and upon the rule of the federal district closest to the location where the witness will appear. Such fees will include the costs of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding, plus travel costs.

(b) *Payment of fees.* A requestor must pay witness fees for current OSC employees and any record certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the United States Department of Treasury.

**§ 1820.22 Final determination.**

The General Counsel will notify the requestor and, when appropriate, the court or other body of the final determination, the reasons for the response to the request or demand, and any conditions that the General Counsel may impose on the testimony of an OSC employee or the release of OSC records or information. The General Counsel has the sole discretion to make the final determination regarding requests to employees for testimony or production of official records and information in litigation in which OSC is not a party. The General Counsel's decision exhausts administrative remedies for purposes of release of the information.

**§ 1820.23 Penalties.**

(a) An employee who releases official records or information or gives testimony relating to official information, except as expressly authorized by OSC, or as ordered by a court after OSC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OSC employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OSC employee who testifies or produces official records and information in violation of this subpart may be subject to disciplinary action.

**§ 1820.24 Conformity with other laws; other rights.**

This regulation is not intended to conflict with 5 U.S.C. 2302(b)(13). This subpart does not create any right, entitlement, or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

■ 4. Revise part 1830 to read as follows:

## PART 1830—PRIVACY ACT REGULATIONS

**Sec.**

1830.1 Scope and purpose.
1830.2 Definitions.
1830.3 Requirements for making Privacy Act requests.
1830.4 Medical records.
1830.5 Requirements for requesting amendment of records.
1830.6 Appeals.
1830.7 Exemptions.
1830.8 Fees.
1830.9 Accounting for disclosures.
1830.10 Conditions of disclosure.

**Authority:** 5 U.S.C. 552a(f),1212(e).

**§ 1830.1 Scope and purpose.**

(a) This part contains rules and procedures followed by OSC in processing requests for records under the Privacy Act. Further information about access to OSC records generally is available on OSC's website at *https://osc.gov/Privacy.*

(b) This part implements the Privacy Act of 1974, codified at 5 U.S.C. 552a, by establishing OSC policies and procedures for the release and maintenance of certain systems of records. *See* 5 U.S.C. 552a(f). This part also establishes policies and procedures for an individual to correct or amend their record if they believe it is not accurate, timely, complete, or relevant or necessary to accomplish an OSC function.

(c) OSC personnel protected by the Privacy Act include all staff, experts, contractors, consultants, volunteers, interns, and temporary employees.

(d) Other individuals engaging with OSC protected by the Privacy Act include, but are not limited to, PPP complainants, Hatch Act complainants, subjects of Hatch Act complaints, Hatch Act advisory opinion requesters, whistleblowers filing disclosures under 5 U.S.C. 1213, and USERRA complainants

(e) This part does not:

(1) Apply to OSC record systems that are not Privacy Act Record Systems.

(2) Make any records available to individuals other than:

(i) Individuals who are the subjects of the records;

(ii) individuals who can prove they have consent of subject individual; or

(iii) individuals acting as legal representatives on behalf of such subject individuals.

(3) Make available information compiled by OSC in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such information, including to any subject individual or party to such litigation or proceeding, shall be governed by applicable constitutional principles, rules of discovery, privileges, and part 1820 of this chapter; or

(4) Apply to personnel records maintained by the Human Capital Office of OSC. Those records are subject to regulations of the Office of Personnel Management in 5 CFR parts 293, 294, and 297.

**§ 1830.2 Definitions.**

As used in this part:

(a) *Access* means availability of a record to a subject individual.

(b) *Disclosure* means the availability or release of a record.

(c) *Maintain* means to maintain, collect, use, or disseminate when used in connection with the term ''record;'' and to have control over or responsibility for a system of records when used in connection with the term ''system of records.''

(d) *Notification* means communication to an individual whether or not they are a subject individual.

(e) *Record* means any item, collection, or grouping of information about an individual that is maintained by OSC, including but not limited to the individual's education, financial transactions, medical history, criminal, or employment history, that contains a name or an identifying number, symbol, or other identifying particular assigned to the individual. When used in this part, record means only a record that is in a system of records.

(f) *Release* means making available all or part of the information or records contained in an OSC system of records.

(g) *Responsible OSC official* means the officer listed in a notice of a system of records as the system manager or another individual listed in the notice of a system of records to whom requests may be made, or the designee of either such officer or individual.

(h) *Subject individual* means that individual to whom a record pertains.

(i) *System of records* means any group of records under the control of OSC from which a record is retrieved by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. *See* 5 U.S.C. 552a(a)(5).

**§ 1830.3 Requirements for making Privacy Act requests.**

(a) *Submission of requests.* A request for OSC records under the Privacy Act must be made in writing. The request must be sent:

(1) *By email to: foiarequest@osc.gov;* or

(2) *By mail to:* U.S. Office of Special Counsel, Chief Privacy Officer, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(3) Both the request letter and envelope or email should clearly be marked ''Privacy Act Request.'' A Privacy Act request is deemed received by OSC when it reaches the Chief Privacy Officer.

(b) *Description of records sought.* Requestors must describe the records sought in enough detail for OSC to locate them with a reasonable amount of effort, including, where known, data such as the date, title or name, author, recipient, and subject matter of the requested record.

(c) *Proof of identity.* OSC requires proof of identity from requestors seeking their own files, preferably a government-issued document bearing the subject individual's photograph. OSC requires a signed consent from the subject individual to release records to an individual's representative.

(d) *Freedom of Information Act processing.* OSC also processes all Privacy Act requests for access to records under the Freedom of Information Act, 5 U.S.C. 552, by following the rules contained in part 1820 of this chapter.

**§ 1830.4 Medical records.**

When a request for access involves medical records that are not otherwise exempt from disclosure, OSC may advise the requesting individual that OSC will only provide the records to a physician the individual designates in writing. Upon receipt of the designation, the physician will be permitted to review the records or to receive copies by mail upon proper verification of identity.

**§ 1830.5 Requirements for requesting amendment of records.**

(a) *Submission of requests.* Individuals may request amendment of records pertaining to them that are subject to amendment under the Privacy Act and this part. The request must be sent:

(1) *By email to: info@osc.gov;* or

(2) *By mail to:* Chief Privacy Officer, U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(3) Both the request letter and envelope or email should be clearly marked ''Privacy Act Amendment Request.'' Whether sent by mail or email, a Privacy Act amendment request is considered received by OSC when it reaches the Chief Privacy Officer.

(b) *Description of amendment sought.* Requests for amendment should include the identification of the records together with a statement of the basis for the requested amendment and all available supporting documents and materials. The request needs to articulate whether information should be added, deleted, or substituted with another record and clearly articulate the reason for believing that the record should be corrected or amended.

(c) *Proof of identity.* Rules and procedures set forth in § 1830.3 apply to requests made under this section.

(d) *Acknowledgement and response.* Requests for amendment shall be acknowledged by OSC no later than ten (10) business days after receipt by the Chief Privacy Officer and a determination on the request shall be made promptly.

(e) *What will not change.* The Privacy Act amendment or correction process will not be used to alter, delete, or amend information which is part of a determination of fact or which is evidence received in the record of a claim in any form of an administrative appeal process. Disagreements with these determinations are to be resolved through the assigned OSC Program Office.

(f) *Notice of error.* If the record is wrong, OSC will correct it promptly. If wrong information was disclosed from the record, we will tell those of whom we are aware received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error—*e.g.,* a change of name or address.

(g) *Record found to be correct.* If the record is correct, OSC will inform you in writing of the reason why we refuse to amend your record and we will also inform you of your right to appeal the refusal and the name and address of the official to whom you should send your appeal.

(h) *Record of another government agency.* If you request OSC to correct or amend a record governed by the regulation of another government agency, we will forward your request to such government agency for processing and we will inform you in writing of the referral.

**§ 1830.6 Appeals.**

(a) *Appeals of adverse determinations.* A requestor may appeal a denial of a Privacy Act request for access to or amendment of records to OSC's Office of General Counsel. The appeal must be in writing, and be sent:

(1) *By email to: info@osc.gov;* or

(2) *By mail to:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(3) The appeal must be received by the Office of General Counsel within 45 calendar days of the date of the letter denying the request. Both the appeal letter and envelope or email should be clearly marked ''Privacy Act Appeal.'' An appeal is considered received by OSC when it reaches the Office of General Counsel. The appeal letter may include as much or as little related information as the requestor wishes, as long as it clearly identifies OSC's determination (including the assigned request number, if known) being appealed. An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

(b) *Responses to appeals.* OSC's decision on an appeal will be made in writing. A final determination will be issued within 20 business days—unless OSC shows good cause to extend the 20-day period.

**§ 1830.7 Exemptions.**

OSC exempts investigatory material from records subject to Privacy Act record requests or amendment of records requests. This exemption aims to prevent interference with OSC's inquiries into matters under its jurisdiction, and to protect identities of confidential sources of information. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency. OSC may

exempt any information compiled in reasonable anticipation of a legal action or proceeding.

**§ 1830.8 Fees.**

Requests for records under this section shall be subject to the fees set forth in part 1820 of this chapter.

**§ 1830.9 Accounting for disclosures.**

OSC will maintain an accounting of all releases of a record for six (6) years or for the life of the record in accordance with the General Records Schedule, whichever is longer—except that, we will not make accounting for:

(a) Releases of your record made with your consent;

(b) To those officers and employees of the Office of Special Counsel who have a need for the record to perform their duties; and

(c) To those required to be released under the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this chapter.

**§ 1830.10 Conditions of disclosure.**

OSC shall not release any record that is contained in a system of records to any individual or to another agency, except as follows:

(a) *Consent to release by the subject individual.* Except as provided in paragraphs (b) and (c) of this section authorizing releases of records without consent, no release of a record will be made without the consent of the subject individual. The consent shall be in writing and signed by the subject individual. The consent shall specify the individual, agency, or other entity to whom the record may be released, which record may be released and, where applicable, during which time frame the record may be released. The subject individual's identity and, where applicable, the identity of the individual to whom the record is to be released shall be verified as set forth in § 1830.3(c).

(b) *Releases without the consent of the subject individual.* The releases listed in this paragraph may be made without the consent of the subject individual, including:

(1) To those officers and employees of the Office of Special Counsel who have a need for the record to perform their duties.

(2) To those required to be released under the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this title.

(3) To the entities listed in in the Privacy Act at 5 U.S.C. 552a(b)(1) through (12).

■ 5. Revise part 1850 to read as follows:

## PART 1850—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF SPECIAL COUNSEL

Sec.

1850.101 Purpose.
1850.102 Application.
1850.103 Definitions.
1850.104–1850.109 [Reserved]
1850.110 Notice.
1850.111–1850.119 [Reserved]
1850.120 General prohibitions against discrimination against individuals with disabilities.
1850.121–1850.129 [Reserved]
1850.130 Employment of qualified individuals with disabilities.
1850.131–1850.139 [Reserved]
1850.140 Program accessibility: Discrimination against qualified individuals with disabilities prohibited.
1850.141–1850.149 [Reserved]
1850.150 Program accessibility: Existing facilities.
1850.151 Program accessibility: New construction and alterations.
1850.152–1850.159 [Reserved]
1850.160 Communications.
1850.161–1850.169 [Reserved]
1850.170 Compliance procedures.
1850.171–1850.999 [Reserved]

**Authority:** 29 U.S.C. 794.

**§ 1850.101 Purpose.**

The purpose of this part is to implement section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

**§ 1850.102 Application.**

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

**§ 1850.103 Definitions.**

(a) *Auxiliary aids* means services or devices that enable individuals with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for individuals with impaired vision include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for individuals with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf individuals (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

(b) *Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) *Days* means calendar days, unless otherwise stated.

(d) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(e) *Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

(f) *Individual with a disability* means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The following phrases used in this definition are further defined as follows:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) Also, physical and mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* include functions such as—

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a *major bodily function,* such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (i) of this definition but is treated by the agency as having such an impairment.

(g) *Qualified individual with a disability* means—

(1) With respect to any agency program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified individuals with disabilities as that term is defined for purposes of employment in 29 CFR 1614.203, which is made applicable to this part by § 1850.130.

(h) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, Section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

**§§ 1850.104–1850.109 [Reserved]**

**§ 1850.110 Notice.**

The agency shall make available to all interested individuals information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency as necessary to apprise such individuals of the protections assured them by Section 504 and this part.

**§§ 1850.111–1850.119 [Reserved]**

**§ 1850.120 General prohibitions against discrimination against individuals with disabilities.**

(a) No qualified individual with a disability shall, on the basis of such disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A qualified individual with a disability may not be excluded from participation in any of the agency's programs or activities, even though permissibly separate or different programs or activities exist.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency, or;

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nondisabled individuals from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different

class of individuals with disabilities is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

**§§ 1850.121–1850.129 [Reserved]**

**§ 1850.130 Employment of qualified individuals with disabilities.**

No qualified individual with a disability shall, on the basis of such disability, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

**§§ 1850.131–1850.139 [Reserved]**

**§ 1850.140 Program accessibility: Discrimination against qualified individuals with disabilities prohibited.**

Except as otherwise provided in § 1850.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

**§§ 1850.141–1850.149 [Reserved]**

**§ 1850.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1850.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or the agency head's designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the *Architectural Barriers Act of 1968,* as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1850.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of § 1850.150(a)(2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning individuals to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

**§ 1850.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

**§§ 1850.152–1850.159 [Reserved]**

**§ 1850.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with a disability.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with parties by telephone, telecommunication devices for deaf individuals or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing.

(b) The agency shall ensure that interested individuals, including individuals with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a

fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or the agency head's designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

**§§ 1850.161–1850.169 [Reserved]**

**§ 1850.170 Compliance procedures.**

(a) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). See Directive No. 51, Equal Employment Opportunity, Non-Discrimination Policy, for procedural information.

(b) All complaints of discrimination on the basis of disability in programs and activities conducted by the agency shall be filed under the procedures described in this paragraph.

(1) *Who may file.* Any individual who believes that they have been subjected to discrimination prohibited by this part, or an authorized representative of such individual, may file a complaint. Any individual who believes that any specific class of individuals has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint. A charge on behalf of an individual or member of a class of individuals claiming to be aggrieved may be made by any individual, agency, or organization.

(2) *Where and when to file.* Complaints shall be filed with the Director, Office of Equal Employment Opportunity (EEO Director), U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036 within 35-calendar days of the alleged act of discrimination. A complaint filed by personal delivery is considered filed on the date it is received by the EEO Director. The date of filing by facsimile or email is the date the facsimile or email is sent. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the agency is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service.

(3) *Acceptance of complaint.* (i) The agency shall accept a complete complaint that is filed in accordance with paragraph (b) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant of receipt and acceptance of the complaint.

(ii) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity.

(iii) If the EEO Director receives a complaint that is not complete, the Director shall notify the complainant that additional information is needed. If the complainant fails to complete the complaint and return it to the EEO Director within 15 days of the complainant's receipt of the request for additional information, the EEO Director shall dismiss the complaint with prejudice and shall inform the complainant.

(4) *Initial decision.* Within 180 days of the receipt of a complete complaint, the EEO Director shall notify the complainant of the results of the investigation in an initial decision containing—

(i) Findings of fact and conclusions of law;

(ii) When applicable, a description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(5) *Appeals.* Any appeal of the EEO Director's initial decision must be filed with the Principal Deputy Special Counsel (PDSC), U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036 by the complainant within 35 days of the date the EEO Director issues the decision required by paragraph (b)(4) of this section. The agency may extend this time for good cause when a complainant shows that circumstances beyond the complainant's control prevented the filing of an appeal within the prescribed time limit. An appeal filed by personal delivery is considered filed on the date it is received by the PDSC. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the agency is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The appeal should be clearly marked ''Appeal of Section 504 Decision'' and must contain specific objections explaining why the complainant believes the initial decision was factually or legally wrong. A copy of the initial decision being appealed should be attached to the appeal letter.

(6) *Appeal decision.* The PDSC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the PDSC needs additional information from the complainant, the PDSC shall have 60 days from the date the additional information is received to make a determination on the appeal.

(7) *Extension of time.* The time limits cited in paragraphs (b)(2) and (5) of this section may be extended for an individual case when the PDSC determines there is good cause, based on the particular circumstances of that case, for the extension.

(8) *Delegation of authority.* The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernmental investigator to perform the investigation, but the authority for making the final determination may not be delegated to another entity.

(c) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

**§§ 1850.171–1850.999 [Reserved]**

[FR Doc. 2022–01560 Filed 1–31–22; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 205**

**[Document Number AMS–NOP–21–0060; NOP–21–02]**

**RIN 0581–AE11**

# National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances per October 2020 and April 2021 NOSB Recommendations (Handling, Crop)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) proposes amendments to the National List of Allowed and Prohibited Substances (National List) section of the USDA's organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule proposes to add low-acyl gellan gum, a food additive used as a thickener, gelling agent, and stabilizer; and paper-based crop planting aids to the National List, along with a definition of paper-based crop planting aids. If finalized, low-acyl gellan gum would be allowed as an ingredient in processed organic products, and paper-based crop planting aids would be allowed in organic crop production. The rule also proposes the correction of a spelling error on the National List to change ''wood resin'' to ''wood rosin''.

**DATES:** Send comment on or before April 4, 2022.

**ADDRESSES:** You may send comments on this proposed rule to the Federal eRulemaking Portal at *https://www.regulations.gov/.* You can access this proposed rule and instructions for submitting public comments by searching for document number, AMS–NOP–21–0060. Comments may also be sent to Jared Clark, Standards Division, National Organic Program, AMS, USDA; 1400 Independence Ave. SW, Room 2642-So., Ag Stop 0268, Washington, DC 20250–0268, or Email: *Jared.Clark@usda.gov.*

*Instructions:* All comments received must include the docket number AMS–NOP–21–0060; NOP–21–02, and/or Regulatory Information Number (RIN) 0581–AE11 for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers, state your position(s), offer any recommended language change(s), and include relevant information and data to support your position(s) (*e.g.,* scientific, environmental, manufacturing, industry, or industry-impact information, etc.). All comments and relevant background documents posted to *https://www.regulations.gov* will include any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Jared Clark, Standards Division, National Organic Program, 202–720–3252, *Jared.Clark@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 21, 2000, the Secretary established the Agricultural Marketing Service's (AMS) National Organic Program and the USDA organic regulations (65 FR 80547). Within the USDA organic regulations (7 CFR part 205) is the National List of Allowed and Prohibited Substances (or ''National List''). The National List identifies the synthetic substances that may be used, and the nonsynthetic (natural) substances that may not be used, in organic crop and livestock production. It also identifies the nonorganic substances that may be used in or on processed organic products (*i.e.,* in organic ''handling'').

The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6524) establishes what may be included on the National List and the procedures that the USDA must follow to amend the National List (§ 6517). OFPA also describes the NOSB's responsibilities in proposing amendments to the National List, including the criteria for evaluating amendments to the National List (§ 6518(m)). Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List. The petition process is described in further detail in the Statutory and Regulatory Authority section below.

The NOSB submitted recommendations to the Secretary after the conclusion of its public meetings on October 30, 2020 and April 30, 2021. In its 2020 [1] and 2021 [2] recommendations, the NOSB concluded that adding paper-based crop planting aids and low-acyl gellan gum, a food additive used as a thickener, gelling agent, and stabilizer, to the National List was consistent with OFPA evaluation criteria (7 U.S.C. 6518(m)). This proposed rule addresses these NOSB recommendations to add low-acyl gellan gum and paper-based crop planting aids to the National List and to add a definition of paper-based crop planting aids to § 205.2 (Terms Defined).

## II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to the National List, along with the NOSB and AMS justifications for each proposed amendment. AMS welcomes comments on each proposed amendment. Comments received during the comment period will inform AMS's decisions for the final rule; specifically, whether the proposed amendments align with OFPA criteria and are justified.

### *A. Low-Acyl Gellan Gum (§ 205.605(b))*

AMS is proposing to add low-acyl gellan gum to the National List at § 205.605(b) as a nonagricultural, synthetic substance allowed for use in organic handling. If finalized, low-acyl gellan gum would be allowed as an ingredient in processed organic and ''made with organic'' products. This AMS proposal follows a recommendation to AMS from the NOSB. The NOSB's recommendation was based on their review of CP Kelco's August 2019 petition, [3] [4] stakeholder comments, and a third-party technical report.

Background

Gellan gums are used in food products as thickeners, gelling agents, and stabilizers, and they can be used in products that require gelling, texturizing, stabilizing, suspending, film-forming, and structuring (*e.g.,* capsules used for dietary supplements). The petitioner argues that low-acyl gellan gum is necessary in organic handling as it holds unique qualities not found in other thickener substances on the National List, including: The ability to create a stable fluid gel with suspended matter in beverages containing fruit pulp or jelly pieces; product clarity not offered by high-acyl gellan gum; heat stability in acid systems unlike carrageenan; the ability to be used in standard processing without additional steps (*e.g.,* compared to pectin, which requires special handling in gelled confections); and

[1] NOSB recommendation for low-acyl gellan gum, October 30, 2020. Available at: *https://www.ams.usda.gov/sites/default/files/media/HSLowAcylGellanGumRec_webpost.pdf.*

[2] NOSB recommendation for paper-based crop planting aids, April 30, 2021. Available at: *https://www.ams.usda.gov/sites/default/files/media/CSPaperBasedCropPlantingAids_FinalRec.pdf.*

[3] August 2019 low-acyl gellan gum petition: *https://www.ams.usda.gov/sites/default/files/media/PetitionLowAcylGellanGum08082019.pdf.*

[4] March 2020 low-acyl gellan gum petition: *https://www.ams.usda.gov/sites/default/files/media/PetitionAddendum_LAGellanGum_ResponsetoNOSB_03062020.pdf.*

providing a carrageenan-free, vegetarian alternative for hard and soft capsules (*e.g.,* dietary supplements).

As described in the third-party technical report,[5] there are two forms of gellan gum: High-acyl and low-acyl. High-acyl gellan gum is listed on the National List (at § 205.605(a)) as a nonsynthetic, nonagricultural substance allowed in organic handling. To manufacture the low-acyl form, high-acyl gellan gum is deacetylated using potassium hydroxide and heat resulting in a synthetic substance per the definition of ''synthetic'' at § 205.2. Acid is then used to lower the pH, and the low-acyl gellan gum is recovered from the solution by alcohol precipitation.

NOSB Recommendation

The NOSB recommended the addition of low-acyl gellan gum to the National List, at § 205.605(b), as a synthetic nonagricultural substance allowed in organic handling. After the NOSB reviewed the low-acyl gellan gum petition, a 2018 third-party technical report on gums, and public comments, they determined that the petitioned use of low-acyl gellan gum meets the OFPA criteria for inclusion in the National List in accordance with 7 U.S.C. 6518(m). In the rationale supporting their recommendation, the NOSB noted minimal adverse effects on the environment and distinct properties of low-acyl gellan gum, including a hard, non-elastic, brittle gel (unlike high-acyl gellan gum) and being a vegetarian option for the manufacture of capsules used for dietary supplements. The NOSB recommended that low-acyl gellan gum be classified as ''synthetic,'' as the manufacturing process includes deacetylation (the removal of acetyl group(s) from molecules), which is a chemical change.

AMS Review of NOSB Recommendation

AMS agrees that low-acyl gellan gum appears to meet the requirements for addition to the National List under 7 U.S.C. 6517(c)(1)(A). Public comments submitted to the NOSB and the 2018 third-party technical report indicate low-acyl gellan gum is necessary due to the apparent unavailability of wholly natural substitute products. Additionally, low-acyl gellan gum does not appear to be harmful to human health or the environment, as gellan gum is listed by the Food & Drug Administration (FDA) as a food additive permitted for direct addition to food for human consumption at 21 CFR 172.665. Additionally, gellan gum is allowed as an inert ingredient in minimum risk pesticides (*i.e.,* pesticide products exempt from the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA]) by the U.S. Environmental Protection Agency (EPA) at 40 CFR 152.25(f)(2)(iv). AMS also agrees with the NOSB's recommendation to classify low-acyl gellan gum as a ''synthetic'' substance because the process of removing acetyl groups by the deacetylation portion meets the definition of ''synthetic'' under § 205.2.

As low-acyl gellan gum appears to meet the requirements at 7 U.S.C. 6517(c)(1)(A), AMS proposes the addition of low-acyl gellan gum to the National List at 7 CFR 205.605(b) as a nonagricultural synthetic substance allowed for use in ''organic'' and ''made with organic (specified ingredients or food group(s))'' processed products.

*B. Paper-Based Crop Planting Aids (§ 205.601(o)(2))*

AMS is proposing to add paper-based crop planting aids to the National List at § 205.601(o)(2) as a synthetic substance allowed for use in organic crop production and add a definition of paper-based crop planting aids to § 205.2 (Terms Defined). If finalized, paper-based crop planting aids would be allowed in organic crop production. This AMS proposal follows a recommendation to AMS from the NOSB from their review of Small Farm Works and Stone Circle Farm's August 2018 petition,[6] [7] a third-party technical report, and public comment.

Background

Paper-based crop planting aids are used to transplant closely spaced crops, such as onions, beets, baby salad greens, etc. The petitioner argued that paper-based crop planting aids are necessary in organic crop production as they allow crop producers to replace the slower and more costly method of transplanting by hand. These paper-based crop planting aids, typically in the form of individual paper pots or paper chain pots, are generally used by small scale farming operations to transplant closely spaced crops using non-motorized equipment.

As described in the 2019 Technical Report on paper-pots and containers,[8] most paper-based crop planting aids contain kraft-manufactured paper, a synthetic substance. Paper-pots and other paper-based crop planting aids also contain a variety of synthetic, nonsynthetic, biobased, and/or biodegradable strengthening, adhesive and binding, fiber reinforcement, and antimicrobial additives.

NOSB Recommendation

The NOSB recommended the addition of paper-based crop planting aids to § 205.2 Terms Defined as well as to the National List, at § 205.601(o)(2), as a synthetic substance allowed in organic crop production. The recommended definition is:

> Paper-based crop planting aid. A material that is comprised of at least 60% cellulose-based fiber by weight, including, but not limited to, pots, seed tape, and collars that are placed in or on the soil and later incorporated into the soil, excluding biodegradable mulch film. Up to 40% of the ingredients can be non-synthetic, other permitted synthetic ingredients at § 205.601(j), or synthetic strengthening fibers, adhesives, or resins. Contains no less than 80% biobased content as verified by a qualified third-party assessment (*e.g.,* laboratory test using ASTM D6866 or composition review by qualified personnel). Added nutrients must comply with § 205.105, 205.203, and 205.206.

The NOSB recommended an annotated listing for paper-based crop planting aids at § 205.601(o)(2) as:

> *Production Aids:* Paper-based crop planting aids as defined in 205.2. Virgin or recycled paper without glossy paper or colored inks.

After the NOSB reviewed the paper-based crop planting aid petition, a 2019 Technical Report on paper pots and containers, two January 2006 [9] and January 2017 [10] technical reports on newspaper, and public comments, the NOSB determined that the petitioned use of paper-based crop planting aids meets the OFPA criteria for allowed synthetic substances in organic crop production at 7 U.S.C. 6518(m). Specifically, the NOSB stated that allowing paper-based crop planting aids will assist small farmers in growing organic crops that would otherwise be prohibitive to grow due to the manual

[5] Gums technical report, 2018: *https://www.ams.usda.gov/sites/default/files/media/GumsTRFinal20180130.pdf.*

[6] August 2018 paper planting pots petition: *https://www.ams.usda.gov/sites/default/files/media/PaperPotorContainerPetition080718.pdf.*

[7] August 2018 paper planting pots petition addendum: *https://www.ams.usda.gov/sites/default/files/media/PetitionAdendumPaperPots10022018.pdf.*

[8] Paper pots and containers technical report, 2019: *https://www.ams.usda.gov/sites/default/files/media/PaperTRFinal7262019.pdf.*

[9] Newspaper or Other Recycled Paper, January 2006: *https://www.ams.usda.gov/sites/default/files/media/Newspaper%20TR%202006.pdf.*

[10] Newspaper or Other Recycled Paper, January 2017: *https://www.ams.usda.gov/sites/default/files/media/Newspaper%20TR%20Final%2001%2011%2017.pdf.*

labor involved in transplanting. The NOSB recommended that paper-based crop planting aids be classified as ''synthetic,'' as the manufacturing process includes acid-base chemical reactions.

AMS Review of NOSB Recommendation

AMS agrees with the NOSB recommendation on paper-based crop planting aids, including: The classification of paper-based crop planting aids as a ''synthetic'' substance, the recommended definition of ''paper-based crop planting aid,'' and the annotation listing at § 205.601.

AMS determined that paper-based crop planting aids, as presented in the recommended definition, appear to meet the requirements for addition to the National List under 7 U.S.C. 6517(c)(1)(A). Paper-based crop planting aids are expected to readily break down in the soil and are not expected to be harmful to human health or the environment in the amounts used for this purpose. This determination is supported by the presence of paper on EPA's list of ''inert ingredients permitted in minimum risk pesticide products'' at 40 CFR 152.25(f)(2)(iv). Further, paper-based crop planting aids appear to be necessary due to the lack of wholly natural substitute products. Public comments and a 2019 third-party technical report also found that these planting aids were consistent with organic farming, because a similar substance (newspaper) is currently allowed as a mulch and/or compost feedstock, and paper planting aids reduce plastic use.

AMS agrees with the classification of paper-based crop planting aids as a ''synthetic'' substance, as the acid-base reactions included in the kraft process of manufacturing paper, as well as the inclusion of additional synthetic substances to improve performance, fit the definition of ''synthetic'' under § 205.2 and further described in NOP 5033.[11]

AMS reviewed public comments submitted to the NOSB prior to the October 2020 and April 2021 NOSB meetings. Many commentors requested clarification on the term ''qualified personnel'' in the proposed definition of *Paper-based crop planting aid.* AMS interprets ''qualified personnel'' to be a third-party (*i.e.,* certifier or material review organization) capable and qualified to make limited biobased determinations based on product-specific formulation. AMS views this allowance as an alternative verification process when the biobased nature of the ingredients is clear (*e.g.,* a product composed entirely of paper and coconut coir). AMS seeks comment on the interpretation of ''qualified personnel'' and the additional considerations outlined within NOSB's recommendation.

As paper-based crop planting aids appear to meet the requirements at 7 U.S.C. 6517(c)(1)(A), AMS proposes the following: An addition of a definition of ''paper-based crop planting aids'' to 7 CFR 205.2, and the addition of paper-based crop planting aids to the National List at 7 CFR 205.601(o)(ii) as a synthetic substance allowed for use in organic crop production. The addition of paper-based crop planting aids at § 205.601(o)(2) would result in a redesignation of microcrystalline cheesewax to § 205.601(o)(1), with both present under § 205.601(o) ''As production aids.'' Additionally, in support of the proposed definition, AMS will explore updating the reference to ASTM D6866–12 at § 205.3 to the current standard in a future rulemaking.

*C. Wood Rosin (sic. Resin; § 205.605(a))*

AMS is proposing a spelling correction to ''wood resin'' listed in the definition of ''waxes'' at 7 CFR 205.605(b). In their sunset recommendation[12] for this substance, the Board noted that ''wood resin'' is the incorrect term and that the corrected listing should read ''wood rosin.'' Though it appears that resin can also refer to rosin, AMS agrees that rosin is the preferred term because it is more specific to the wood product and would provide more clarity on the substance allowed.

AMS proposes amending the listing at § 205.605(a) ''Waxes—nonsynthetic (Wood resin)'' to read ''Waxes—nonsynthetic (Wood rosin)''.

## III. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on, or deletion from, the National List. Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List and directs petitioners to obtain the petition procedures from USDA. The current petition procedures published in the **Federal Register** (81 FR 12680, March 10, 2016) for amending the National List can be accessed through the NOP Program Handbook on the AMS website in ''Section I Other'' at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

*A. Executive Order 12866 and Regulatory Flexibility Act*

This proposed rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those Orders.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses.[13] The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $1,000,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. For this category, the small business threshold is average annual receipts of less than $16.5 million.

AMS has considered the economic impact of this proposed rulemaking on

[11] NOP 5033—Guidance: Classification of Materials: *https://www.ams.usda.gov/sites/default/files/media/NOP-5033.pdf.*

[12] Formal Recommendation, 2022 Sunset Reviews—Handling, October 30, 2020: *https://www.ams.usda.gov/sites/default/files/media/HS2022SunsetRecs_webpost.pdf.*

[13] Table of Small Business Size Standards Matched to North American Industrial Classification System Codes, August 19, 2019: *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the United States would be considered small entities. According to the 2019 Census of Agriculture, 16,585 organic farms in the United States reported total sales of organic products and total farmgate sales more than $9.9 billion.[14] Based on that data, organic sales average just under $600,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $1,000,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database, there are 19,059 organic handlers certified under the USDA organic regulations, as of January 2021.[15] The Organic Trade Association's 2020 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The SBA defines small agricultural service firms, which include certifying agents under the NAICS subsector ''All other professional, scientific, and technical services,'' as those having annual receipts of less than $16,500,000 (13 CFR 121.201). There are currently 77 USDA-accredited certifying agents; based on a query of the NOP certified organic operations database.[16] While many certifying agents are small entities that would be affected by this proposed rule, we do not expect that these certifying agents would incur significant costs as a result of this action. Certifying agents already must comply with the current regulations, *e.g.,* maintaining certification records for organic operations.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of an additional substance in organic handling. Adding a substance to the National List would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. Therefore, AMS concludes that the economic impact of this addition, if any, would be minimal. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

*B. Executive Order 12988*

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations to avoid unduly burdening the court system. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this proposed rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

This proposed rule is not intended to have a retroactive effect.

*C. Paperwork Reduction Act*

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

*D. Executive Order 13175*

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that 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.

AMS has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the NOP regulations.

*E. General Notice of Public Rulemaking*

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add two substances to the National List. A 60-day period for interested persons to comment on this rule is provided.

**List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records; Fees, Imports, Labeling,

[14] U.S. Department of Agriculture, National Agricultural Statistics Service. 2019 Census of Agriculture. *https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf.*

[15] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/.* Accessed on January 29, 2021.

[16] Organic Integrity Database, Certifier Locator: *https://organic.ams.usda.gov/Integrity/Certifiers/CertifiersLocationsSearchPage.aspx.* Accessed February 25, 2021.

Livestock, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 205 as follows:

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6524.

■ 2. Amend § 205.2 by adding, in alphabetical order, the definition for ''Paper-based crop planting aid''.

**§ 205.2 Terms Defined.**

* * * * *

*Paper-based crop planting aid.* A material that is comprised of at least 60% cellulose-based fiber by weight, including, but not limited to, pots, seed tape, and collars that are placed in or on the soil and later incorporated into the soil, excluding biodegradable mulch film. Up to 40% of the ingredients can be nonsynthetic, other permitted synthetic ingredients at § 205.601(j), or synthetic strengthening fibers, adhesives, or resins. Contains no less than 80% biobased content as verified by a qualified third-party assessment (*e.g.,* laboratory test using ASTM D6866 or composition review by qualified personnel). Added nutrients must comply with §§ 205.105, 205.203, and 205.206.

* * * * *

■ 3. Amend § 205.601 by revising paragraph (o) to read as follows:

**§ 205.601 Synthetic substances allowed for use in organic crop production.**

* * * * *

(o) Production aids:

(1) Microcrystalline cheesewax (CAS #'s 64742–42–3, 8009–03–08, and 8002–74–2)—for use in log grown mushroom production. Must be made without either ethylene-propylene co-polymer or synthetic colors.

(2) Paper-based crop planting aids as defined in § 205.2. Virgin or recycled paper without glossy paper or colored inks.

* * * * *

■ 4. Amend § 205.605 by:

■ a. In paragraph (a), revising the entry for ''Waxes''.

■ b. In paragraph (b), adding, in alphabetical order, an entry for ''Low-acyl gellan gum.''.

The addition and revision to read as follows:

**§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''**

* * * * *

(a) * * *

Waxes—nonsynthetic (Wood rosin).

* * * * *

(b) * * *

Low-acyl gellan gum.

* * * * *

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2022–01915 Filed 1–31–22; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2022–0021; Project Identifier AD–2020–01283–A]**

**RIN 2120–AA64**

## Airworthiness Directives; Piper Aircraft, Inc., Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Piper Aircraft, Inc., (Piper) Model PA–46–600TP airplanes. This proposed AD was prompted by testing that showed that the wing splice assembly could fail before the assembly reaches its established life limit. This proposed AD would require revising the Airworthiness Limitations section of the existing maintenance manual (MM) or instructions for continued airworthiness to reduce the life limit of the wing splice assembly. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by March 18, 2022.

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

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

For service information identified in this NPRM, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com.* You may view the service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0021; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5524; email: *john.r.marshall@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0021; Project Identifier AD–2020–01283–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt

from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Background

The FAA was notified by Piper of testing that showed that the wing splice assembly, part number (P/N) 46W57A100–001, could fail before reaching its established life limit on Model PA–46–600–TP airplanes. The wing splice assembly was certificated with a life limit of 5,132 hours time-in-service (TIS); however, the failures of the test assembly occurred before reaching that established life limit. The stress levels used in the life limit analysis were not adequate. After a new fatigue test article analysis, Piper reduced the life limit of the wing splice assembly P/N 46W57A100–001 from 5,132 hours TIS to 3,767 hours TIS and revised the Airworthiness Limitations section in the MM accordingly.

Failure of the wing splice assembly, if not addressed, could result in loss of airplane control. Airplanes having serial numbers 4698186 and larger (in production airplanes) will be delivered with an Airworthiness Limitations section with the reduced life limit incorporated.

## FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

## Related Service Information

The FAA reviewed Piper Aircraft, Inc., PA–46–600TP, M600 Maintenance Manual, Airworthiness Limitations, Section 4–00–00, dated August 31, 2021. This service information specifies the life limits of structural parts for the Model PA–46–600TP airplane, and reduced the life limit for the wing splice assembly.

## Proposed AD Requirements in This NPRM

This proposed AD would require revising the Airworthiness Limitations section of the existing MM or instructions for continued airworthiness to reduce the life limit of the wing splice assembly.

## Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 127 airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per airplane | Cost on U.S. operators |
|---|---|---|---|---|
| Revise the Airworthiness Limitations section | 1 work-hour × $85 per hour = $85 ..... | Not Applicable | $85 | $10,795 |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Piper Aircraft, Inc.:** Docket No. FAA–2022–0021; Project Identifier AD–2020–01283–A.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by March 18, 2022.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Piper Aircraft, Inc., Model PA–46–600TP airplanes, serial numbers 4698001 and 4698004 through 4698185, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 5711, Wing Spar.

**(e) Unsafe Condition**

This AD results from testing that showed that the wing splice assembly could fail before the assembly reaches its established life limit. The FAA is issuing this AD to prevent failure of the wing splice assembly before the current established life limit. The unsafe condition, if not addressed, could result in loss of airplane control.

**(f) Compliance**

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

**(g) Action**

Within 90 days after the effective date of this AD, revise the Airworthiness Limitations section in the existing maintenance manual or instructions for continued airworthiness by reducing the life limit of the wing splice assembly part number 46W57A100–001 to 3,767 hours time-in-service.

**Note 1 to paragraph (g):** Section 4–00–00 of Piper Aircraft, Inc., PA–46–600TP, M600 Maintenance Manual, Airworthiness Limitations, Page 1, dated August 31, 2021, contains the life limit in paragraph (g) of this AD.

**(h) Alternative Methods of Compliance (AMOCs)**

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

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

**(i) Related Information**

(1) For more information about this AD, contact John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5524; email: *john.r.marshall@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on January 26, 2022.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022–01955 Filed 1–31–22; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2021–0774]**

**RIN 1625–AA08**

## Special Local Regulation; Montlake Cut, Union Bay Reach, Seattle, Washington

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a special local regulation for a recurring marine event on Lake Washington the first Satruday of May each year. This action is necessary to provide for the safety of life on the navigable waters during the marine event. This proposed rulemaking would restrict vessel traffic in the designated area during the event unless authorized by the Captain of the Port Sector Puget Sound or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before March 3, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0774 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 about this proposed rulemaking, call or email Chief Warrant Officer William Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background, Purpose, and Legal Basis

The Coast Guard proposes to establish a special local regulation for the Windermere Cup marine event held annually on the first Saturday of May each year from 8 a.m. to noon. This event is held on the navigable waters of the Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA.

Under 46 U.S.C. 70041, Coast Guard Thirteenth District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved marine event. The District Commander has determined that potential hazards associated with the marine event would pose a safety concern for anyone within the race area.

In order to protect the safety of all waterway users, including event participants and spectators, this proposed rule would establish a special local regulation for the time and location of the marine event. Participant means all persons and vessels registered with the event sponsor as a participants in the race. Spectator means any vessel in the vicinity of the marine event with the primary purpose of witnessing the marine event. Spectator vessels can observe the marine event from one of the designated spectator areas. One area is located north of Union Bay Reach in Union Bay. The other is located in the area between the state route 520 bridge and south of Union Bay Reach. Vessels would not be permitted to enter the regulated areas unless authorized by the COTP or a designated representative.

### III. Discussion of Proposed Rule

The Coast Guard proposes to add a new annually recurring special local regulation on the first Saturday of May each year from 8 a.m. to 12 p.m. The regulated area would cover the all navigable waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, from the southern corner of University of Washington Oceanography pier at 47°38′57″ N, 122°18′45″ W thence south to 47°38′46″ N, 122°18′45″ W, thence eastward to Webster Point Light 21 at 47°38′51″ N, 122°16′33″ W, thence south to the SR520 bridge at 47°38′37″ N, 122°16′34″ W. These coodinates are based on Nort American Datum 83 (NAD 83).

The duration of the regulated area is intended to ensure the safety of the public and participants during the rowing race. Non-participant vessels are not permitted to enter, transit through, anchor in, or remain within the regulated area 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 Puget Sound (COTP) in the enforcement of the regulations in this section. To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Puget Sound Command Center at 206–217–6002. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative. The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners, announcement in the Local Notice to Mariners and on-scene designated representatives. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation area which would impact a small-designated area of the Montlake Cut and Union Bay Reach. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the areas, and the proposed 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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

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

### *C. Collection of Information*

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

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

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves regulated area lasting 4 hours that would prohibit persons or vessels from transiting the regulated area during the rowing event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### *G. Protest Activities*

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

jeopardizing the safety or security of people, places, or vessels.

**V. Public Participation and Request for Comments**

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

*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- 2021–0774 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 proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed 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 proposed 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 100**

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 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 § 100.1311 to read as follows:

**§ 100.1311 Special Local Regulation; Montlake Cut, Lake Washington, Seattle, Washington.**

(a) *Regulated area.* The regulations in this section apply to the following area: The navigable waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, from the southern corner of University of Washington Oceanography pier at 47°38′57″ N, 122°18′45″ W thence south to 47°38′46″ N, 122°18′45″W, thence eastward to Webster Point Light 21 at 47°38′51″ N, 122°16′33″ W, thence south to the SR520 bridge at 47°38′37″ N, 122°16′34″ W. These coodinates are based on Nort American Datum 83 (NAD 83).

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

Participant means all persons and vessels registered with the event sponsor as a participants in the race. Spectator means any vessel in the vicinity of a marine event with the primary purpose of witnessing the event. Spectator vessels can observe the marine event from one of the designated spectator areas. One area is located north of Union Bay Reach in Union Bay. The other is located in the area between the state route 520 bridge and south of Union Bay Reach.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Puget Sound Command Center at 206–217–6002. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners, announcement in the local notice to mariners, and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced annually from 8 a.m. to 12 a.m. on first Saturday of May.

Dated: October 26, 2021.

**M.W. Bouboulis,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

**Editorial note:** This document was received for publication by the Office of the Federal Register on January 27, 2022.

[FR Doc. 2022–01999 Filed 1–31–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

**[Docket ID ED–2021–OSERS–0160]**

### Proposed Priority—State Personnel Development Grants

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Proposed priority.

**SUMMARY:** The Office of Special Education and Rehabilitative Services (OSERS) proposes a funding priority under the State Personnel Development Grants (SPDG) program, which assists States in reforming and improving their systems for personnel preparation and personnel development in order to improve results for children with disabilities. We take this action to focus attention on the need to improve results for children with disabilities and their families by supporting a comprehensive system of personnel development (CSPD) for the Individuals with Disabilities Education Act (IDEA) Part C Grants for Infants and Families program. The Department may use the proposed priority for competitions in fiscal year (FY) 2022 and later years.

**DATES:** We must receive your comments on or before March 3, 2022.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information

on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW, Room 5161, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6673. Email: *Jennifer.Coffey@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding the proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to comment only on the proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority by accessing *Regulations.gov.* You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The purpose of this program is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services to improve results for children with disabilities.

*Program Authority:* 20 U.S.C. 1451–1455.

**Proposed Priority**

This notification contains one proposed priority.

Supporting an IDEA Part C Comprehensive System of Personnel Development (CSPD).

*Background:* The purpose of this proposed priority is to support further advancement of IDEA Part C CSPDs. Use of this proposed priority would allow the Department to award funds competitively to SEAs to provide to their State lead agencies (LAs) to further develop the IDEA Part C statewide CSPD systems outlined in section 635(a)(8) of IDEA in accordance with the State plan under section 653 of IDEA and implement professional development activities that are authorized under the use of funds provisions under section 654 of IDEA. In order to be considered for a grant under this priority, if the SEA is not the State LA for IDEA Part C, an SEA shall establish a partnership, consistent with IDEA section 652(b)(1)(B), with the State LA, which is the State lead agency responsible for administering IDEA Part C, including the CSPD requirements.

*Note:* To carry out the State plan under section 653 of IDEA, as described in its application, the SEA also may award contracts, subgrants, or both to other public and private entities, including, if appropriate, the State LA under Part C of IDEA.

We intend for this proposed priority to supplement the SPDG statutory priority, published in the **Federal Register** on February 13, 2017 (82 FR 10470),[1] as well as other relevant statutory and regulatory priorities established by the Department. Specifically, all applicants must meet the statutory requirements in sections 651 through 655 of the IDEA, 20 U.S.C. 1451–1455.

*Proposed Priority:* Projects designed to enable the State to meet the CSPD requirements of section 635(a)(8) and (9) of the IDEA. In order to be considered for a grant under this priority, if the SEA is not the State LA for IDEA Part C, an SEA shall establish a partnership, consistent with IDEA section 652(b)(1)(B), with the State LA responsible for administering IDEA Part C. Consistent with IDEA section 635(a)(8), the purpose of this priority is to help improve the capacity of States' IDEA Part C personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State. The CSPD must include: (1) Training personnel to implement innovative strategies and activities for the recruitment and retention of early education service providers; (2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and (3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program. The IDEA Part C CSPD may also include, consistent with 34 CFR 303.118(b): (1) Training personnel to work in rural and inner-city areas; (2) Training personnel in the emotional and social development of young children; and (3) Training personnel to support families in participating fully in the development and implementation of the child's Individualized Family Service Plan; and (4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable. The SEA must include in its State plan how it will partner with the State LA, if the SEA is not the State LA for IDEA Part C, to implement these aspects of the CSPD. The description of the partnership should indicate the amount and percentage of SPDG funding that will support implementation of the CSPD over the project period and how funding will complement current efforts and investments (Federal IDEA Part C appropriations and State and local funds) to implement the CSPD. The description should also describe the extent to which funds will be used on activities to increase and train personnel

[1] *www.federalregister.gov/documents/2017/02/13/2017-02895/applications-for-new-awards-state-personnel-development-grants-spdg-program.*

working with infants and toddlers and their families that have historically been underserved by Part C.[2]

*Types of Priorities:* When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

*Final Priority:* We will announce the final priority in a document in the **Federal Register**. We will determine the final priority after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

*Note:* This document does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only on a reasoned determination that its benefits would justify the costs. In choosing among alternative regulatory approaches, we selected the approach that maximizes net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

The potential costs associated with this priority would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

**Paperwork Reduction Act of 1995**

The proposed priority contains information collection requirements that are approved by OMB under OMB control number 1820–0028; the proposed priority does not affect the currently approved data collection.

[2] If the provision requiring State IDEA Part C programs to develop an equity plan is enacted in the FY2022 appropriations, then projects must align their CSPD activities with State IDEA Part C equity plans, which are plans to support equitable access to and participation in Part C services in the State, particularly for populations that have been traditionally underrepresented in the program.

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

*Regulatory Flexibility Act Certification:* The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

Participation in the SPDG program is voluntary. In addition, the only eligible entities for this program are SEAs, which do not meet the definition of a small entity. For these reasons, the proposed priority would not impose any additional burden on small entities.

We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Katherine Neas,**

*Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2022–01802 Filed 1–31–22; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2021–0775; FRL–9330–01–R8]

## Approval and Promulgation of Implementation Plans; Utah; Emissions Statement Rule and Nonattainment New Source Review Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard for the Uinta Basin, Northern Wasatch Front and Southern Wasatch Front Nonattainment Areas

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of Utah. The revisions fulfill the emissions statement and nonattainment new source review (NNSR) requirements for the 2015 8-hour ozone national ambient air quality standard (NAAQS) for the Uinta Basin, Northern Wasatch Front, and Southern Wasatch Front nonattainment areas (NAAs). Utah submitted an emissions statement rule revision and a separate NNSR certification to meet, in part, the nonattainment requirements for Marginal ozone NAAs under the 2015 8-hour ozone NAAQS. The State's submission of the emissions statement rule revision also included revisions to emissions reporting requirements for stationary sources, which will be addressed in this proposed rule as well. The EPA is taking this action pursuant to sections 110, 172, and 182 of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before March 3, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2021–0775, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6709, email address: *lang.matthew@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

## I. Background

Ground-level ozone is formed when nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs) react in the presence of sunlight. Referred to as ozone precursors, these two pollutants are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects may occur following exposure to ozone pollution. These effects are more pronounced in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. In 1979, in response to this scientific evidence, the EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS.[1] The EPA had previously promulgated a NAAQS for total photochemical oxidants.

On July 18, 1997, the EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours.[2] The EPA determined this standard to be more protective of public health than the previous 1979 1-hour ozone standard. In 2008, the EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm.[3] On October 26, 2015, the EPA again strengthened the 8-hour ozone NAAQS to 0.070 ppm, based on extensive scientific evidence about ozone's effects on public health and welfare.[4] Effective August 3, 2018, the EPA designated the Uinta Basin, Northern Wasatch Front, and Southern Wasatch Front areas as Marginal nonattainment for the more stringent 2015 8-hour ozone NAAQS.[5]

The Uinta Basin NAA is comprised of portions of Duchesne and Uintah Counties. The Northern Wasatch Front NAA includes Salt Lake, Davis, and portions of Weber and Tooele Counties. The Southern Wasatch Front NAA is comprised of only a portion of Utah County.

Under section 182(a)(3)(B) of the CAA, Utah is required to implement an emissions statement rule in its Marginal NAAs that requires the owner or operator of each stationary source of $NO_X$ or VOCs to provide the state with an annual statement showing the actual emissions of $NO_X$ and VOCs from the source.[6] This requirement may be waived for any class or category of stationary sources which emit less than 25 tons per year of $NO_X$ or VOCs if the state includes these emissions in the base year or periodic emissions inventories.[7] Under section 172(c)(5) and 172(b) of the CAA, Utah is required to have implemented a NNSR permit program within three years from the effective date of designation.[8] In addition to these two requirements, Utah is required to submit a base year emissions inventory of $NO_X$ and VOCs for its Marginal NAAs under section 182(a)(1) of the CAA.[9] These three requirements together constitute the Marginal SIP. EPA has previously approved Utah's base year emissions inventory in the Uinta Basin, Northern Wasatch Front and Southern Wasatch Front NAAs.[10] With the proposed approval of the State's emissions statement rule revisions and NNSR certification, which are the subject of this action, Utah will have met all requirements for its Marginal NAAs under the 2015 8-hour ozone NAAQS.

## II. Summary of SIP Revision

### *A. Emission Inventories Rule Revision*

On November 3, 2020, the Utah Division of Air Quality (UDAQ) submitted a SIP revision titled ''R307–150. Permit: Emission Inventories'' which includes provisions to satisfy the emissions statement requirement under CAA section 182(a)(3)(B).[11] Utah met the reasonable notice and public hearing requirements of CAA section 110(a) for the revision to its emissions inventory requirements through reasonable notice posted on July 1, 2020, and notice of a public hearing for August 3, 2020.[12] Utah's emissions inventory SIP revision describes two changes to Rule R307–150 of the Utah Administrative Code (UAC). The first change converts summary-only emissions inventory reports to detailed reports and the second introduces reporting requirements specific to sources in ozone NAAs. Additional minor clerical revisions that do not affect the substance of the requirements of the rule were made throughout Rule R307–150 and are also being proposed for approval except for those in Section R307–150–8 as well as those in Subsection R307–150–3(4) which contain revisions that have not been incorporated into the Utah SIP.[13] The clerical revisions that are included in these unincorporated sections of Rule R307–150 will be addressed in a future action.

[1] Revisions to the National Ambient Air Quality Standards for Photochemical Oxidants, 44 FR 8202 (Feb. 8, 1979).

[2] National Ambient Air Quality Standards for Ozone, 62 FR 38856.

[3] National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008).

[4] National Ambient Air Quality Standards for Ozone, 80 FR 65292.

[5] Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018).

[6] 42 U.S.C. 7511a(a)(3)(B)(i)

[7] 42 U.S.C. 7511a(a)(3)(B)(ii)

[8] Id. 7502(c)(5); Id. 7502(b).

[9] Id. 7511a(a)(1).

[10] Approval and Promulgation of Implementation Plans; Utah; 2017 Base Year Inventories for the 2015 8-Hour Ozone National Ambient Air Quality Standard for the Uinta Basin, Northern Wasatch Front and Southern Wasatch Front Nonattainment Areas, 86 FR 35404 (July 7, 2021).

[11] Letter dated October 28, 2020, from Gary R. Herbert, Governor, State of Utah, to Gregory Sopkin, Regional Administrator, EPA, Region 8.

[12] Utah, Utah Administrative Documentation, R307–150. Permit: Emission Inventories, November 2020 (''UT Emissions Inventory SIP Revision'').

[13] When we describe changes as clerical in this proposed action, we are referring to changes such as section renumbering; alphabetizing of definitions; minor grammatical, editorial, and typographical revisions; and changes in capitalization.

1. Conversion of Summary-Only to Detailed Emissions Inventory Reporting

The first change of Utah's emissions inventory SIP submittal requires that all facilities submit detailed inventory data which was accomplished through removal of Section R307–150–7 and Subsection R307–150–3(4) regarding its applicability as well as the addition of Subsection R307–150–3(3)(d), effective September 3, 2020.[14] Previously, Section R307–150–7 required certain facilities to only submit facility totals for each pollutant while other facilities were required to report permitted equipment-level information.[15] The revision removes Section R307–150–7 and Subsection R307–150–3(4) regarding its applicability while adding Subsection R307–150–3(3)(d) to require Part 70 sources not included in Subsections R307–150–3(2) and R307–150–3(3)(a)–(c) to submit detailed inventory data as specified by Section R307–150–6.[16]

2. Annual Ozone Emissions Statements

The other change included in Utah's emissions inventory SIP revisions adds Section R307–150–9 entitled ''Annual Ozone Emission Statement'' and Subsection R307–150–3(5) regarding its applicability, effective September 3, 2020. This revision requires sources to submit an annual ozone emissions statement to UDAQ by April 15 showing emissions of $NO_X$ and VOCs from the prior year, with the first such statement having been due in 2021.[17] As specified in the SIP revision, which adds Subsection R307–150–3(5) regarding the annual ozone emissions statement rule applicability, this rule applies to stationary sources in designated ozone nonattainment areas that have the potential to emit greater than 25 tons per year of $NO_X$ or VOCs.[18]

*B. NNSR Certification*

On August 2, 2021, UDAQ submitted a SIP revision certifying that Utah's existing NNSR permit program fulfills the requirements under CAA section 172(c)(5).[19] Utah met the requirements of CAA section 110(a) for the SIP revision certifying its existing NNSR permit program through reasonable notice posted on May 28, 2021 and notice of a public hearing for July 1, 2021.[20]

NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 by the SIP Requirements Rule implementing the 2015 8-hour ozone NAAQS.[21] The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are located at 40 CFR 51.165.[22] The SIP for each ozone nonattainment area must contain NNSR provisions that:

- Set major source thresholds for $NO_X$ and VOCs pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2);
- Classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3);
- Consider any significant net emissions increase of $NO_X$ as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E);
- Consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F);
- Set significant emissions rates for VOC and $NO_X$ as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E);
- Contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2);
- Provide that the requirements applicable to VOC also apply to $NO_X$ pursuant to 40 CFR 51.165(a)(8); and
- Set offset ratios for VOC and $NO_X$ pursuant to 40 CFR 51.165(a)(9)(ii)–(iv).[23]

Utah's NNSR SIP Revision certifies that Utah's existing NNSR permit program, applicable to the Uinta Basin, Northern Wasatch Front and Southern Wasatch Front NAAs under the 2015 8-hour ozone NAAQS, is at least as stringent as the minimum requirements for NNSR permitting programs for the ozone NAAQS at 40 CFR 51.165.[24] Utah's SIP-approved NNSR program, as established in UAC R307–403, incorporates by reference the definitions at 40 CFR 51.165(a)(1).[25]

## III. Proposed Action

We are proposing to approve the SIP revision submitted by Utah which included changes to R307–150 concerning the level of detail of emissions inventory data reported by certain sources as well as implementation of an annual ozone emissions statement rule for stationary sources in ozone NAAs. Additionally, we are proposing to approve the SIP revision submitted by Utah certifying that the State's previously approved NNSR permit program meets the requirement stemming from the Marginal ozone nonattainment designations of the Uinta Basin, Northern Wasatch Front, and Southern Wasatch Front areas. We are proposing to approve the revisions because they were prepared in accordance with the requirements in sections 182(a)(3)(B), 172(c)(5) and 172(b) of the CAA. The EPA is soliciting public comments on the issues discussed in this document. The EPA will consider these comments before taking final action.

## IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the UDAQ rules regarding stationary source reporting requirements for emission inventories discussed in Sections II.A.1 and II.A.2 of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

[14] UT Emissions Inventory SIP Revision at 69, 73, 75, 97.

[15] Id. at 69.

[16] Id. at 73, 75.

[17] Id. at 76.

[18] Id. at 73.

[19] Submittal with letter dated July 29, 2021, from Kimberly Shelley, Executive Director, Utah Department of Environmental Quality, to Debra Thomas, Acting Regional Administrator, EPA, Region 8 (''UT NNSR Certification'').

[20] UT NNSR Certification at 4.

[21] Final Rule, Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements, 83 FR 62998 (Dec. 6, 2018).

[22] 40 CFR 51.1314 includes new source review requirements for the 2015 Ozone NAAQS with reference to specific requirements at 40 CFR 51.165.

[23] 40 CFR 51.165.

[24] UT NNSR Certification at 6.

[25] UAC R307–403–1(3).

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, 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 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, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 26, 2022.

**KC Becker,**

*Regional Administrator, Region 8.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R05–OAR–2020–0410; EPA–R05–OAR–2021–0141; FRL–9484–01–R5]**

## Air Plan Approval; Wisconsin; Redesignation of the Manitowoc, Wisconsin Area to Attainment of the 2015 Ozone Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to find that the Manitowoc, Wisconsin area is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and to act in accordance with a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment for the 2015 ozone NAAQS, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). Also, EPA is proposing to approve WDNR's certification that its stationary annual emissions statement regulation, which has been previously approved by EPA under a prior ozone standard, satisfies the CAA emission statement rule requirement for the 2015 ozone standard. WDNR submitted these requests on August 3, 2020 and October 29, 2021. EPA is also proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2033 in the Manitowoc area. EPA also finds adequate and is proposing to approve Wisconsin's 2025 and 2033 volatile organic compound (VOC) and oxides of nitrogen ($NO_X$) Motor Vehicle Emission Budgets (MVEBs) for the Manitowoc area. Finally, these revisions satisfy the emissions inventory requirements for the partial Manitowoc area under the 2015 ozone NAAQS. The CAA requires emission inventories for all areas that were designated nonattainment.

**DATES:** Comments must be received on or before March 3, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0410 and EPA–R05–OAR–2021–0141 at *https://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

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**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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## I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Manitowoc nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2018–2020, and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Manitowoc area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Manitowoc area in attainment of the 2015 ozone NAAQS through 2033. EPA also finds adequate and is proposing to approve the newly-established 2025 and 2033 MVEBs for the Manitowoc area. Finally, EPA is proposing to approve WDNR's stationary annual emissions statement regulation and base year emissions inventory for the Manitowoc area.

## II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). *See* 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. *See* 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Manitowoc area was originally designated as a marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018 (83 FR 25776) (effective August 3, 2018). On June 14, 2021, EPA published a final rule revising the 2015 ozone NAAQS designations for 13 counties, including Manitowoc County (86 FR 31438). EPA's revised designations expanded the nonattainment area in Manitowoc County to include a larger part of the county's shoreline area. WDNR's October 29, 2021 submittal included revised emissions inventories and a redesignation request for the expanded geographic boundaries of the Manitowoc County nonattainment area that reflects the changes EPA made to the area in June 2021.

## III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

## IV. What is EPA's analysis of WDNR's redesignation request?

### *A. Has the Manitowoc area attained the 2015 ozone NAAQS?*

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,[1] on average, for the 3-year period, with a minimum data completeness of 75% during the ozone

[1] The ozone season is defined by the state in 40 CFR 58 appendix D. The ozone season for Wisconsin is March–October 15. *See* 80 FR 65292, 65466–67 (October 26, 2015).

monitoring season of any year during the 3-year period. *See* section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Manitowoc area for the 2018–2020 period submitted with this request, in addition to the more recent 2019–2021 period. These data have been quality-assured, are recorded in the AQS, and have been certified. These data demonstrate that the Manitowoc area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE MANITOWOC AREA

| County | Monitor | Year | % Observed | Fourth high (ppm) | 2018–2020 average (ppm) | 2019–2021 average (ppm) |
|---|---|---|---|---|---|---|
| Manitowoc | 55–071–0007 | 2018 | 99 | 0.076 | 0.070 | 0.068 |
| | | 2019 | 99 | 0.066 | | |
| | | 2020 | 92 | 0.069 | | |
| | | 2021 | 99 | 0.070 | | |

The Manitowoc area's 3-year ozone design value for 2018–2020 is 0.070 ppm [2] and 0.068 for the 2019–2021 period, both which meet the 2015 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the Manitowoc area is attaining the 2015 ozone NAAQS.

If the design value of a monitoring site in the area violates the NAAQS after proposal but prior to final approval of the redesignation, EPA will not take final action to determine that the Manitowoc area is attaining the NAAQS or to approve the redesignation of this area. As discussed in section IV.D.3. below, WDNR has committed to continue monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

*B. Has WDNR met all applicable requirements of section 110 and part D of the CAA for the Manitowoc area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?*

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that a state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that a state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA finds that WDNR has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). Additionally, EPA finds that all applicable requirements of the Wisconsin SIP for the area have been fully approved under section 110(k) of the CAA. In making these determinations, EPA ascertained which CAA requirements are applicable to the Manitowoc area and the Wisconsin SIP and, if applicable, whether the required Wisconsin SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992 Calcagni memorandum (*see* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due after the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. WDNR Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Manitowoc Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by a state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain

[2] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

air pollutants, *e.g.,* $NO_X$ SIP call.[3] However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with an area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for an area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. An area will still be subject to these requirements after such area is redesignated to attainment of the 2015 ozone NAAQS. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation.[4]

b. Part D Requirements

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Manitowoc area was classified as marginal under subpart 2 for the 2015 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation. For the Manitowoc nonattainment area, SIPs required under CAA section 172 were due August 3, 2021. Section 172(c)(3) requires submittal and approval of a comprehensive, accurate and complete inventory of actual emissions for the area. This requirement was superseded by the inventory requirement in Section 182(a)(1), discussed further in Section iii. Section 182(a) Requirements.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area. Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources in the nonattainment area. EPA has previously approved WDNR's NSR program on January 18, 1995 (60 FR 3538). However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' WDNR has demonstrated that the Manitowoc area will be able to maintain the 2015 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). WDNR's PSD program will become effective in the Manitowoc area upon redesignation to attainment. EPA approved WDNR's PSD program on October 6, 2014 (79 FR 60064) and February 7, 2017 (82 FR 9515).

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[5] as not applying for purposes of evaluating a redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748

[3] On October 27, 1992 (63 FR 57356), EPA issued a $NO_X$ SIP call requiring the District of Columbia and 22 states to reduce emissions of $NO_X$ in order to reduce the transport of ozone and ozone precursors.

[4] On September 14, 2018, WDNR submitted an infrastructure SIP to meet the requirements of section 110 for the 2015 ozone NAAQS. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 2015 ozone NAAQS nonattainment status of the Manitowoc area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the State's 2015 ozone NAAQS redesignation request.

[5] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of MVEBs, such as control strategy SIPs and maintenance plans.

(December 7, 1995) (redesignation of Tampa, Florida).

iii. Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and $NO_X$ emitted within the boundaries of the ozone nonattainment area within two years of designation. For the Manitowoc area, this submission was due August 3, 2020. WDNR submitted an emissions inventory that meets the requirements of Section 182(a)(1) in this redesignation request.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Manitowoc area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because WDNR complied with this requirement for the Manitowoc area under the prior 1-hour ozone NAAQS. *See* 68 FR 18883 (June 16, 2003).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone NAAQS and the consideration of WDNR's redesignation request for this standard, the Manitowoc area is not subject to the section 182(a)(2)(B) requirement because the Manitowoc area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(2)(C), under the heading ''Corrections to the State implementation plans—Permit programs'' contains a requirement for states to submit NSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. For the purposes of the 2015 ozone NAAQS and the consideration of WDNR's redesignation request for this standard, the Manitowoc area is not subject to the section 182(a)(2)(C) requirement because the Manitowoc area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(4) specifies the emission offset ratio for marginal areas but does not establish a SIP submission deadline. EPA's December 6, 2018, implementation rule for the 2015 ozone NAAQS clarifies that nonattainment NSR permit program requirements applicable to the 2015 NAAQS are due three years from the effective date of the nonattainment designation, *i.e.,* August 3, 2021. *See* 83 FR 62998, 63001. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions ''no later than 3 years from the date of the nonattainment designation.'' These offset ratios are incorporated into Wisconsin's Nonattainment NSR permitting program, which EPA approved on January 18, 1995 (60 FR 3538).

While WDNR has not submitted a nonattainment NSR SIP revision to address the 2015 ozone NAAQS, WDNR currently has a fully-approved part D NSR program in place. In addition, EPA approved WDNR's PSD program on February 7, 2017 (82 FR 9515). As discussed above, WDNR has demonstrated that the Manitowoc area will be able to maintain the 2015 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Manitowoc area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and $NO_X$ emissions. As discussed below in section IV.D.4. of this proposed rule, Wisconsin will continue to update its emissions inventory at least once every three years. Regarding stationary source emission statements, this submission was due August 3, 2020. WDNR's authority under Chapter NR 438 of the Wisconsin Administrative Code (WAC) requires annual $NO_X$ and VOC emission reporting from any facility in the State that emits a pollutant above the thresholds specified in the code. EPA approved Wisconsin's emission reporting program as satisfying the CAA emission statement requirement on December 6, 1993 (58 FR 64155).

Therefore, EPA finds that the Manitowoc area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Manitowoc Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

At various times, WDNR has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Wisconsin SIP for the Manitowoc area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

*C. Are the air quality improvements in the Manitowoc area due to permanent and enforceable emission reductions?*

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that WDNR has demonstrated that that the observed ozone air quality improvement in the Manitowoc area is due to permanent and enforceable reductions in VOC and $NO_X$ emissions resulting from State and Federal measures adopted into the SIP.

In making this demonstration, the State has calculated the change in emissions between 2017 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Manitowoc area and upwind areas have implemented in recent years. In addition, WDNR provided an analysis to demonstrate that the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that WDNR has adequately demonstrated that the improvement in

air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional $NO_X$ Controls

*Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR).* CAIR created regional cap-and-trade programs to reduce sulfur dioxide ($SO_2$) and $NO_X$ emissions in 27 eastern states, including Wisconsin, that contributed to downwind nonattainment and maintenance of the 1997 ozone NAAQS and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). EPA approved WDNR's CAIR regulations into the Wisconsin SIP on October 16, 2007 (72 FR 58542). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without *vacatur* to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus addressed the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR. CSAPR requires substantial reductions of $SO_2$ and $NO_X$ emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial *vacatur* of CSAPR [6] was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high Court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 $NO_X$ ozone season emissions budgets for Wisconsin. On September 7, 2016, in response to the remand, EPA finalized an update to CSAPR requiring further reductions in $NO_X$ emissions from EGUs beginning in May 2017. This final rule was projected to result in a 20% reduction in ozone season $NO_X$ emissions from EGUs in the eastern United States, a reduction of 800,000 tons in 2017 compared to 2015 levels.

The reduction in $NO_X$ emissions from the implementation of CSAPR results in lower concentration of transported ozone entering the Manitowoc area upon implementation of the phase 2 budgets in 2019 and throughout the maintenance period.

b. Federal Emission Control Measures

Reductions in VOC and $NO_X$ emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and $NO_X$ emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented in 2030, this rule will cut $NO_X$ and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76% and 28%, respectively. $NO_X$ and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. As projected by these estimates and demonstrated in the onroad emission modeling for the Manitowoc area, much of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

*Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards.* On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduces both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and $NO_X$ and for particulate matter. The VOC and $NO_X$ tailpipe standards for light-duty vehicles represent approximately an 80% reduction from pre-2017's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and $NO_X$ and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from previous standards and apply to all light-duty and onroad gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the onroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

*Heavy-Duty Diesel Engine Rules.* In July 2000, EPA issued a rule for onroad heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for $NO_X$, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion $NO_X$ and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 $NO_X$ and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimates that by 2030 $NO_X$ and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the onroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

*Nonroad Diesel Rule.* On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards were phased in for 2008 through 2015 model years based on

[6] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

engine size. The $SO_2$ limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented in 2030, compliance with this rule will cut $NO_X$ emissions from these nonroad diesel engines by approximately 90%. As projected by these estimates and demonstrated in the nonroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

*Nonroad Spark-Ignition Engines and Recreational Engine Standards.* On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. When fully implemented in 2030, EPA estimates an overall 72% reduction in VOC emissions from these engines and an 80% reduction in $NO_X$ emissions. As projected by these estimates and demonstrated in the nonroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

*Category 3 Marine Diesel Engine Standards.* On April 30, 2010 (75 FR 22896), EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards applied beginning in 2011, and are expected to result in a 15 to 25% reduction in $NO_X$ emissions from these engines by 2030. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80% reduction in $NO_X$ from these engines by 2030. As projected by these estimates and demonstrated in the nonroad emission modeling for the Manitowoc area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission Reductions

WDNR is using a 2017 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the area as nonattainment. WDNR is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2018–2020 period used to demonstrate attainment.

Area and nonroad mobile emissions were collected from data available on EPA's Air Emissions Modeling and National Emissions Inventory websites.[7] Using 2017 National Emissions Inventory (NEI) and Emissions Modeling platform 2016v1, WDNR collected data for the 2017 NEI year, and the 2023 projected inventory. 2017 emissions were assumed to be equivalent to the 2017 NEI emissions. 2019 emissions were derived by interpolating between 2017 and 2023 (2017 NEI and 2016v1).

WDNR compiled 2017 and 2019 actual point source emissions from state inventory databases. Tons per summer day (TPSD) emissions were then derived by using emissions from the third quarter of the calendar year (*i.e.,* July 1 to September 30) to represent the typical ozone season day emissions for these sources and applying a conversion factor to the annual emissions to account for ozone season work weekday emissions being higher if a facility only operates during the work week (*i.e.,* five days) instead of the entire week (*i.e.,* seven days).

Onroad mobile source emissions were calculated from emission factors produced by EPA's Motor Vehicle Emission Simulator model, MOVES 3.0.1, and transportation data developed by the Wisconsin Department of Transportation.

Using the inventories described above, WDNR's submittal documents changes in VOC and $NO_X$ emissions from 2017 to 2019 for the Manitowoc area. Emissions data are shown in Tables 2 through 6.

TABLE 2—MANITOWOC AREA $NO_X$ EMISSIONS FOR NONATTAINMENT YEAR 2017

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 1.83 | 0.75 | 1.05 | 1.76 | 5.39 |

TABLE 3—MANITOWOC AREA VOC EMISSIONS FOR NONATTAINMENT YEAR 2017

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 1.33 | 2.56 | 0.67 | 0.68 | 5.23 |

TABLE 4—MANITOWOC AREA $NO_X$ EMISSIONS FOR ATTAINMENT YEAR 2019

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 2.22 | 0.71 | 0.98 | 1.38 | 5.30 |

[7] *https://www.epa.gov/air-emissions-modeling/2011-version-63-platform.*

TABLE 5—MANITOWOC AREA VOC EMISSIONS FOR ATTAINMENT YEAR 2019

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 1.18 | 2.45 | 0.61 | 0.57 | 4.82 |

TABLE 6—CHANGE IN $NO_X$ AND VOC EMISSIONS IN THE MANITOWOC AREA BETWEEN 2017 AND 2019

[TPSD]

| | $NO_X$ | | | VOC | | |
|---|---|---|---|---|---|---|
| | 2017 | 2019 | Net change (2017–2019) | 2017 | 2019 | Net change (2017–2019) |
| Point | 1.83 | 2.22 | 0.39 | 1.33 | 1.18 | −0.15 |
| Area | 0.75 | 0.71 | −0.04 | 2.56 | 2.45 | −0.11 |
| Nonroad | 1.05 | 0.98 | −0.07 | 0.67 | 0.61 | −0.06 |
| Onroad | 1.76 | 1.38 | −0.38 | 0.68 | 0.57 | −0.11 |
| Total | 5.39 | 5.30 | −0.09 | 5.23 | 4.82 | −0.41 |

As shown in Table 6, $NO_X$ and VOC emissions in the Manitowoc area declined by 0.09 TPSD and 0.41 TPSD, respectively, between 2017 and 2019.

3. Meteorology

WDNR analyzed the maximum fourth-high 8-hour ozone values for May, June, July, August, and September, for years 2000 to 2019, to further support WDNR's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not unusually favorable meteorology.

First, the maximum 8-hour ozone concentration at the monitor in the Manitowoc area was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. While there is a clear trend in decreasing ozone concentrations at the monitor, there is no such trend in the temperature data.

WDNR also examined the relationship between the average summer temperature for each year of the 2000–2019 period and the fourth-high 8-hour ozone concentration. Given the similarity of ozone concentrations observed at the monitor and the regional nature of ozone formation, WDNR conducted this analysis using the average fourth-high 8-hour ozone concentration from the Manitowoc monitor. While there is some correlation between average summer temperatures and ozone concentrations, this correlation does not exist over the study period. The linear regression lines for each data set demonstrate that the average summer temperatures have increased over the 2000 to 2019 period, while average ozone concentrations have decreased. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the Manitowoc area, and not unusually favorable summer temperatures.

As discussed above, WDNR identified numerous Federal rules that resulted in the reduction of VOC and $NO_X$ emissions from 2017 to 2019. In addition, WDNR's analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the Manitowoc area between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Therefore, EPA finds that WDNR has shown that the air quality improvements in the Manitowoc area are due to permanent and enforceable emissions reductions.

*D. Does WDNR have a fully approvable ozone maintenance plan for the Manitowoc area?*

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission 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. In conjunction with its request to redesignate the Manitowoc area to attainment for the 2015 ozone NAAQS, WDNR submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2033, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that WDNR's ozone maintenance plan includes the necessary components and approve the maintenance plan as a revision of the Wisconsin SIP.

1. Attainment Inventory

EPA is proposing to determine that the Manitowoc area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2018–2020. WDNR selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and $NO_X$. The attainment emissions inventory identifies the levels of emissions in the Manitowoc area that are sufficient to attain the 2015 ozone NAAQS. The derivation of the

attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the State documented maintenance of the ozone standard in the Manitowoc area?

WDNR has demonstrated maintenance of the 2015 ozone NAAQS through 2033 by ensuring that current and future emissions of VOC and $NO_X$ for the Manitowoc area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

WDNR is using emissions inventories for the years 2025 and 2033 to demonstrate maintenance. 2033 is more than 10 years after the expected effective date of the redesignation to attainment and 2025 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Point, area, and nonroad mobile emissions were collected from data available on EPA's Air Emissions Modeling website. Using Emissions Modeling platform 2016v1, WDNR collected data for the 2023 and 2028 projected inventories. TPSD emissions were then derived by dividing July emissions by the number of days in July. For interim year 2023, version 2023el was used without modification except for adjustments to emissions for ten point sources, based on more recent source specific information. 2030 emissions were derived by linearly extrapolating from 2016 to 2028. As with the 2023 inventory, adjustments were made to the emissions for ten point sources based on more recent source specific information.

Onroad mobile source emissions were developed through the combined effort of WDNR and Wisconsin Department of Transportation and were calculated from emission factors produced by EPA's MOVES 3.0.1 model and data extracted from the region's travel-demand model. Emissions data are shown in Tables 7 through 11 below.

TABLE 7—MANITOWOC AREA $NO_X$ EMISSIONS FOR INTERIM MAINTENANCE YEAR 2025

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 2.52 | 0.63 | 0.84 | 0.91 | 4.90 |

TABLE 8—MANITOWOC AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2025

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 1.36 | 2.25 | 0.53 | 0.47 | 4.60 |

TABLE 9—MANITOWOC AREA $NO_X$ EMISSIONS FOR MAINTENANCE YEAR 2033

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 2.55 | 0.61 | 0.80 | 0.61 | 4.56 |

TABLE 10—MANITOWOC AREA VOC EMISSIONS FOR MAINTENANCE YEAR 2033

[TPSD]

| County | Point | Area | Nonroad | Onroad | Total |
|---|---|---|---|---|---|
| Manitowoc | 1.41 | 2.35 | 0.50 | 0.32 | 4.58 |

TABLE 11—CHANGE IN $NO_X$ AND VOC EMISSIONS IN THE MANITOWOC AREA BETWEEN 2019 AND 2033

[TPSD]

| | $NO_X$ | | | | VOC | | | |
|---|---|---|---|---|---|---|---|---|
| | 2019 | 2025 | 2033 | Net change (2019–2033) | 2019 | 2025 | 2033 | Net change (2019–2033) |
| Point | 2.22 | 2.52 | 2.55 | 0.33 | 1.18 | 1.36 | 1.41 | 0.23 |
| Area | 0.71 | 0.63 | 0.61 | −0.10 | 2.45 | 2.25 | 2.35 | −0.10 |
| Nonroad | 0.98 | 0.84 | 0.80 | −0.18 | 0.61 | 0.53 | 0.50 | −0.11 |
| Onroad | 1.38 | 0.91 | 0.61 | −0.77 | 0.57 | 0.47 | 0.32 | −0.25 |
| Total | 5.30 | 4.90 | 4.56 | −0.74 | 4.82 | 4.60 | 4.58 | −0.24 |

In summary, WDNR's maintenance demonstration for the Manitowoc area shows maintenance of the 2015 ozone NAAQS by providing emissions information to support the demonstration that future emissions of $NO_X$ and VOC will remain at or below 2019 emission levels when taking into account both future source growth and implementation of future controls. Table 11 shows $NO_X$ and VOC emissions in the Manitowoc area are projected to decrease by 0.74 TPSD and 0.24 TPSD, respectively, between 2019 and 2033.

3. Continued Air Quality Monitoring

WDNR has committed to continue to operate the ozone monitors listed in Table 1 above. WDNR has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. WDNR remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Wisconsin has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Manitowoc area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. WDNR will continue to operate the current ozone monitors located in the Manitowoc area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, WDNR will continue to develop and submit to EPA updated emission inventories for all source categories at least once every 3 years, consistent with the requirements of 40 CFR part 51, subpart A, and 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Wisconsin was compiled for 2017. Point source facilities covered by WDNR's emission statement rule, WAC Chapter NR 438, will continue to submit VOC and $NO_X$ emissions on an annual basis.

5. What is the contingency plan for the Manitowoc area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, WDNR has adopted a contingency plan for the Manitowoc area to address possible future ozone air quality problems. The contingency plan adopted by WDNR has two levels of response, a warning level response and an action level response.

In WDNR's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.070 ppm or higher is monitored within the maintenance area. A warning level response will consist of WDNR conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In WDNR's plan, an action level response is triggered when a three-year design value exceeds 0.070 ppm or greater is monitored within the maintenance area. When an action level response is triggered, WDNR, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. WDNR may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

WDNR included the following list of potential contingency measures in its maintenance plan:

1. Anti-idling control program for mobile sources, targeting diesel vehicles
2. Diesel exhaust retrofits
3. Traffic flow improvements
4. Park and ride facilities
5. Rideshare/carpool program
6. Expansion of the vehicle emissions testing program

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA is proposing to conclude that WDNR's maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, WDNR has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Manitowoc area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by WDNR for the Manitowoc area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Wisconsin SIP.

## V. Has the state adopted approvable motor vehicle emission budgets?

### *A. Motor Vehicle Emission Budgets*

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of

the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2015 ozone NAAQS in EPA's December 6, 2018, implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and $NO_X$ for ozone) to address pollution from onroad transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

*B. What is the status of EPA's adequacy determination for the proposed VOC and $NO_X$ MVEBs for the Manitowoc area?*

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, WDNR's maintenance plan includes $NO_X$ and VOC MVEBs for the Manitowoc area for 2033 and 2025, the last year of the maintenance period and an interim year. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

TABLE 12—MVEBS FOR THE MANITOWOC AREA

[TPSD]

| | Attainment year 2019 onroad emissions | 2025 Estimated onroad emissions | 2025 Mobile safety margin allocation | 2025 MVEBs | 2033 Estimated onroad emissions | 2033 Mobile safety margin allocation | 2033 MVEBs |
|---|---|---|---|---|---|---|---|
| VOC | 0.57 | 0.41 | 0.06 | 0.47 | 0.28 | 0.04 | 0.32 |
| $NO_X$ | 1.38 | 0.79 | 0.12 | 0.91 | 0.53 | 0.08 | 0.61 |

As shown in Table 12, the 2025 and 2033 MVEBs exceed the estimated 2025 and 2033 onroad sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, WDNR allocated a portion of the safety margin (described further below) to the mobile sector. WDNR has demonstrated that the Manitowoc area can maintain the 2015 ozone NAAQS with mobile source emissions at or below 0.47 TPSD and 0.32 TPSD of VOC and 0.91 TPSD and 0.61 TPSD of $NO_X$ in 2025 and 2033, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA finds adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Manitowoc area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

*C. What is a safety margin?*

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 11, the emissions in the Manitowoc area are projected to have safety margins of 0.74 TPSD for $NO_X$ and 0.24 TPSD for VOC in 2033 (the difference between the attainment year, 2019, emissions and the projected 2033 emissions for all sources in the Manitowoc area). Similarly, there is a safety margin of 0.40 TPSD for $NO_X$ and 0.22 TPSD for VOC in 2025. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, WDNR is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2025, WDNR is allocating 0.06 TPSD and 0.12 TPSD of the VOC and $NO_X$ safety margins, respectively. In 2033, WDNR is allocating 0.04 TPSD and 0.08 TPSD of the VOC and $NO_X$ safety margins, respectively. WDNR is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2025 and 2033 safety margins. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2025 and 2033 contained in the demonstration of maintenance, the permissible level of onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

## VI. Emissions Statement and Inventories

### *A. Emissions Statement*

Section 182(a)(3)(B) of the CAA requires states to include regulations in the SIP to require sources (source facilities) to submit annual statements characterizing sources of $NO_X$ and VOC emissions within the source facilities and to report actual $NO_X$ and VOC emissions for these sources. WDNR confirmed in its August 3, 2020 submittal that Wisconsin's existing emissions reporting rule at WAC Chapter NR 438, approved in Wisconsin's SIP, remains in place and is adequate to meet the CAA section 182(a)(3)(B) emission statement requirement for the 2015 ozone standard. EPA approved this rule into the Wisconsin SIP on December 6, 1993 (58 FR 64155). This rule specifically requires all facilities in the state that emit greater than or equal to 5 tons/year of $NO_X$ or 3 tons/year VOC during the reporting year to submit annual emissions statements. Therefore, Wisconsin's rule WAC Chapter NR 438 meets the requirements of CAA section 182(a)(3)(B).

### *B. Emissions Inventories*

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS, including the ozone NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Ozone is a gas that is formed by the reaction of VOC and $NO_X$ in the atmosphere in the presence of sunlight (VOC and $NO_X$ are referred to as ozone precursors). Therefore, an emission inventory for ozone focuses on the emissions of VOC and $NO_X$. VOC is emitted by many types of pollution sources, including power plants, industrial sources, on-road and off-road mobile sources, smaller stationary sources, collectively referred to as area sources, and biogenic sources. $NO_X$ is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission levels (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction targets needed to attain the NAAQS and to achieve reasonable further progress (RFP) toward attainment of the ozone standard (not required in the areas considered here), determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. As stated above, the CAA requires the states to submit emission inventories for areas designated as nonattainment for ozone. For the 2015 ozone NAAQS, EPA specifies that states submit ozone season day emission estimates for an inventory calendar year to be consistent with the baseline year for RFP plan as required by 40 CFR 51.1310(b). For the RFP baseline year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year for the most recently available complete triennial (3-year cycle) emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area. (83 FR 63034–63035, December 6, 2018). States are required to submit estimates of VOC and $NO_X$ emissions for four general classes of anthropogenic sources: Stationary point sources; area sources; onroad mobile sources; and nonroad mobile sources.

WDNR provided documentation of a 2017 $NO_X$ and VOC base year emissions inventory requirement for the partial Manitowoc, nonattainment area in their October 29, 2021 submittal. WDNR selected 2017 because this was one of the three years of ozone data indicating a violation of the ozone standard that were used to designate the areas as nonattainment for the 2015 ozone NAAQS. 83 FR 25778, 25779. In addition, the 2017 emissions inventory was the most recent comprehensive, accurate, and quality assured (QA) triennial emissions inventory in the NEI database, available at the time the state began preparing the emissions inventory submittal for the partial Manitowoc area. Tables 2 and 3 summarize the 2017 $NO_X$ and VOC emissions for partial Manitowoc area in tons of emissions per ozone season day.

EPA has reviewed WDNR's requested SIP revision for consistency with sections 172(c)(3) CAA and 182(a)(1) of the CAA and with EPA's emission inventory requirements. In particular, EPA has reviewed the techniques used by WDNR to derive and quality assure the emission estimates. EPA has also considered whether Wisconsin has provided the public with the opportunity to review and comment on the development of the emission estimates, whether Wisconsin has confirmed that source facility emission statements are required for the 2015 ozone standard, and whether the state has addressed all public comments. WDNR documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is thorough and is adequate for EPA to determine that Wisconsin followed acceptable procedures to estimate the emissions. Accordingly, we conclude that Wisconsin has developed inventories of $NO_X$ and VOC emissions that are comprehensive and complete.

## VII. Proposed Actions

EPA is proposing to determine that the Manitowoc nonattainment is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2018–2020 showing that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Manitowoc area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Manitowoc area in attainment of the 2015 ozone NAAQS through 2033. EPA also finds adequate and is proposing to approve the newly-established 2025 and 2033 MVEBs for the Manitowoc area. EPA also proposes to approve the base year emissions inventories for the partial Manitowoc area under the 2015 ozone NAAQS. Finally, we are also

confirming that Wisconsin has acceptable and enforceable annual emission statement regulations for the 2015 ozone standard.

## VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 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, 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone NAAQS in tribal lands.

### List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 25, 2022.

**Debra Shore,**

*Regional Administrator, Region 5.*

[FR Doc. 2022–01943 Filed 1–31–22; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[EPA–R05–RCRA–2021–0374; FRL–9466–01–R5]**

## Illinois: Proposed Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** Illinois has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Illinois' application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

**DATES:** Comments on this proposed rule must be received by March 18, 2022.

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

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: Gonzalez.norberto@epa.gov.*

EPA must receive your comments by March 18, 2022. Direct your comments to Docket ID Number EPA–R05–RCRA–2021–0374. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov,* or email. The Federal *www.regulations.gov* website is an ''anonymous access'' system, which means 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 EPA without going through *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 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. For additional submission methods, the full EPA public comment policy, information about CBI or multi-media submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly

available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* For alternative access to docket materials, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Norberto Gonzalez, RCRA C and D Section, Land, Chemicals and Redevelopment Division, LL–17J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Norberto Gonzalez can be reached by telephone at (312) 353–1612 or via email at *Gonzalez.norberto@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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

States that have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Illinois, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

## B. What decisions have we made in this rule?

On June 21, 2021, Illinois submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between December 5, 1997, and April 17, 2015. EPA concludes that Illinois' application to revise its authorized program meets all the statutory and regulatory requirements established under RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Illinois final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document.

Illinois has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

## C. What will be the effect if Illinois is authorized for these changes?

If Illinois is authorized for the changes described in Illinois' authorization application, these changes will become a part of the authorized State hazardous waste program and will therefore be federally enforceable. Illinois will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA Sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Illinois are already effective under state law and are not changed by this proposed action.

## D. What happens if EPA receives adverse comments on this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

## E. What has Illinois previously been authorized for?

Illinois initially received Final Authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Illinois' program on the following dates: March 5, 1988 (53 FR 126, January 5, 1988); April 30, 1990 (55 FR 7320, March 1, 1990); June 3, 1991 (56 FR 13595, April 3, 1991); August 15, 1994 (59 FR 30525, June 14, 1994); May 14, 1996, (61 FR 10684, March 15, 1996); October 4, 1996 (61 FR 40520, August 5, 1996); March 10, 2017 (82 FR 13256, March 10, 2017); and on February 9, 2021 (86 FR 8713, February 9, 2021).

## F. What changes are we proposing with this action?

On June 21, 2021, Illinois submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Illinois' hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Illinois for the following program changes:

TABLE 1—ILLINOIS' ANALOGS TO THE FEDERAL REQUIREMENTS

| Rule checklist | Description of Federal requirement | **Federal Register** and date | Analogous state authority: Subtitle G: Waste Disposal, 35 Ill. Adm. Code (IAC) |
|---|---|---|---|
| 162 | Clarification of Standards for Hazardous Waste LDR Treatment Variances. | 62 FR 64504, December 5, 1997 | 728.144 Effective January 1, 1999. |
| 181 | Universal Waste Rule | 64 FR 36466, July 6, 1999 | 720.110, 721.109, 724.101, 725.101, 728.101, 703.123, 733.101, 733.102, 733.103, 733.104, 733.105, 733.106, 733.107, 733.108, 733.109, 733.110, 733.113, 733.114, 733.130, 733.132, 733.133, 733.134, 733.150, 733.160, 733.181. Effective June 20, 2000. |
| 200 | Zinc Fertilizer Rule | 67 FR 48393, July 24, 2002 | 721.104, 726.120, 728.140. Effective July 17, 2003. |
| 203 | Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Used Oil Management Standards. | 68 FR 44659, July 30, 2003 | 721.105, 739.110, 739.174. Effective July 19, 2004. |

TABLE 1—ILLINOIS' ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

| Rule checklist | Description of Federal requirement | **Federal Register** and date | Analogous state authority: Subtitle G: Waste Disposal, 35 Ill. Adm. Code (IAC) |
|---|---|---|---|
| 208 and 208.1 | Methods Innovation Rule and SW–846 Final Update III B | 70 FR 34538, June 14, 2005 as amended 70 FR 44150, August 1, 2005. | 720.111, 720.121, 720.122, 721.103, 721.121, 721.122, 721.135, 721.138, 721 Appendix A, B, and C, 724.290, 724.414, 724.934, 724.963, 724 Appendix I, 725.290, 725.414, 725.934, 725.935, 725.963, 725.981, 725.984, 726.200, 726.202, 726.206, 726.212, 726 Appendix I, 728.140, 728.148 Table U, 728 Appendix I, 703.205, 703.223, 703.232, 739.110, 739.144, 739.153, 739.163. Effective February 23, 2006. |
| 209 | Universal Waste Rule: Specific Provisions for Mercury Containing Equipment. | 70 FR 45508, August 5, 2005 | 720.110,721.109, 724.101, 725.101, 728.101, 703.101, 733.101, 733.104, 733.109, 733.113, 733.114, 733.132, 733.133, 733.134. Effective December 20, 2006. |
| 211 | Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures. | 70 FR 57769, October 4, 2005 | 721.103. Effective December 20, 2006. |
| 213 | Burden Reduction Initiative | 71 FR 16862, April 4, 2006 | 720.110, 720.131, 721.104, 724.115, 724.116, 724.152, 724.156, 724.173, 724.198, 724.199, 724.200, 724.113, 724.215, 724.220, 724.243, 724.245, 724.247, 724.274, 724.291, 724.292, 724.293, 724.295, 724.296, 724.351, 724.380, 724.414, 724.443, 724.447, 724.654, 724.671, 724.673, 724.674, 724.1161, 724.1162, 724.1200, 724.1201, 725.115, 725.116, 725.152, 725.156, 725.173, 725.190, 725.193, 725.213, 725.215, 725.220, 725.243, 725.245, 724.247, 725.274, 725.291, 725.292, 725.293, 725.295, 725.296, 725.301, 725.321, 725.324, 725.359, 725.380, 725.401, 725.403, 725.414, 725.541, 725.543, 725.544, 725.2061, 725.2062, 725.1200, 725.1201, 726.202, 726.203, 728.107, 728.109, 703.114, 703.116, 703.126, 703.142, 703.142 Appendix I. Effective July 14, 2008. |
| 215 | Cathode Ray Tubes Rule | 71 FR 42928, July 28, 2006 | 720.110, 721.104, 721.138, 721.139, 721.140, 721.141. Effective July 14, 2008. |
| 217 | NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments. | 73 FR 18970, April 8, 2008 | 724.440, 726.200. Effective December 30, 2008. |
| 218 | F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes. | 73 FR 31756, June 4, 2008 | 721.131, 721.131 Table. Effective December 30, 2008. |
| 222 | OECD Requirements; Export Shipments of Spent Lead Acid Batteries. | 75 FR 01236, January 8, 2010 | 722.110, 722.155, 722.158, 722.180, 722.181, 722.182, 722.183, 722.184, 722.185, 722.186, 722.187, 722, 188, 722.189, 723.110, 724.112, 724.171, 725.112, 725.171, 726.180 (a) Table. Effective October 14, 2011. |
| 223 | Hazardous Waste Technical Corrections and Clarifications | 75 FR 12989, March 18, 2010 75 FR 31716, June 4, 2010. | 720.110, 720 Appendix I, 721.101, 721.102 (c) Table 1, 721.104, 721.105, 721.106, 721.107, 721.123, 721.130, 721.131, 721.132 (a) Table, 721.133, 721 Appendix VII, 722.110, 722.111, 722.123, 722.134, 722.141, 722.142, 722.160, 723.112, 724.152, 724.156, 724.172, 724.414, 724.416, 724.652, 725.152, 725.156, 725.172, 725.414,725.416, 726.120, 726.122, 726.170, 726.180, 726.201, 728.140 Table, 728.148, 702.181. Effective October 14, 2011. |
| 224 | Withdrawal of the Emissions Comparable Fuel Exclusion | 75 FR 33712, June 15, 2010 | 721.104, 721.138. Effective October 14, 2011. |
| 225 | Removal of Saccharin and Its Salts from the List of Hazardous Constituents, Hazardous Wastes and Hazardous Substances. | 75 FR 78918, December 17, 2010. | 721.111, 721.133, 728.140. Effective October 14, 2011. |
| 227 | Revisions of the Land Disposal Treatment Standards for Carbamate Wastes. | 76 FR 34147, June 13, 2011 | 728.140 Table, 728.148 Table. Effective June 4, 2012. |
| 228 | Hazardous Waste Technical Corrections and Clarifications Rule | 77 FR 22229, April 13, 2012 | 721.132, 726.120. Effective March 4, 2013. |
| 229 | Conditional Exclusions for Solvent Contaminated Wipes | 78 FR 46448, July 31, 2013 | 720.110, 721.104. Effective May 27, 2014. |
| 230 | Conditional Exclusions for Carbon Dioxide (C02) Streams in Geologic Sequestration Activities. | 79 FR 00350, January 3, 2014 | 720.110, 721.104. Effective May 27, 2014. |
| 231 | Hazardous Waste Electronic Manifest System | 79 FR 07518, February 7, 2014 | 720.110, 722.120, 722.124, 722.125, 723.120, 723.125, 724.171, 725.171. Effective January 12, 2015. |
| 232 | Revisions to the Export Provisions of the Cathode Ray Tube Rule | 79 FR 36220, June 26, 2014 | 720.110, 721.139, 721.141. Effective January 12, 2015. |
| 234 | Vacatur of the Comparable Fuels and the Gasification Rule | 80 FR 18777, April 8, 2015 | 720.110, 721.104, 721.138. Effective August 9, 2016. |
| 235 | Disposal of Coal Combustion Residuals from Electric Utilities | 80 FR 21302, April 17, 2015 | 721.104. Effective August 9, 2016. |

## G. Where are the revised state rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable.

*More Stringent Rules*

EPA considers the following state requirements to be more stringent than the federal requirements:

- 35 IAC 722.141, because Illinois requires an annual report instead of the biennial report required in 40 CFR 262.22, 264.75, and 265.75.
- 35 IAC 724.156(i), because Illinois has added this provision to facilitate state notification.
- 35 IAC 725.414, because Illinois prohibits all liquids in landfills; where the Federal rules allow for exceptions in 40 CFR 265.314(f)(1) and (2).

These requirements would become part of Illinois' authorized program and would be federally enforceable.

*Broader in Scope Rules*

EPA also considers the following state requirements to go beyond the scope of the Federal program:

- 35 IAC 721.103(g), because Illinois does not allow the exemption allowed in the Federal rules at 40 CFR 261.3(g)(4), for certain mixtures.

Broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with state law, they are not RCRA requirements.

*Nondelegable Rules*

EPA cannot authorize the Federal requirements at 40 CFR 260.21, 268.5, 268.6, 268.42(b), and 268.44. Although Illinois has adopted these requirements

verbatim from the Federal regulations at 35 IAC 720.121, 728.105, 728.106, 728.142(b), and 728.144, EPA would continue to implement the Federal requirements.

*Universal Waste Lamps Rules Not Authorized*

Illinois allows Lamp Crushing under its current version of the Universal Waste Rule (35 IAC 733.105, 733.113(d), 733.133(d), and 733.134(e)), and has not applied for authorization of the Universal Waste Lamps Rule. In the future, EPA will determine whether to prohibit crushing of lamps, or decide under what conditions lamp crushing may be permitted. Until the issue is resolved, no state that allows crushing may be authorized for the Universal Waste Lamps Rule, and the Illinois version of the Universal Waste Lamps Rule is not part of the Illinois authorized program.

**H. Who handles permits after the final authorization takes effect?**

When the final authorization takes effect, Illinois will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of the proposed authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Illinois is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

**I. How does proportionate share liability affect Illinois' RCRA program?**

Illinois' RCRA authorities are not impacted by the proportionate share liability (PSL) provision of the Illinois Environmental Protection Act, 415 ILCS 5/58.9(a)(1). Section 58.9(a)(1) provides, in pertinent part:

> Notwithstanding any other provisions of this Act to the contrary, . . . in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act or the Groundwater Protection Act to require any person to conduct remedial action or to seek recovery of costs for remedial activity conducted by the State of Illinois or any person beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by such person's act of omission or beyond such person's proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons.

Section 58.9 is part of Title XVII (Site Remediation Program) of the Illinois Environmental Protection Act. Title XVII does not apply to a particular site if ''. . . (ii) the site is a treatment, storage, or disposal site for which a permit has been issued, or that is subject to closure requirements under Federal or state solid or hazardous waste laws'' (415 ILCS 5/58.1(a)(2)(ii)). Hazardous waste treatment, storage, and disposal facilities under Subtitle C of RCRA fall within the exclusion at Section 58.1(a)(2)(ii). These facilities are subject to closure and post-closure care requirements under the Act (415 ILCS 5/22.17) and Illinois program rules that are identical in substance to Federal rules at 40 CFR part 264 (35 IAC 724). The Illinois Appellate Court has held that the PSL does not apply to sites that are outside the scope of Title XVII. *People of the State of Illinois* v. *State Oil,* 822 NE. 2d 876 (Ill. App. 2004). Therefore, the exclusion at Section 58.1(a)(2)(ii) renders Title XVII, including Section 58.9, inapplicable to sites upon which RCRA regulated facilities are located. Based on this exclusion, and as indicated by the Illinois Attorney General in the Attorney General Statement included in the State's October 19, 2015 final program revision application, the PSL provision does not impact the adequacy of Illinois' RCRA authorities.

**J. What is codification and is EPA codifying Illinois' hazardous waste program as proposed in this rule?**

Codification is the process of placing citations and references to the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. EPA previously codified Illinois' authorized program in effect as of June 3, 1991, at 40 CFR part 272, subpart O (See 57 FR 3722, January 31, 1992). EPA is not proposing to codify the authorization of Illinois' changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart O for the authorization of Illinois' program changes at a later date.

**K. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize state requirements for the purpose of RCRA Section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this proposed authorization of Illinois' revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize 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). 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 proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. 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. This action 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 under Executive Order 12866.

Under RCRA Section 3006(b), EPA grants a state's application for authorization 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 authorization 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 note) do not apply. As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action 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). 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 action proposes authorization of 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, this proposed rule is not subject to Executive Order 12898.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations; Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 24, 2022.

**Debra Shore,**

*Regional Administrator, Region 5.*

[FR Doc. 2022–01939 Filed 1–31–22; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 87, No. 21
Tuesday, February 1, 2022

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.

## UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

### Public Quarterly Meeting of the Board of Directors

**AGENCY:** United States African Development Foundation.

**ACTION:** Notice of meeting.

**SUMMARY:** The US African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

**DATES:** The meeting date is Tuesday, February 1, 2022, 10:00 a.m. to 11:30 a.m.

**ADDRESSES:** The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Nina-Belle Mbayu, (202)233–8808.

*Authority:* Public Law 96–533 (22 U.S.C. 290h).

Dated: January 26, 2022.

**Nina-Belle Mbayu,**

*Associate General Counsel.*

[FR Doc. 2022–01977 Filed 1–31–22; 8:45 am]

**BILLING CODE 6117–01–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2021–0031]**

### Notice of Request for a New Information Collection: Analyzing Consumers' Value of "Product of USA" Labeling Claims

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to collect information using a web-based survey/experiment to help gauge consumer awareness and understanding of current "Product of USA" labeling claims on meat (beef and pork) products and consumer willingness to pay (WTP) for meat products labeled as "Product of USA" using the current and potentially revised definitions of the claim. FSIS also intends to collect information on consumer understanding of other "USDA" labeling on meat products, such as the "USDA Choice" label and the USDA mark of inspection. This is a new information collection with an estimated annual burden of 1,815.1 hours.

**DATES:** Submit comments on or before April 4, 2022.

**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2021–0031. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Analyzing Consumers' Value of "Product of USA" Labeling Claims.

*OMB Number:* 0583–XXXX.

*Type of Request:* Request for a new information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). This statute mandates that FSIS protect the public by verifying that meat products are safe, wholesome, unadulterated, and properly labeled and packaged.

The FSIS Food Standards and Labeling Policy Book (the "Policy Book") provides guidance to help meat and poultry product manufacturers prepare product labels that are truthful and not misleading. The Policy Book states that meat (beef and pork) labeling may bear the phrase "Product of USA" under one of the following conditions:

(1) if the country to which the product is exported requires this phrase, and the product is processed in the United States or

(2) if the product is processed in the United States (*i.e.,* is of domestic origin).

Accordingly, the "Product of USA" labeling claim may be applied to meat products derived from animals that have been imported from a foreign country but slaughtered in the United States, as well as to meat products that have been imported from a foreign country and repackaged or otherwise further processed in the United States.

USDA has received three petitions from industry associations regarding the origin of meat products bearing the "Product of USA" labeling claim, requesting that the meaning of the claim be publicly revised by USDA. Additionally, in August 2021, bills were introduced in the House of Representatives and the Senate to require that cattle be born, raised, and slaughtered in the United States in order to bear the "Product of USA" labeling claim. To address the concern that the "Product of USA" labeling claim may not accurately reflect consumer understanding about the origin of FSIS-regulated products, FSIS intends to initiate rulemaking after conducting a comprehensive review of the current

voluntary ''Product of USA'' labeling claim.

To provide information needed to support rulemaking, FSIS is requesting approval for a new information collection to conduct a consumer web-based survey/experiment on ''Product of USA'' labeling on meat (beef and pork) products. FSIS has not previously conducted consumer research on this topic. This is a new information collection with an estimated annual burden of 1,815.1 hours.

The web survey/experiment will address three primary research questions: (1) Do consumers notice the ''Product of USA'' labeling claim?; (2) Do consumers understand the current ''Product of USA'' definition and other ''USDA'' labeling (*e.g.,* ''USDA Choice'') as it relates to country of origin?; and (3) How much are consumers willing to pay for meat products bearing the ''Product of USA'' labeling claim for the current definition and potential revised definitions (*e.g.,* if the meat were from an animal that was born, raised, slaughtered, and processed in the United States)?

FSIS has contracted with RTI International to conduct the web-based survey/experiment. The web-based survey/experiment will comprise three components. For the first component, respondents will complete a series of limited time exposure tasks (LTE) to measure their extrinsic value (*i.e.,* saliency) of the ''Product of USA'' labeling claim. Respondents will view up to six mock products that vary in terms of whether the ''Product of USA'' claim is present, and if present, the location and formatting of the ''Product of USA'' claim. Respondents will be exposed to each mock product for a limited time (*e.g.,* 20 seconds) then asked to list what labeling features they recall (unaided) and then to answer a series of recognition questions to indicate whether they saw specific images and phrases (including the ''Product of USA'' claim) or not. Responses will be statistically analyzed to determine respondents' saliency or degree of attention for the ''Product of USA'' labeling claim.

For the second component, respondents will answer survey questions to address (1) their understanding of the current ''Product of USA'' labeling claim as it relates to product country of origin (*e.g.,* born, raised, slaughtered, processed) and (2) their understanding of the meaning of other ''USDA'' labeling such as ''USDA Choice'' or the USDA mark of inspection, as related to product country of origin.

For the third component, respondents will complete a discrete choice experiment (DCE) to measure their intrinsic value (WTP) for meat products bearing the ''Product of USA'' labeling claim for the current definition and potential revised definitions (*e.g.,* the meat is from an animal that was both slaughtered and processed in the United States). Respondents will complete 8 to 10 choice questions in which they are asked to choose between two hypothetical products; for example, two ground beef products that differ based on the following attributes: Price ($/lb), definition for a ''Product of USA'' labeling claim, and the presence or absence of the following claims (*e.g.,* breed, diet, production conditions, raising conditions, and freshness). Responses will be statistically analyzed to determine respondents' WTP for the current definition and potential revised definitions of the voluntary ''Product of USA'' labeling claim.

To administer the survey, RTI will partner with Ipsos' KnowledgePanel, a probability-based panel that is designed to be nationally representative of the U.S. adult population, with panel members recruited using address-based sampling and weighting procedures to provide nationally representative estimates. Ipsos will select a sample that is sufficient to yield 4,400 responses (including 300 people who generally speak Spanish at home).

A selected sample of panel members will be invited to participate in the study via email. Surveyed individuals will be adults (18 years of age and older) who speak English or Spanish (the survey will be translated into Spanish), have primary or shared responsibility for grocery shopping for their household, and are purchasers of meat products.

Up to eight cognitive interviews will be conducted to evaluate and refine the survey instrument before receiving OMB approval. After receiving OMB approval, Ipsos will conduct a pilot study to ensure that programming logic for the online survey is correct before the full-scale study is implemented. Participants will receive a $50 incentive for participating in the cognitive interviews and a $5 (equivalent) incentive for participating in the pilot or full-scale study.

*Estimate of Burden:* Participants will be recruited for the cognitive interviews by posting ads on social media. It is expected that 12 individuals will complete a screener to determine eligibility for the cognitive interviews, with eight completing the cognitive interview. The cognitive interviews are expected to last 60 minutes. For the pilot study, it is expected that 83 panel members selected by Ipsos will receive email invitations and that 30 of the eligible panel members will subsequently complete the questionnaire. For the full-scale study, it is expected that 9,778 panel members selected by Ipsos will receive email invitations and that 4,400 of the eligible panel members will subsequently complete the questionnaire. The email invitation for the pilot study and the full-scale study is expected to take 2 minutes to read. The questionnaire is expected to take 20 minutes to complete. The total estimated burden of the web-based survey/experiment is 1,815.1 hours.

ESTIMATED ANNUAL REPORTING BURDEN FOR THE WEB-BASED SURVEY/EXPERIMENT

| Study component | Sample size | Freq | Responses | | | | Non-responses | | | | Total burden hours |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Count | Freq X count | Min/resp | Burden hours | Count | Freq X count | Min/resp | Burden hours | |
| Cognitive Interviews: | | | | | | | | | | | |
| Screener | 12 | 1 | 8 | 8 | 8 | 1.1 | 4 | 4 | 8 | 0.5 | 1.6 |
| Interview | 8 | 1 | 8 | 8 | 60 | 8.0 | 0 | 0 | 0 | 0.0 | 8.0 |
| Pilot Study: | | | | | | | | | | | |
| Email invitation | 83 | 1 | 30 | 30 | 2 | 1.0 | 53 | 53 | 2 | 1.8 | 2.8 |
| Questionnaire | 30 | 1 | 30 | 30 | 20 | 10.0 | 0 | 0 | 0 | 0.0 | 10.0 |
| Full-Scale Study: | | | | | | | | | | | |
| Email invitation | 9,778 | 1 | 4,400 | 4,400 | 2 | 146.7 | 5,378 | 5,378 | 2 | 179.3 | 326.0 |
| Questionnaire | 4,400 | 1 | 4,400 | 4,400 | 20 | 1,466.7 | 0 | 0 | 0 | 0.0 | 1,466.7 |
| Total Burden | 9,873 | | | | | 1,633.5 | | | | 181.6 | 1,815.1 |

*Respondents:* Consumers.

*Estimated Number of Respondents:* 9,873.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Total Burden on Respondents:* 1,815.1 hours.

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. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

**Paul Kiecker,**

*Administrator.*

[FR Doc. 2022–02042 Filed 1–31–22; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program—Disaster Supplemental Nutrition Assistance Program (D–SNAP)

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the planned information collection. This is a revision of a currently approved collection associated with requests by State agencies to operate a Disaster Supplemental Nutrition Assistance Program (D–SNAP) to temporarily provide food assistance to households following a disaster.

**DATES:** Written comments must be received on or before April 4, 2022.

**ADDRESSES:** Comments may be sent to: Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via email to *SNAPCPBRules@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the Certification Policy Branch at (703) 305–2022.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

*Title:* Disaster Supplemental Nutrition Assistance Program (D–SNAP).

*Form:* N/A.

*OMB Number:* 0584–0336.

*Expiration Date:* 10/31/2022.

*Type of Request:* Revision of a previously approved collection.

*Abstract:* Pursuant to § 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179) and § 5(h)(1) the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)), the Secretary of Agriculture has the authority to establish a Disaster Supplemental Nutrition Assistance Program (D–SNAP), which is a temporary program that State agencies may operate to provide food assistance to households affected by disasters. D–SNAP is separate and distinct from the Supplemental Nutrition Assistance Program (SNAP) because it has different standards of eligibility, is operated for a limited duration, and only provides one month's worth of benefits to eligible households.

State agencies submit formal requests to operate D–SNAP to the Food and Nutrition Service (FNS) for approval and may only request to operate D–SNAP in areas that have received a Presidential Disaster Declaration with authorization for Individual Assistance, also known as an IA declaration, from the Federal Emergency Management Agency (FEMA). In their D–SNAP requests, State agencies outline their proposed procedures for conducting D–SNAP facility, designate the areas where they wish to operate, and provide sufficient supporting information. FNS reviews all D–SNAP requests and supporting information to ensure that all necessary requirements to operate D–SNAP are met. Using clearly defined FNS' criteria, FNS created a template for State agencies submit their D–SNAP requests electronically through the Waiver Information Management System (WIMS).

Once the original request to operate D–SNAP is approved by FNS to operate D–SNAP, State agencies will submit any subsequent request to modify or expand operations to newly eligible areas via WIMS to FNS for approval. These modification or expansion requests are typically reserved for when a large-scale disaster impacts different areas of a State in different ways or at different times. Subsequent modification and expansion requests require substantially less time to prepare than initial D–SNAP requests.

This information collection request contains only burden estimates associated with the State agency request to operate a D–SNAP. All burden imposed on State agencies and households associated with the certification of D–SNAP households performed by State agencies is approved under OMB Control Number 0584–0064 (SNAP Forms: Applications, Periodic Reporting, Notices; expiration date: 2/29/2024).

Burden for State reporting of both the D–SNAP data on the FNS–292A (Report of Commodity Distribution for Disaster Relief) and FNS–292B (Report of Disaster Supplemental Nutrition Assistance Benefit Issuance) are approved under two separate OMB Control Numbers. The recordkeeping burden for FNS–292A and FNS–292B is approved under OMB Control Number 0584–0037 (expiration date: 05/31/2024), and the reporting burden for the FNS–292A and FNS–292B is approved under OMB Control Number 0584–0594 (Food Programs Reporting System; expiration date: 07/31/2023). None of the burden activities for the other approved OMB control numbers cited in this notice have been outlined in this submission.

Because it is impossible to predict the number of natural disasters and extreme weather events that result in an IA declaration in a given year, and because some State agencies may find that operation of a D–SNAP is not warranted even upon receipt of an IA declaration, FNS is revising this burden estimate based on the annual average number of formal D–SNAP requests submitted and approved since this collection was last approved. From Federal Fiscal Year 2019 to 2021 an average of 5 State agencies requested and were approved to operate D–SNAP each year and an average of 2 State agencies requested and were approved for a modification or extension. The number of hours per response has not changed, but the estimated total burden hours has increased due to the higher number of State agency requests. The agency understands based on respondent threshold outlined in the Paperwork Reduction Act, 1995 FNS does not need to submit a request to OMB; however, to err on the side of caution, the agency is seeking OMB approval in case more than nine States need to submit D–SNAP requests, which will require the agency to seek OMB approval.

In light of this, we also understand seeking and obtaining OMB approval now will allow the agency to request a change justification for any modifications in the burden estimates due to increase of the number of State agency respondents rather than complete the entire full-blown OMB process again for any changes in burden estimates due to an increase in respondents.

**Summary of Burden Hours**

*Affected Public:* State agencies and local governments.

*Estimated Total Annual Number of Respondents:* 5. The total estimated number of respondents is 5. An average of 5 State agencies submit D–SNAP requests each year, and out of those original 5 State agencies, an average of 2 State agencies will submit subsequent requests to modify or expand those already approved D–SNAPs. Therefore, the agency is not double counting these 5 State agencies in our estimates.

*Estimated Frequency of Responses per Respondents:* 2.8. State agencies submit an average of 2 D–SNAP requests per year and average of 2 subsequent modification or expansion requests per year.

*Estimated Total Annual Responses:* 14.

*Estimated Total Hours per Response:* 8. Approximately 10 hours for State agency D–SNAP requests, and approximately 3 hours for each subsequent modification or expansion request.

*Estimated Total Annual Burden on Respondents:* 112.

| Respondent | Estimated number of respondents | Responses annually per respondent | Total annual responses | Estimated avg. number of hours per response | Estimated total hours |
|---|---|---|---|---|---|
| State Agency—Submission of D–SNAP Request | 5 | 2 | 10 | 10 | 100 |
| State Agency—Submission of D–SNAP modification or expansion request | 2 | 2 | 4 | 3 | 12 |
| Total Reporting Burden | 5 | 2.8 | 14 | 8 | 112 |

**Cynthia Long,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2022–02002 Filed 1–31–22; 8:45 am]

BILLING CODE 3410–30–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Nevada Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Wednesday, February 16, 2022, from 3:00 p.m. to 4:30 p.m. Pacific Time. The purpose of the meeting is to review their addendum regarding updates to recommendations noted in their report on remote learning and equity in education.

**DATES:** Wednesday, February 16, 2022, from 3:00 p.m. to 4:30 p.m. Pacific Time.

*Webex Information:* Register online *https://tinyurl.com/ycyywjtv.*

*Audio:* (800) 360–9505, AccessCode: 2762 660 7065.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

**SUPPLEMENTARY INFORMATION:** Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at *afortes@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681–0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Welcome
II. Review Addendum
III. Public Comment
IV. Vote on Addendum
V. Next Steps
VI. Adjournment

Dated: January 27, 2022.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2022–02013 Filed 1–31–22; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### First Responder Network Authority

### Public Combined Board and Board Committees Meeting

**AGENCY:** First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), Department of Commerce.

**ACTION:** Announcement of meeting.

**SUMMARY:** The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

**DATES:** February 9, 2022; 10:30 a.m. to 12:30 p.m. Mountain Daylight Time (MDT); Albuquerque, New Mexico.

**ADDRESSES:** The meeting will be held at the Marriott Albuquerque Hotel located at 2101 Louisiana Boulevard NE, Albuquerque, New Mexico 87110. Due to restrictions on the number of people who can be present, members of the public will not be able to attend in-person but may listen to the meeting and view the presentation by visiting the URL: *https://stream2.sparkstreetdigital.com/20220209-firstnet.html.* If you experience technical difficulty, contact *support@sparkstreetdigital.com.* WebEx information can also be found on the FirstNet Authority website (*FirstNet.gov*).

**FOR FURTHER INFORMATION CONTACT:**

*General information:* Janell Smith, (202) 257–5929, *Janell.Smith@FirstNet.gov.*

*Media inquiries:* Ryan Oremland, (571) 665–6186, *Ryan.Oremland@FirstNet.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Middle-Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

*Matters to be Considered:* The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

*Other Information:* The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Janell Smith at (202) 257–5929 or email: *Janell.Smith@FirstNet.gov* at least five (5) business days (February 2) before the meeting.

*Records:* The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *FirstNet.gov.*

Dated: January 27, 2022.

**Janell Smith,**

*Board Secretary, First Responder Network Authority.*

[FR Doc. 2022–02021 Filed 1–31–22; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–868]**

### Welded Stainless Pressure Pipe From India: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on welded stainless pressure pipe (WSPP) from India would be likely to lead to continuation or recurrence of countervailable subsidies at the levels as indicated in the ''Final Results of Sunset Review'' section of this notice.

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jolanta Lawska, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8362.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 17, 2016, Commerce published the CVD order on WSPP from India in the **Federal Register**.[1] On October 1, 2021, Commerce published the notice of initiation of the first five-year (sunset) review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On October 15, 2021, Commerce received a notice of intent to participate from Bristol Metals, LLC, Felker Brothers Corporation, and Primus Pipe & Tube, Inc. (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers of WSPP.[4] On October 29, 2021, Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive a substantive response from any respondent interested parties.

On November 30, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] Accordingly, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

#### Scope of the Order

The merchandise covered by the *Order* is welded stainless pressure pipe from India. For a full description of the scope, *see* the Issues and Decision Memorandum.[7]

#### Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx.* A list of the issues discussed in the Issues and Decision Memorandum is attached as an appendix to this notice.

#### Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

| Producer/exporter | Net countervailable subsidy rate (percent) |
|---|---|
| Steamline Industries Limited (Steamline) | 3.13 |
| Sunrise Stainless Private Limited/Sun Mark Stainless Pvt. Ltd./Shah Foils Ltd. (Sunrise Companies)[8] | 6.22 |
| All Others | 4.65 |

#### Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: January 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework

[1] *See Welded Stainless Pressure Pipe from India: Antidumping Duty and Countervailing Duty Orders,* 81 FR 81062 (November 17, 2016) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 54423 (October 1, 2021).

[3] *See* Domestic Interested Parties' Letter, ''Notice of Intent to Participate in the First Five-Year Review of the Countervailing Duty Order on Welded Stainless Pressure Pipe from India,'' dated October 15, 2021.

[4] *Id.*

[5] *See* Domestic Interested Parties' Letter, ''First Five-Year ('Sunset') Review of Countervailing Order on Welded Stainless Steel Pressure Pipe from India: Domestic Producers' Substantive Response to Notice of Initiation,'' dated October 29, 2021.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on October 1, 2021,'' dated November 30, 2021.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Expedited First Sunset Review of the Countervailing Duty Order on Welded Stainless Pressure Pipe from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] Commerce determined that Sunrise Stainless Private Limited, Sun Mark Stainless Pvt. Ltd., and Shah Foils Ltd. are entitled to the same subsidy rate. *See Order,* 81 FR at 81064.

VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Rates Likely to Prevail
3. Nature of the Subsidies
VII. Final Results of Review
VIII. Recommendation

[FR Doc. 2022–01956 Filed 1–31–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–824]**

### Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 4, 2021, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India. The period of review (POR) is July 1, 2019, through June 30, 2020. We received no comments or requests for a hearing. We continue to find that sales of subject merchandise by Jindal Poly Films Limited (Jindal) and SRF Limited of India (SRF) were not made at less than normal value during the POR.

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, 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) 482–5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 4, 2021, Commerce published the preliminary results for this administrative review.[1] In the *Preliminary Results,* we invited interested parties to comment within 30 days. The petitioners[2] also requested an extension of the briefing schedule on August 25, 2021.[3] Commerce issued a memorandum to all interested parties on August 27, 2021, which granted the petitioners' request and stated that we would reset the deadlines to submit case briefs on a later date.[4] On September 1, 2021, we issued a supplemental questionnaire to SRF.[5] On September 10, 2021, we issued a supplemental questionnaire to Jindal.[6] On September 16, 2021, SRF submitted its response to our supplemental questionnaire.[7] On September 24, 2021, Jindal submitted its response to our supplemental questionnaire.[8] On November 18, 2021, Commerce extended these final results and then on November 23, 2021, Commerce established the revised deadlines for the briefing schedule.[9] No interested party submitted comments or requested a hearing in this administrative review. The current deadline for these final results is January 28, 2022. Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

### Scope of the Order[10]

The products covered by the *Order* are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the *Order* is dispositive.

### Changes Since the Preliminary Results

As noted above, Commerce received no comments concerning the *Preliminary Results.* Jindal submitted corrected information for a movement charge, which had been inadvertently omitted in its prior filings.[11] Also, in response to instructions from Commerce, Jindal separated information for discounts and rebates that were grouped together.[12] We incorporated these corrections and updated information into these final results; we continue to find that sales of subject merchandise by Jindal were not made at less than normal value during the POR. SRF submitted corrected information for its quantity discount as explained in its supplemental questionnaire.[13] We also incorporated the corrections and updated information into these final results; we also continue to find that sales of subject merchandise made by SRF were not made at less than normal value during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum.[14]

### Final Results of Review

The final weighted-average dumping margins for the period July 1, 2019, through June 30, 2020, are as shown below:

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 41949 (August 4, 2021) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] The petitioners are DuPont Teijin Films; Mitsubishi Polyester Film, Inc.; and SKC, Inc.

[3] *See* Petitioners' Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Extension of Briefing Schedule,'' dated August 25, 2021.

[4] *See* Memorandum, ''2019–2020 Antidumping Duty Administrative Review of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India,'' dated August 27, 2021.

[5] *See* Commerce's Letter, ''2019–2020 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India: Supplemental Questionnaire,'' dated September 1, 2021.

[6] *See* Commerce's Letter, ''2019–2020 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India: Supplemental Questionnaire,'' dated September 10, 2021.

[7] *See* SRF's Letter, ''Polyethylene Terephthalate (PET) Film from India: Submission of 1st Supplemental Response of Anti-dumping Admin Review Questionnaire,'' dated September 16, 2021 (SRF's September 16, 2021 SQR).

[8] *See* Jindal's Letter, ''2019–2020 Administrative Review of the Ani-Dumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India: Supplemental Questionnaire Response,'' dated September 24, 2021.

[9] *See* Memorandum, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India—Briefing,'' dated November 18, 2021.

[10] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 44175 (July 1, 2002) (*Order*).

[11] *See* Memorandum, ''Jindal's Final Analysis Memorandum,'' dated concurrently with the signature of this **Federal Register** notice.

[12] *See* Jindal's Letter, ''2019–2020 Administrative Review of the Ani-Dumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India: Supplemental Questionnaire Response,'' dated September 24, 2021.

[13] *See* SRF's September 16, 2021 SQR at 7–8. *See also* Memorandum, ''SRF's Final Analysis Memorandum,'' dated concurrently with the signature of this **Federal Register** notice.

[14] *See Preliminary Results* PDM.

| Manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Jindal Poly Films Ltd | 0.00 |
| SRF Limited of India | 0.00 |

**Assessment Rates**

Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Because we calculated a zero margin in the final results of this review for both Jindal and SRF, in accordance with 19 CFR 351.212, we will instruct CBP to liquidate the appropriate entries without regard to dumping duties.

Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of the final results of this administrative review. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon 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, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Jindal and SRF will both be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 5.71 percent, which is the all-others rate established by Commerce in the LTFV investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

**Notification to Interested Parties**

We are issuing and publishing these final results of administrative review in accordance with sections 751(a) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: January 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–01960 Filed 1–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See Order; see also Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India,* 67 FR 34899 (May 16, 2002).

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–489–825]**

## Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir), exporter/producer of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey), received *de minimis* net countervailable subsidies during the period of review, January 1, 2019, through December 31, 2019.

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jaron Moore or Janae Martin, 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) 482–0238, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 5, 2021, Commerce published the preliminary results of the administrative review with respect to Ozdemir,[1] and gave interested parties an opportunity to comment.[2] No interested party submitted comments. Commerce has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review; 2019,* 86 FR 54926 (October 5, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Results,* 86 FR 54927.

## Scope of the Order [3]

The products covered by the *Order* are shipments of certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceed the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

## Changes Since the Preliminary Results

No interested parties filed comments on the *Preliminary Results* and we made no changes to the subsidy calculations for Ozdemir in the final results of this review. Thus, there is no decision memorandum accompanying these final results.

## Final Results of Administrative Review

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we determine that the following net countervailable subsidy rate exists for Ozdemir for the period January 1, 2019, through December 31, 2019: [4]

| Company | Subsidy Rate (percent *ad valorem*) |
|---|---|
| Ozdemir Boru Profil San. Ve Tic. Ltd. Sti | * 0.26 |

* *de minimis.*

## Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review, pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2). Because we calculated a *de minimis* countervailable subsidy rate for Ozdemir in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to countervailing duties in accordance with 19 CFR 351.212(b)(2) and 19 CFR 351.106(c)(2).

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 Requirement

Pursuant to section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the appropriate rates.[5] For shipments of subject merchandise by Ozdemir entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, the cash deposit rate will be zero. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

## Notification to Interested Parties

This notice of final results is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–01958 Filed 1–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 81 FR 62874 (September 13, 2016) (*Order*).

[4] We have made no changes to this rate since the *Preliminary Results.* Therefore, no additional disclosure of calculations is necessary for these final results under 19 CFR 351.224(b).

[5] *See also* section 751(a)(2)(C) of the Act (''The {results of the} determination . . . shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.'').

# DEPARTMENT OF COMMERCE

## International Trade Administration

## Renewable Energy and Energy Efficiency Advisory Committee

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a virtual meeting via WebEx on Thursday February 17, 2022, hosted by the U.S. Department of Commerce. The meeting is open to the public with registration instructions provided below.

**DATES:** February 17, 2022, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with the REEEAC Designated Federal Officer (DFO) Cora Dickson at the contact information below by 5:00 p.m. EST on Friday, February 11, in order to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

**ADDRESSES:** To register, please contact Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants will be emailed the login information for the meeting, which will be conducted via WebEx.

**FOR FURTHER INFORMATION CONTACT:** Cora Dickson, REEEAC DFO, Office of Energy

and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. app.), on July 14, 2010. The REEEAC was re-chartered most recently on June 5, 2020. The REEEAC provides the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information about the Committee, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On February 17, 2022, the REEEAC will hold the sixth meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, covering four broad themes: Trade promotion and market access, global decarbonization, clean energy supply chains, and technology and innovation. The Committee will also review recommendations developed by subcommittee in these areas. This meeting will also include a briefing from interagency officials on U.S. government efforts to deploy offshore wind energy and develop a domestic supply chain for offshore wind goods and services. To receive an agenda please make a request to REEEAC DFO Cora Dickson per above. The agenda will be made available no later than February 11, 2022.

The Committee meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATE caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact REEEAC DFO Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EST on Friday, February 11, 2022. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, DFO, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EST on Friday, February 11, 2022. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

**Devin Horne,**

*Senior International Trade Specialist, Office of Energy and Environmental Industries.*

[FR Doc. 2022–02033 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–DR–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–825]**

### Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review and Rescission, in Part; 2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines certain producers/exporters of polyethylene terephthalate film, sheet, and strip (PET film) from India received countervailable subsidies during the period of review (POR), January 1, 2019, through December 31, 2019. Additionally, we are rescinding the review for one company with no shipments of subject merchandise to the United States during the POR.

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Czajkowski or Richard Roberts, 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) 482–1395 or (202) 482–3464, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

Commerce published the *Preliminary Results* of this review on August 2, 2021, and invited comments from interested parties.[1] On November 1, 2021, Commerce extended the deadline for the final results of this review until January 28, 2022.[2]

For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

#### Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded from India. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://*

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[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part; 2019;* 86 FR 41450 (August 8, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019,'' dated November 1, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Results of the Countervailing Duty Administrative Review; 2019: Polyethylene Terephthalate Film, Sheet, and Strip from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

*access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

**Changes Since the Preliminary Results**

Based on the comments received from interested parties, we revised the calculation of the net countervailable subsidy rates for all companies. For a discussion of these issues, *see* the Issues and Decision Memorandum.

**Methodology**

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

**Rescission of Administrative Review, in Part**

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[5] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[6] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[7]

According to the CBP import data, one company subject to this review, Vacmet India Limited, did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Because there is no evidence on the record of this segment of the proceeding to indicate that this company had entries, exports, or sales of subject merchandise to the United States during the POR, we are rescinding the administrative review with respect to this company consistent with 19 CFR 351.213(d)(3).

**Rate for Non-Selected Companies Under Review**

There are three companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents. For these companies, because the rates calculated for the sole mandatory respondent, SRF, was above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies SRF's rate. This methodology to establish the all-others subsidy rate is consistent with our practice and section 705(c)(5)(A) of the Act, which governs the calculation of the all-others rate in investigations.

**Final Results of Review**

We determine the following net countervailable subsidy rate for the POR January 1, 2019, through December 31, 2019:

| Manufacturer/exporter | Subsidy rate (percent *ad valorem*) |
|---|---|
| SRF Limited[8] | 5.39 |
| **Review-Specific Average Rate Applicable to the Following Companies[9]** | |
| Ester Industries Limited | 5.39 |
| Garware Polyester Ltd | 5.39 |
| Jindal Poly Films Ltd[10] | 5.39 |

**Disclosure**

We intend to disclose to interested parties the calculations and analysis performed for these final results of review within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

**Assessment**

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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).

With respect to the company for which this administrative review is rescinded (*i.e.,* Vacmet India Limited), countervailing duties shall be assessed at rates equal to the cash deposit rate required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(1)(i).

**Cash Deposit Requirements**

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Administrative Protective Order**

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[6] *See* 19 CFR 351.212(b)(2).

[7] *See* 19 CFR 351.213(d)(3).

[8] SRF Limited is also known as SRF Limited of India.

[9] This rate is based on the rate for the respondent that was selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[10] This company is also known as Jindal Poly Films Ltd. (India). This company was incorrectly identified in the *Preliminary Results* as Jindal Polyester Ltd. The name has been corrected in these final results.

Dated: January 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order Information
IV. Subsidies Valuation
V. Analysis of Programs
VI. Analysis of Comments
Comment 1: Whether Commerce Correctly Calculated SRF's Benefits Received for the Special Economic Zones (SEZ) Program
Comment 2: Whether Commerce Used the Correct Denominator to Calculate Benefits for the SEZ Program
VII. Recommendation

[FR Doc. 2022–01959 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–DS–P**

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## 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.

### Upcoming Sunset Reviews for March 2022

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in March 2022 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Reviews).

| | Department contact |
|---|---|
| **Antidumping Duty Proceedings** | |
| Aluminum Extrusions from China, A–570–967 (2nd Review) | Jacky Arrowsmith, (202) 482–5255. |
| Pure Magnesium from China, A–570–832 (5th Review) | Mary Kolberg, (202) 482–1785. |
| R–134 from China, A–570–044 (1st Review) | Mary Kolberg, (202) 482–1785. |
| Stainless Sheet and Strip from China, A–570–042 (1st Review) | Jacky Arrowsmith, (202) 482–5255. |
| Phosphorous Copper from South Korea, A–580–085 (1st Review) | Mary Kolberg, (202) 482–1785. |
| **Countervailing Duty Proceedings** | |
| Aluminum Extrusions from China, C–570–968 (2nd Review) | Jacky Arrowsmith, (202) 482–5255. |
| Stainless Sheet and Strip from China, C–570–043 (1st Review) | Jacky Arrowsmith, (202) 482–5255. |

### Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in March 2022.

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) Review* 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: January 18, 2022.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2022–02014 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–867]**

### Welded Stainless Pressure Pipe From India: Final Results of Expedited Sunset Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on welded stainless pressure pipe (WSPP) from India would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, 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) 482–1009.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 1, 2021, Commerce published the notice of initiation of the sunset review of the AD order[1] on WSPP from India, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On October 15, 2021, Commerce received a notice of intent to participate from the domestic

[1] *See Welded Stainless Pressure Pipe from India: Antidumping and Countervailing Duty Order,* 81 FR 81062 (November 17, 2016) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Review,* 86 FR 54423 (October 1, 2021).

producers[3] in the underlying investigation, within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] The domestic producers claimed domestic interested party status under section 771(9)(C) of the Act, as manufacturers of domestic like product in the United States.[5] On October 29, 2021, the domestic producers submitted a timely substantive response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] Commerce did not receive a substantive response from any other interested parties with respect to the *Order* covered by this sunset review, nor was a hearing requested. On November 30, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[7] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), Commerce is conducting an expedited (120-day) sunset review of the *Order.*

## Scope of the Order

The product covered by the *Order* is welded stainless pressure pipe from India. For a full description of the scope, *see* the Issues and Decision Memorandum.[8]

## Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the *Order* were revoked. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx.* A list of the issues discussed in the decision memorandum is attached as an appendix to this notice.

## Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins of up to 12.66 percent.

## Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

## Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: January 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Order
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–01957 Filed 1–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] The Domestic Producers are Bristol Metals, LLC, Felker Brothers Corporation, and Primus Pipe & Tube, Inc. (collectively, domestic producers).

[4] *See* Domestic Producers' Letter, ''Notice of Intent to Participate in the First Five-Year Review of the Antidumping Duty Order on Welded Stainless Pressure Pipe from India,'' dated October 15, 2021.

[5] *Id.* at 2.

[6] *See* Domestic Producers' Letter, ''Welded Stainless Pressure Pipe from India, First Review: Domestic Producers' Substantive Response to Notice of Initiation,'' dated October 29, 2021.

[7] *See* Commerce's Letter, ''Sunset Reviews Initiated on October 1, 2021,'' dated November 30, 2021.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Expedited First Sunset Review of the Antidumping Duty Order on Welded Stainless Pressure Pipe from India,'' dated concurrently with, and hereby adopted by, this notice.

# DEPARTMENT OF COMMERCE

## International Trade Administration

## Initiation of Five-Year (Sunset) Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

## Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

## Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the

following AD and CVD order(s) and suspended investigation(s):

| DOC case No. | ITC case No. | Country | Product | Commerce contact |
|---|---|---|---|---|
| A–570–049 | 731–TA–1329 | China | Ammonium Sulfate (1st Review) | Thomas Martin, (202) 482–3936. |
| A–570–038 | 731–TA–1310 | China | Amorphous Silica Fabric (1st Review) | Jacky Arrowsmith, (202) 482–5255. |
| A–580–899 | 731–TA–1091 | China | Artist Canvas (3rd Review) | Mary Kolberg, (202) 482–1785. |
| A–570–036 | 731–TA–1309 | China | Biaxial Integral Geogrid Products (1st Review) | Thomas Martin, (202) 482–3936. |
| A–533–869 | 731–TA–1308 | India | Off-The-Road Tires (1st Review) | Thomas Martin, (202) 482–3936. |
| C–570–050 | 701–TA–562 | China | Ammonium Sulfate (1st Review) | Thomas Martin, (202) 482–3936. |
| C–570–039 | 701–TA–555 | China | Amorphous Silica Fabric (1st Review) | Jacky Arrowsmith, (202) 482–5255. |
| C–570–037 | 701–TA–554 | China | Biaxial Integral Geogrid Products (1st Review) | Thomas Martin, (202) 482–3936. |
| C–533–870 | 701–TA–552 | India | Off-The-Road Tires (1st Review) | Jacky Arrowsmith, (202) 482–5255. |

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Letters of Appearance and Administrative Protective Orders**

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 18, 2022.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2022–02026 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–829]**

### Stainless Steel Wire Rod From the Republic of Korea: Initiation of Circumvention Inquiry of Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to an allegation of circumvention from North American Stainless (NAS), the Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of stainless steel round wire (SS round wire) from the Socialist Republic of Vietnam (Vietnam) are circumventing the antidumping duty (AD) order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea).

**DATES:** Applicable February 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla, 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) 482–3477.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 18, 2021, NAS, a domestic producer of SSWR requested that Commerce initiate a circumvention inquiry proceeding, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(i), to determine whether SS round wire from Vietnam involves a minor alteration to subject merchandise, such that it should be subject to the order [1] on SSWR from Korea.[2] On July 12, 2021, we issued a supplemental questionnaire.[3] On July 26, 2021, NAS responded to our supplemental questionnaire.[4] On July 2, 2021, August 12, 2021, and again on September 22, 2021, we extended the deadline by 45 days respectively, to determine whether to initiate the circumvention allegation.[5] Because we granted NAS an extension of time to respond to Commerce's second supplemental questionnaire response, on November 10, 2021, we determined that additional time was required to review and assess NAS's request for Commerce to determine whether to initiate a circumvention inquiry and, therefore, extended the deadline by 60 days, until January 14, 2022. On November 19, 2021, NAS responded to our second supplemental questionnaire.[6] On January 4, 2022, we extended the deadline by 14 days, until January 28, 2022.[7]

## Scope of the Order

For a complete description of the scope of the *Order, see* Appendix I.

## Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers SSWR from Korea that has been cold-drawn and further processed into SS round wire in Vietnam and exported into the United States.

## Legal Framework

Section 781(c) of the Act provides that Commerce may find circumvention of an AD or countervailing duty (CVD) order when products which are of the class or kind as merchandise subject to an AD or CVD order have been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.''

While the Act is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.'' [8] Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.[9]

## Analysis

After analyzing the record evidence and the petitioner's allegation, we determine that there is sufficient information to at minimum warrant the initiation of a minor alterations circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i).[10] For a full discussion of the basis for our decision to initiate a minor alterations circumvention inquiry, *see* the Initiation Decision Memorandum.[11] The Initiation Decision Memorandum is a public document, 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 Initiation Decision Memorandum is available at *https://access.trade.gov/public/FRNotices ListLayout.aspx.* As explained in the Initiation Decision Memorandum, the information provided by NAS warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.[12]

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue questionnaires to solicit information from producers and exporters in Vietnam concerning their shipments of SS round wire to the United States made from SSWR produced in Korea. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse

[1] *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod from Korea,* 63 FR 49331 (September 15, 1998) (*Order*).

[2] *See* NAS's Letter, ''Stainless Steel Wire Rod from the Republic of Korea—Request for Circumvention Ruling Pursuant to Section 781(c),'' dated May 18, 2021 (Circumvention Allegation).

[3] *See* Commerce's Letter, ''Request for Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order on Stainless Steel Wire Rod from the Republic of Korea: Supplemental Questionnaire,'' dated July 12, 2021.

[4] *See* NAS's Letter, ''Stainless Steel Wire Rod from Korea—NAS's Response to the Department's Supplemental Questionnaire,'' dated July 26, 2021.

[5] *See* Memoranda, ''Stainless Steel Wire Rod from the Republic of Korea: Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,'' dated July 2, 2021, August 12, 2021, and September 22, 2021.

[6] *See* NAS' Letter, ''Stainless Steel Wire Rod from Korea—NAS' Response to the Department's 2nd Supplemental Questionnaire,'' dated November 19, 2021.

[7] *See* Memorandum, ''Stainless Steel Wire Rod from the Republic of Korea: Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,'' dated January 4, 2022.

[8] *See Certain Vertical Shaft Engines Between 99c and Up To 225c, and Parts Thereof, from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders—600cc Up To 99cc Engines,* 86 FR 51866 (September 17, 2021).

[9] *Id.; see also Deacero S.A. de C.V.* v. *United States,* 817 F.3d 1332 (Fed. Cir. 2016).

[10] *See* Memorandum, ''Decision Memorandum for Initiation of -Circumvention Inquiry,'' dated concurrently with, and hereby adopted by, this notice (Initiation Decision Memorandum). The record evidence necessary for initiating a circumvention inquiry differ from a determination of circumvention. *See also, e.g., Hydrofluorocarbon Blends from the People's Republic of China; Initiation of the Anticircumvention Inquiry of Antidumping Duty Order; Components,* 84 FR 28273 (June 18, 2019).

[11] *Id.*

[12] *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti*-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti*-Circumvention Inquiry on the Antidumping Duty Order, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti*-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

inferences, pursuant to section 776(b) of the Act.

**Conclusion**

Commerce will determine whether the merchandise subject to the inquiry (as described in the ''Merchandise Subject to the Circumvention Inquiry'' section above) is circumventing the *Order* such that it should be included within the scope of the *Order,* pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

In accordance with 19 CFR 351.225(1)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. In accordance with section 781(f) of the Act, to the maximum extent practicable, Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

**Notification to Interested Parties**

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: January 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Order

Stainless Steel Wire Rod, which comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

**SF20T**

Carbon—0.05 max
Manganese—2.00 max
Phosphorous—0.05 max
Sulfur—0.15 max
Silicon—1.00 max
Chromium—19.00/21.00
Molybdenum—1.50/2.50
Lead—added (0.10/0.30)
Tellurium—added (0.03 min)

**K–M35FL**

Carbon—0.015 max
Silicon—0.70/1.00
Manganese—0.40 max
Phosphorous—0.04 max
Sulfur—0.03 max
Nickel—0.30 max
Chromium—12.50/14.00
Lead—0.10/0.30
Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Appendix II

I. Summary
II. Background
III. Scope of the Order
IV. Merchandise Subject to the Circumvention Inquiry
V. Legal Framework
VI. Analysis
VII. Country-Wide Circumvention Inquiries
VIII. Recommendation

[FR Doc. 2022–01992 Filed 1–31–22; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB730]**

## Advisory Committee Open Session on Management Strategy Evaluation for Atlantic Bluefin Tuna

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

**ACTION:** Notice of meeting.

**SUMMARY:** NMFS is holding a public meeting via webinar for the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and all interested stakeholders to receive an update and provide input on the development of the management strategy evaluation for Atlantic bluefin tuna.

**DATES:** A virtual meeting that is open to the public will be held on February 25, 2022, from 1:30 p.m. to 3 p.m. EST.

**ADDRESSES:** Please register to attend the meeting at: *https://forms.gle/f8L6jxsmstXRC2b47.* Registration will close on February 24, 2022, at 5 p.m. EST. Instructions for accessing the virtual meeting will be emailed to registered participants.

**FOR FURTHER INFORMATION CONTACT:** Bryan Keller, Office of International Affairs and Seafood Inspection, (301) 427–7725 or at *Bryan.Keller@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Management strategy evaluation (MSE) is a process that allows fishery managers and stakeholders (*e.g.,* industry, scientists, and non-governmental organizations) to assess how well different strategies achieve specified management objectives for a fishery. After several years of work, ICCAT expects to finalize its bluefin tuna MSE in 2022 and anticipates adopting a management procedure in November 2022 to set Total Allowable Catch (TACs) for 2023 and future years for both the western Atlantic and eastern Atlantic and Mediterranean stocks of bluefin tuna. NMFS and the United States more broadly participate in this MSE development process and have been engaging stakeholders and considering their input throughout the process through various means, including consultation with the Advisory Committee to the U.S. Section to ICCAT. The United States also participates in the development of the bluefin tuna MSE through active engagement by U.S. scientists in ICCAT's Standing Committee on Research and Statistics (SCRS).

The February 25 meeting is intended to update stakeholders and solicit their input on the MSE approach being developed by ICCAT. This includes SCRS progress in developing initial candidate management procedures (CMPs) illustrating potential management tradeoffs and the related process by ICCAT to refine management objectives to assist the SCRS in further refining and narrowing those CMPs. This open session Advisory Committee meeting is primarily informational in nature and intended to increase the opportunity for stakeholder awareness and input on the bluefin tuna MSE process. Discussions at the meeting will help to inform U.S. scientists who are participating in work of the SCRS. In addition, while no binding decisions or formal, consensus-based

recommendations will be made, input provided during the meeting will be considered by the United States to assist its preparations for a March 2022 meeting of ICCAT's Panel 2 and other ICCAT bluefin tuna MSE meetings planned for 2022.

*Authority:* 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2022.

**Alexa Cole,**

*Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.*

[FR Doc. 2022–02020 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB732]**

### 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 SEDAR 78 South Atlantic Spanish Mackerel Assessment Webinar 4.

**SUMMARY:** The SEDAR 78 assessment of the South Atlantic Stock of Spanish mackerel will consist of a series of assessment webinars. A SEDAR 78 Assessment Webinar 4 is scheduled for February 18, 2022. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 78 South Atlantic Spanish Mackerel Assessment Webinar 4 has been scheduled for February 18, 2022, from 9 a.m. until 12 p.m. Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

*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 78 South Atlantic Spanish Mackerel Assessment Webinar 4 are as follows:

Finalize any data issues as needed; continue the discussion on base model configuration and discuss proposed changes to the model, sensitivity runs, and projections; and finalize the base model configuration if possible.

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: January 26, 2022.

**Tracey L. Thompson,**

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

[FR Doc. 2022–01946 Filed 1–31–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Amendment of Department of Defense Federal Advisory Committees—Defense Science Board

**AGENCY:** Department of Defense (DoD).

**ACTION:** Charter amendment of Federal Advisory Committee.

**SUMMARY:** The DoD is publishing this notice to announce that it is amending the charter for the Defense Science Board (DSB).

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The DSB's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., appendix) and 41 CFR 102–3.50(d). The charter and contact information for the DSB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DSB provides the Secretary of Defense and Deputy Secretary of Defense with independent advice on matters supporting the DoD's scientific and technical enterprise. The DSB shall focus on matters concerning science, technology, manufacturing, acquisition process, and other topics of special interest to the Department in response

to specific tasks from the Secretary of Defense, the Deputy Secretary of Defense (''the DoD Appointing Authority''), or the Under Secretary of Defense (Research and Engineering) (USD(R&E)). The DSB is composed of no more than 40 members who are eminent authorities in the fields of science, technology, manufacturing, acquisition process, and other matters of special interest to the DoD. Members will consist of talented, innovative private sector leaders with a diversity of background, experience, and thought in support of the DSB missions.

Individual members are appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DSB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DSB, or serve on more than two DoD Federal advisory committees at one time.

DSB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DSB members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All DSB members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official DSB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the DSB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DSB. All written statements shall be submitted to the DFO for the DSB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: January 26, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2022–01979 Filed 1–31–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Prepare a Supplement to the Gulf of Alaska Navy Training Activities Draft Supplemental Environmental Impact Statement/ Overseas Environmental Impact Statement

**AGENCY:** Department of the Navy (DoN), Department of Defense (DoD).

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy (DoN) announces its intent to prepare a supplement to the December 2020 Gulf of Alaska (GOA) Navy Training Activities Draft Supplemental Environmental Impact Statement (EIS)/ Overseas Environmental Impact Statement (OEIS). This supplement to the Draft Supplemental EIS/OEIS will address a change in the Study Area and the addition of a new Continental Shelf and Slope Mitigation Area.

**ADDRESSES:** Naval Facilities Engineering Command, Northwest, Attention: GOA Supplemental EIS/OEIS Project Manager, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315–1101, *projectmanager@goaeis.com.*

**SUPPLEMENTATRY INFORMATION:** Pursuant to section 102(2)(c) of the NEPA, regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and Presidential Executive Order 12114, the DoN announced its intent to prepare a supplement to the 2011 GOA Navy Training Activities EIS/ OEIS and 2016 GOA Navy Training Activities Supplemental EIS/OEIS in the **Federal Register** (FR) on February 10, 2020 (85 FR 7538), and invited the public to comment on the scope of the Supplemental EIS/OEIS. A Draft Supplemental EIS/OEIS was subsequently released on December 11, 2020 (85 FR 80093), in which the potential environmental effects associated with military readiness training activities conducted within the GOA Study Area were evaluated.

Since the release of the Draft Supplemental EIS/OEIS on December 11, 2020, the DoN has recognized that the size and shape of the Temporary Maritime Activities Area (TMAA) in the Gulf of Alaska does not provide sufficient space for the realistic maneuvering of vessels and aircraft during training exercises. The proposed study area will now include additional air space and sea space to the west and south of the TMAA. This additional area is referred to as the Western Maneuver Area (WMA) and is approximately 185,806 square nautical miles. The TMAA, as currently defined (approximately 42,146 square nautical miles), would remain unchanged with all activities involving active sonar and explosives still occurring in this area only. No new or increased training activities are proposed as part of the revised proposed action, only an expansion of the overall training area for vessel and aircraft maneuvering purposes. In addition, DoN proposes implementing a new mitigation area within the continental shelf and shelf slope area of the TMAA. To protect marine species and biologically important habitat, use of explosives (up to 10,000 feet altitude) would be restricted in this area.

All public comments received during the Draft Supplemental EIS/OEIS comment period (December 11, 2020, through February 16, 2021) are still valid and will be considered in the Final Supplemental EIS/OEIS for this action. Previously submitted comments need not be resubmitted. The supplement to the Draft Supplemental EIS/OEIS is expected to be available in March 2022. A Notice of Availability of the supplement to the Draft Supplemental EIS/OEIS will be published in the **Federal Register** at that time, and the supplement to the Draft Supplemental EIS/OEIS will be released for a public comment period of 45 days. No decision will be made to implement any alternative in the GOA Study Area until the NEPA process is complete and a Record of Decision is signed by the DoN.

Dated: January 25, 2022.

**J.M. Pike,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2022–01986 Filed 1–31–22; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

### DOE/NSF High Energy Physics Advisory Panel

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open virtual meeting.

**SUMMARY:** This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, March 7, 2022; 12:00 p.m. to 2:00 p.m.

**ADDRESSES:** This meeting is open to the public. This meeting will be held

digitally via Zoom. Information to participate can be found on the website closer to the meeting date at *https://science.osti.gov/hep/hepap/meetings/.*

**FOR FURTHER INFORMATION CONTACT:** John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–35/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–1298; Email: *John.Kogut@science.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To charge HEPAP with a study of the international competitiveness of the U.S. program in high energy physics.

Tentative Agenda:

- Brief update from DOE—Glen Crawford
- Brief update from NSF—Jim Shank
- Presentation of Charge—James Siegrist
- Discussion

*Public Participation:* The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at: *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available on the High Energy Physics Advisory Panel website: *https://science.osti.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on January 26, 2022.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2022–01984 Filed 1–31–22; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 15227–000]**

### Ortus Power Resources Colorado, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 9, 2021, Ortus Power Resources Colorado, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Phantom Canyon Pumped Storage Project to be located near the Town of Penrose, in Fremont, Pueblo, and El Paso Counties, Colorado. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed closed-loop pumped storage project would consist of: (1) A new 4,728-foot-long, 202-foot-high roller compacted concrete gravity dam impounding a new upper reservoir with a surface area of 93.8 acres, and a total storage capacity of 9,100 acre-feet at a normal maximum operating elevation of 6,176 feet above average mean sea level (msl); (2) a new 2,638-foot-long, 132-foot-high zoned fill/rockfill embankment dam (Main Dam), a new 4,071-foot-long, 64-foot-high saddle dam (Saddle Dam #1), a new 2,104-foot-long, 58-foot-high saddle dam (Saddle Dam #2), and a new 55-foot-long, 8-foot-high saddle dam (Saddle Dam #3) impounding a new lower reservoir a surface area of 322 acres, and a total storage capacity of 17,436 acre-feet at a normal maximum operating elevation of 5,630 feet msl; (3) a new 29,000-foot-long, 48-inch-diameter concrete reinforced diversion pipeline for water delivery from the Arkansas River to the lower reservoir; (4) a new 6,500-foot-long, 18- to 20-foot-diameter penstock connecting the upper and lower reservoirs; (5) a new 50,000 square foot powerhouse containing four 125-megawatt reversible pump/turbine generators; and (6) a new 230-kilovolt (kV) substation that will connect to the grid via one of three pathways: (a) Interconnection with the existing 230-kV Western Area Power Authority transmission line that bisects the project site; (b) interconnect with the Xcel transmission and distribution network at the Midway substation (would require 28-mile-long project transmission line); or (c) interconnection with the Colorado Springs Utility transmission and distribution network at the Nixon substation (would require approximately 33-mile-long project transmission line). The estimated annual power generation at the Phantom Pumped Storage Project would be between 800,00 and 2,800,000 megawatt hours.

*Applicant Contact:* Mr. Peter A. Gish, 8 The Green, Suite #4411, Dover, Delaware 13301, *peter@ortusclimate.com.*

*FERC Contact:* Ousmane Sidibe; *Ousmane.sidibe@ferc.gov,* (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspa.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15227–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15227) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 26, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–01998 Filed 1–31–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG22–47–000; EG01–301–000.

*Applicants:* Geysers Power Company, LLC, Geysers Power Company, LLC.

*Description:* Notice of Self-Recertification of Exempt Wholesale Generator Status.

*Filed Date:* 1/26/22.

*Accession Number:* 20220126–5146.

*Comment Date:* 5 p.m. ET 2/16/22.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER20–1214–002.

*Applicants:* CHPE, LLC.

*Description:* CHPE LLC submits Supplemental Information to the December 9, 2021 Compliance Filing.

*Filed Date:* 1/25/22.

*Accession Number:* 20220125–5183.

*Comment Date:* 5 p.m. ET 2/4/22.

*Docket Numbers:* ER22–528–001.

*Applicants:* Tucson Electric Power Company.

*Description:* Tariff Amendment: Modification to Proposed Effective Dates to be effective 2/16/2022.

*Filed Date:* 1/26/22.

*Accession Number:* 20220126–5100.

*Comment Date:* 5 p.m. ET 2/16/22.

*Docket Numbers:* ER22–864–000.

*Applicants:* ConnectGen South Wrentham LLC.

*Description:* ConnectGen South Wrentham LLC submits a Request for Limited One-Time Prospective Waiver of Tariff Provisions with Expedited Consideration.

*Filed Date:* 1/20/22.

*Accession Number:* 20220120–5184.

*Comment Date:* 5 p.m. ET 2/10/22.

*Docket Numbers:* ER22–886–000.

*Applicants:* Sagebrush Line, LLC.

*Description:* Compliance filing: Notice of Succession to be effective 12/27/2021.

*Filed Date:* 1/25/22.

*Accession Number:* 20220125–5143.

*Comment Date:* 5 p.m. ET 2/15/22.

*Docket Numbers:* ER22–887–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: DEF—FPL Certificate of Concurrence to be effective 1/25/2022.

*Filed Date:* 1/25/22.

*Accession Number:* 20220125–5148.

*Comment Date:* 5 p.m. ET 2/15/22.

*Docket Numbers:* ER22–888–000.

*Applicants:* Energy Center Dover LLC.

*Description:* Energy Center Dover LLC submits an Informational Filing with Request for Limited One-Time Prospective Waiver of Tariff Provisions and Expedited Consideration.

*Filed Date:* 1/21/22.

*Accession Number:* 20220121–5220.

*Comment Date:* 5 p.m. ET 2/11/22.

*Docket Numbers:* ER22–889–000.

*Applicants:* Dominion Energy South Carolina, Inc.

*Description:* Dominion Energy South Carolina, Inc., submits Notice of Cancellation of Network Integration Transmission Service Agreement and Network Operating Agreement the City of Orangeburg, South Carolina.

*Filed Date:* 1/24/22.

*Accession Number:* 20220124–5206.

*Comment Date:* 5 p.m. ET 2/14/22.

*Docket Numbers:* ER22–890–000.

*Applicants:* American Electric Power Service Corporation.

*Description:* American Electric Power Service Corporation, Submitted a Notice of Cancellation of Interconnection and Operating Agreements.

*Filed Date:* 1/25/22.

*Accession Number:* 20220125–5191.

*Comment Date:* 5 p.m. ET 2/15/22.

*Docket Numbers:* ER22–891–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: Calpine Greenleaf Holdings Amendment (SA 174) to be effective 9/17/2021.

*Filed Date:* 1/26/22.

*Accession Number:* 20220126–5134.

*Comment Date:* 5 p.m. ET 2/16/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 26, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–01997 Filed 1–31–22; 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:* RP22–496–000.

*Applicants:* WBI Energy Transmission, Inc.

*Description:* § 4(d) Rate Filing: 2022 Tariff Filing Removing North Bakken Expansion Service Agreement to be effective 2/1/2022.

*Filed Date:* 1/25/22.

*Accession Number:* 20220125–5120.

*Comment Date:* 5 p.m. ET 2/7/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *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: January 26, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–01993 Filed 1–31–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2725–075]**

### Oglethorpe Power Corporation, Georgia Power Company, Rocky Mountain Leasing Corporation, and U.S. Bank National Association; 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.:* 2725–075.

c. *Dated Filed:* December 10, 2021.

d. *Submitted By:* Oglethorpe Power Corporation.

e. *Name of Project:* Rocky Mountain Pumped Storage Hydroelectric Project.

f. *Location:* On Heath Creek, Floyd County, Georgia. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR 5.5 of the Commission's regulations.

h. *Applicant Contact:* Craig A. Jones, Environmental Policy Director, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, GA 30084, (770) 270–7348, *craig.jones@opc.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093 or *michael.spencer@ferc.gov.*

j. Oglethorpe Power Corporation (OPC) filed its request to use the Traditional Licensing Process on December 10, 2021. OPC provided public notice of its request on December 10, 2021. In a letter dated January 26, 2022, the Director of the Division of Hydropower Licensing approved OPC'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/or 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 Georgia State Historic Preservation Officer, as required by section 106, 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 OPC 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. OPC 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 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 *FERCONline Support@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The applicant states its unequivocal intent to submit an application for a new license for Project No. 2725–075. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new 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 December 31, 2024.

p. Register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: January 26, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–01994 Filed 1–31–22; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2021–0952; FRL–9458–01–OCSPP]**

### Clothianidin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (FDACS) to use the insecticide clothianidin (CAS No. 210–880–92–5 as a soil drench application to treat up to 125,376 acres of immature (3–5 years old) citrus trees to control the transmission of Huanglongbing (HLB) disease vectored by the Asian Citrus Psyllid (ACP). The applicant proposes a use that has been requested in 5 or more previous years. Therefore, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before February 16, 2022.

**ADDRESSES:** The docket for these actions, identified by docket identification (ID) number EPA–HQ–OPP–2021–0952, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744.

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

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

## II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The FDACS has requested the EPA Administrator to issue a specific exemption for the use of clothianidin as a soil drench application on immature (3–5 years old) citrus trees to control the transmission of HLB disease vectored by ACP. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that clothianidin is needed to suppress the transmission of HLB disease vectored by ACP due to the lack of available alternative pesticides and effective control practices. Without the use of this tool, Florida citrus growers are expected to experience significant economic losses due to the severity of this invasive disease and vector complex.

The Applicant proposes to make no more than two applications of clothianidin at a maximum rate of 0.4 lb. a.i./A (24.0 fl. oz per acre) per 12-month period on up to 125,376 acres of immature (3–5 years old) citrus trees grown in Florida from January 14 to October 31, 2022. A total of 50,150 lbs. of clothianidin could be used on the maximum acreage of 125,376 at the highest rate.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR–4 program and has been requested in 5 or more previous years; and for which a complete application for registration of that use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency.

The FDACS submitted in 2011 a petition for tolerance to EPA that was subsequently withdrawn, and an application/petition has not been resubmitted to the Agency. The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the FDACS.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: January 19, 2022.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2022–01987 Filed 1–31–22; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2021–0513; FRL–9417–01–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 their product registrations to terminate one or more 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 withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have 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 March 3, 2022.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0513, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

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: (202) 566–2707; 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 certain product registrations and terminate certain uses of 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 |
|---|---|---|---|
| 432–1515 | 432 | BES0531 | Bacillus thuringiensis subspecies israelensis Strain BMP 144 solids, spores and insecticidal toxins. |
| 524–487 | 524 | Harness 20G Granular Herbicide | Acetochlor. |
| 524–496 | 524 | Mon 58430 Herbicide | Acetochlor. |
| 524–497 | 524 | Mon 58442 Herbicide | Atrazine; Glyphosate-isopropylammonium & Acetochlor. |
| 1258–1401 | 1258 | IWC 2300–G | Sodium bromide. |
| 2693–70 | 2693 | Latenac Antifouling Red | Cuprous oxide. |
| 2724–688 | 2724 | Security BT Dust Biological Insecticide | Bacillus thuringiensis subspecies kurstaki strain SA–12 solides, spores, and insecticidal toxins, ATCC # SD–1323. |
| 4822–278 | 4822 | Raid Formula 278 Insect Killer | Permethrin. |
| 5185–448 | 5185 | NABR97–E | Sodium bromide. |
| 6836–264 | 6836 | Dantobrom TBS–2 | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin. |
| 6836–281 | 6836 | Dantobrom PG Granular | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin. |
| 7946–11 | 7946 | Mauget Inject-A-Cide B | Dicrotophos. |
| 8622–25 | 8622 | Halobrom | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–28 | 8622 | Halogene | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–29 | 8622 | Halogene G | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–30 | 8622 | Halogene T–30 | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–41 | 8622 | Halobrom Mini Slow Dissolving Brominating Tablets for Pool & Spa. | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–70 | 8622 | Halobrom BCDMH 96% | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–73 | 8622 | Halogene—Tab | 2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-. |
| 8622–82 | 8622 | Halogene 96 | 2,4-Imidazolidinedione, 3-bromo-1-chloro-5,5-dimethyl-. |
| 9688–84 | 9688 | Chemsico Lawn & Garden Insect Control | Permethrin. |
| 9688–85 | 9688 | Chemsico Home Insect Control C | Permethrin. |
| 9688–120 | 9688 | Chemsico Concentrate MP | Permethrin & Myclobutanil. |
| 9688–149 | 9688 | Chemsico Insecticide Concentrate 57P | Permethrin. |
| 9688–184 | 9688 | Chemsico Fire Ant Killer PD | Permethrin. |
| 11678–78 | 11678 | Titanium 9.3 | Novaluron. |
| 41750–3 | 41750 | Awlgrip Awlstar Anti-Fouling Gold Label BP802 White Lightning. | Cuprous oxide. |
| 62719–42 | 62719 | Reldan F Insecticidal Chemical | Chlorpyrifos-methyl. |
| 73049–405 | 73049 | BTI Technical Powder Bioinsecticide | Bacillus thuringiensis subsp. israelensis strain EG2215. |
| 74229–1 | 74229 | Magna Cide D | Nabam & Sodium dimethyldithiocarbamate. |
| 80289–16 | 80289 | Dipron 10 EC | Novaluron. |
| 87093–12 | 87093 | LN Iron HEDTA | Ferric HEDTA. |
| AR–970005 | 2217 | Acme Hi-Dep Herbicide | 2,4–D, diethanolamine salt & 2,4–D, dimethylamine salt. |
| CA–100003 | 66222 | Rimon 0.83 EC Insecticide | Novaluron. |
| ID–100005 | 66222 | Rimon 0.83 EC | Novaluron. |
| ID–180003 | 5481 | Parazone 3SL Herbicide | Paraquat dichloride. |
| ID–190005 | 5481 | Parazone 3SL Herbicide | Paraquat dichloride. |

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration No. | Company No. | Product name | Active ingredients |
|---|---|---|---|
| ID–190006 | 5481 | Parazone 3SL Herbicide | Paraquat dichloride. |
| ID–190007 | 5481 | Parazone 3SL Herbicide | Paraquat dichloride. |
| MT–060002 | 66222 | Rimon 0.83 EC | Novaluron. |
| OR–180005 | 5481 | Parazone 3SL Herbicide | Paraquat dichloride. |
| OR–160008 | 264 | Sivanto 200 SL | Flupyradifurone. |
| WA–050016 | 61282 | Prozap Zinc Phosphide Pellets | Zinc phosphide (Zn3P2). |
| WA–120012 | 59639 | Valor Herbicide | Flumioxazin. |
| WA–180003 | 5481 | Parazone 3SL Herbicide | Paraquat dichloride. |
| WY–060005 | 66222 | Rimon 0.83 EC | Novaluron. |

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| Registration No. | Company No. | Product name | Active ingredient | Uses to be terminated |
|---|---|---|---|---|
| 10088–55 | 10088 | Non-Selective Herbicide #3 | Prometon | Weed control on railroad sidings. |
| 10324–81 | 10324 | Maquat 7.5–M | Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride. | Cadaver. |
| 10324–177 | 10324 | Maquat 705–M | Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride. | Cadaver. |
| 66222–22 | 66222 | Pramitol 25E | Prometon | Railroads. |
| 70506–575 | 70506 | Thiram 480DP | Thiram | Turf and golf. |

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 |
|---|---|
| 264 | Bayer CropScience, LP,8622 Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004. |
| 432 | Bayer Environmental Science, A Division of Bayer CropScience, LP, 700 Chesterfield Parkway West, Chesterfield, MO 63017. |
| 524 | Bayer CropScience, LP, 801 Pennsylvania Ave., NW, Suite 900, Washington, DC 20004. |
| 1258 | Innovative Water Care, LLC, 1400 Bluegrass Lakes Parkway, Alpharetta, GA 30004. |
| 2217 | PBI/Gordon Corporation, 22701 W 68th Terrace, Shawnee, KS 66226. |
| 2693 | International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091. |
| 2724 | Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173. |
| 4822 | S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403. |
| 5185 | Bio-Lab, Inc., P.O. Box 300002, Lawrenceville, GA 30049–1002. |
| 5481 | Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706. |
| 6836 | Arxada, LLC, 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960. |
| 7946 | J.J. Mauget Co., Agent Name: SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192. |
| 8622 | ICL–IP America, Inc., 11636 Huntington Road, Gallipolis Ferry, WV 25515. |
| 9688 | Chemsico, A Division of United Industries Corp., One Rider Trail Plaza Drive, Suite 300, Earth City, MO 63045–1313. |
| 10088 | Athea Laboratories, Inc., P.O. Box 240014, Milwaukee, WI 53224. |
| 10324 | Mason Chemical Company, 9075 Centre Pointe Dr., Suite 400, West Chester, OH 45069. |
| 11678 | Adama Makhteshim Ltd., Agent Name: Makhteshim-Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. |
| 41750 | International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091. |
| 59639 | Valent U.S.A., LLC, 4600 Norris Canyon Road, P.O. Box 5075, San Ramon, CA 94583. |
| 61282 | Hacco, Inc., 620 Lesher Place, Lansing, MI 48912. |
| 62719 | Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. |
| 66222 | Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100 Raleigh, NC 27604. |
| 70506 | UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. |

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

| EPA company No. | Company name and address |
|---|---|
| 73049 | Valent Biosciences, LLC, 1910 Innovation Way, Suite 100, Libertyville, IL 60048–6316. |
| 74229 | Pro Tech USA, LLC, Agent Name: KRK Consulting, LLC, 5807 Churchill Way, Medina, OH 44256. |
| 80289 | Isagro S.P.A., D/B/A Isagro USA, Inc., Agent Name: Exigent Sciences, LLC, 370 S. Main St., Yuma, AZ 85364. |
| 87093 | LNouvel, Inc., 4657 Courtyard Trail, Plano, TX 75024. |

## 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 termination 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 for 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 and 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 and terminated uses.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: January 21, 2022.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2022–01989 Filed 1–31–22; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2020–0682; FRL–9518–01–ORD]**

## Request for Nomination of Experts for the Biofuels and the Environment: Third Triennial Report to Congress Peer Review Panel

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

**ACTION:** Notice; nomination of experts for peer review panel.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is requesting nominations for an external expert panel to peer review EPA's Biofuels and the Environment: Third Triennial Report to Congress (RtC3). The peer review will be conducted under the framework of EPA's Scientific Integrity Policy (*https://www.epa.gov/sites/default/files/2014-02/documents/scientific_integrity_policy_2012.pdf*) and follow procedures established in EPA's Peer Review Handbook 4th Edition, 2015 (EPA/100/B–15/001). EPA invites the public to nominate scientific experts to be considered as peer reviewers for this contractor-managed peer review. Nominations of peer review candidates will be accepted by EPA's contractor, Eastern Research Group, Inc. (ERG). Relevant expertise includes economics, engineering, agronomics, land use change, remote sensing, air quality, biogeochemistry, water quality, hydrology, conservation biology, limnology, and ecology. EPA has instructed ERG to formulate a single pool of eighteen (18) candidate external reviewers to provide independent external peer review. After consideration of peer reviewer nominations submitted to ERG in response to this **Federal Register** notice (FRN) and after consideration of public comments on the List of Candidates (to be announced in a future FRN), ERG will select from this pool the final list of up to nine (9) peer reviewers in a manner consistent with EPA's Peer Review Handbook 4th Edition, 2015 (EPA/100/B–15/001), ensuring their combined expertise best spans the above disciplines.

**DATES:** Nominations should be submitted by March 3, 2022.

**ADDRESSES:** Any interested person or organization may nominate scientific experts to be considered as peer reviewers. Self-nominations will also be accepted. Nominations should be submitted to ERG no later than March 3, 2022 by sending an email to: *peerreview@erg.com* (subject line: RtC3 Peer Review). Nominations should include all nominee information described in section II of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning nominations of expert peer reviewers should be directed to EPA's contractor, ERG, by email to *peerreview@erg.com* (subject line: RtC3 Peer Review). For information on the period of submission, contact the ORD Docket at the EPA Headquarters Docket Center; phone: 202–566–1752; fax: 202–566–9744; or email: *ord.docket@epa.gov.* For technical information, contact Christopher Clark; phone: 202–564–4183; or email: *Clark.Christopher@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Information About the Document

In 2007, Congress enacted the Energy Independence and Security Act (EISA) with the stated goals of ''mov[ing] the United States toward greater energy independence and security [and] to increase the production of clean renewable fuels.'' In accordance with these goals, EISA revised the Renewable Fuel Standard (RFS) Program, which was created under the 2005 Energy Policy Act and is administered by EPA, to increase the volume of renewable fuel required to be blended into transportation fuel to 36 billion gallons per year by 2022. Section 204 of EISA directs EPA, in consultation with the U.S. Departments of Agriculture and Energy, to assess and report triennially to Congress on the environmental and resource conservation impacts of the RFS Program.

The first report to Congress (RtC1) was completed in 2011 and provided an assessment of the environmental and resource conservation impacts associated with increased biofuel production and use (EPA/600/R–10/183F). The overarching conclusions of this first report were: (1) The environmental impacts of increased biofuel production and use were likely negative but limited in impact; (2) there was a potential for both positive and negative impacts in the future; and (3) EISA goals for biofuels production could be achieved with minimal environmental impacts if best practices were used and if technologies advanced to facilitate the use of second-generation biofuel feedstocks (corn stover, perennial grasses, woody biomass, algae, and waste).

The second report to Congress (RtC2) was completed in 2018 and reaffirmed the overarching conclusions of the RtC1 (EPA/600/R–18/195). The RtC2 noted that the biofuel production and use conditions that led to the conclusions of the RtC1 had not materially changed, and that the production of biofuels from cellulosic feedstocks anticipated by both the EISA and the RtC1 had not materialized. Noting observed increases in acreage for corn and soybean production in the period prior to and following implementation of the RFS2 Program, the RtC2 concluded that the environmental and resource conservation impacts associated with land use change were likely due, at least in part, to the RFS and associated production of biofuel feedstocks but that further research was needed.

This RtC3 builds on the previous two reports and provides an update on the impacts to date of the RFS Program on the environment. This report assesses air, water, and soil quality; ecosystem health and biodiversity; and other effects. This third report also includes new analyses not previously included in the first and second reports.

## II. How To Submit Nominations for Peer Reviewers

*Expertise sought:* EPA is seeking candidates who are nationally and/or internationally recognized scientific experts to serve as external peer reviewers for the draft report. Nominees should possess a strong background and demonstrated expertise in one or more of the following areas: Economics, engineering, agronomics, land use change, remote sensing, air quality, biogeochemistry, water quality, hydrology, conservation biology, limnology, and ecology. Economists should have expertise in partial equilibrium modeling (PE), computable general equilibrium modeling (CGE), and/or econometric studies. All candidates should have scientific credentials equivalent to a Ph.D., broad expertise in biofuels, and should be familiar with the Renewable Fuel Standard (RFS) Program.

*Selection criteria:* From the pool of nominees, EPA's contractor, ERG, will select nine peer reviewers, in a manner consistent with EPA's Peer Review Handbook 4th Edition, 2015 (EPA/100/B–15/001), based on the following factors: (1) Demonstrated expertise in the areas listed above through relevant peer-reviewed publications; (2) professional accomplishments and recognition by professional societies; (3) demonstrated ability to work constructively and effectively in a committee setting; (4) absence of conflicts of interest; (5) no appearance of a lack of impartiality; (6) willingness to commit adequate time for a thorough review of the draft report, including preparation of individual written comments that will be made publicly available; and (7) availability to participate virtually in a public two-day or three-day peer review meeting and to provide subsequent revised individual comments. Registration information, meeting dates, and other logistical information will be provided in a subsequent FRN at least 30 days prior to the external peer review meeting.

*Required nominee information:* To receive full consideration, the following information should be provided for each nominee in the submission to ERG at *peerreview@erg.com* (subject line: RtC3 Peer Review): (1) Contact information for the person making the nomination; (2) contact information for the nominee; (3) the disciplinary and specific areas of expertise of the nominee; (4) the nominee's curriculum vitae; (5) a biographical sketch of the nominee indicating current position, educational background, past and current research activities, recent service on other advisory committees, peer review panels, editorial boards or professional organizations, sources of recent grant and/or contract support, and (6) any other comments on the relevance of the nominee's expertise to this peer review topic. Compensation for non-federal peer reviewers will be provided by ERG.

*Selection process:* ERG will notify nominees of selection or non-selection. ERG will also conduct an independent search for candidates to assemble a balanced group representing the expertise needed to fully evaluate EPA's Third Triennial Biofuels and the Environment Report to Congress (RtC3). ERG will consider and screen all nominees against the criteria previously described. Following the screening process, ERG will narrow the list of potential reviewers to eighteen candidates. Prior to selecting the final peer reviewers, an FRN will be published (exact date to be determined) to solicit comments on the pool of eighteen candidates. In that notice, the public will be requested to provide relevant information or documentation on the candidate pool within 15 days of the announcement of the interim list of candidates. After considering the public comments on the candidate pool, ERG will select nine peer reviewers, carefully

weighing a number of factors including the candidates' areas of expertise and professional qualifications.

**Timothy Watkins,**

*Acting Director, Center for Public Health and Environmental Assessment.*

[FR Doc. 2022–02047 Filed 1–31–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–XXXX; FR ID 68459]**

### Information Collection Being Submitted for Review and Approval to Office of Management and Budget

*Correction*

In notice document 2022–01205, appearing on pages 3299–3330, in the issue of Friday, January 21, 2022 make the following correction:

On page 3299, in the second column, in the **DATES** section, ''January 21, 2022'' should read ''February 22, 2022''.

[FR Doc. C1–2022–01205 Filed 1–31–22; 8:45 am]

**BILLING CODE 0099–10–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0748 and 3060–0692; FR ID 69382]**

### Information Collections Being Submitted for Review and Approval to Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

**DATES:** Written comments and recommendations for the proposed information collection should be submitted on or before March 3, 2022.

**ADDRESSES:** Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*OMB Control Number:* 3060–0748.

*Title:* Section 64.104, 64.1509, 64.1510 Pay-Per-Call and Other Information Services.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 5,125 respondents; 5,175 responses.

*Estimated Time per Response:* 2 to 260 hours.

*Frequency of Response:* Annual and on occasion reporting and recordkeeping requirements; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority(s) for the information collection is found at 47 U.S.C. 228(c)(7)–(10); Public Law 192–556, 106 stat. 4181 (1992), codified at 47 U.S.C. 228 (The Telephone Disclosure and Dispute Resolution Act of 1992).

*Total Annual Burden:* 47,750 hours.

*Total Annual Cost:* None.

*Needs and Uses:* 47 CFR 64.1504 of the Commission's rules incorporates the requirements of Sections 228(c)(7)–(10) of the Communications Act restricting the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers may not charge a calling party for information conveyed on a toll-free number call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider gives the calling party an introductory message disclosing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services. 47 CFR 64.1509 of the Commission rules incorporates the requirements of 47 U.S.C. (c)(2) and 228 (d)(2)–(3) of the Communications Act. Common carriers that assign telephone numbers to pay-

per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

Under 47 CFR 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

*OMB Control Number:* 3060–0692.

*Type of Review:* Extension of a currently approved collection.

*Title:* Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multi-channel Video Programming Distributor (MVPD).

*Form Number:* N/A.

*Respondents:* Individuals or households; Business or other for-profit entities.

*Number of Respondents and Responses:* 22,000 respondents and 253,010.

*Estimated Time per Response:* 0.083–2 hours.

*Frequency of Response:* On occasion reporting requirement; Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 36,114 hours.

*Total Annual Cost:* No cost.

*Needs and Uses:* In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to adopt rules governing the disposition of home wiring owned by a cable operator when a subscriber terminates service. The rules at 76.800 *et seq.,* implement that directive. The intention of the rules is to clarify the status and provide for the disposition of existing cable operator-owned wiring in single family homes and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2022–02018 Filed 1–31–22; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT:** 87 FR 3109.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Tuesday, January 25, 2022 AT 10:00 a.m. and its Continuation at the Conclusion of the Open Meeting on January 27, 2022.

**CHANGES IN THE MEETING:** This meeting also discussed:

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

* * * * *

**FOR MORE INFORMATION CONTACT:** 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. 2022–02066 Filed 1–28–22; 11:15 am]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE–22–012, The CDC National Centers of Excellence in Youth Violence Prevention (YVPCs): Rigorous Evaluation of Prevention Strategies to Prevent and Reduce Community Rates of Youth Violence.*

*Dates:* June 21–22, 2022.

*Times:* 8:30 a.m.–5:30 p.m., EDT.

*Place:* Web Conference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop

S106–9, Atlanta, Georgia 30341–3717, Telephone: (404) 639–6473, Email: *AWilkes@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2022–01951 Filed 1–31–22; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22–007: Reduce Health Disparities and Improve Traumatic Brain Injury (TBI) Related Outcomes Through the Implementation of CDC's Pediatric Mild TBI Guideline; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22–007: Reduce Health Disparities and Improve Traumatic Brain Injury (TBI) Related Outcomes Through the Implementation of CDC's Pediatric Mild TBI Guideline; June 6–7, 2022, 8:30 p.m.–5:30 p.m., EDT, Videoconference.

The Videoconference meeting was published in the **Federal Register** on January 14, 2022, Volume 87, Number 10, page 2438.

The meeting is being amended to correct the dates of the special emphasis panel and should read as follows:

*Date:* June 7–8, 2022.

The meeting is closed to the public.

*For Further Information Contact:* Mikel Walters, Ph.D., Scientific Review Official, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone (404) 639–0913, *MWalters@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2022–01950 Filed 1–31–22; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE–22–001, Grants To Support New Investigators in Conducting Research Related to Understanding Polydrug Use Risk and Protective Factors; Cancellation of Meeting

**AGENCY:** Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Notice.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE–22–001, Grants to Support New Investigators in Conducting Research Related to Understanding Polydrug Use Risk and Protective Factors; March 15–16, 2022, 8:30 a.m.–5:30 p.m., EDT. The web conference was published in the **Federal Register** on January 5, 2022, Volume 87, Number 3, page 460.

This meeting is being canceled in its entirety.

**FOR FURTHER INFORMATION CONTACT:** Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341–3717, Telephone: (404) 639–6473, Email: *AWilkes@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2022–01949 Filed 1–31–22; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–10401]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by April 4, 2022.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection

document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

## Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10401 Standards Related to Reinsurance, Risk Corridors, Risk Adjustment, and Payment Appeals

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

## Information Collection

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment; *Use:* The data collection and reporting requirements will be used by HHS to run the permanent risk adjustment program, including validation of data submitted by issuers, on behalf of States that requested HHS to run it for them. Risk adjustment is one of three market stability programs established by the Patient Protection and Affordable Care Act and is intended to mitigate the impact of adverse selection in the individual and small group health insurance markets inside and outside of the Health Insurance Exchanges. HHS will also use this data to adjust the payment transfer formula for risk associated with high-cost enrollees. State regulators can use the reporting requirements outlined in this collection to request a reduction to the statewide average premium factor of the risk adjustment transfer formula, beginning for the 2019 benefit year, and thereby avoid having to establish their own programs. Issuers and providers can use the alternative reporting requirements for mental and behavioral health records described herein to comply with State privacy laws. *Form Number:* CMS–10401 (OMB control number: 0938–1155); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 650; *Total Annual Responses:* 173,918; *Total Annual Hours:* 4,126,850. For policy questions regarding this collection contact Jacqueline Wilson at *jacqueline.wilson1@cms.hhs.gov.*

Dated: January 27, 2022.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2022–02039 Filed 1–31–22; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10463]**

### 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 March 3, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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/Paperwork ReductionActof1995/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:* Cooperative Agreement to Support Navigators in Federally-facilitated Exchanges; *Use:* Section 1311(i) of the PPACA requires Exchanges to establish a Navigator grant program under which it awards grants to eligible individuals and entities (as described in Section 1311(i)(2) of the PPACA and 45 CFR 155.210(a) and (c)) applying to serve consumers in States with a FFE. Navigators assist consumers by providing education about and facilitating selection of qualified health plans (QHPs) within the Exchanges, as well as other required duties. Entities and individuals cannot serve as federally certified Navigators and carry out the required duties without receiving federal cooperative agreement funding. On July 1, 2021, HHS published the Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule proposed rule. The proposed regulations would amend federal regulations at 45 CFR 155.210(e)(9) to reinstitute the requirement that FFE Navigators provide consumers with information and assistance on access, affordability and certain post-enrollment topics, such as the eligibility appeals process, the Exchange-related components of the Premium Tax Credit (PTC) reconciliation process, and the basic concepts and rights of health coverage and how to use it.

Under the Terms and Conditions of the Navigator program cooperative agreements, awardees must provide progress reports on a weekly, monthly, quarterly and annual basis during the cooperative agreement period of performance, and a final report at the end of the period of performance. Awardees will submit their progress reports electronically to CMS staff for evaluation and analysis. The results of this evaluation will provide feedback on the effectiveness of the Navigator program, so that HHS and CMS leadership may evaluate the effectiveness of the program and address any areas that need revisions. CMS will also use the information collected from Navigator grant awardees to inform the public about the availability of application and enrollment assistance services from designated organizations. *Form Number:* CMS–10463 (OMB control number: 0938–1215); *Frequency:* Annually, Monthly, Quarterly, Weekly; *Affected Public:* Private sector; *Number of Respondents:* 100; *Total Annual Responses:* 5,200; *Total Annual Hours:* 529,000. For questions regarding this collection contact Gian Johnson at 301–492–4323.

Dated: January 27, 2022.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2022–02031 Filed 1–31–22; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; ACF–800: Child Care and Development Fund (CCDF) Annual Aggregate Report (OMB #0970–0150)

**AGENCY:** Office of Child Care, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Child Care (OCC), Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF–800: CCDF Annual Aggregate Report (OMB #0970–0150, expiration 2/28/2022). There are no changes requested to the form.

**DATES:** *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* All emailed requests should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The ACF–800 provides annual aggregate data on the children and families receiving direct child care services under CCDF, and is used by OCC to analyze and evaluate the CCDF program to the extent which state and territory lead agencies are assisting families in addressing child care needs.

*Respondents:* State and territory lead agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| ACF–800: CCDF Annual Aggregate Report | 56 | 1 | 40 | 2,240 |

*Estimated Total Annual Burden Hours:* 2,240.

*Authority:* The Child Care and Development Block Grant Act (42 U.S.C. 9857 *et seq.*); regulations at 45 CFR 98.70 and 98.71.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022–02012 Filed 1–31–22; 8:45 am]

**BILLING CODE 4184–81–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–

* 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.

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)
U.S. 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

**Anastasia Marie Donovan,**

*Policy Analyst, Division of Workplace Programs.*

[FR Doc. 2022–01990 Filed 1–31–22; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Meeting of the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the meeting on March 29, 2022 of the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services National Advisory Council (CMHS NAC). The meeting is open to the public and can be accessed remotely. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meeting will include consideration of the minutes from the August 17, 2021, SAMHSA, CMHS NAC meeting; updates from the CMHS Director; updates from the Office of the Assistant Secretary, and council discussions.

**DATES:** Tuesday, March 29, 1:00 p.m. to 5:00 p.m., EDT (OPEN).

**ADDRESSES:** The meeting will be held virtually and can be accessed via Zoom.

**FOR FURTHER INFORMATION CONTACT:** Pamela Foote, Designated Federal Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 14E57B, Rockville, Maryland 20857, Telephone: (240) 276–1279, Fax: (301) 480–8491, Email: *pamela.foote@samhsa.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** The CMHS NAC is required to meet at least twice per fiscal year. To attend virtually, submit written or brief oral comments, or request special accommodation for persons with disabilities, contact Pamela Foote. Individuals can also register on-line at: *https://snacregister.samhsa.gov/MeetingList.aspx.*

The public comment section will be scheduled at the conclusion of the meeting. Individuals interested in submitting a comment, must notify Pamela Foote on or before March 14, 2022 via email to: *Pamela.Foote@samhsa.hhs.gov.*

Up to three minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be considered for inclusion in the official record of the meeting.

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA website at: *http://www.samhsa.gov/about-us/advisory-councils/cmhs-national-advisory-council* or by contacting the CMHS NAC Designated Federal Officer; Pamela Foote.

*Council Name:* Substance Abuse and Mental Health Services Administration, Center for Mental Health Services National Advisory Council.

Dated: January 25, 2022.

**Carlos Castillo,**

*Committee Management Officer, SAMHSA.*

[FR Doc. 2022–02007 Filed 1–31–22; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Notice of Meeting for the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC)

**AGENCY:** Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Health and Human Services announces a meeting of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC).

The ISMICC is open to the public and can be accessed via telephone or webcast only, and not in person. Agenda with call-in information will be posted on SAMHSA's website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.*

The meeting will provide information on federal efforts related to serious mental illness (SMI) and serious emotional disturbance (SED).

**DATES:** April 13, 2022, 1:00 p.m.–5:00 p.m. (EDT)/Open.

**ADDRESSES:** The meeting will be held virtually and can be accessed via Zoom.

**FOR FURTHER INFORMATION CONTACT:** Pamela Foote, ISMICC Designated Federal Officer, SAMHSA, 5600 Fishers

Lane, 14E53C, Rockville, MD 20857; telephone: 240–276–1279; email: *pamela.foote@samhsa.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background and Authority

The ISMICC was established on March 15, 2017, in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. app., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in SMI and SED, research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMIs, SEDs, and advances in access to services and supports for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect federal programs related to SMI and SED have on public health, including public health outcomes such as: (A) Rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than one (1) year after the date of enactment of the 21st Century Cures Act, and five (5) years after such date of enactment, the ISMICC shall submit a report to Congress and any other relevant federal department or agency.

## II. Membership

This ISMICC consists of federal members listed below or their designees, and non-federal public members.

*Federal Membership:* Members include, The Secretary of Health and Human Services; The Assistant Secretary for Mental Health and Substance Use; The Attorney General; The Secretary of the Department of Veterans Affairs; The Secretary of the Department of Defense; The Secretary of the Department of Housing and Urban Development; The Secretary of the Department of Education; The Secretary of the Department of Labor; The Administrator of the Centers for Medicare and Medicaid Services; and The Commissioner of the Social Security Administration.

*Non-federal Membership:* Members include, not less than 14 non-federal public members appointed by the Secretary, representing psychologists, psychiatrists, social workers, peer support specialists, and other providers, patients, family of patients, law enforcement, the judiciary, and leading research, advocacy, or service organizations.

The ISMICC is required to meet at least twice per year.

To attend virtually, submit written or brief oral comments, or request special accommodation for persons with disabilities, contact Pamela Foote. Individuals can also register on-line at: *https://snacregister.samhsa.gov/MeetingList.aspx.*

The public comment section will be scheduled at the conclusion of the meeting. Individuals interested in submitting a comment, must notify Pamela Foote on or before April 4, 2021 via email to: *Pamela.Foote@samhsa.hhs.gov.*

Up to three minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be considered for inclusion in the official record of the meeting.

Substantive meeting information and a roster of Committee members is available at the Committee's website: *https://www.samhsa.gov/about-us/advisory-councils/meetings*

Dated: January 25, 2022.

**Carlos Castillo,**

*Committee Management Officer.*

[FR Doc. 2022–02003 Filed 1–31–22; 8:45 am]

**BILLING CODE 4162–20–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2021–0830]**

### National Boating Safety Advisory Committee; Vacancies

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard seeks applications from persons interested in the membership on the National Boating Safety Advisory Committee (Committee) to fill two vacancies. This Committee advises the Coast Guard on matters related to national recreational boating safety.

**DATES:** Your completed applications should reach the U.S. Coast Guard on or before March 3, 2022.

**ADDRESSES:** Applications should include a cover letter expressing interest in an appointment to the National Boating Safety Advisory Committee and a resume detailing the applicant's boating experience with a brief biography. Incomplete applications will not be considered.

Applications should be submitted via email with subject line ''Application for NBSAC'' to *NBSAC@uscg.mil.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Decker, Alternate Designated Federal Officer of the National Boating Safety Advisory Committee; telephone 202–372–1507 or email at *NBSAC@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The National Boating Safety Advisory Committee is a Federal advisory committee. The Committee operates under the provisions of the *Federal Advisory Committee Act,* (5 U.S.C. appendix) in addition to the administrative provisions in section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. No 115–282, 132 Stat 4192). That authority is codified, at 46 U.S.C. 15105. The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee will hold meetings at least twice a year. The meetings are held virtually or at a location selected by the U.S. Coast Guard.

All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed for travel and per diem in accordance with Federal Travel Regulations.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

In this solicitation for Committee members, we will consider applications for two (2) positions:

- One member to represent State officials responsible for State boating safety programs.

• One member to represent recreational vessel and associated equipment manufacturers.

Each member of the Committee must have particular expertise, knowledge, and experience on matters related to national boating safety.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, email your cover letter and resume along with the brief biography to *NBSAC@uscg.mil* via the transmittal method provided in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

Dated: January 26, 2022.

**Wayne R. Arguin, Jr.,**

*Captain, U.S. Coast Guard, Director of Inspections and Compliance.*

[FR Doc. 2022–02016 Filed 1–31–22; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2020–0016]**

### Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Announcement of meetings; correction.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) published a document in the **Federal Register** of January 6, 2022, concerning four meetings under the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19. The document contained an incorrect date.

**FOR FURTHER INFORMATION CONTACT:** Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of January 6, 2022, in FR Doc. 87–784, on page 784, in the second column, correct the **DATES** caption to read:

*Dates*

• Wednesday, January 5, 2022, from 1 p.m. to 3 p.m. Eastern Time (ET).
• Wednesday, January 12, 2022, from 1 p.m. to 3 p.m. ET.
• Wednesday, January 19, 2022, from 1 p.m. to 3 p.m. ET.
• Wednesday, February 2, 2022, from 1 p.m. to 3 p.m. ET.

Dated: January 26, 2022.

**Shabnaum Q. Amjad,**

*Deputy Associate Chief Counsel, Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency.*

[FR Doc. 2022–01940 Filed 1–31–22; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2022–0007]**

### Assistance to Firefighters Grant Program

**AGENCY:** Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the Federal Fire Prevention and Control Act of 1974, as amended, the Administrator of FEMA is publishing this notice describing the fiscal year (FY) 2021 Assistance to Firefighters Grant (AFG) Program application process, deadlines, and award selection criteria. This notice explains the differences, if any, between these guidelines and those recommended by representatives of the national fire service leadership during the annual meeting of the Criteria Development Panel, which was held June 25, 2021. The application period for the FY 2021 AFG Program is November 8, 2021 through January 21, 2022, and was announced on the AFG website at *https://www.fema.gov/grants/preparedness/firefighters,* as well as at *www.grants.gov.*

**DATES:** Grant applications for the FY 2021 AFG Program are being accepted electronically at *https://go.fema.gov,* from November 8, 2021 through January 21, 2022, at 5 p.m. ET.

**ADDRESSES:** Assistance to Firefighters Grant Branch, DHS/FEMA, 400 C Street SW, 3N, Washington, DC 20472–3635.

**FOR FURTHER INFORMATION CONTACT:** Catherine Patterson, Branch Chief, Assistance to Firefighters Grant Branch, 1–866–274–0960.

**SUPPLEMENTARY INFORMATION:** The AFG Program awards grants directly to fire departments, nonaffiliated emergency medical services (EMS) organizations, and State Fire Training Academies (SFTAs) for the purpose of enhancing the health and safety of first responders and improving their abilities to protect the public from fire and fire-related hazards.

Applications for the FY 2021 AFG Program are submitted and processed online at *https://go.fema.gov.* Before the application period started, the FY 2021 AFG Program Notice of Funding Opportunity (NOFO) was published on FEMA's AFG Program website at *Assistance to Firefighters Grants Program | FEMA.gov.* The AFG Program website provides additional information and materials useful for FY 2021 AFG Program applicants including Frequently Asked Questions, Application Checklist, Get Ready Guide Narrative, Self-Evaluation Sheets for Vehicle Acquisition and Operations Safety, and a Cost Share Calculator. Based on past AFG Program application periods, FEMA anticipates receiving 8,000 to 10,000 applications for the FY 2021 AFG Program, and the ability to award approximately 2,000 grants.

**Congressional Appropriations**

For the FY 2021 AFG Program, Congress appropriated a total of $460 million through the *DHS Appropriations Act, 2021* (Pub. L. 116–260) ($360 million) and the *American Rescue Plan Act of 2021* (Pub. L. 117–2) ($100 million). From this amount, $414 million will be made available for FY 2021 AFG Program awards. In addition, section 33 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2229), requires that a minimum of 10 percent of available funds be expended for Fire Prevention and Safety (FP&S) Program grants. FP&S Program awards will be made directly to local fire departments and to local, regional, state, or national entities recognized for their expertise in the fields of fire prevention and firefighter safety research and development. The majority of the funds appropriated for FY 2021 are available for obligation and award until September 30, 2022. The $100 million from the *American Rescue Plan Act of 2021* is available for obligation and award until September

30, 2025, but FEMA anticipates obligating and awarding all of this funding with the rest of the FY 2021 funding by September 30, 2022.

The Federal Fire Prevention and Control Act of 1974 further directs FEMA to administer these appropriations according to the following requirements:

- Career fire departments: Not less than 25% of available grant funds.
- Volunteer fire departments: Not less than 25% of available grant funds.
- Combination fire departments and departments using paid-on-call firefighting personnel: Not less than 25% of available grant funds.
- Open competition (career, volunteer, and/or combination fire departments and departments using paid-on-call firefighting personnel): Not less than 10% of available grant funds awarded.
- EMS providers including fire departments and nonaffiliated EMS organizations: Not less than 3.5% of available grant funds awarded, with nonaffiliated EMS providers receiving no more than 2 percent of the total available grant funds.
- SFTAs: Not more than 3% of available grant funds shall be collectively awarded to SFTA applicants, with a maximum of $1 million per applicant.
- Vehicles: Not more than 25% of available grant funds may be used for the purchase of vehicles; by policy and based on recommendations, FEMA intends to dedicate 10% of those vehicle funds for ambulances.
- Micro grants: This is a voluntary funding limitation choice made by the applicant for requests submitted within the operations and safety activity; it is not an additional funding opportunity. Micro grants are awards that have a Federal participation (share) that does not exceed $50,000. Only fire departments and nonaffiliated EMS organizations are eligible to choose micro grants, and the only eligible micro grants requests are for training, equipment, personal protective equipment (PPE), and wellness and fitness activities. Applicants that select micro grants may receive additional consideration for award. If an applicant selects micro grants in their application, they will be limited in the total amount of funding their organization can be awarded. If they are requesting funding in excess of $50,000 Federal participation, they should not select micro grants.

**Background of the AFG Program**

Since 2001, the AFG Program has helped firefighters and other first responders obtain critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and related hazards. FEMA awards grants on a competitive basis to the applicants that best address the AFG Program's priorities and provide the most compelling justification. Applications that best address AFG Program priorities, as identified in the Application Evaluation Criteria, are reviewed by a panel composed of fire service personnel.

The AFG Program has three program activities:

- Operations and Safety
- Vehicle Acquisition
- Regional Projects

The priorities for each activity are fully outlined in the funding notice.

**Application Evaluation Criteria**

Before making a grant award, FEMA is required by 31 U.S.C. 3354, as amended by the Payment Integrity Information Act of 2019, Public Law 116–117 (2020), 41 U.S.C. 2313, and 2 CFR 200.206 to review information available through any Office of Management and Budget (OMB) designated repositories of government-wide eligibility qualification or financial integrity information. Therefore, application evaluation criteria may include the following risk-based considerations of the applicant: (1) Financial stability; (2) quality of management systems and ability to meet management standards; (3) history of performance in managing Federal awards; (4) reports and findings from audits; and (5) ability to effectively implement statutory, regulatory, or other requirements.

FEMA will rank all complete and submitted applications based on how well they align with program priorities for the type of jurisdiction(s) served. Answers to activity-specific questions provide information used to determine each application's ranking relative to the stated program priorities.

Funding priorities and criteria for evaluating AFG Program applications are established by FEMA based on the recommendations from the Criteria Development Panel (CDP). The CDP is composed of fire service professionals that make recommendations to FEMA regarding the creation of new, or the modification of previously established, funding priorities, as well as developing criteria for awarding grants. The content of the funding notice reflects implementation of the CDP's recommendations with respect to the priorities and evaluation criteria for awards.

The nine major fire service organizations represented on the CDP are:

- International Association of Fire Chiefs
- International Association of Fire Fighters
- National Volunteer Fire Council
- National Fire Protection Association
- National Association of State Fire Marshals
- International Association of Arson Investigators
- International Society of Fire Service Instructors
- North American Fire Training Directors
- Congressional Fire Service Institute

**Review and Selection Process**

AFG Program applications are reviewed through a multi-phase process. All applications are electronically pre-scored and ranked based on how well they align with the funding priorities outlined in the NOFO. Applications with the highest pre-score rankings are then scored competitively by no less than three members of a Peer Review Panel. Applications are also evaluated through a series of internal FEMA review processes for completeness, adherence to programmatic guidelines, technical feasibility, and anticipated effectiveness of the proposed project(s). Below is the process by which applications are reviewed:

*i. Pre-Scoring Process*

The application undergoes an electronic pre-scoring process based on established program priorities listed within the NOFO and answers to activity specific questions within the online application. Application narratives are not reviewed during pre-scoring. Request details and budget information should comply with program guidance and statutory funding limitations. The pre-score is 50% of the total application score.

*ii. Peer Review Panel Process*

Applications with the highest pre-score undergo peer review. The peer review is comprised of fire service representatives recommended by the organizations represented on the CDP. The panelists assess the merits of each application based on the narrative section of the application, including the evaluation elements listed in the Narrative Evaluation Criteria below. Panelists independently score each project within the application, discuss the merits and/or shortcomings of the application with their peers, and

document the findings. A consensus is not required. The panel score is 50% of the total application score.

*iii. Technical Evaluation Process*

The highest ranked applications are considered within the fundable range. Applications that are in the fundable range undergo both a technical review by a subject-matter expert, as well as a FEMA AFG Branch review before being recommended for an award. The FEMA AFG Branch assesses the request with respect to costs, quantities, feasibility, eligibility and recipient responsibility prior to recommending an application for award. Once the technical evaluation process is complete, the cumulative score for each application is determined and FEMA generates a final ranking of applications. FEMA awards grants based on this final ranking and the statutorily required funding limitations listed in this notice and the NOFO.

**Narrative Evaluation Criteria**

*1. Financial Need (25%)*

Applicants should describe their financial need and how consistent it is with the intent of the AFG Program. This statement should include details describing the applicant's financial distress, summarized budget constraints, unsuccessful attempts to secure other funding, and proof that their financial distress is out of their control.

*2. Project Description and Budget (25%)*

This statement should clearly explain the applicant's project objectives and the relationship between those objectives and the applicant's budget and risk analysis. The applicant should describe the activities, including program priorities or facility modifications, ensuring consistency with project objectives, the applicant's mission, and any national, state and/or local requirements. Applicants should link the proposed expenses to operations and safety, as well as the completion of the project goals.

*3. Cost Benefit (25%)*

Applicants should describe how they plan to address the operations and personal safety needs of their organization, including cost effectiveness and sharing assets. This statement should also include details about gaining the maximum benefits from grant funding by citing reasonable or required costs, such as specific overhead and administrative costs. The applicant's request should also be consistent with their mission and identify how funding will benefit their organization and personnel.

*4. Statement of Effect on Daily Operations (25%)*

This statement should explain how these funds will enhance the applicant's overall effectiveness. It should address how an award will improve daily operations and reduce the applicant's risks. Applicants should include how frequently the requested items will be used, and in what capacity. Applicants should also indicate how the requested items will help the community and increase the organization's ability to save additional lives or property. Jurisdictions that demonstrate their commitment and proactive posture to reducing fire risk, by explaining their code enforcement (to include Wildland Urban Interface code enforcement) and mitigation strategies (including whether or not the jurisdiction has a FEMA-approved mitigation strategy) may receive stronger consideration under this criterion.

**Eligible Applicants**

*Fire Departments:* Fire departments operating in any of the 50 states, as well as fire departments in the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally recognized Indian Tribe or tribal organization.

A fire department is an agency or organization having a formally recognized arrangement with a state, territory, local (city, county, parish, fire district, township, town, or other governing body), or tribal authority to provide fire suppression to a population within a geographically fixed primary first due response area.

*Nonaffiliated EMS organizations:* Nonaffiliated EMS organizations operating in any of the 50 states, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or any federally recognized Indian Tribe or tribal organization.

A nonaffiliated EMS organization is an agency or organization that is a public or private nonprofit emergency medical services entity providing medical transport that is not affiliated with a hospital and does not serve a geographic area in which emergency medical services are adequately provided by a fire department.

FEMA considers the following as hospitals under the AFG Program:

- Clinics
- Medical centers
- Medical colleges or universities
- Infirmaries
- Surgery centers
- Any other institutions, associations, or foundations providing medical, surgical or psychiatric care and/or treatment for the sick or injured

*State Fire Training Academies:* SFTAs operating in any of the 50 states, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of Puerto Rico. Applicants must be designated either by legislation or by a Governor's declaration as the sole fire service training agency within a state, territory, or the District of Columbia. The designated SFTA shall be the only agency/bureau/division, or entity within that state, territory or the District of Columbia.

**Ineligibility**

- To avoid a duplication of benefits, FEMA reserves the right to review all program activities or grant applications where two or more organizations share a single facility. To be eligible as a separate organization, two or more fire departments or nonaffiliated EMS organizations will have different funding streams, personnel rosters, Employer Identification Numbers (EINs), or Data Universal Numbering System (DUNS) Number/unique entity identifier. If two or more organizations share facilities and each submits an application in the same program area (*e.g.,* Equipment, Modify Facilities, PPE, Training, and/or Wellness and Fitness Programs) FEMA will carefully review each application for eligibility.
- Fire-based EMS organizations are not eligible to apply as nonaffiliated EMS organizations. Fire-based EMS training and equipment must be requested by a fire department under the AFG Program component program of Operations and Safety.
- Eligible applicants may submit only one application for each activity (*e.g.,* Operations and Safety, Regional, etc.), but may submit for multiple projects within each activity. Under the Vehicle Activity, applicants may submit one application for vehicles for their department and one separate application to host a regional vehicle. Duplicate applications (more than one application in the same activity) may be disqualified.
- An Operations and Safety applicant may submit one application for an eligible project (*e.g.,* turn out gear); it may not submit a regional application for the same project.

**Statutory Limits to Funding**

- Congress has enacted statutory limits to the amount of funding that a

grant recipient may receive from the AFG Program in any single fiscal year based on the population served (15 U.S.C. 2229(c)(2)). Awards will be limited based on the size of the population protected by the applicant, as indicated below. Notwithstanding the annual limits stated below, the FEMA Administrator may not award a grant in an amount that exceeds one percent of the available grant funds in such fiscal year, except where it is determined that such recipient has an extraordinary need for a grant in an amount that exceeds the 1% aggregate limit.

- In the case of a recipient that serves a jurisdiction with 100,000 people or fewer, the amount of available grant funds awarded to such recipient shall not exceed $1 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, the amount of available grant funds awarded to such recipient shall not exceed $2 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 500,000 people, but not more than 1 million people, the amount of available grant funds awarded to such recipient shall not exceed $3 million in any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 1 million people, but not more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the one percent aggregate cap of $4.6 million for FY 2021, but FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap; if FEMA waives the aggregate cap, the amount of grant funds awarded to such recipient shall not exceed $6 million for any fiscal year.
- In the case of a recipient that serves a jurisdiction with more than 2.5 million people, the amount of available grant funds awarded to such recipient is subject to the one percent aggregate cap of $4.6 million for FY 2021, but FEMA may waive this aggregate cap in individual cases where FEMA determines that a recipient has an extraordinary need for a grant that exceeds the aggregate cap; if FEMA waives the aggregate cap, the amount of grant funds awarded to such recipient shall not exceed $9 million for any fiscal year.
- FEMA may not waive the population-based limits on the amount of grant funds awarded as set by 15 U.S.C. 2229(c)(2)(A).

The cumulative total of the Federal share of awards in Operations and Safety, Regional, and Vehicle Acquisition activities will be considered when assessing award amounts and any limitations thereto. Applicants may request funding up to the statutory limit on each of their applications.

For example, an applicant that serves a jurisdiction with more than 100,000 people, but not more than 500,000 people, may request up to $2 million on their Operations and Safety Application, and up to $2 million on their Vehicle Acquisition request. However, should both grants be awarded, the applicant would have to choose which award to accept if the cumulative value of both applications exceeds the statutory limits.

**Cost Sharing and Maintenance of Effort**

Grant recipients must share in the costs of the projects funded under this grant program as required by 15 U.S.C. 2229(k)(1) and in accordance with applicable Federal regulations at 2 CFR part 200, but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA validates that the grant recipient has provided sufficient evidence that the cost-share requirement will be fulfilled during the performance period of the grant award.

In general, an eligible applicant seeking a grant shall agree to make available non-Federal funds equal to not less than 15% of the grant awarded. However, the cost share will vary as follows based on the size of the population served by the organization, with exceptions to this general requirement for entities serving smaller communities:

- Applicants that serve populations of 20,000 or less shall agree to make available non-Federal funds in an amount equal to not less than 5% of the grant awarded.
- Applicants serving areas with populations above 20,000, but not more than 1 million, shall agree to make available non-Federal funds in an amount equal to not less than 10% of the grant awarded.
- Applicants serving areas with populations above 1 million shall agree to make available non-Federal funds in an amount equal to not less than 15% of the grant awarded.

The cost share for SFTAs will apply the requirements above based on the total population of the state.

The cost share for a regional application will apply the requirements above based on the aggregate population of the primary first due response areas of the host and participating partner organizations that execute a Memorandum of Understanding as described in Appendix B, Section J, Regional projects, of the FY 2021 AFG Program NOFO.

On a case-by-case basis, FEMA may allow a grant recipient that may already own assets (equipment or vehicles), acquired with non-Federal cash, to use the trade-in allowance/credit value of those assets as ''cash'' for the purpose of meeting the cost-share obligation of their AFG Program award. In-kind, cost-share matches are not allowed.

Grant recipients under this grant program must also agree to a maintenance of effort requirement as required by 15 U.S.C. 2229(k)(3) (referred to as a ''maintenance of expenditure'' requirement in that statute). A grant recipient shall agree to maintain during the term of the grant the applicant's aggregate expenditures relating to the activities allowable under the NOFO at not less than 80% of the average amount of such expenditures in the two fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and at the request of the grant recipient, the Administrator of FEMA may waive or reduce a grant recipient's cost share requirement or maintenance of effort requirement. AFG Program applicants for FY 2021 must indicate at the time of application whether they are requesting a waiver and whether the waiver is for the cost share requirement, for the maintenance of effort requirement, or both. As required by statute, the Administrator of FEMA is required to establish guidelines for determining what constitutes economic hardship. FEMA has published these guidelines on FEMA's website at *https://www.fema.gov/sites/default/files/2020-04/Eco_Hardship_Waiver_FPS_SAFER_AFG_IB_FINAL.pdf.*

Before the start of the FY 2021 AFG Program application period, FEMA conducted applicant internet webinars to inform potential applicants about the AFG Program. In addition, FEMA provided applicants with information at the AFG Program website, *https://www.fema.gov/grants/preparedness/firefighters,* to help them prepare quality grant applications. The AFG Program Help Desk is staffed throughout the application period to assist applicants with the automated application process as well as answer any questions.

Applicants can reach the AFG Program Help Desk through a toll-free telephone number Monday through Friday, 8 a.m. AM–4:30 p.m. ET at 1–866- 274–0960 or electronic mail at *firegrants@fema.dhs.gov.*

**Application Process**

Organizations may submit one application per application period in each of the three AFG Program activities (*e.g.,* one application for Operations and Safety, one for Vehicle Acquisition, and/or a separate application to be a Joint/Regional project host). If an organization submits more than one application for any single AFG Program activity (*e.g.,* two applications for Operations and Safety, two for Vehicles, etc.), either intentionally or unintentionally, both applications may be disqualified.

Applicants may access the grant application electronically at *https://go.fema.gov.* The application is also accessible from the U.S. Fire Administration's website at *http://www.usfa.fema.gov* and the *Grants.gov* website at *http://www.grants.gov.* New applicants must register and establish a username and password for secure access to the grant application. Previous AFG Program applicants must use their previously established username and password.

Applicants are expected to answer questions about their grant request that reflect the AFG Program funding priorities. In addition, each applicant must complete four separate narratives for each project or grant activity requested. Grant applicants will also provide relevant information about their organization's characteristics, call volume, and existing organizational capabilities.

**System for Award Management (SAM)**

Per 2 CFR 25.200, all Federal grant applicants and recipients must register at *https://SAM.gov.* SAM is the Federal Government's System for Award Management, and registration is free of charge. Applicants must maintain current information in SAM that is consistent with the data provided in their AFG Program grant application and in the Dun & Bradstreet database, which currently provides the official unique entity identifier, the Data Universal Numbering System (DUNS) number. Per 2 CFR 25.205, FEMA may not make a federal award or make any financial modifications to an existing award unless the applicant or grant recipient has complied with all applicable DUNS and SAM requirements. The grant applicant's banking information, EIN, organization/entity name, address and DUNS number must match the same information provided in SAM.

**Criteria Development Panel Recommendations**

If there are any differences between the published AFG Program guidelines and the recommendations made by the CDP, FEMA must explain them and publish the information in the **Federal Register** prior to awarding any grant under the AFG Program. For FY 2021, FEMA accepted, and will implement, all but two of the CDP's recommendations for the prioritization of eligible activities.

**Adopted Recommendations for FY 2021**

The FY 2021 AFG Program NOFO contains some changes to definitions, descriptions, and priority categories. Changes to the FY 2021 AFG Program NOFO include:

- Under the PPE Activity:
  - Inclusion of pre-scoring emphasis for this Activity to ensure replacing out of service and non-compliant PPE is of high priority. Therefore, the following PPE priorities and definitions have been updated:
    - Increase supply for new hire/existing firefighters that do not have one set of turnout gear (PPE) or allocated seated position Self Contained Breathing Apparatus (SCBA). This includes replacing out of service PPE and SCBA as High Priority.
    - Replace in-service/in-use/damaged/unsafe/unrepairable PPE or SCBA to meet current standard as High Priority.
    - Replace in-service/in-use/expired/noncompliant PPE or SCBA to current standard as High Priority.
    - Upgrade technology to current standard as Low Priority.
  - Additional considerations for PPE and SCBA:
    - The applicant's call volume has a lesser impact on scoring and therefore the final funding decision.
- Under the Equipment Activity:
  - The following equipment priorities and definitions have been updated:
    - Obtain equipment to achieve minimum operational and deployment standards for existing missions as High Priority.
    - Replace non-compliant equipment to current standard as High Priority.
    - Obtain equipment for new mission as Medium Priority.
    - Upgrade technology to current standard as Low Priority.
- Under Supporting Definitions:
  - Paid on-call/stipend departments are added to the definition of Combination Fire Department.
  - Firefighting personnel definition is added.
- Under Modifications to Facility Activity:
  - New first-time installation of exhaust, sprinkler, carbon monoxide and/or smoke/fire detection systems are now listed as High Priority, while replacement or update/upgrade to existing systems is considered Low Priority.
- Under Equipment Activity List:
  - Respirator decontamination system is added as Medium Priority.
- Under Additions to the Application:
  - Question about frequency of live fire training is added for statistical purposes only.
  - Question about self-inflicted fatalities within the department is added for statistical purposes only.
  - Question regarding quantity of equipped Advanced Life Support Response vehicles (transport and non-transport) is added.
- Under Allocations and Restrictions of Available Grant Funds by Organization Type:
  - Outline the funding available for Micro Grants applications.
- Under Application Tips:
  - Recommendation to consider non-Per- and polyfluoroalkyl substances (PFAS) when recipients purchase new protective gear.
- Under Micro Grants:
  - Funding allocation for Micro Grants was updated. Of the 25% allocated to each of the career, combination, and volunteer departments, FEMA will aim to fund no less than 25% of the allocation for Micro Grants.

**Recommendations Not Adopted for FY 2021**

- Proposed changes to reduce the size of the Micro Grant applications were not adopted for the FY 2021 application cycle.
- Proposed change that all items that are PFAS free receiving higher funding priority was not adopted for the FY 2021 application cycle.

*Authority*: 15 U.S.C. 2229.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2022–02034 Filed 1–31–22; 8:45 am]

BILLING CODE 9111–64–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–MB–2020–0138; FF09M27000–212–FXMB123109EAGLE]**

### Eagle Permits; Updated Bald Eagle Population Estimates and Take Limits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In December 2016, the U.S. Fish and Wildlife Service (Service, or we) completed a Programmatic Environmental Impact Statement (PEIS) wherein we evaluated biological data to establish maximum take limits for permits to take bald eagles in each of six eagle management units in the United States. In the PEIS, we committed to reevaluate biological data and reassess the take limits no less than once every 6 years. This notice is to inform the public that we have reviewed recent data and, using updated population and demographic models, are revising take limits for bald eagles effective immediately.

**DATES:** The maximum allowable take limits set forth in this document are effective February 1, 2022.

**ADDRESSES:** Supplementary documents for this notice may be obtained from *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2020–0138.

**FOR FURTHER INFORMATION CONTACT:** Brian A. Millsap, National Raptor Coordinator, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 505–559–3963.

**SUPPLEMENTARY INFORMATION:**

## Background

Our authority to authorize take of eagles is derived from the Migratory Bird Treaty Act (16 U.S.C. 703–712) and the Bald and Golden Eagle Protection Act (hereafter Eagle Act; 16 U.S.C. 668–668d). The Eagle Act further specifies that take of eagles may only be authorized after a finding that the take is compatible with the preservation of the bald eagle or the golden eagle. Through regulations in part 22 of title 50 of the Code of Federal Regulations (CFR), the Service issues eagle take permits for several specific purposes, including scientific or Tribal religious purposes and preventing depredations on livestock and collisions with airplanes near airports. However, the majority of permits the Service issues to authorize take of eagles are for incidental take; that is, take that is associated with, but not the purpose of, a human activity (50 CFR 22.26). The definition of ''take'' under the Eagle Act includes ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' (16 U.S.C. 668c; 50 CFR 22.3).

In 2016, we revised the permit regulations governing eagle incidental take (81 FR 91494, December 16, 2016). As part of that rulemaking action, we completed a biological status assessment for both bald and golden eagles and a Programmatic Environmental Impact Statement. These documents and other supporting information for the 2016 rule are available in Docket No. FWS–R9–MB–2011–0094 at *http://www.regulations.gov.* The 2016 rulemaking action and supplementary documents implemented the following actions:

(1) Established six eagle management units (EMUs) for bald eagles—the Atlantic Flyway, Mississippi Flyway, Central Flyway, Pacific Flyway north of 40° north latitude, Pacific Flyway south of 40° north latitude, and Alaska;

(2) Established a bald eagle management objective of maintaining stable or increasing breeding populations in all EMUs, and the persistence of local populations throughout the geographic range;

(3) Used the 20th quantiles of the bald eagle population size estimates for each EMU for permitting purposes and presented those values (use of the 20th quantile of the probability distributions for the population size estimates was a policy decision made by the Service in the 2016 PEIS to conservatively addresses the uncertainty in the population size estimates to ensure the take limits are compatible with the management objective for bald eagles);

(4) Established a specific take rate for bald eagles in the Pacific Flyway South EMU and a general take rate across the other EMUs that was consistent with the management objective;

(5) Set take limits in each EMU based on the appropriate take rate and the 20th quantile of the EMU population size estimate; and

(6) Established a schedule for conducting eagle surveys and committed to updating population size estimates and, if warranted, take rates and take limits no less than once every 6 years.

The 2016 status report and PEIS used bald eagle count data from 2009 to arrive at a U.S. population estimate of 143,000 bald eagles (20th quantile = 126,000). The schedule established in the PEIS called for the Service to update bald-eagle-population size and take limits in 2022. However, as part of the 2019 settlement agreement for *Energy and Wildlife Action Coalition* v. *Department of the Interior et al.* (a case challenging aspects of our authority to issue eagle permits), the Service agreed to expedite the next update of the bald-eagle-population size and appropriate take rate. We completed one new survey of occupied bald eagle nesting territories in the coterminous United States (excluding the Pacific Flyway South EMU, for reasons explained below) in 2019 and have since completed the necessary scientific analyses for the expedited update.

## Updated Data and Take Limits

Through this document, we are providing public notice of the updated bald eagle population size, take rate, and take limits used to guide issuance of bald eagle take permits for all but the Alaska and Pacific Flyway South bald eagle EMUs. We did not implement surveys in Alaska because we did not have the financial or logistical resources. In the Pacific Flyway South EMU bald eagles are relatively scarce and patchily distributed, making aerial surveys impractical. Take limits for these two EMUs will remain as reported in the 2016 PEIS until we are able to acquire and conduct separate analyses of new information from these populations.

For this update, we implemented several improvements to the data and models we use to generate the relevant demographic, population size, and take rate estimates. These changes are discussed in detail in a technical report that can be obtained from *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2020–0138. In brief, we:

(1) Collaborated with the Cornell University Laboratory of Ornithology to use eBird citizen-science information to improve our estimates of the number of occupied bald eagle nesting territories. The Service's aerial bald eagle nesting territory survey covers areas of the coterminous United States that have high densities of nesting bald eagles, but these surveys are not efficient in, and thus are not conducted in, areas where nests are sparse. However, eBird bald eagle relative abundance estimates are available for nearly all areas in the coterminous United States. For the 2009 bald eagle population size estimate, we used counts of known bald eagle nests provided by State fish and wildlife agencies as a conservative estimate of the number of occupied bald eagle nesting territories outside of the areas covered by the aerial survey. Many States no longer track bald eagle nests, however, so this process was not a viable option for this update. Instead, Cornell Laboratory of Ornithology and Service scientists used aerial survey and eBird relative abundance data from areas where both data types were available to develop a model that accurately predicted bald eagle nest density from eBird relative abundance values. We then used this model to estimate the number of occupied bald eagle nesting territories in 2019 in the Atlantic, Mississippi, Central, and Pacific Flyway North EMUs.

(2) Developed an integrated population model (IPM) to improve the precision of our estimates of demographic rates. IPMs integrate count data (our estimates of the number of occupied nesting territories) and data on survival rates and reproductive rates to produce more precise estimates of population size, survival, and fecundity than would otherwise be possible. These rates are used to estimate the take rate consistent with our management objective and to translate the estimate of the number of occupied nesting territories into a total population size estimate. IPMs also allow for the estimation of demographic parameters for which no explicit data are available in some cases. For bald eagles, one such parameter is the proportion of adults that breed, and we were able to obtain credible estimates of this parameter from our IPM. This change is important because it allowed us to account for adult ''floaters'' (*i.e.,* adults not settled on a nesting territory) and thus accurately estimate the total number of adult bald eagles in the population. The IPM provided information on the proportion of the bald eagle population that was in each age class, and so knowing the number of adults allowed us to estimate numbers for the other age classes and thus total population size. In our 2016 eagle status assessment we independently modeled each relevant demographic rate, and thus did not take advantage of the ability to leverage the information that comes with IPMs.

(3) We updated the bald eagle banding data used to estimate survival rates in the IPM to include band recoveries through 2018.

(4) We updated our model for determining take rates and limits for bald eagles based on the new estimates of relevant demographic parameters from the IPM. We also added flexibility to the model to accommodate the type of density dependence that likely regulates bald eagle population size.

Our 2019 estimate of bald eagle population size in the four EMUs is 316,708. However, consistent with the Service's decision in the 2016 PEIS, we use the 20th quantile of the probability distribution as the relevant value for management purposes, which is 273,327 bald eagles. Although some of the increase in the estimates of population size from 2009 to 2019 can be attributed to improvements in methods, the majority of the increase is likely due to population growth, estimated to be around 10 percent per year. In the 2016 PEIS, we determined that a take rate of 0.06 was consistent with our management objective for bald eagles. Based on updated demographic information and using a more appropriate form of the take-limit model, we have updated our estimate of the appropriate take rate to 0.09. The changes in population size and the take rate result in an annual maximum take limit in the four EMUs of 15,832 bald eagles (see table below). Actual permitted bald eagle take was 490 in 2020, and the higher updated take limits will not in themselves lead to increased take.

TABLE—FORMER AND NEW BALD EAGLE POPULATION SIZE AND TAKE LIMITS BY BALD EAGLE MANAGEMENT UNIT

| Bald eagle management unit | 2009 Population size (20th quantile) | 2009 Take limit | 2019 Population size (20th quantile) | New take limits |
|---|---|---|---|---|
| Atlantic Flyway | 20,387 | 1,223 | 72,990 | 4,223 |
| Mississippi Flyway | 27,334 | 1,640 | 137,917 | 7,986 |
| Central Flyway | 1,163 | 70 | 26,253 | 1,521 |
| Pacific Flyway North | 13,296 | 798 | 36,302 | 2,102 |
| Total | 62,180 | 3,731 | 273,327 | 15,832 |

Despite the improvements we made in our models and approach, we have not altered the analytical framework of the 2016 PEIS. Additionally, our update does not alter any of the policy decisions made in the PEIS, and there are no regulatory changes necessary to implement these new take limits. In the 2016 PEIS we specifically anticipated these kinds of periodic updates to the technical information underlying our analytical framework to account for changes in population size and demographic rates that might occur over time. Thus, these updates represent a recalibration of the take limits by applying the same concepts and policy decisions in the 2016 PEIS to updated information on the size and demographic rates of bald eagles in the relevant EMUs. Because this new information constitutes only a technical update of the scientific information in our 2016 PEIS, we have determined that the PEIS itself does not need to be updated or supplemented, nor are any regulatory changes required to implement the update. Consequently, these updated maximum allowable take limits are effective upon publication of this notice.

**Martha Williams,**

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2022–02040 Filed 1–31–22; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[L19900000.PO0000.LLWO320.20X; OMB Control No. 1004–0025]**

## Agency Information Collection Activities; Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before March 3, 2022.

**ADDRESSES:** Written comments and recommendations for this information collection request (ICR) 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:** To request additional information about this ICR, contact Elaine Guenaga by email at *eguenaga@blm.gov,* or by telephone at 775–276–0287. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 28, 2021 (86 FR 59746). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

*Abstract:* The General Mining Law (30 U.S.C. 29, 30, and 39) authorizes a holder of an unpatented claim for hardrock minerals to apply for fee title (patent) to the federal land (as well as minerals) embraced in the claim. Division G, Title I of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), annual appropriation bill for the Department of the Interior, has prevented the BLM from processing mineral patent applications unless the applications were grandfathered under the initial legislation. While grandfathered applications are rare at present, the approval to collect the information continues to be necessary because of the possibility that the moratorium will be lifted and applicable regulations that contain the information are still part of the Code of Federal Regulations.

There are no proposed program or other policy changes requested. The BLM will be adjusting the non-hour cost burden from $255,375 to $256,425, an increase of $1,050. The adjustment results from updating costs estimates.

OMB control number 1004–0025 is scheduled to expire on February 28, 2022. This request is for OMB to renew this OMB control number for an additional three (3) years.

*Title of Collection:* Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests (43 CFR parts 3860 and 3870).

*OMB Control Number:* 1004–0025.

*Form Numbers:* 3860–2 and 3860–5.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Owners of unpatented mining claims and mill sites upon the public lands, and of reserved mineral lands of the United States, National Forests, and National Parks.

*Total Estimated Number of Annual Respondents:* 1.

*Total Estimated Number of Annual Responses:* 10.

*Estimated Completion Time per Response:* Varies from 1–100 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 559.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Non-hour Burden Cost:* $256,425.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

**Darrin King,**

*Information Collection Clearance Officer.*

[FR Doc. 2022–01974 Filed 1–31–22; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–AKRO–ANIA–DENA–CAKR–LACL–KOVA–WRST–GAAR–33114; PPAKAKROR4; PPMPRLE1Y.LS0000]**

### National Park Service Alaska Region Subsistence Resource Commission Program; Notice of Public Meetings

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** The National Park Service (NPS) is hereby giving notice that the Aniakchak National Monument Subsistence Resource Commission (SRC), the Denali National Park SRC, the Cape Krusenstern National Monument SRC, the Lake Clark National Park SRC, the Kobuk Valley National Park SRC, the Wrangell-St. Elias National Park SRC, and the Gates of the Arctic National Park SRC will meet as indicated below.

**DATES:** The Aniakchak National Monument SRC will meet via teleconference from 1:30 p.m. to 5:00 p.m. or until business is completed on Tuesday, March 1, 2022. The alternate meeting date is Tuesday, March 8, 2022, from 1:30 p.m. to 5:00 p.m. or until business is completed.

The Denali National Park SRC will meet via teleconference from 10:00 a.m. to 5:00 p.m. or until business is completed on Thursday, February 24, 2022. The alternate meeting date is Wednesday, March 2, 2022, from 10:00 a.m. to 5:00 p.m. or until business is completed.

The Cape Krusenstern National Monument SRC will meet via teleconference from 1:00 p.m. to 5:00 p.m. on Monday, February 28, 2022, and from 9:00 a.m. to 12:00 p.m. on Tuesday, March 1, 2022, or until business is completed. The alternate meeting dates are Tuesday, May 10, 2022, from 1:00 p.m. to 5:00 p.m., and Wednesday, May 11, 2022, from 9:00 a.m. to 12:00 p.m. or until business is completed.

The Lake Clark National Park SRC will meet via teleconference from 1:00 p.m. to 4:00 p.m. or until business is completed on Wednesday, March 30, 2022. The alternate meeting date is Wednesday, April 6, 2022, from 1:00 p.m. to 4:00 p.m. or until business is completed.

The Kobuk Valley National Park SRC will meet via teleconference from 1:00 p.m. to 5:00 p.m. on Thursday, February 24, 2022, and from 9:00 a.m. to 12:00 p.m. on Friday, February 25, 2022, or until business is completed. The alternate meeting dates are Thursday,

May 12, 2022, from 1:00 p.m. to 5:00 p.m., and Friday, May 13, 2022, from 9:00 a.m. to 12:00 p.m. or until business is completed.

The Wrangell-St. Elias National Park SRC will via teleconference from 9:00 a.m. to 5:00 p.m. or until business is completed on both Wednesday, February 23, 2022, and Thursday, February 24, 2022. If business is completed on February 23, 2022, the meeting will adjourn, and no meeting will take place on February 24, 2022. The alternate meeting dates are Tuesday, March 1, 2022, from 9:00 a.m. to 5:00 p.m., and Wednesday, March 2, 2022, from 9:00 a.m. to 5:00 p.m. or until business is completed.

The Gates of the Arctic National Park SRC will meet via teleconference from 8:30 a.m. to 5:00 p.m. or until business is completed on both Wednesday, April 20, 2022, and Thursday, April 21, 2022. The alternate meeting dates are Thursday, May 5, 2022, from 8:30 a.m. to 5:00 p.m., and Friday, May 6, 2022, from 8:30 a.m. to 5:00 p.m. or until business is completed.

**ADDRESSES:** The Aniakchak National Monument SRC will meet via teleconference. Teleconference participants must call the NPS office at (907) 246–2154 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Mark Sturm, Superintendent, at (907) 246–2120, or via email at *mark_sturm@nps.gov,* or Linda Chisholm, Subsistence Coordinator, at (907) 246–2154 or via email at *linda_chisholm@nps.gov,* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

The Denali National Park SRC will meet via teleconference. Teleconference participants must call the NPS office at (907) 644–3604 prior to the meeting to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Brooke Merrell, Acting Superintendent, at (907) 683–9627, or via email at *brooke_merrell@nps.gov* or Amy Craver, Subsistence Coordinator, at (907) 644–3604 or via email at *amy_craver@nps.gov* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

The Cape Krusenstern National Monument SRC will meet via teleconference. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Jeanette Koelsch, Acting Superintendent, at (907) 443–6101, or via email at *jeanette_koelsch@nps.gov,* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

The Lake Clark National Park SRC will meet via teleconference. Teleconference participants must call the NPS office at (907) 644–3648 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Susanne Green, Superintendent, at (907) 644–3627, or via email at *susanne_green@nps.gov* or Liza Rupp, Subsistence Manager, at (907) 644–3648 or via email at *elizabeth_rupp@nps.gov* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

The Kobuk Valley National Park SRC will meet via teleconference. Teleconference participants must call the NPS office at (907) 442–8342 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Jeanette Koelsch, Acting Superintendent, at (907) 443–6101, or via email at *jeanette_koelsch@nps.gov,* or Hannah Atkinson, Cultural Resource Specialist, at (907) 442–8342 or via email at *hannah_atkinson@nps.gov* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

The Wrangell-St. Elias National Park SRC will meet via teleconference. Teleconference participants must contact Barbara Cellarius, Subsistence Coordinator, at (907) 205–0157 or email *wrst_subsistence@nps.gov* by no later than 4:00 p.m. on Thursday, February 17, 2022, to receive teleconference passcode information. For more detailed information regarding these meetings, or if you are interested in applying for SRC membership, contact Designated Federal Officer Ben Bobowski, Superintendent, (907) 822–5234, or via email at *ben_bobowski@nps.gov* or Barbara Cellarius, Subsistence Coordinator, at (907) 205–0157 or via email at *barbara_cellarius@nps.gov* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

The Gates of the Arctic National Park SRC will meet via teleconference. Teleconference participants must call the NPS office at (907) 455–0639 prior to the meeting to receive teleconference passcode information. For more detailed information regarding this meeting or if you are interested in applying for SRC membership, contact Designated Federal Officer Jeff Rasic, Acting Superintendent, at (907) 750–7356, or via email at *jeff_rasic@nps.gov* or Marcy Okada, Subsistence Coordinator, at (907) 455–0639 or via email at *marcy_okada@nps.gov* or Kim Jochum, Federal Advisory Committee Group Federal Officer, at (907) 744–6438 or via email at *kim_jochum@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The NPS is holding meetings pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix 1–16). The NPS SRC program is authorized under title VIII, section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118).

SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting.

*Purpose of the Meeting:* The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introduction
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the SRC Purpose
6. SRC Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Staff Reports
    a. Superintendent/Ranger Reports
    b. Resource Manager's Report
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting.

The SRC meetings may produce recommendations to the Secretary of the Interior and the Governor for any changes in the subsistence hunting program or its implementation which the commission deems necessary, pursuant to 16 U.S.C. 3118. The SRC meetings dates may change based on inclement weather or exceptional circumstances. If a meeting date is changed, the Superintendent will issue a press release and use local newspapers and/or radio stations to announce the rescheduled meeting.

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

*Authority:* 5 U.S.C. appendix 2.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2022–02009 Filed 1–31–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–OIA–DTS–32490; PPWODIREI0–PIN00IO15.XI0000]**

### U.S. Nomination to the World Heritage List: Moravian Church Settlements (Historic Moravian Bethlehem District)

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the decision to request that the Historic Moravian Bethlehem District in Bethlehem, Pennsylvania, contribute to a serial transnational (multi-country) draft nomination of Moravian Church Settlements for inclusion on the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List. The decision is the result of consultation with the Federal Interagency Panel for World Heritage and the review of public comments submitted in response to an earlier notice. This notice complies with applicable World Heritage Program regulations.

**ADDRESSES:** To request paper copies of documents discussed in this notice, contact April Brooks, Office of International Affairs, National Park Service, 1849 C St. NW, Room 2415, Washington, DC 20240 (202) 354–1808, or sending electronic mail (Email) to: *april_brooks@nps.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jonathan Putnam, 202–354–1809. Information on the U.S. World Heritage program can be found at *https://www.nps.gov/subjects/internationalcooperation/worldheritage.htm.*

**SUPPLEMENTARY INFORMATION:**

### Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for preservation of natural and cultural heritage sites of global significance. The World Heritage Committee, composed of representatives of 21 nations periodically elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List. There are 1,154 sites in 167 countries. Currently there are 24 World Heritage Sites in the United States. U.S. participation and the roles of the Department of the Interior (Department) and the National Park Service (NPS) are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR part 73—World Heritage Convention. Each State Party to the Convention maintains a Tentative List, periodically updated, of properties that are considered suitable for nomination. Only properties on the Tentative List are eligible to officially prepare nominations that the Department may consider for submission. The Historic Moravian Bethlehem District was included on the U.S. Tentative List on April 11, 2017. Neither inclusion in the list nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. law.

The Department's Assistant Secretary for Fish and Wildlife and Parks (Assistant Secretary) initiates the process to nominate U.S. sites to the World Heritage List by publishing a notice in the **Federal Register** seeking public comment regarding which properties on the U.S. Tentative List should be nominated next by the United States. The first notice (81 FR 89143, as required by 36 CFR 73.7(c)) was published on January 11, 2021. Following the publication of the first notice, the Assistant Secretary convened the Federal Interagency Panel to review the public comments submitted and make a recommendation. The Federal Interagency Panel for World Heritage is chaired by the Assistant Secretary and assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. If the Panel recommends that a property be nominated and the recommendation is accepted by the Assistant Secretary, a second notice is issued. This is the second notice as required by 36 CFR 73.7(f) on the proposed nomination.

### Decision To Request the Preparation of a New U.S. World Heritage Nomination

The Department received more than 80 comments in response to the first notice, including 63 concerning the Historic Moravian Bethlehem District, all of which were expressions of support from the property owners, elected representatives at local, State, and Federal levels, individuals, institutions, and museums. There were no comments against nominating any property. Most of the other comments were in support of or discussions of other properties, including Okefenokee National Wildlife Refuge in Georgia.

The Department considered all comments received as well as the advice of the Federal Interagency Panel for World Heritage, which met on June 15, 2021. The Panel agreed by consensus to recommend authorization at this time for the Historic Moravian Bethlehem District to contribute as a component to a serial transnational nomination of Moravian Church Settlements.

The Department has selected the Historic Moravian Bethlehem District as a proposed U.S. component of a serial transnational nomination of Moravian Church Settlements to the World Heritage List. With the assistance of the Department, including the completion of appropriate consultation with Native American Tribal governments, the owners of property in this district are encouraged to contribute to a complete nomination, in coordination with other participating countries, in accordance with 36 CFR part 73 and the nomination format required by the World Heritage Committee.

The Historic Moravian District in Bethlehem, Pennsylvania, a National Historic Landmark, is a mid- and late-18th century planned community created in conjunction with the larger Moravian congregation in Herrnhut, Germany. Bethlehem, Pennsylvania, became the religious and administrative

center of Moravian activities in North America. It consists of religious, domestic, and industrial components, reflecting Moravian principles of urban planning and the full scope of Moravian community life in a North American context. The Moravian settlement of Christiansfeld in Denmark was inscribed on the World Heritage List in 2015. The government of the German state of Saxony has proposed including the Moravian settlement of Herrnhut along with Bethlehem, Pennsylvania, as a ''serial transnational'' group nomination to extend the Danish listing, possibly including Moravian settlements in other countries as well.

**Next Steps**

A draft World Heritage nomination for Moravian Church Settlements that includes the Historic Moravian Bethlehem District may now be prepared, in consultation with the National Park Service's Office of International Affairs. The NPS will coordinate the review and evaluation of the Bethlehem, Pennsylvania, portion of the draft nomination to ensure it meets the requirements of 36 CFR 73, and will cooperate with the governments of other countries participating in this nomination to complete and submit it to the World Heritage Committee. Following NPS review of a complete draft nomination, the Department may submit it to the World Heritage Centre for technical review by September 30 of any year. The Centre will then provide comments by November 15 of that year. The Federal Interagency Panel for World Heritage will review a draft nomination following receipt of the Centre's comments and recommend to the Department whether the nomination should be formally submitted for consideration by the World Heritage Committee. Submittal to the World Heritage Centre by the Department through the Department of State can be made by February 1 of any year; the World Heritage Committee would then consider the nomination at its annual meeting in the summer of the following year, after an evaluation by an official Advisory Body to the Committee.

*Authority:* 54 U.S.C. 307101; 36 CFR part 73.

**Shannon A. Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2022–01952 Filed 1–31–22; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033204; PPWOCRADN0–PCU00RP14.R50000]**

### Native American Graves Protection and Repatriation Review Committee Finding Regarding the Cultural Affiliation of Human Remains and Associated Funerary Objects Removed From, and Adjacent to, Moundville Archeological Site (1TU500) Located in Tuscaloosa County, AL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** On November 23, 2021, the Native American Graves Protection and Repatriation Review Committee (Review Committee) found, based on the information provided before and during its public meeting, that a cultural affiliation exists between the present-day Muskogean-speaking Indian Tribes and the earlier group connected to human remains and funerary objects excavated at, and adjacent to, the Moundville archeological site (1Tu500), in Tuscaloosa County, AL. The recommendations, findings, and actions in this notice are advisory only and are not binding on any person. Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA or the Act), the Review Committee is responsible for reviewing and making findings related to the identity or cultural affiliation of cultural items. The National Park Service is not responsible for the determinations in this notice.

**ADDRESSES:** The meeting transcript containing the Review Committee proceedings and deliberation for this finding are available online at *www.nps.gov/subjects/nagpra/index.htm* or upon an email request to the National NAGPRA Program (*NAGPRA_Info@nps.gov*).

**FOR FURTHER INFORMATION CONTACT:** Melanie O'Brien, Manager and Designated Federal Official, National NAGPRA Program, 1849 C Street NW, Washington, DC 20240, telephone (202) 354–2201, email *NAGPRA_Info@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The Native American Graves Protection and Repatriation Review Committee (Review Committee) found that a cultural affiliation exists between the present-day Muskogean-speaking Indian Tribes and the earlier group connected to human remains and funerary objects excavated at, and adjacent to, the Moundville archeological site (1Tu500), in Tuscaloosa County, AL. The recommendations, findings, and actions in this notice are advisory only and are not binding on any person. Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA or the Act), the Review Committee is responsible for reviewing and making findings related to the identity or cultural affiliation of cultural items. 25 U.S.C. 3006(c)(3)(A).

These advisory findings do not necessarily represent the views of the National Park Service or Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters. The Review Committee established by Section 8 of the Act (25 U.S.C. 3006) is an advisory body governed by the Federal Advisory Committee Act. Under the Act, upon the request of any affected party, the Review Committee is responsible for reviewing and making findings related to the identity or cultural affiliation of cultural items. 25 U.S.C. 3006(c)(3)(A).

**Background**

Under the Act, ''cultural affiliation'' means that there is a relationship of shared group identity that can be reasonably traced between a present-day Indian Tribe and an identifiable earlier group. 25 U.S.C. 3001(2). Cultural affiliation of Native American human remains and associated funerary objects is established by compiling an inventory, based on information possessed by a museum or Federal agency and in consultation with Indian Tribes and Native Hawaiian organizations. 25 U.S.C. 3003. When cultural affiliation is not established in an inventory, then, upon request, Native American human remains and associated funerary objects must be expeditiously returned where a requesting Indian Tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon the following kinds of relevant information: Geographical, kinship, biological, archeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion. 25 U.S.C. 3005(a)(4).

**Request for a Finding**

At its November 23, 2021, virtual pubic meeting, the Review Committee heard a request from the following affected parties for a finding of fact: The Choctaw Nation of Oklahoma, The Chickasaw Nation, Coushatta Tribe of Louisiana, The Muscogee (Creek) Nation, Seminole Tribe of Florida [previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton,

Hollywood, & Tampa Reservations)], and The Seminole Nation of Oklahoma, with support from the Jena Band of Choctaw Indians and the Alabama-Coushatta Tribe of Texas [previously listed as Alabama-Coushatta Tribes of Texas]. The question presented was whether the present-day Muskogean-speaking Indian Tribes are culturally affiliated with the human remains and funerary objects excavated at, and adjacent to, the Moundville archeological site (1TU500), in Tuscaloosa County, AL. The Review Committee considered the relevant information submitted by the requestors, which included the following types of evidence: Linguistic, oral tradition, geographical, kinship, biological, archeological, historical, and anthropological.

During discussion, members of the Review Committee noted that the requestors had asked for a finding based upon a preponderance of the evidence and asked whether a finding of cultural affiliation by a preponderance of the evidence would differ from a finding by a reasonable basis. In response, attorneys from the Department's Office of the Solicitor stated that, in practice, preponderance of the evidence and reasonable basis are similar standards for determining whether the evidence leans slightly more one way than the other. The Review Committee noted several times that the University of Alabama did not have an opportunity to present information on this matter to the Review Committee. One member stated that the preponderance of the evidence means a weighing between two sides, and since the Review Committee had heard the tribal case but not the museum's case the reasonable basis standard was appropriate.

**Finding of Fact**

All six currently appointed Review Committee members participated in the fact finding. By a vote of five in favor and one abstention, the Review Committee found that, based on the evidence before it, there is a preponderance of the evidence for cultural affiliation between the human remains and funerary objects originating from, and adjacent to, the Moundville archeological site (1Tu500) and the present-day Muskogean-speaking Indian Tribes. The abstaining member requested, and the other members agreed, that a statement be appended to the finding. This statement is that the one abstaining member of the Review Committee found that, based on the evidence before the Review Committee, there is a reasonable basis for cultural affiliation between the human remains and funerary objects originating from, or adjacent to, the Moundville archeological site (1Tu500) and the present-day Muskogean-speaking Indian Tribes. The requesting, affected parties making a request for this finding are: The Choctaw Nation of Oklahoma, The Chickasaw Nation, Coushatta Tribe of Louisiana, The Muscogee (Creek) Nation, Seminole Tribe of Florida [previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood, & Tampa Reservations)], and The Seminole Nation of Oklahoma, with support from the Jena Band of Choctaw Indians and the Alabama-Coushatta Tribe of Texas [previously listed as Alabama-Coushatta Tribes of Texas].

This finding was approved for publication by the Chair of the Review Committee, Francis P. McManamon.

Dated: January 26, 2022.

**Melanie O'Brien,**

*Designated Federal Official, Native American Graves Protection and Repatriation Review Committee.*

[FR Doc. 2022–02036 Filed 1–31–22; 8:45 am]

**BILLING CODE 4312–52–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#–33335; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before January 22, 2022, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by February 16, 2022.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 22, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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

Nominations submitted by State or Tribal Historic Preservation Officers:

**IOWA**

**Marshall County**

Riemenschneider, August and Josephine, Farmstead, 201 4th Ave. NE, State Center, SG100007464

**KANSAS**

**Johnson County**

Campbell Dome House, 8126 Hamilton Dr., Overland Park, SG100007467

**NEW YORK**

**Chemung County**

North Main and West Water Commercial Historic District (Boundary Increase), 232–261 West Water St. and Wisner Park, North Main, West Grey, West Church and West First Sts., Elmira, BC100007465

**OREGON**

**Malheur County**

Rex Theater, 240 A St. West, Vale, SG100007459

**Multnomah County**

Dean's Beauty Salon and Barber Shop, (African American Resources in Portland, Oregon, from 1851 to 1973 MPS), 213–215 NE Hancock St., Portland, MP100007455

Golden West Hotel, (African American Resources in Portland, Oregon, from 1851 to 1973 MPS), 707 NW Everett St., Portland, MP100007456

Mt. Olivet Baptist Church, (African American Resources in Portland, Oregon, from 1851 to 1973 MPS), 1734 NE 1st Ave., Portland, MP100007457

**Polk County**

Burford-Stanley House, 342 Monmouth Ave. South, Monmouth, SG100007458

**PENNSYLVANIA**

**Cameron County**

Cameron County Courthouse, 20 East 5th St., Emporium, SG100007460

**Erie County**

Wright's Block, 425–431 State St., Erie, SG100007461

Additional documentation has been received for the following resources:

**MISSISSIPPI**

**Hinds County**

Farish Street Neighborhood Historic District (Additional Documentation), Roughly bounded by Amite, Mill, Fortification and Lamar Sts., Jackson, AD80002245

**NEW YORK**

**Dutchess County**

Halfway Diner, 39 North Broadway, Red Hook, AD87002297

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

**PUERTO RICO**

**San Juan Municipality**

San Juan National Historic Site (Additional Documentation), 501 Norzagaray St., Castillo San Cristóbal, San Juan, AD66000930

**Toa Baja Municipality**

San Juan National Historic Site (Additional Documentation), 501 Norzagaray St., Castillo San Cristóbal, Toa Baja, AD66000930

(Authority: Section 60.13 of 36 CFR part 60)

Dated: January 26, 2022.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

[FR Doc. 2022–01944 Filed 1–31–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–NPS0033353; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Phillips Academy, Andover, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Robert S. Peabody Institute of Archaeology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects, and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Robert S. Peabody Institute of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Institute of Archaeology at the address in this notice by March 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Robert S. Peabody Institute of Archaeology, Phillips Academy, Andover, MA. The human remains and associated funerary objects were removed from eight sites in Cumberland, Hancock, and Washington Counties, ME.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the Robert S. Peabody Institute of Archaeology professional staff in consultation with representatives of the Aroostook Band of Micmacs [previously listed as Aroostook Band of Micmac Indians]; Houlton Band of Maliseet Indians; Passamaquoddy Tribe; and the Penobscot Nation [previously listed as Penobscot Tribe of Maine] (hereafter referred to as ''The Consulted Tribes'').

### History and Description of the Remains

In 1915, human remains representing, at minimum, one individual were removed from Wolfe's Neck (014.101) in Cumberland County, ME, by Warren K. Moorehead. During an inventory project at the Robert S. Peabody Institute in 2019, the remains were identified (and confirmed by a physical anthropologist) as Native American human remains. Moorehead had identified the site as Me 171/7. In 1968, Dean Snow assigned it number 014.101. Snow's record noted that ancestral human remains had been found at the site by Dr. Jos E. Porter of Maine General Hospital, in Portland, and that those human remains were subsequently transferred to the Anthropology Department at Harvard University on August 10, 1953. The human remains at the Peabody Institute likely originated from one of the eroding shell middens in the area, which would date them sometime between 2,800 years ago and the arrival of colonial settlers. No known individual was identified. The 36 associated funerary objects are 29 ceramic sherds and seven faunal bone fragments.

In 1913, human remains representing, at minimum, one individual were removed from Boynton's Shellheap (043.004) in Hancock County, ME, by Warren K. Moorehead and Charles Peabody under the auspices of the Department of Archaeology at Phillips Academy (now the Robert S. Peabody Institute of Archaeology). During a recent inventory project, the remains were identified as Native American human remains. The individual's age and sex could not be ascertained. Other human remains from Boynton's Shellheap were listed in a Notice of Inventory Completion published in the **Federal Register** on November 21, 2001 (66 FR 58522–58523, November 21, 2001) and were subsequently transferred to The Consulted Tribes. Based on artifact assemblages recovered from the site, Boynton's Shellheap was occupied between 2,150 and 500 B.P. No known individual was identified. No associated funerary objects are present.

Sometime in the 1930s, human remains representing, at minimum, one individual were removed from Falls Island (080.050) in Washington County, ME, by avocational archeologists John and Douglas Knapton. The human

remains were given to the Robert S. Peabody Institute as part of the materials recovered during the Northeast Archaeological Survey conducted in Maine from 1932 to1954. During a recent inventory project, the remains were identified as Native American human remains. The individual's age and sex could not be ascertained due to the fragmentary nature of the human remains. The artifact assemblage from Falls Island is consistent with coastal shell-bearing sites from the Middle Maritime Woodland and Late Maritime Woodland periods dating between approximately 2200 B.P. and contact with European settlers. The two associated funerary objects are two faunal bone fragments.

From 1936 to 1940, human remains representing, at minimum, five individuals were removed from Nevin Shellheap (042.011) in Hancock County, ME, by Douglas Byers and Frederick Johnson. In March of 1941, the majority of the human remains removed by Byers and Johnson from the Nevin Shellheap were loaned to the Peabody Museum of Archaeology and Ethnology at Harvard University, Cambridge, MA. On June 28, 1989 and August 8, 1997, control of those human remains was transferred to Harvard University, and they were listed in a Notice of Inventory Completion published by Harvard University in the **Federal Register** on August 11, 2021 (86 FR 44038–44040, August 11, 2021). The fragmentary remains of the five individuals listed in this notice were inadvertently overlooked during the 1941, 1989, and 1997 transfers to Harvard University. They were identified as Native American human remains during an inventory project carried out at the Robert S. Peabody Institute between 2019 and 2021. The human remains belong to one subadult of unknown sex, one subadult female, two adult males, and one small adult of unknown sex. No known individuals were identified. On April 28, 2015, the Robert S. Peabody Institute listed 462 associated funerary objects from this site in a Notice of Inventory Completion published in the **Federal Register** (80 FR 23582–23583, April 28, 2015). During the 2019–2021 inventory project, it located an additional 655 associated funerary objects. The 655 additional associated funerary objects are two bone harpoons (including fragments), three modified faunal remains, three bone perforators (including fragments), 638 miscellaneous faunal remains, one unmodified stone, one stone projectile point, four dog burials, one pebble coated with red ochre, one lot of stone and soil matrix, and one ceramic sherd.

In 1913, one associated funerary object was removed from Hodgkin's Point Shellheap in Hancock County, ME, by Warren K. Moorehead under the auspices of the Department of Archaeology at Phillips Academy. The human remains from Hodgkin's Point Shellheap were listed in a Notice of Inventory Completion published in the **Federal Register** on May 22, 1997 (62 FR 28063–28064, May 22, 1997) and were subsequently transferred to the Passamaquoddy Tribe and the Penobscot Nation [previously listed as Penobscot Tribe of Maine]. During a recent inventory project, the associated funerary object, a faunal bone fragment, was identified.

In 1956, two associated funerary objects were removed from Pond Island Site (041.030) in Hancock County, ME, by Douglas Byers. The human remains from Pond Island Site were listed in a Notice of Inventory Completion published in the **Federal Register** on November 21, 2001 (66 FR 58522–58523, November 21, 2001) and were subsequently transferred to The Consulted Tribes. During a recent inventory project, the associated funerary objects, a beaver tooth and a ceramic sherd, were identified.

In 1915, 27 associated funerary objects were removed from Holbrook Island in Hancock County, ME, by Warren K. Moorehead. The human remains from Holbrook Island were listed in a Notice of Inventory Completion published in the **Federal Register** on January 10, 1995 (60 FR 2611–2612, January 10, 1995) and were subsequently transferred to the Passamaquoddy Tribe and the Penobscot Nation [previously listed as Penobscot Tribe of Maine]. The Holbrook Island Site is believed to have been occupied between 900 and 1500 C.E. During a recent inventory project, the 27 associated funerary objects were identified. They are 21 stone bifaces (including fragments), four modified faunal remains, and two unmodified faunal remains.

In 1921, four associated funerary objects were removed from Ludlow's Point Shellheap in Hancock County, ME, by Warren K. Moorehead. The human remains from Ludlow's Point Shellheap were listed in a Notice of Inventory Completion published in the **Federal Register** on July 18, 1995 (60 FR 36827, July 18, 1995) and were subsequently transferred to the Passamaquoddy Tribe and the Penobscot Nation [previously listed as Penobscot Tribe of Maine]. Ludlow's Point Shellheap is believed to have been occupied between 900 and 1500 C.E. During a recent inventory project, the associated funerary objects, four fragments of modified faunal remains, were identified.

Past consultation with The Consulted Tribes has revealed compelling lines of evidence tying the Wabanaki to the land today known as Maine, New England, and the Canadian Maritimes. The Wabanki have lived uninterrupted on this land for over 12,000 years. Wabanaki oral history is often tied to specific landscape features, with language and stories reflecting a long presence in Maine. Archeological evidence has also established a cultural relationship between the Wabanaki and ancestral populations in that region.

**Determinations Made by the Robert S. Peabody Institute of Archaeology**

Officials of the Robert S. Peabody Institute of Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 727 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects to The Consulted Tribes.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by March 3, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Consulted Tribes may proceed.

The Robert S. Peabody Institute is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: January 26, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–02037 Filed 1–31–22; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–562 and 731–TA–1329 (Review)]**

## Ammonium Sulfate From China; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on ammonium sulfate from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted February 1, 2022. To be assured of consideration, the deadline for responses is March 3, 2022. Comments on the adequacy of responses may be filed with the Commission by April 15, 2022.

**FOR FURTHER INFORMATION CONTACT:** Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 9, 2017, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of ammonium sulfate from China (82 FR 13094). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of ammonium sulfate, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all domestic producers of ammonium sulfate.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is March 9, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for

information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 15, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–512, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company

transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–01909 Filed 1–31–22; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–552 and 731–TA–1308 (Review)]**

## New Pneumatic Off-the-Road Tires From India; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain new pneumatic off-the-road tires from India would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted February 1, 2022. To be assured of consideration, the deadline for responses is March 3, 2022. Comments on the adequacy of responses may be filed with the Commission by April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ahdia Bavari (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** *Background.*—On March 6, 2017, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of certain new pneumatic off-the-road tires from India (82 FR 12553–12558). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be

found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is India.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of certain new pneumatic off-the-road tires coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of certain new pneumatic off-the-road tires coextensive with Commerce's scope, except for a certain U.S. producer that was excluded from the *Domestic Industry* as a related party. The Commission also determined in the original determinations that the *Domestic Industry* did not include firms that engaged in tire mounting operations but did not otherwise produce certain new pneumatic off-the-road tires.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is March 6, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 18, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–516, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response To This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in number of tires and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in number of tires and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in number of tires and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–01898 Filed 1–31–22; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–554 and 731–TA–1309 (Review)]**

## Biaxial Integral Geogrid Products From China; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain biaxial integral geogrid products from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted February 1, 2022. To be assured of consideration, the deadline for responses is March 3, 2022. Comments on the adequacy of responses may be filed with the Commission by April 18, 2022.

**FOR FURTHER INFORMATION CONTACT:** Caitlyn Hendricks (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 3, 2017, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of certain biaxial integral geogrid products from China (82 FR 12437–12441). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* as consisting of biaxial geogrids and triaxial geogrids.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* to include all U.S. producers of biaxial geogrids and triaxial geogrids.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is March 3, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as

provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 18, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–515, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various

factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in square yards and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square yards and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–01899 Filed 1–31–22; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–555 and 731–TA–1310 (Review)]**

## Amorphous Silica Fabric From China; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain amorphous silica fabric from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted February 1, 2022. To be assured of consideration, the deadline for responses is March 3, 2022. Comments on the adequacy of responses may be filed with the Commission by April 15, 2022.

**FOR FURTHER INFORMATION CONTACT:** Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On March 17, 2017, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of certain amorphous silica fabric from China (82 FR 14314–14317). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all industrial grade amorphous silica fabric that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of all U.S. producers of industrial grade amorphous silica fabric coextensive with Commerce's scope.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is March 17, 2017.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices,

and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 15, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–513, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in kilograms and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit,

(iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in kilograms and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in kilograms and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–01896 Filed 1–31–22; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1091 (Third Review)]**

## Artists' Canvas From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on artists' canvas from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted February 1, 2022. To be assured of consideration, the deadline for responses is March 3, 2022. Comments on the adequacy of responses may be filed with the Commission by April 15, 2022.

**FOR FURTHER INFORMATION CONTACT:** Nayana Kollanthara (202–205–2043), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 1, 2006, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of artists' canvas from China (71 FR 31154). Following the first five-year reviews by Commerce and the Commission, effective November 9, 2011, Commerce issued a continuation of the antidumping duty order on imports of artists' canvas from China (76 FR 69704). Following the second five-year reviews by Commerce and the Commission, effective March 21, 2017, Commerce issued a continuation of the antidumping duty order on imports of artists' canvas from China (82 FR 14502). The Commission is now

conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission found a single *Domestic Like Product* consisting of all artists' canvas meeting the physical specifications of Commerce's scope definition.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of artists' canvas, that is, all U.S. coaters (*i.e.,* bulk canvas producers) and non-print converters of artists' canvas, but not print converters. Certain Commissioners defined the *Domestic Industry* differently in the original determination and the first five-year review determination.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the proceeding and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Written submissions.*—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 15, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document

Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–514, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

*Inability to provide requested information.*—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2015.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2015, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–01912 Filed 1–31–22; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Mashni, et al.,* Case No. 2:18–cv–02288–DCN, was lodged with the United States District Court for the District of South Carolina, Charleston Division, on January 26, 2022.

This proposed Consent Decree concerns a complaint filed by the United States against Paul Edward Mashni; PEM Residential, LLC; PEM Real Estate Group, LLC; Finish Line Foundation II, Inc.; Kiawah River Farms, LLC; Kiawah River Excavating & Earthworks, LLC; KRF XSL, LLC; SC Investment Holdings, LLC; and SC Investment Holdins, LLC (collectively ''Defendants''), pursuant to Sections 301, 309, and 404 of the Clean Water Act, 33 U.S.C. 1311, 1319, and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to pay a civil penalty, effectuate compensatory mitigation, and be subject to other injunctive relief.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Johanna Valenzuela, Assistant United States Attorney, United States Attorney's Office for the District of South Carolina, 1441 Main Street, Suite 500, Columbia, SC, 29201, or to *pubcomment_eds.enrd@usdoj.gov* and refer to *United States* v. *Mashni, et al.,* Case No. 2:18–cv–02288–DCN, DJ # 90–5–1–4–21393.

The proposed Consent Decree may be examined at *http://www.justice.gov/enrd/consent-decrees.* In addition, the proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, Charleston Division, 85 Broad Street, Charleston, SC 29401. However, the Clerk Office's may limit public access due to the ongoing Coronavirus/COVID–19 emergency.

**Cherie L. Rogers,**

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2022–01978 Filed 1–31–22; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Work-Study Program of the Child Labor Regulations

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before March 3, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Wage and Hour Division of the Department of

Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* The child labor provisions of the FLSA establish a minimum age of 16 years for employment in nonagricultural occupations, but the Secretary of Labor is authorized to provide by regulation for 14- and 15-year-olds to work in suitable occupations other than manufacturing or mining, and during periods and under conditions that will not interfere with their schooling or health and well-being. 29 CFR 570.35(b) describes the conditions of employment that allow the employment of 14- and 15-year-olds, pursuant to a school-supervised and school-administered Work-Study Program (WSP), under conditions Child Labor Regulation 3 otherwise prohibit. The regulation requires the implementation of an information collection with regard to a WSP. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 28, 2021 (86 FR 53690).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–WHD.

*Title of Collection:* Work-Study Program of the Child Labor Regulations.

*OMB Control Number:* 1235–0024.

*Affected Public:* State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 510.

*Total Estimated Number of Responses:* 1,010.

*Total Estimated Annual Time Burden:* 528 hours.

*Total Estimated Annual Other Costs Burden:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: January 26, 2022.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2022–01980 Filed 1–31–22; 8:45 am]

**BILLING CODE 4510–FN–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Establish an Information Collection System

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

**DATES:** Written comments on this notice must be received by April 4, 2022, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Program Monitoring Data Collections for National Science Foundation (NSF) Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Programs.

*OMB Number:* 3145–NEW.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to establish an information collection for post-award output and outcome monitoring system.

*Abstract:* The NSF SBIR/STTR programs focus on transforming scientific discovery into products and services with commercial potential and/or societal benefit. Unlike fundamental or basic research activities that focus on scientific and engineering discovery itself, the NSF SBIR/STTR programs support the creation of opportunities to move fundamental science and engineering out of the lab and into the market at scale, through startups and small businesses representing deep technology ventures. Here, deep technologies refer to technologies based on discoveries in fundamental science and engineering. The NSF SBIR/STTR programs are designed to provide non-dilutive funding (financing that does not involve equity, debt, or other elements of the business ownership structure) at the earliest stages of technology research and development.

The NSF SBIR/STTR programs are Congressionally mandated. By investing federal research and development funds into startups and small businesses, NSF hopes to stimulate the creation of novel products, services, and solutions in the private sector, strengthen the role of small business in meeting federal research and development needs, increase the commercial application of federally supported research results, build a strong national economy, and increase and develop the U.S. workforce, especially by fostering and encouraging participation of socially and economically disadvantaged and women-owned small businesses.

Both the NSF SBIR and NSF STTR programs have two phases: Phase I and Phase II. Phase I is a 6–12 month experimental or theoretical investigation that allows the awardees to determine the scientific, technical, and commercial merit of the idea or concept. Phase II further develops the proposed concept, building on the feasibility of the project undertaken in Phase I, with a goal of working toward the commercial launch of the new product, process, or service being developed.

The NSF SBIR/STTR programs request the Office of Management and Budget (OMB) approval of this clearance that will allow the programs to improve the rigor of our surveys for evaluations and program monitoring, as well as to initiate new data collections to monitor the immediate, intermediate, and long-term outcomes of our investments by

periodically surveying the startup businesses and their founders/co-founders involved in the businesses. The clearance will allow the SBIR/STTR programs to rigorously develop, test, and implement survey instruments and methodologies.

The primary objective of this clearance is to allow the NSF SBIR/STTR programs to collect characteristics, output, and outcome information from the startup companies funded by the programs. This collection will enable the evaluation of the impacts of our investments in technology translation and innovation over time. The second, related objective is to improve our questionnaires and/or data collection procedures through pilot tests and other survey methods used in these activities. Under this clearance a variety of surveys could be pre-tested, modified, and used.

Following standard OMB requirements, NSF will submit to OMB an individual request for each survey project we undertake under this clearance. NSF will request OMB approval in advance and provide OMB with a copy of the questionnaire and materials describing the project.

Data collected will be used for planning, management, evaluation, and audit purposes. Summaries of output and outcome monitoring data are used to respond to queries from Congress, the Small Business Administration (SBA), the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), NSF's Office of the Inspector General, and other pertinent stakeholders. These data are needed for effective administration, program monitoring, evaluation, outreach/marketing roadmaps, and for strategic reviews and measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act Modernization Act of 2010, Evidence-Based Policymaking Act of 2018, and NSF's Strategic Plan.

All questions asked in the data collection are questions that are NOT included in the annual, final or outcomes reports, and the intention is to ask the grantees even beyond the period of performance on voluntary basis in order to capture impacts of the research that occur during and beyond the life of the award.

Grantees will be invited to submit information on a periodic basis to support the management of the NSF SBIR/STTR investment portfolio. Once the survey tool for a specific program is tested, grantees will be invited to submit these indicators to NSF via data collection methods that include, but are not limited to, online surveys, interviews, focus groups, phone interviews, etc. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel, sources of funding and support, knowledge transfer and technology translation activities, patents, licenses, publications, descriptions of significant advances, and other outcomes of the funded efforts.

**Use of the Information**

The data collected will be used for NSF internal and external reports, historical data, program level studies and evaluations, and for securing future funding for the maintenance and growth of the NSF SBIR/STTR programs. Evaluation designs could make use of metadata associated with the award and other characteristics to identify a comparison group to evaluate the impact of the program funding and other interesting research questions.

ESTIMATE OF PUBLIC BURDEN

| Collection title | Number of respondents | Annual number of responses/respondent | Annual hour burden |
|---|---|---|---|
| Program Monitoring Data Collections for National Science Foundation (NSF) Small Business Innovation Research, (SBIR)/Small Business Technology Transfer (STTR) Programs. | 400 startup businesses per year | 3 | 600 |

For life-of-award monitoring, the data collection burden to awardees will be limited to no more than 30 minutes of the respondents' time in each instance.

**Respondents**

The respondents are either Principal Investigators (PIs) of the startup businesses that the NSF SBIR/STTR Programs awarded, founders, co-founders, and/or key personnel of the startup businesses. In the case of Business Survey, only one response from each startup/small business is anticipated.

**Estimates of Annualized Cost to Respondents for the Hour Burdens**

The overall annualized cost to the respondents is estimated to be $26,400. The following table shows the annualized estimate of costs to PI/Founders/Business Partners respondents, who are generally university assistant professors. This estimated hourly rate is based on a report from the American Association of University Professors, ''Annual Report on the Economic Status of the Profession, 2020–21,'' *Academe,* March–April 2021, Survey Report Table 1. According to this report, the average salary of an assistant professor across all types of doctoral-granting institutions (public, private-independent, religiously affiliated) was $91,408. When divided by the number of standard annual work hours (2,080), this calculates to approximately $44 per hour.

| Respondent type | Number of respondents | Burden hours per respondent | Average hourly rate | Estimated annual cost |
|---|---|---|---|---|
| PIs/Founders, Business Partners | 400 | 1.5 | $44 | $26,400 |
| Total | 400 | | | 26,400 |

**Estimated Number of Responses per Report**

Data collection for the collections involves all awardees in the programs involved.

Dated: January 27, 2022.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2022–02029 Filed 1–31–22; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2021–0149]**

## Information Collection: Operators' Licenses

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Operators' Licenses.''

**DATES:** Submit comments by April 4, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0149. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2021–0149 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0149.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the online collections of information and related instructions may be obtained without charge by accessing ADAMS Accession Numbers ML21222A098 and ML21222A099. The supporting document is available in ADAMS under ML21221A100.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0149 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Part 55 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Operators' Licenses.''
2. *OMB approval number:* 3150–0018.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* As necessary for the NRC to meet its responsibilities to determine the eligibility for applicants and operators.
6. *Who will be required or asked to respond:* Holders of, and applicants for, facility (*i.e.,* nuclear power and non-power research and test reactor) operating licenses and individual operator licensees.
7. *The estimated number of annual responses:* 437 (345 reporting responses + 92 recordkeepers).
8. *The estimated number of annual respondents:* 92.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 170,928 hours (149,619 hours reporting + 21,309 hours recordkeeping).
10. *Abstract:* 10 CFR part 55 ''Operators' Licenses,'' specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear

reactors, as necessary to promote public health and safety. The reporting and recordkeeping requirements contained in 10 CFR part 55 are mandatory for the affected facility licensees and applicants. In addition, the information collection includes two online forms for requesting exemptions from requirements for part 55 ''Exemption Request'' and part 55 ''Research and Test Reactor Exemption Request related to the COVID–19 Public Health Emergency.'' The information collected by the online form is the minimum needed by the NRC to make a determination on the acceptability of the licensee's request for an exemption.

### III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: January 27, 2022.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2022–02045 Filed 1–31–22; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2021–0150]**

## Information Collection: NRC Form 396, "Certification of Medical Examination by Facility Licensee"

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

**DATES:** Submit comments by April 4, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0150. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2021–0150 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0150.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and NRC Form 396 are available in ADAMS under ML21214A113 and ML21214A180.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0150 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

### II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''
2. *OMB approval number:* 3150–0024.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 396.
5. *How often the collection is required or requested:* Upon application for an initial or upgrade license; every 6 years for the renewal of an operator or senior

operator license, and notices of disability that occur during licensed tenure.

6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying the medical fitness or operator licensee.

7. *The estimated number of annual responses:* 1,650.

8. *The estimated number of annual respondents:* 128.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 2,063 hours (1,650 Reporting hours plus 413 Recordkeeping hours).

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

### III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: January 27, 2022.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2022–02043 Filed 1–31–22; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–528, STN 50–529, STN–530, and 72–44; NRC–2021–0100]**

## In the Matter of Arizona Public Service Company; El Paso Electric Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3 and Independent Spent Fuel Storage Installation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Indirect transfer of control of licenses; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the application dated March 18, 2021, filed by El Paso Electric Company (EPE). The application sought NRC consent to the indirect transfer of control of EPE's interests in Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (together, the facility). No physical changes or operational changes to the facility were proposed in the application.

**DATES:** The order was issued on January 25, 2022, and is effective immediately.

**ADDRESSES:** Please refer to Docket ID NRC–2021–0100 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0100. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The license transfer order and the NRC staff safety evaluation supporting the order are available in ADAMS under Package Accession No. ML22003A102.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564, email: *Siva.Lingam@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the order is attached.

Dated: January 26, 2022.

For the Nuclear Regulatory Commission.

**Siva P. Lingam,**

*Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

### Attachment—Order Approving Indirect Transfer of Control of Licenses

**United States of America**

**Nuclear Regulatory Commission**

In the Matter of: Arizona Public Service Company, El Paso Electric Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3 and Independent Spent Fuel Storage Installation.

Docket Nos. STN 50–528, STN 50–529, STN 50–530, and 72–44

License Nos. NPF–41, NPF–51, and NPF–74

### Order Approving Indirect Transfer of Control of Licenses

**I**

Arizona Public Service Company (APS) is the licensed operator and a licensed co-owner of Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI). Palo Verde is located in Maricopa County, Arizona. The other licensed co-owners (tenants-in-common), Salt River Project Agricultural Improvement and Power District; Southern California Edison Company; El Paso Electric Company (EPE); Public Service Company of New Mexico; Southern California Public Power Authority; and Los Angeles Department of Water and Power, hold possession-only rights for these licenses (*i.e.,* they are not licensed to operate the facility).

**II**

By application dated March 18, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML21077A256), EPE requested pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, ''Transfer of licenses,'' and 72.50, ''Transfer of license,'' that the U.S. Nuclear Regulatory Commission (NRC, the Commission)

consent to the indirect transfer of control of the Palo Verde NRC licenses.

According to the application, EPE currently owns a 15.8 percent tenant-in-common interest and holds possession-only rights in the Palo Verde NRC licenses. The indirect transfer of control of EPE's possession only non-operating interests in the Palo Verde NRC licenses resulted from the acquisition of an approximately 33.3 percent membership interest in IIF US Holding 2 GP, LLC (IIF US 2 GP), the general partner of IIF US Holding 2 LP (IIF US 2), by a private individual, Anne Cleary, a U.S. citizen, subsequent to the retirement and relinquishment of an approximately 33.3 percent IIF US 2 GP membership interest held by Dennis Clarke, a U.S. citizen. APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the Palo Verde NRC licenses. Further, APS operates, and will continue to operate, each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. The remaining tenant-in-common co-owners that hold possession-only rights in the Palo Verde NRC licenses are: Salt River Project Agricultural Improvement and Power District (17.49 percent); Southern California Edison Company (15.8 percent); Public Service Company of New Mexico (10.2 percent); Southern California Public Power Authority (5.91 percent); and Los Angeles Department of Water and Power (5.7 percent).

According to the application, the transaction involved the issuance of the approximately 33.3 percent interest in IIF US 2 GP that was relinquished by Dennis Clarke on September 30, 2020, to Anne Cleary pursuant to that certain resolution dated September 30, 2020, of the IIF US 2 GP Owners, Rita J. Sallis and Christopher Ward. As a result of the transaction, as of December 17, 2020, Anne Cleary became an approximately 33.3 percent owner of IIF US 2 GP and indirect owner of EPE. The approximately 33.3 percent interests of each of Rita J. Sallis and Christopher Ward were unaffected by the transaction.

After the transaction, Anne Cleary owns an approximately 33.3 percent membership interest in IIF US 2 GP. APS continues to own a 29.1 percent tenant-in-common interest and continues to hold both operating and possession rights in the Palo Verde NRC licenses. Further, APS continues to operate each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. Also, as before the transaction, no entity owns 50 percent or more of the voting interests. Accordingly, after the transaction, there is no change in the control of the operation of Palo Verde; APS continues to make all technical decisions that do not require approval from all owners of Palo Verde.

No physical changes or operational changes were proposed in the application.

A notice of the application and opportunity to comment, request a hearing, and petition for leave to intervene on the application was published in the **Federal Register** (FR) on May 4, 2021 (86 FR 23757). The NRC did not receive any comments or hearing requests on the application.

Under 10 CFR 50.80 and 10 CFR 72.50, no license for a production or utilization facility or ISFSI, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that the acquisition of an approximately 33.3 percent membership interest in IIF US 2 GP by Anne Cleary is acceptable. The transferee is qualified to be the indirect holder of the licenses and indirect transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this Order, which is available at ADAMS Accession No. ML22003A105.

## III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the application regarding the indirect transfer of control of licenses is approved for Palo Verde Units 1, 2, and 3 and the Palo Verde ISFSI.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated March 18, 2021, and the NRC staff's safety evaluation dated the same date as this Order, which are available for public inspection electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *PDR.Resource@nrc.gov.*

Dated: January 25, 2022.

For the Nuclear Regulatory Commission

/RA/

Brian D. Wittick,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–01942 Filed 1–31–22; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2021–0151]**

## Information Collection: NRC Form 398, "Personal Qualification Statement—Licensee"

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 398, ''Personal Qualification Statement—Licensee.''

**DATES:** Submit comments by April 4, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0151. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2021–0151 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0151.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement and NRC Form 398 are available in ADAMS under ML21214A219 and ML21214A220.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0151 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 398, ''Personal Qualification Statement—Licensee.''
2. *OMB approval number:* 3150–0090.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 398.
5. *How often the collection is required or requested:* Upon application for an initial or upgrade operator license and every six years for the renewal of operator or senior operator licenses.
6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying that the applicants and renewal operators are qualified to be licensed as reactor operators and senior reactor operators.
7. *The estimated number of annual responses:* 1,018.
8. *The estimated number of annual respondents:* 1,018.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5,252.
10. *Abstract:* NRC Form 398 is used to transmit detailed information required to be submitted to the NRC by a facility licensee on each applicant applying for new and upgraded licenses or license renewals to operate the controls at a nuclear reactor facility. This information is used to determine that each applicant or renewal operator seeking a license or renewal of a license is qualified to be issued a license and that the licensed operator would not be expected to cause operational errors and endanger public health and safety.

## III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: January 27, 2022.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2022–02044 Filed 1–31–22; 8:45 am]

BILLING CODE 7590–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94066; File No. SR–FICC–2021–009]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

January 26, 2022.

On December 13, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2021–009 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021,[3] and the Commission received no comment letters regarding the changes proposed in the Proposed Rule Change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93857 (December 22, 2021), 86 FR 74130 (December 29, 2021) (File No. SR–FICC–2021–009).

[4] 15 U.S.C. 78s(b)(2).

to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is February 12, 2022.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates March 29, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–FICC–2021–009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01964 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94070; File No. SR–ISE–2022–02]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce ISE's Options Regulatory Fee

January 26, 2022.

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 January 20, 2022, Nasdaq ISE, LLC (''ISE'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE's Pricing Schedule at Options 7, Section 9, Part C, to reduce the ISE Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

ISE previously filed to waive its ORF from October 1, 2021 through January 31, 2022.[3] The Waiver Filing provided that ISE would continue monitoring the amount of revenue collected from the ORF to determine if regulatory revenues would exceed regulatory costs when it recommenced assessing ORF on February 1, 2022. If so, the Exchange committed to adjust its ORF.[4] At this time, after a review of its regulatory revenues and regulatory costs, the Exchange proposes to reduce the ORF from $0.0018 (the amount of the ORF prior to the waiver) to $0.0014 per contract side as of February 1, 2022, to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

[3] *See* Securities Exchange Act Release No. 92577 (August 5, 2021), 86 FR 44092 (August 11, 2021) (SR–ISE–2021–16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE's Options Regulatory Fee) (''Waiver Filing'').

[4] *Id.* at 44094.

The options industry continues to experience high options trading volumes and volatility. At this time, ISE believes that the options volume it experienced in the second half of 2021 is likely to persist into 2022. The anticipated options volume would impact ISE's ORF collection which, in turn, has caused ISE to propose reducing the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs.

Collection of ORF

Upon recommencement of the ORF on February 1, 2022,[5] ISE will assess its ORF for each customer option transaction that is either: (1) Executed by a Member on ISE; or (2) cleared by an ISE Member at The Options Clearing Corporation (''OCC'') in the customer range,[6] even if the transaction was executed by a non-Member of ISE, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a ISE Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [8]); and (2) if the OCC clearing member is not a ISE Member, ORF is collected only on the cleared customer contracts executed at ISE, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.[9]

In the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. In the case where a Member executes a transaction and a different Member

[5] Prior to the Waiver Filing, the Exchange similarly collected ORF as described herein.

[6] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[9] By way of example, if Broker A, an ISE Member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by ISE from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than ISE, it was cleared by an ISE Member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between ISE and the transaction. If Broker A was not an ISE Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on ISE nor was it cleared by an ISE Member.

clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. In the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. In the case where a Member executes a transaction on ISE and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on ISE and collected from the non-Member who cleared the transaction. In the case where a Member executes a transaction at an away market and a non-Member clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses were approximately 38% of the total regulatory costs for 2021. Thus, direct expenses were approximately 62% of total regulatory costs for 2021.[10]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its Members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0018 per contract side to $0.0014 per contract side. The Exchange issued an Options Trader Alert on December 31, 2021 indicating the proposed rate change for February 1, 2022.[11]

The proposed reduction is based on a sustained high level of options volume in 2021. The below table displays average daily volume for 2021.[12]

| Date | Total Contracts | Customer Sides | Trading Days | Quarter Contracts | Quarter Cust Sides | Quarter ADC | Quarter Cust ADS |
|---|---|---|---|---|---|---|---|
| Jan 2021 | 838,339,790 | 784,399,878 | 19 | | | | |
| Feb 2021 | 823,413,002 | 782,113,450 | 19 | | | | |
| Mar 2021 | 898,653,388 | 837,247,059 | 23 | 2,560,406,180 | 2,403,760,387 | **41,973,872** | **39,405,908** |
| Apr 2021 | 711,388,828 | 667,208,963 | 21 | | | | |
| May 2021 | 718,368,993 | 659,913,862 | 20 | | | | |
| Jun 2021 | 866,099,522 | 809,242,842 | 22 | 2,295,857,343 | 2,136,365,667 | **36,442,180** | **33,910,566** |
| Jul 2021 | 790,038,364 | 729,239,647 | 21 | | | | |
| Aug 2021 | 801,578,079 | 741,111,748 | 22 | | | | |
| Sep 2021 | 811,458,905 | 744,936,837 | 21 | 2,403,075,348 | 2,215,288,232 | **37,548,052** | **34,613,879** |
| Oct 2021 | 821,102,002 | 760,524,395 | 21 | | | | |
| Nov 2021 | 944,355,975 | 866,102,667 | 21 | | | | |
| Dec 2021 | 561,154,417 | 503,350,470 | 13 | 2,326,612,394 | 2,129,977,532 | **42,302,044** | **38,726,864** |

To date, fourth quarter options average daily volume in 2021 has been higher than options average daily volume in any of the prior three quarters of 2021. With respect to customer options volume across the industry, total customer options contract average daily volume, to date, in 2021 is 36,565,398 as compared to total customer options contract average daily volume in 2020 which was 27,002,511.[13]

There can be no assurance that the Exchange's costs for 2022 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue that may be generated utilizing an ORF rate of $0.0018 per contract side may result in revenue which exceeds the Exchange's estimated regulatory costs for 2022 if options volume persists. In 2021, options volume remained high, due in large part to the extreme volatility in the marketplace as a result of the COVID–19 pandemic. The Exchange therefore proposes to reduce its ORF to $0.0014 per contract side to ensure that revenue does not exceed the Exchange's estimated regulatory costs in 2022. Particularly, the Exchange believes that reducing the ORF when

[10] The Exchange will set a 2022 Regulatory Budget in the first quarter of 2022.

[11] *See* Options Trader Alert 2021–63.

[12] The OCC data from December 2021 numbers reflect only 13 trading days as this information is through December 17, 2021. Volume data in the table represents numbers of contracts; each contract has two sides.

[13] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type.*

combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the rate of $0.0018 per contract side.[14]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying [15] its Members via an Options Trader Alert.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act [18], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the rate that would otherwise be in effect on February 1, 2022. Moreover, the proposed reduction is necessary for the Exchange to avoid collecting revenue, in combination with other regulatory fees and fines, that would be in excess of its anticipated regulatory costs which is consistent with the Exchange's practices.

The Exchange designed the ORF to generate revenues that would be less than the amount of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may collect revenue which would exceed its regulatory costs. Indeed, the Exchange notes that when taking into account the potential that recent options volume persists, it estimates the ORF may generate revenues that would cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to reduce the ORF amount from $0.0018 to $0.0014 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at OCC.[20] The Exchange believes the ORF ensures fairness by assessing higher fees to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Members, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [21] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

[14] The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[15] The Exchange will provide Members with such notice at least 30 calendar days prior to the effective date of the change.

[16] The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] If the OCC clearing member is an ISE member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not an ISE member, ORF is collected only on the cleared customer contracts executed at ISE, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

[21] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2022–02 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–ISE–2022–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2022–02, and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94080; File No. SR–CboeBZX–2021–039]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 27, 2022.

**I. Introduction**

On May 10, 2021, Cboe BZX Exchange, Inc. (''BZX'' 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Wise Origin Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on June 1, 2021.[3]

On July 13, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On August 23, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On November 15, 2021, the Commission designated a longer period for Commission action on the proposed rule change.[8]

This order disapproves the proposed rule change. The Commission concludes that BZX has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and in particular, the requirement that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [9]

When considering whether BZX's proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard used in its orders considering previous proposals to list bitcoin [10]-based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91994 (May 25, 2021), 86 FR 29321 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92388, 86 FR 38163 (July 19, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 92721, 86 FR 48272 (Aug. 27, 2021).

[8] *See* Securities Exchange Act Release No. 93571, 86 FR 64979 (Nov. 19, 2021). On December 27, 2021, the Exchange filed Amendment No. 1 to the proposal. As discussed below, however, *see* Section III.E, *infra,* the Commission views this amendment as untimely. Furthermore, even if this amendment had been timely filed, it would not alter the Commission's conclusion that the Exchange's proposal is not consistent with the Exchange Act. *See* Section III.E.

[9] 15 U.S.C. 78f(b)(5).

[10] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''bitcoin blockchain.'' The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 86 FR at 29321.

commodity trusts and bitcoin-based trust issued receipts.[11] As the Commission has explained, an exchange that lists bitcoin-based exchange-traded products (''ETPs'') can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[12]

The standard requires such surveillance-sharing agreements since they ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [13] The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[14] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[15]

In the context of this standard, the terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[16] A surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.'' [17]

Consistent with this standard, for the commodity-trust ETPs approved to date for listing and trading, there has been in *every* case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.[18] Moreover, the surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[19]

Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is ''uniquely'' and ''inherently''

[11] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (''USBT Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31); Order Disapproving a Proposed Rule Change to List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37). *See also* Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''). The Commission also notes that orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019).

[12] *See* USBT Order, 85 FR at 12596. *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

[13] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998) (''NDSP Adopting Release''). *See also* Winklevoss Order, 83 FR at 37594; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

[14] *See* NDSP Adopting Release, 63 FR at 70959.

[15] *See* Winklevoss Order, 83 FR at 37592–93; Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm.*

[16] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[17] *See* USBT Order, 85 FR at 12597.

[18] *See* Winklevoss Order, 83 FR at 37594.

[19] *See* USBT Order, 85 FR at 12597; Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depository Receipts (''ADRs'')). The Commission has also required a surveillance-sharing agreement in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR–Amex–87–25) (stating that ''surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary'' and that ''[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation.''). And the Commission has required a surveillance-sharing agreement even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR–Amex–91–22) (stating that surveillance-sharing agreements ''ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses'').

resistant to fraud and manipulation.[20] In response, the Commission has agreed that, if a listing exchange could establish that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, it would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.[21] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.[22] No listing exchange has satisfied its burden to make such demonstration.[23]

Here, BZX contends that approval of the proposal is consistent with Section 6(b)(5) of the Exchange Act, in particular Section 6(b)(5)'s requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[24] As discussed in more detail below, BZX asserts that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the Exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size,[25] and there exist other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[26]

Although BZX recognizes the Commission's focus on potential manipulation of bitcoin ETPs in prior disapproval orders, BZX argues that such manipulation concerns have been sufficiently mitigated.[27] Specifically, as discussed in more detail below, the Exchange asserts that the significant increase in trading volume in bitcoin futures on the Chicago Mercantile Exchange (''CME''), the growth of liquidity in the spot market for bitcoin, and certain features of the Shares and the Index (as defined herein) mitigate potential manipulation concerns and should be the central consideration as the Commission determines whether to approve this proposal.[28]

Further, BZX believes that the proposal would give U.S. investors access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors. According to BZX, the proposed listing and trading of the Shares would mitigate risk by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing certain risks associated with investing in operating companies that are proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.[29]

In the analysis that follows, the Commission examines whether the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act by addressing: In Section III.B.1 assertions that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices; in Section III.B.2 assertions that BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin; and in Section III.C assertions that the proposal is consistent with the protection of investors and the public interest.

Based on its analysis, the Commission concludes that BZX has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Commission further concludes that BZX has not established that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin. As discussed further below, BZX repeats various assertions made in prior bitcoin-based ETP proposals that the Commission has previously addressed and rejected—and more importantly, BZX does not respond to the Commission's reasons for rejecting those assertions but merely repeats them. As a result, the Commission is unable to find that the proposed rule change is consistent with the statutory requirements of Exchange Act Section 6(b)(5).

The Commission again emphasizes that its disapproval of this proposed rule change does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, BZX has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

## II. Description of the Proposed Rule Change

As described in more detail in the Notice,[30] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the Fidelity Bitcoin Index PR (''Index''), adjusted for the Trust's expenses and other liabilities.[31] Each Share will represent a fractional undivided beneficial interest in and ownership of the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.[32]

In seeking to achieve its investment objective, the Trust would hold bitcoin and value its Shares daily as of 4:00 p.m. E.T. using the same methodology used to calculate the Index. The Index is designed to reflect the performance of bitcoin in U.S. dollars and is calculated using bitcoin price feeds from eligible bitcoin spot platforms. The current platform composition of the Index is Bitstamp, Coinbase, Gemini, itBit, and Kraken. The Index market value would be the volume-weighted median price of bitcoin in U.S. dollars over the previous

[20] *See* USBT Order, 85 FR at 12597.

[21] *See* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and bitcoin [spot] markets'' generally, as well as one bitcoin trading platform specifically, have unique resistance to fraud and manipulation); *see also* USBT Order, 85 FR at 12597.

[22] *See* USBT Order, 85 FR at 12597.

[23] *See supra* note 11.

[24] *See* Notice, 86 FR at 29331.

[25] *See id.* at 29332.

[26] *See id.* at 29332–33.

[27] *See id.* at 29324, 29327.

[28] *See id.* at 29327.

[29] *See id.* at 29324.

[30] *See* Notice, *supra* note 3. *See also* draft Registration Statement on Form S–1, dated March 24, 2021, submitted to the Commission by the Sponsor on behalf of the Trust (''Registration Statement'').

[31] FD Funds Management LLC (''Sponsor'') is the sponsor of the Trust, Delaware Trust Company is the trustee, and Fidelity Service Company, Inc. will be the administrator (''Administrator''). A third-party transfer agent will facilitate the issuance and redemption of Shares of the Trust, respond to correspondence by Trust shareholders and others relating to its duties, maintain shareholder accounts, and make periodic reports to the Trust. An affiliate of the Sponsor, Fidelity Distributors Corporation, will be the marketing agent in connection with the creation and redemption of ''baskets'' of Shares, and the Sponsor will provide assistance in the marketing of the Shares. Fidelity Digital Asset Services, LLC will serve as the Trust's custodian (''Custodian''). The Index methodology was developed by Fidelity Product Services, LLC (''Index Provider'') and is administered by the Fidelity Index Committee. Coin Metrics, Inc. is the third-party calculation agent for the Index. The Sponsor's affiliates have an ownership interest in Coin Metrics, Inc. *See* Notice, 86 FR at 29321, 29327 n.57, 29328–29, 29329 n.63.

[32] *See id.* at 29328.

five minutes, which would be calculated by (1) ordering all individual transactions on eligible spot platforms over the previous five minutes by price, and then (2) selecting the price associated with the 50th percentile of total volume.[33]

The net asset value (''NAV'') of the Trust is the total assets of the Trust including, but not limited to, all bitcoin and cash, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The NAV per Share of the Trust would be calculated by taking the fair market value of its total assets based on the volume-weighted median price of bitcoin used for the calculation of the Index, subtracting any liabilities (which include accrued expenses), and dividing that total by the total number of outstanding Shares. The Administrator would calculate the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after 4:00 p.m. E.T.[34]

The Trust will provide information regarding the Trust's bitcoin holdings, as well as an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.[35]

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of Shares. When creating the Shares, authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for the Shares, and when redeeming the Shares, the Trust, through the Custodian, will deliver bitcoin to such authorized participants.[36]

## III. Discussion

### *A. The Applicable Standard for Review*

The Commission must consider whether BZX's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [37] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [38]

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,[39] 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 Exchange Act and the applicable rules and regulations.[40] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[41]

### *B. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices*

#### (1) Assertions That Other Means Besides Surveillance-Sharing Agreements Will Be Sufficient To Prevent Fraudulent and Manipulative Acts and Practices

As stated above, the Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with a comprehensive surveillance-sharing agreement with a regulated market of significant size, including by demonstrating that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation.[42] Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodities or securities markets.[43]

BZX asserts that bitcoin is resistant to price manipulation. According to BZX, the geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin.[44] Fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging.[45] To the extent that there are bitcoin platforms engaged in, or allowing, wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other platforms because participants will generally ignore markets with quotes that they deem non-executable.[46] BZX further argues that the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any single venue would require manipulation of the global bitcoin price in order to be effective.[47] Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading venue.[48] As a result, BZX concludes that ''the potential for manipulation on a [bitcoin] trading platform would require overcoming the liquidity supply of such arbitrageurs

[33] *See id.* at 29329.

[34] *See id.* at 29329–30.

[35] *See id.* at 29329.

[36] *See id.* at 29328–29.

[37] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that ''[t]he rules of the exchange 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; and are 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.'' 15 U.S.C. 78f(b)(5).

[38] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[39] *See id.*

[40] *See id.*

[41] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[42] *See* USBT Order, 85 FR at 12597 n.23. The Commission is not applying a ''cannot be manipulated'' standard. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *See id.*

[43] *See id.* at 12597.

[44] *See* Notice, 86 FR at 29327 n.51.

[45] *See id.*

[46] *See id.*

[47] *See id.*

[48] *See id.*

who are effectively eliminating any cross-market pricing differences.'' [49]

As with the previous proposals, the Commission here concludes that the record does not support a finding that the bitcoin market is inherently and uniquely resistant to fraud and manipulation. BZX asserts that, because of how bitcoin trades occur, including through continuous means and through fragmented platforms, arbitrage across the bitcoin platforms essentially helps to keep global bitcoin prices aligned with one another, thus hindering manipulation. The Exchange, however, does not provide any data or analysis to support its assertions, either in terms of how closely bitcoin prices are aligned across different bitcoin trading venues or how quickly price disparities may be arbitraged away.[50] As stated above, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[51]

Efficient price arbitrage, moreover, is not sufficient to support the finding that a market is uniquely and inherently resistant to manipulation such that the Commission can dispense with surveillance-sharing agreements.[52] The Commission has stated, for example, that even for equity options based on securities listed on national securities exchanges, the Commission relies on surveillance-sharing agreements to detect and deter fraud and manipulation.[53] Here, the Exchange provides no evidence to support its assertion of efficient price arbitrage across bitcoin platforms, let alone any evidence that price arbitrage in the bitcoin market is novel or unique so as to warrant the Commission dispensing with the requirement of a surveillance-sharing agreement. Moreover, BZX does not take into account that a market participant with a dominant ownership position would not find it prohibitively expensive to overcome the liquidity supplied by arbitrageurs and could use dominant market share to engage in manipulation.[54]

In addition, the Exchange makes the unsupported claim that bitcoin prices on platforms with wash trades or other activity intended to manipulate the price of bitcoin do not influence the ''real'' price of bitcoin. The Exchange also asserts that, to the extent that there are bitcoin platforms engaged in or allowing wash trading or other manipulative activities, market participants will generally ignore those platforms. However, without the necessary data or other evidence, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation.[55]

Additionally, the continuous nature of bitcoin trading does not eliminate manipulation risk, and neither do linkages among markets, as BZX asserts.[56] Even in the presence of continuous trading or linkages among markets, formal (such as those with consolidated quotations or routing requirements) or otherwise (such as in the context of the fragmented, global bitcoin markets), manipulation of asset prices, as a general matter, can occur simply through trading activity that creates a false impression of supply or demand.[57]

BZX also argues that the significant liquidity in the bitcoin spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year.[58] According to BZX, in January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in February 2021) with a market impact of 50 basis points (compared to 30 basis points in February 2021). For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in February 2021) with a market impact of 80 basis points (compared to 50 basis points in February 2021). BZX contends that as the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease.[59]

However, the data furnished by BZX regarding the cost to move the price of bitcoin, and the market impact of such attempts, are incomplete. BZX does not provide meaningful analysis pertaining to how these figures compare to other markets or why one must conclude, based on the numbers provided, that the bitcoin market is costly to manipulate. Further, BZX's analysis of the market impact of a mere two sample transactions is not sufficient evidence to conclude that the bitcoin market is resistant to manipulation.[60] Even assuming that the Commission agreed with BZX's premise, that it is costly to manipulate the bitcoin market and it is becoming increasingly so, any such evidence speaks only to establish that there is some resistance to manipulation, not that it establishes *unique* resistance to manipulation to warrant dispensing with the standard surveillance-sharing agreement.[61] The Commission thus concludes that the record does not demonstrate that the nature of bitcoin trading renders the bitcoin market inherently and uniquely resistant to fraud and manipulation.

Moreover, BZX does not sufficiently contest the presence of possible sources of fraud and manipulation in the bitcoin spot market generally that the Commission has raised in previous orders, which have included (1) ''wash'' trading,[62] (2) persons with a dominant position in bitcoin manipulating bitcoin pricing, (3) hacking of the bitcoin network and trading platforms, (4) malicious control of the bitcoin network, (5) trading based on material, non-public information, including the dissemination of false and misleading information, (6) manipulative activity involving the purported ''stablecoin'' Tether (''USDT''), and (7) fraud and manipulation at bitcoin trading platforms.[63]

In addition, BZX does not address risk factors specific to the bitcoin blockchain and bitcoin platforms, described in the Trust's Registration Statement, that undermine the argument that the bitcoin market is inherently resistant to fraud

[49] *See id.*

[50] For example, the Registration Statement states that ''[a]s the use of digital asset networks increases without a corresponding increase in throughput of the networks, average fees and settlement times can increase significantly,'' and that such ''[i]ncreased fees and decreased settlement speeds . . . could adversely impact the value of the Shares.'' *See* Registration Statement at 15. BZX does not provide data or analysis to address, among other things, whether such risks of increased fees and bitcoin transaction settlement times may affect the arbitrage effectiveness that BZX asserts. *See also infra* note 64 and accompanying text (referencing statements made in the Registration Statement that contradict assertions made by BZX).

[51] *See supra* note 41.

[52] *See* Winklevoss Order, 83 FR at 37586; SolidX Order, 82 FR at 16256–57; USBT Order, 85 FR at 12601.

[53] *See, e.g.,* USBT Order, 85 FR at 12601.

[54] *See, e.g.,* Winklevoss Order, 83 FR at 37584; USBT Order, 85 FR at 12600–01.

[55] *See* USBT Order, 85 FR at 12601.

[56] *See* Winklevoss Order, 83 FR at 37585 n.92 and accompanying text.

[57] *See id.* at 37585.

[58] *See* Notice, 86 FR at 29328.

[59] *See id.*

[60] Aside from stating that the ''statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021,'' the Exchange provides no other information pertaining to the methodology used to enable the Commission to evaluate these findings or their significance. *See id.* at 29328 nn.58–59.

[61] *See* USBT Order, 85 FR at 12601.

[62] *See supra* note 55 and accompanying text.

[63] *See* USBT Order, 85 FR at 12600–01 & nn.66–67 (discussing J. Griffin & A. Shams, *Is Bitcoin Really Untethered?* (October 28, 2019), *available at https://ssrn.com/abstract=3195066* and published in 75 J. Finance 1913 (2020)); Winklevoss Order, 83 FR at 37585–86.

and manipulation. For example, the Registration Statement acknowledges that ''[platforms] on which bitcoin trades are relatively new and largely unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments''; that ''[o]ver the past several years, a number of bitcoin spot markets have been closed or faced issues due to fraud, failure, security breaches or governmental regulations''; that ''[t]he nature of the assets held at bitcoin spot markets makes them appealing targets for hackers and a number of bitcoin spot markets have been victims of cybercrimes'' and that ''[n]o bitcoin [platform] is immune from these risks''; that ''many [bitcoin] spot markets lack certain safeguards put in place by more traditional exchanges to enhance the stability of trading on the [platform]''; that ''[a] lack of stability in the bitcoin spot markets, manipulation of bitcoin spot markets by customers and/or the closure or temporary shutdown of such [platforms] due to fraud, business failure, hackers or malware, or government-mandated regulation may reduce confidence in bitcoin generally and result in greater volatility in the market price of bitcoin and the Shares of the Trust'' and that such ''closure or temporary shutdown of a bitcoin spot market may impact the Trust's ability to determine the value of its bitcoin holdings or for the Trust's [a]uthorized [p]articipants to effectively arbitrage the Trust's Shares''; that ''[t]he potential consequences of a spot market's failure or failure to prevent market manipulation could adversely affect the value of the Shares''; that many spot markets and over-the-counter (''OTC'') market venues ''do not provide the public with significant information regarding their ownership structure, management teams, corporate practices or oversight of customer trading''; and that the bitcoin blockchain could be vulnerable to a ''51% attack,'' in which a bad actor or actors that control a majority of the processing power dedicated to mining on the bitcoin network may be able to alter the bitcoin blockchain on which the bitcoin network and bitcoin transactions rely.'' [64]

BZX also asserts that other means to prevent fraud and manipulation are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange mentions that the Index, which is used to value the Trust's bitcoin, is itself resistant to manipulation based on the Index's methodology, as described above.[65] According to the Exchange, ''using rolling five-minute segments [to calculate the Index] means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across exchanges, potentially triggering review.'' [66] The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The Exchange asserts that the use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot bitcoin volume in a three-minute window to have any influence on the NAV.[67] Further, removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple exchanges at once to have any ability to influence the price.[68]

Simultaneously with the Exchange's assertions regarding the Index, the Exchange also states that, because the Trust will engage in in-kind creations and redemptions, the ''manipulability of the Index [is] significantly less important.'' [69] The Exchange elaborates further that, ''because the Trust will not accept cash to buy bitcoin in order to create new shares or . . . be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.'' [70] According to BZX, when authorized participants create Shares with the Trust, they would need to deliver a certain number of bitcoin per share (regardless of the valuation used), and when they redeem with the Trust, they would similarly expect to receive a certain number of bitcoin per share.[71] As such, BZX argues that even if the price used to value the Trust's bitcoin is manipulated, the ratio of bitcoin per Share does not change, and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value.[72] This, according to BZX, not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.[73]

Based on assertions made and the information provided, the Commission can find no basis to conclude that BZX has articulated other means to prevent fraud and manipulation that are sufficient to justify dispensing with the requisite surveillance-sharing agreement.

First, the record does not demonstrate that the proposed methodology for calculating the Index would make the proposed ETP resistant to fraud or manipulation such that a surveillance-sharing agreement with a regulated market of significant size is unnecessary.[74] Specifically, the Exchange has not assessed the possible influence that spot platforms not included among the Index's constituent bitcoin platforms would have on bitcoin prices used to calculate the Index.[75] As discussed above, the record does not establish that the broader bitcoin market is inherently and uniquely resistant to fraud and manipulation. Accordingly, to the extent that trading on other spot bitcoin platforms not directly used to calculate the Index affects prices on the Index's constituent bitcoin platforms, the characteristics of those other spot bitcoin platforms—where various kinds of fraud and manipulation from a variety of sources may be present and persist [76]—may affect whether the Index is resistant to manipulation.

Moreover, the Exchange's assertions that the Index's methodology helps make the Index resistant to manipulation are contradicted by the Registration Statement's own statements. Specifically, the Registration Statement states that ''[s]pot markets on which bitcoin trades are relatively new and largely unregulated, and, therefore, may be more exposed to fraud and

[64] *See* Registration Statement at 3, 8–9, 13. *See also* Winklevoss Order, 83 FR at 37585.

[65] *See* Notice, 86 FR at 29328.

[66] *See id.* at 29329. According to the Exchange, this extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. *See id.*

[67] *See id.*

[68] *See id.*

[69] *See id.* at 29328.

[70] *See id.*

[71] *See id.*

[72] *See id.*

[73] *See id.*

[74] The Commission has previously considered and rejected similar arguments about the valuation of bitcoin according to a benchmark or reference price. *See, e.g.,* SolidX Order, 82 FR at 16258; Winklevoss Order, 83 FR at 37587–90; USBT Order, 85 FR at 12599–601.

[75] As discussed above, the Commission has no basis on which to conclude that bitcoin platforms are insulated from prices of others that engage in or permit fraud or manipulation. *See supra* note 55 and accompanying text.

[76] *See supra* note 64 and accompanying text (describing, among other things, the risks associated with spot bitcoin markets that are new and largely unregulated).

security breaches than established, regulated exchanges for other financial assets or instruments''; that ''[o]ver the past several years, a number of bitcoin spot markets have been closed or faced issues due to fraud, failure, security breaches or governmental regulations''; and that ''[n]o bitcoin [platform] is immune from these risks'' [77] Moreover, the Registration Statement specifically acknowledges that ''[p]ricing sources used by the Index are digital asset spot markets that facilitate the buying and selling of bitcoin and other digital assets'' and that ''[a]lthough many pricing sources refer to themselves as 'exchanges,' they are not registered with, or supervised by, the SEC or CFTC and do not meet the regulatory standards of a national securities exchange or designated contract market.'' [78] The Registration Statement further admits that ''[t]he Index is based on various inputs which include price data from various third-party bitcoin spot markets'' and [t]he Index Provider does not guarantee the validity of any of these inputs, which may be subject to technological error, manipulative activity, or fraudulent reporting from their initial source.'' [79] The Registration Statement concludes that ''[f]or these reasons, among others, purchases and sales of bitcoin may be subject to temporary distortions or other disruptions due to various factors . . . [which] could affect the price of bitcoin used in Index calculations and, therefore, could adversely affect the level of the Index.'' [80]

The Index constituent bitcoin platforms are a subset of the spot bitcoin trading venues currently in existence. Although the Sponsor raises concerns regarding fraud and security of bitcoin platforms in the Registration Statement, the Exchange does not explain how or why such concerns are consistent with its assertion that the Index is resistant to fraud and manipulation. In addition, as described above, for purposes of calculating the Trust's NAV per Share, the Trust's holdings of bitcoin would be valued using the Index.[81] Even though the Sponsor also raises concerns in the Registration Statement regarding manipulative activity and fraudulent reporting with respect to the inputs from the Index's constituent bitcoin platforms, the Exchange does not sufficiently explain how or why such concerns are consistent with its assertion that the Index methodology, and therefore the Trust's NAV calculation, is resistant to fraud and manipulation.

Second, BZX has not shown that its proposed use of a volume-weighted median price of bitcoin over time intervals of five minutes to calculate the Index market value would effectively be able to eliminate fraudulent or manipulative activity that is not transient. Fraud and manipulation in the bitcoin spot market could persist for a ''significant duration.'' [82] The Exchange does not connect the use of such partitions to the duration of the effects of fraudulently reported prices or other manipulative activity that may exist in the bitcoin spot market.[83]

Third, the Exchange does not explain the significance of the Index's purported resistance to manipulation to the overall analysis of whether the proposal to list and trade the Shares is designed to prevent fraud and manipulation. Even assuming that the Exchange's argument is that, if the Index is resistant to manipulation, the Trust's NAV, and thereby the Shares as well, would be resistant to manipulation, the Exchange has not established in the record a basis for such conclusion. That assumption aside, the Commission notes that the Shares would trade at market-based prices in the secondary market, not at NAV, which then raises the question of the significance of the NAV calculation to the manipulation of the Shares.

Fourth, the Exchange's arguments are contradictory. While arguing that the Index is resistant to manipulation, the Exchange simultaneously downplays the importance of the Index in light of the Trust's in-kind creation and redemption mechanism.[84] The Exchange points out that the Trust will create and redeem Shares in-kind, not in cash, which renders the NAV calculation, and thereby the ability to manipulate NAV, ''significantly less important.'' [85] In BZX's own words, the Trust will not accept cash to buy bitcoin in order to create shares or sell bitcoin to pay cash for redeemed shares, so the price that the Sponsor uses to value the Trust's bitcoin ''is not particularly important.'' [86] If the Index that the Trust uses to value the Trust's bitcoin ''is not particularly important,'' it follows that the Index's resistance to manipulation is not material to the Shares' susceptibility to fraud and manipulation. As the Exchange does not address or provide any analysis with respect to these issues, the Commission cannot conclude that the Index aids in the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices.

Finally, the Commission finds that BZX has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation. The Commission has previously addressed similar assertions.[87] As the Commission stated before, in-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets.[88] Accordingly, the Commission is not persuaded here that the Trust's in-kind creations and redemptions afford it a unique resistance to manipulation.[89]

(2) Assertions That BZX Has Entered Into a Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size

As BZX has not demonstrated that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, the Commission next examines whether the record supports the conclusion that BZX has entered into a comprehensive surveillance-

[77] *See* Registration Statement at 8.

[78] *See id.* at 25.

[79] *See id.*

[80] *See id.*

[81] *See* Notice, 86 FR at 29329.

[82] *See* USBT Order, 85 FR at 12601 n.66; *see also id.* at 12607.

[83] *See* WisdomTree Order, 86 FR at 69327.

[84] *See supra* notes 69–73 and accompanying text.

[85] *See* Notice, 86 FR at 29328 (''While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are available in-kind makes the manipulability of the Index significantly less important.'').

[86] *See id.* (concluding that ''because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.'').

[87] *See* Winklevoss Order, 83 FR at 37589–90; USBT Order, 85 FR at 12607–08.

[88] *See, e.g.,* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14969, 14974 (Mar. 24, 2006) (SR–Amex–2005–072).

[89] Putting aside the Exchange's various assertions about the nature of bitcoin and the bitcoin market, the Index, and the Shares, the Exchange also does not address concerns the Commission has previously identified, including the susceptibility of bitcoin markets to potential trading on material, non-public information (such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand for bitcoin; the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain, which would create two different, non-interchangeable types of bitcoin), or to the dissemination of false or misleading information. *See* Winklevoss Order, 83 FR at 37585. *See also* USBT Order, 85 FR at 12600–01.

sharing agreement with a regulated market of significant size relating to the underlying assets. In this context, the term ''market of significant size'' includes a market (or group of markets) as to which (i) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (ii) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[90]

As the Commission has stated in the past, it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.[91] Accordingly, based on the common membership of BZX and the CME in the ISG,[92] BZX has the equivalent of a comprehensive surveillance-sharing agreement with the CME. However, while the Commission recognizes that the CFTC regulates the CME futures market,[93] including the CME bitcoin futures market, and thus such market is ''regulated,'' in the context of the proposed ETP, the record does not, as explained further below, establish that the CME bitcoin futures market is a ''market of significant size'' as that term is used in the context of the applicable standard here.[94]

(i) Whether There is a Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on the CME Bitcoin Futures Market To Successfully Manipulate the ETP

(a) Assertions by BZX

The first prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' is the determination that there is a reasonable likelihood that a person attempting to manipulate the ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP.

BZX notes that the CME began to offer trading in bitcoin futures in 2017.[95] According to BZX, nearly every measurable metric related to CME bitcoin futures contracts, which trade and settle like other cash-settled commodity futures contracts, has ''trended consistently up since launch and/or accelerated upward in the past year.'' [96] For example, according to BZX, there was approximately $28 billion in trading in CME bitcoin futures in December 2020 compared to $737 million, $1.4 billion, and $3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively.[97] Additionally, CME bitcoin futures traded over $1.2 billion per day in December 2020 and represented $1.6 billion in open interest compared to $115 million in December 2019.[98] Similarly, BZX contends that the number of large open interest holders [99] has continued to increase, even as the price of bitcoin has risen, as have the number of unique accounts trading CME bitcoin futures.[100] In addition, the Sponsor, in a separate submission to the Commission, represents that ''[b]etween Q1 2019 & Q2 2021, quarterly CME bitcoin futures volume grew more than 20x.'' [101]

BZX argues that the significant growth in CME bitcoin futures across each of trading volumes, open interest, large open interest holders, and total market participants since the USBT Order was issued is reflective of that market's growing influence on the spot price. BZX asserts that where CME bitcoin futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the Index's constituent bitcoin platforms) would have to participate in the CME bitcoin futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the CME bitcoin futures market.[102]

BZX further states that academic research corroborates the overall trend outlined above and supports the thesis that CME bitcoin futures pricing leads the spot market. BZX asserts that academic research demonstrates that the CME bitcoin futures market was already leading the spot price in 2018 and 2019.[103] BZX concludes that a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP.[104]

The Commission disagrees. The record does not demonstrate that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate it. Specifically, BZX's assertions about the general upward trends from 2018 to February 2021 in trading volume and open interest of, and in the number of large open interest holders and number of unique accounts trading in, CME bitcoin futures, as well as the Sponsor's assertions about the growth in quarterly CME bitcoin futures volume from 2019 to 2021, do not establish that the CME bitcoin futures market is of significant size. While BZX provides data showing *absolute* growth in the size of the CME bitcoin futures market, it provides no data *relative* to the concomitant growth in either the bitcoin spot markets or other bitcoin futures markets (including unregulated futures markets). Moreover, even if the CME has grown in relative size, as the Commission has previously articulated, the interpretation of the term ''market of significant size'' or ''significant market'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[105] BZX's recitation of data reflecting the size of the CME bitcoin futures market, alone, either currently or in relation to previous years, is not sufficient to establish an interrelationship between the CME

[90] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that provides guidance to market participants. *See id.*

[91] *See id.* at 37580 n.19.

[92] *See* Notice, 86 FR at 29327 n.54 and accompanying text.

[93] While the Commission recognizes that the CFTC regulates the CME, the CFTC is not responsible for direct, comprehensive regulation of the underlying bitcoin spot market. *See* Winklevoss Order, 83 FR at 37587, 37599.

[94] In the context of the proposed ETP, the Index's constituent bitcoin platforms are not ''regulated.'' They are not registered as ''exchanges'' and lack the obligations, authority, and oversight of national securities exchanges. Thus, the Commission limits the scope of its analysis to the CME. *See* WisdomTree Order, 86 FR at 69330 n.119.

[95] According to BZX, each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate. *See* Notice, 86 FR at 29325.

[96] *See id.*

[97] *See id.*

[98] *See id.*

[99] BZX represents that a large open interest holder in CME bitcoin futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. According to BZX, at a price of approximately $30,000 per bitcoin on December 31, 2020, more than 80 firms had outstanding positions of greater than $3.8 million in CME bitcoin futures. *See id.* at 29325 n.47.

[100] *See id.* at 29325.

[101] *See* Submission by the Sponsor to the Commission in connection with a meeting between representatives of the Sponsor, BZX, and Commission staff on September 8, 2021, (''Sponsor Submission'') at 4, *available at: https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf.*

[102] *See* Notice, 86 FR at 29327.

[103] *See id.* at 29327 & n.48 (citing Y. Hu, Y. Hou & L. Oxley, *What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective,* 72 Int'l Rev. of Fin. Analysis 101569 (2020) (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*) (''Hu, Hou & Oxley'')).

[104] *See id.* at 29327.

[105] *See* USBT Order, 85 FR at 12611.

bitcoin futures market and the proposed ETP.[106]

Further, the econometric evidence in the record for this proposal also does not support a conclusion that an interrelationship exists between the CME bitcoin futures market and the bitcoin spot market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would also have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.[107] While BZX states that CME bitcoin futures pricing leads the spot market,[108] it relies on the findings of a price discovery analysis in one section of a single academic paper to support the overall thesis.[109] However, the findings of that paper's Granger causality analysis, which is widely used to formally test for lead-lag relationships, are concededly mixed.[110] In addition, the Commission considered an unpublished version of the paper in the USBT Order, as well as a comment letter submitted by the authors on that record.[111] In the USBT Order, as part of the Commission's conclusion that ''mixed results'' in academic studies failed to demonstrate that the CME bitcoin futures market constitutes a market of significant size, the Commission noted the paper's inconclusive evidence that CME bitcoin futures prices lead spot prices—in particular that the months at the end of the paper's sample period showed that the spot market was the leading market—and stated that the record did not include evidence to explain why this would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future.[112] The Commission also stated that the paper's use of daily price data, as opposed to intraday prices, may not be able to distinguish which market incorporates new information faster.[113] BZX has not addressed either issue.

Moreover, BZX does not provide results of its own analysis and does not present any other data supporting its conclusion. BZX's unsupported representations constitute an insufficient basis for approving a proposed rule change in circumstances where, as here, the Exchange's assertion would form such an integral role in the Commission's analysis and the assertion is subject to several challenges.[114] In this context, BZX's reliance on a single paper, whose own lead-lag results are inconclusive, is especially lacking because the academic literature on the lead-lag relationship and price discovery between bitcoin spot and futures markets is unsettled.[115] In the USBT Order, the Commission responded to multiple academic papers that were cited and concluded that, in light of the mixed results found, the exchange there had not demonstrated that it is reasonably likely that a would-be manipulator of the proposed ETP would transact on the CME bitcoin futures market.[116] Likewise, here, given the body of academic literature to indicate to the contrary, the Commission concludes that the information that BZX provides is not a sufficient basis to support a determination that it is reasonably likely that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market.[117]

(b) Sponsor Submission

While BZX does not provide in its filing results of its own analysis nor presents any other data to support its conclusion that CME bitcoin futures pricing leads the spot market, the Sponsor in the Sponsor Submission provides information to show that the CME bitcoin futures market leads price discovery across global USD and USDT bitcoin futures and spot markets. The Sponsor states that its findings are based on tick level trade data aggregated in one-second intervals for USD and USDT bitcoin spot and futures prices from Coin Metrics spanning January 1, 2019, to March 31, 2021. According to the Sponsor, the data for futures includes both ordinary and perpetual futures. The Sponsor explains that its dataset is limited to BTC–USD and BTC–USDT trades to exclude any impact caused by exchange rate movements.

With respect to whether the CME bitcoin futures market leads the spot markets or vice versa, the Sponsor concedes that ''conclusions are mixed.'' The Sponsor attributes the lack of agreement to the use of classic metrics derived from the Vector Error Correction Model (''VECM''), which it states likely involves ''substantial imputation'' when used with data sets such as CME bitcoin futures trading data. This imputation,

[106] *See id.* at 12612.

[107] *See id.* at 12611. Listing exchanges have attempted to demonstrate such an ''interrelationship'' by presenting the results of various econometric ''lead-lag'' analyses. The Commission considers such analyses to be central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the CME bitcoin futures market. *See id.* at 12612.

[108] *See* Notice, 86 FR at 29327.

[109] *See supra* note 103 and accompanying text. BZX references the following conclusion from the ''time-varying price discovery'' section of Hu, Hou & Oxley: ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective . . .'' *See* Notice, 86 FR at 29327 n.48.

[110] The paper finds that the CME bitcoin futures market dominates the spot markets in terms of Granger causality, but that the causal relationship is bi-directional, and a Granger causality episode from March 2019 to June/July 2019 runs from bitcoin spot prices to CME bitcoin futures prices. The paper concludes: ''[T]he Granger causality episodes are not constant throughout the whole sample period. Via our causality detection methods, market participants can identify when markets are being led by futures prices and when they might not be.'' *See* Hu, Hou & Oxley, *supra* note 103.

[111] *See* USBT Order, 85 FR at 12609.

[112] *See id.* at 12613 n.244.

[113] *See id.*

[114] *See Susquehanna,* 866 F.3d at 447.

[115] *See, e.g.,* D. Baur & T. Dimpfl, *Price discovery in bitcoin spot or futures?,* 39 J. Futures Mkts. 803 (2019) (finding that the bitcoin spot market leads price discovery); O. Entrop, B. Frijns & M. Seruset, *The determinants of price discovery on bitcoin markets,* 40 J. Futures Mkts. 816 (2020) (finding that price discovery measures vary significantly over time without one market being clearly dominant over the other); J. Hung, H. Liu & J. Yang, *Trading activity and price discovery in Bitcoin futures markets,* 62 J. Empirical Finance 107 (2021) (finding that the bitcoin spot market dominates price discovery); B. Kapar & J. Olmo, *An analysis of price discovery between Bitcoin futures and spot markets,* 174 Econ. Letters 62 (2019) (finding that bitcoin futures dominate price discovery) (''Kapar & Olmo''); E. Akyildirim, S. Corbet, P. Katsiampa, N. Kellard & A. Sensoy, *The development of Bitcoin futures: Exploring the interactions between cryptocurrency derivatives,* 34 Fin. Res. Letters 101234 (2020) (finding that bitcoin futures dominate price discovery); A. Fassas, S. Papadamou, & A. Koulis, *Price discovery in bitcoin futures,* 52 Res. Int'l Bus. Fin. 101116 (2020) (finding that bitcoin futures play a more important role in price discovery) (''Fassas et al''); S. Aleti & B. Mizrach, *Bitcoin spot and futures market microstructure,* 41 J. Futures Mkts. 194 (2021) (finding that relatively more price discovery occurs on the CME as compared to four spot exchanges); J. Wu, K. Xu, X. Zheng & J. Chen, *Fractional cointegration in bitcoin spot and futures markets,* 41 J. Futures Mkts. 1478 (2021) (finding that CME bitcoin futures dominate price discovery). *See also* C. Alexander & D. Heck, *Price discovery in Bitcoin: The impact of unregulated markets,* 50 J. Financial Stability 100776 (2020) (finding that, in a multi-dimensional setting, including the main price leaders within futures, perpetuals, and spot markets, CME bitcoin futures have a very minor effect on price discovery; and that faster speed of adjustment and information absorption occurs on the unregulated spot and derivatives platforms than on CME bitcoin futures) (''Alexander & Heck'').

[116] *See* USBT Order, 85 FR at 12613 nn.239–244 and accompanying text.

[117] In addition, the Exchange fails to address the relationship (if any) between prices on other bitcoin futures markets and the CME bitcoin futures market, the bitcoin spot market, and/or the particular Index constituent bitcoin platforms, or where price formation occurs when the entirety of bitcoin futures markets, not just the CME, is considered.

the Sponsor argues, ''can produce biased results.'' [118]

In contrast, the Sponsor argues that its analysis accounts for the characteristics of CME bitcoin futures trading data by applying the Hayashi-Yoshida (''HY'') estimator. According to the Sponsor, the use of the HY estimator is more suitable for ''disparate and infrequent data,'' as it is free from imputation, and it has also previously proven useful in price discovery research, including bitcoin spot markets.[119] Based on its analysis, the Sponsor argues that the results demonstrate that the CME bitcoin futures market has consistently led bitcoin price discovery across global USD bitcoin markets.[120] As a result of its study, the Sponsor concludes that there is a reasonable likelihood that a person attempting to manipulate the ETP would have to trade in the CME bitcoin futures market because: (1) The CME bitcoin futures market leads in bitcoin price discovery across USD-based trading in bitcoin futures and spot markets globally; and (2) arbitrage between the CME bitcoin futures market and spot markets would tend to counter an attempt to manipulate the spot market alone.[121]

The Sponsor Submission does not provide sufficient evidence for the Commission to conclude that it is reasonably likely that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. By applying its selected analytical method, the Sponsor presents conclusory results that suggest that CME bitcoin futures lead price discovery. Even if the Commission were to accept these results at face value, the Sponsor has not demonstrated that other analyses that reached different and opposite conclusions were, in fact, ''spurious'' results, or otherwise were results on which the Commission cannot reasonably rely. In fact, the Sponsor highlights that in the academic literature, ''conclusions are mixed'' on the lead-lag relationship between bitcoin spot and futures markets. Namely, there are analytical methodologies that lead to the conclusion that the spot market price leads the CME futures price, those that conclude that the CME futures price leads the spot market price, as well as those that conclude that unregulated futures markets lead the CME futures market in price discovery.[122] While the Sponsor dismisses the validity of these other results due to the *theoretical* possibility that imputation or synchronous sampling can lead to spurious or unreliable results, it does not provide any detail to support that any of the other results are *actually* inaccurate.

Moreover, the Commission cannot accept the Sponsor's results at face value based on the extent of the information it provides. While the Sponsor provides in graphs aggregate *average* ''lead'' times (in seconds) that suggest that the CME futures market has the largest ''lead'' in each quarter of the sample period, the Sponsor does not provide the specific results of each of its pairwise assessments (*e.g.,* CME compared to Coinbase; CME compared to Gemini; etc.) or—crucially—the Sponsor's confidence intervals around each such pairwise result. Provision of pairwise results and confidence intervals is common in the academic literature that the Sponsor itself cites in the Sponsor Submission.[123] The Commission is thus unable to assess the Sponsor's specific results or statistical significance of those results. Confidence intervals are particularly important, given that the Sponsor's results show that the ''lead'' of the CME bitcoin futures market has steadily decreased over the sample period to within about one second of ''lead'' time, which is the tick data aggregation interval for the study, and to below one second compared to the leading non-regulated USD bitcoin futures market. The Sponsor also has not discussed whether its findings are sensitive to its choice to aggregate tick level trade data into one-second intervals, particularly as the estimated ''lead'' times decrease over the sample period; or whether the Sponsor's critique of other studies—that imputation or synchronous sampling can lead to ''spurious'' or otherwise unreliable results—applies to its findings as well because of the aggregation that the Sponsor used. Further, the Sponsor has not discussed the robustness of its two-dimensional methodology—which examines pairwise lead-lag relationships within and across the bitcoin spot and futures markets—to the critique in the multi-dimensional Alexander & Heck study that: ''omitting substantial information flows from other markets can produce misleading results . . . . [I]n a two-dimensional model one or other of the instruments must necessarily be identified as price leader.'' [124]

The Commission accordingly concludes that the information provided in the record for this proposal does not establish a reasonable likelihood that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. Therefore, the information in the record also does not establish that the CME bitcoin futures market is a ''market of significant size'' with respect to the proposed ETP.

(ii) Whether It Is Unlikely That Trading in the Proposed ETP Would Be the Predominant Influence on Prices in the CME Bitcoin Futures Market

The second prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' is the determination that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market.[125]

BZX asserts that trading in the Shares would not be the predominant force on prices in the CME bitcoin futures market (or spot market) because of the significant volume in the CME bitcoin futures market, the size of bitcoin's market capitalization, which is approximately $1 trillion, and the significant liquidity available in the spot market.[126] BZX provides that, according to February 2021 data, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[127] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, BZX states that a market participant could enter a market

[118] *See* Sponsor Submission at 8. The Sponsor states that prior lead-lag studies employ methods that assume that the prices/returns under consideration are synchronous and so adjustments need to be made for non-synchronous and/or infrequent data. According to the Sponsor, adjustments such as imputation or synchronous sampling can lead to ''spurious results'' for these methods. *See id.* at 19.

[119] *See id.* at 8. The Sponsor further explains that, due to the ''high sparsity'' of CME futures data, the framework of correlation-based lead-lag analysis using the HY estimator is more suitable because this approach is free from any imputation or sampling and has proven useful in price discovery research. *See id.* at 19.

[120] *See id.* at 9.

[121] *See id.* at 7.

[122] The Sponsor points to Kapar & Olmo and Fassas et al. as results that suggest that CME futures lead the spot markets, and to Alexander & Heck as results that suggest that CME futures lag. *See id.* at 8. *See also supra* note 115.

[123] *See, e.g.,* Sponsor Submission (citing B. Schei, *High Frequency Lead-Lag Relationships in the Bitcoin Market,* Copenhagen Business School Master's Thesis (2019) (unpublished)).

[124] *See* Alexander & Heck, *supra* note 115, at 2.

[125] *See* Winklevoss Order, 83 FR at 37594; USBT Order, 85 FR at 12596–97.

[126] *See* Notice, 86 FR at 29328.

[127] *See id.* According to BZX, these statistics are based on samples of bitcoin liquidity in U.S. dollars (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021. *See id.* nn.58–59.

buy or sell order for $10 million of bitcoin and only move the market 0.5 percent.[128] BZX further asserts that more strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market, which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.[129] Thus, BZX concludes that the combination of CME bitcoin futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants (including authorized participants creating and redeeming with the Trust) to buy or sell large amounts of bitcoin without significant market impact, will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or the CME bitcoin futures market.[130]

In its submission, the Sponsor similarly argues that the CME futures market-leading price discovery across USD-based bitcoin trading markets, as well as its aggregate significant trading volume and liquidity, make it unlikely that trading in a bitcoin ETP would be the predominant influence on prices in CME bitcoin futures.[131] Specifically, the Sponsor concludes that it is unlikely that trading in a bitcoin ETP would be the predominant influence on CME bitcoin futures market or bitcoin spot prices because of: (1) The CME bitcoin futures market leading in bitcoin price discovery across USD-based trading in bitcoin futures and spot markets globally; (2) significant trading volume in USD-based bitcoin futures; and (3) the highly liquid bitcoin spot market.[132]

The Commission does not agree. The record does not demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. As the Commission has already addressed and rejected one of the bases of BZX's and the Sponsor's assertions—that CME bitcoin futures leads price discovery [133]—the Commission will only address below the other bases—the overall size, volume, and liquidity of, and the impact of buys and sells on, the CME bitcoin futures market and spot bitcoin market.

BZX's and the Sponsor's assertions about the potential effect of trading in the Shares on the CME bitcoin futures market and bitcoin spot market are general and conclusory, repeating the aforementioned trade volume of the CME bitcoin futures market and the size and liquidity of the bitcoin spot market, as well as the market impact of a large transaction, without any analysis or evidence to support these assertions. For example, there is no limit on the amount of mined bitcoin that the Trust may hold. Yet BZX does not provide any information on the expected growth in the size of the Trust and the resultant increase in the amount of bitcoin held by the Trust over time, or on the overall expected number, size, and frequency of creations and redemptions—or how any of the foregoing could (if at all) influence prices in the CME bitcoin futures market. Thus, the Commission cannot conclude, based on BZX's and the Sponsor's statements alone and absent any evidence or analysis in support of BZX's and the Sponsor's assertions, that it is unlikely that trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market.

The Commission also is not persuaded by BZX's assertions about the minimal effect a large market order to buy or sell bitcoin would have on the bitcoin market.[134] While BZX concludes by way of a $10 million market order example that buying or selling large amounts of bitcoin would have insignificant market impact, the conclusion does not analyze the extent of any impact on the CME bitcoin futures market. Even assuming that BZX is suggesting that a single $10 million order in bitcoin would have immaterial impact on the prices in the CME bitcoin futures market, this prong of the ''market of significant size'' determination concerns the influence on prices from trading *in* the proposed ETP, which is broader than just trading *by* the proposed ETP. While authorized participants of the Trust might only transact in the bitcoin spot market as part of their creation or redemption of Shares, the Shares themselves would be traded in the secondary market on BZX. The record does not discuss the expected number or trading volume of the Shares, or establish the potential effect of the Shares' trade prices on CME bitcoin futures prices. For example, BZX does not provide any data or analysis about the potential effect the quotations or trade prices of the Shares might have on market-maker quotations in CME bitcoin futures contracts and whether those effects would constitute a predominant influence on the prices of those futures contracts.

Thus, because BZX and the Sponsor have not provided sufficient information to establish both prongs of the ''market of significant size'' determination, the Commission cannot conclude that the CME bitcoin futures market is a ''market of significant size'' such that BZX would be able to rely on a surveillance-sharing agreement with the CME to provide sufficient protection against fraudulent and manipulative acts and practices.

The requirements of Section 6(b)(5) of the Exchange Act apply to the rules of national securities exchanges. Accordingly, the relevant obligation for a comprehensive surveillance-sharing agreement with a regulated market of significant size, or other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement, resides with the listing exchange. Because there is insufficient evidence in the record demonstrating that BZX has satisfied this obligation, the Commission cannot approve the proposed ETP for listing and trading on BZX.

*C. Whether BZX Has Met Its Burden To Demonstrate That the Proposal Is Designed To Protect Investors and the Public Interest*

BZX contends that, if approved, the proposed ETP would protect investors and the public interest. However, the Commission must consider these potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[135] Because BZX has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

BZX asserts that, with the growth of U.S. investor exposure to bitcoin through OTC bitcoin funds, so too has grown the potential risk to U.S. investors.[136] Specifically, BZX argues that premium and discount volatility, high fees, insufficient disclosures, and

[128] *See id.* at 29328.

[129] *See id.*

[130] *See id.*

[131] *See* Sponsor Submission at 7.

[132] *See id.* The Sponsor states that bitcoin trading volume and market capitalization has continued to grow (2019 Q1–2021 Q2), *see* Sponsor Submission at 10, and that spot trading costs and market impact have decreased over the last year (January 2020–February 2021), *see id.*

[133] *See supra* notes 107–124 and accompanying text.

[134] *See* Notice, 86 FR at 29328 (''For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%.'').

[135] *See* Winklevoss Order, 83 FR at 37602. *See also* GraniteShares Order, 83 FR at 43931; ProShares Order, 83 FR at 43941; USBT Order, 85 FR at 12615.

[136] *See* Notice, 86 FR at 29331.

technical hurdles are putting U.S. investor money at risk on a daily basis and that such risk could potentially be eliminated through access to a bitcoin ETP.[137] As such, the Exchange believes that approving this proposal (and comparable proposals submitted hereafter) would give U.S. investors access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to custodying spot bitcoin; and (iv) reducing certain risks associated with investing in operating companies that are proxies for bitcoin exposure.[138]

According to BZX, OTC bitcoin funds are generally designed to provide exposure to bitcoin in a manner similar to the Shares. However, unlike the Shares, BZX states that ''OTC bitcoin funds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV and, as such, frequently trade at a price that is out of line with the value of their assets held.'' [139] BZX represents that, historically, OTC bitcoin funds have traded at significant premiums or discounts compared to their NAV.[140] BZX argues that, in contrast, a bitcoin ETP would provide an alternative to OTC bitcoin funds offering investors access to direct bitcoin exposure with real time trading and transparency on pricing/valuation, liquidity, and active arbitrage—advantages of the ETP structure.[141] One commenter expresses support for the approval of bitcoin ETPs because they believe such ETPs would have lower premium/discount volatility and lower management fees than an OTC bitcoin fund.[142]

BZX also asserts that exposure to bitcoin through an ETP also presents advantages for investors compared to buying spot bitcoin directly.[143] BZX asserts that, without the advantages of an ETP, an investor holding bitcoin through a cryptocurrency trading platform lacks protections.[144] BZX explains that, typically, OTC trading platforms hold most, if not all, investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify investors or to observe any particular cybersecurity standard.[145] Meanwhile, an investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings.[146] BZX represents that the Custodian would, by contrast, use ''cold'' (offline) storage to hold private keys, employ a certain degree of cybersecurity measures and operational best practices, be highly experienced in bitcoin custody, and be accountable for failures.[147] Thus, with respect to custody of the Trust's bitcoin assets, BZX concludes that, compared to owning spot bitcoin directly, the Trust presents advantages for investors.[148]

BZX further asserts that a number of operating companies engaged in unrelated businesses have announced investments as large as $1.5 billion in bitcoin.[149] Without access to bitcoin ETPs, BZX argues that investors seeking investment exposure to bitcoin may purchase shares in these companies in order to gain the exposure to bitcoin that they seek.[150] BZX contends that such operating companies, however, are imperfect bitcoin proxies and provide investors with partial or indirect bitcoin exposure paired with additional risks associated with whichever operating company they decide to purchase.[151]

BZX also states that investors in many other countries, including Canada, are able to use more traditional exchange-listed and traded products to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.[152]

In essence, BZX asserts that the risky nature of direct investment in the underlying bitcoin and the unregulated markets on which bitcoin and OTC bitcoin funds trade compel approval of the proposed rule change. The Commission disagrees. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.[153] Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk—such as the susceptibility of an asset to loss or theft—the proposed rule change may still fail to meet the requirements under the Exchange Act.[154]

Here, even if it were true that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange provides some additional protection to investors, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[155] As explained above, for bitcoin-based ETPs, the Commission has consistently required that the listing exchange have a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The

[137] *See id.*

[138] *See id.* at 29324.

[139] *See id.* BZX also states that, unlike the Shares, because OTC bitcoin funds are not listed on an exchange, they are not subject to the same transparency and regulatory oversight by a listing exchange. BZX further asserts that the existence of a surveillance-sharing agreement between BZX and the CME bitcoin futures market would result in increased investor protections for the Shares compared to OTC bitcoin funds. *See id.* at 29324 n.39.

[140] *See id.* at 29324.

[141] *See id.*

[142] *See* letter from Anonymous, dated June 17, 2021 (''Anonymous Letter'').

[143] *See* Notice, 86 FR at 29324.

[144] *See id.*

[145] *See id.*

[146] *See id.*

[147] *See id.*

[148] *See id.*

[149] *See id.*

[150] *See id.*

[151] *See id.*

[152] *See id.* at 29323. BZX represents that the Purpose Bitcoin ETF, a bitcoin-based ETP launched in Canada, reportedly reached $421.8 million in assets under management in two days, demonstrating the demand for a North American market listed bitcoin ETP. BZX contends that the Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. BZX also argues that without an approved bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase these shares in order to get access to bitcoin exposure. BZX believes that, given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange-listed ETP. *See id.* at 29323 n.36. BZX also notes that regulators in other countries have either approved or otherwise allowed the listing and trading of bitcoin-based ETPs. *See id.* at 29323 n.37. *See also* Anonymous Letter (stating that ''institutions can simply buy the Canadian ETFs, leaving US retail investors holding the bag'' and that ''[a]pproving an [ETP] in the US will correct this imbalance quickly and give relief to US-based investors who are stuck with an asset that is trading at a discount to NAV.'').

[153] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

[154] *See* SolidX Order, 82 FR at 16259; WisdomTree Order, 86 FR at 69334.

[155] *See supra* note 135.

listing exchange has not met that requirement here. Therefore, the Commission is unable to find that the proposed rule change is consistent with the statutory standard.

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[156]

For the reasons discussed above, BZX has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),[157] and, accordingly, the Commission must disapprove the proposal.[158]

*D. Other Comments*

Comment letters also address the general nature and uses of bitcoin;[159] the inherent value of bitcoin;[160] and the desire of investors to gain access to bitcoin through an ETP.[161] Ultimately, however, additional discussion of these topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

*E. The Exchange's Untimely Amendment to the Proposal*

The deadline for rebuttal comments in response to the Order Instituting Proceedings was October 1, 2021.[162] On December 27, 2021, the Exchange filed Amendment No. 1 to the proposed rule change to amend and replace in its entirety the proposal as submitted on May 10, 2021. Because this amendment was filed months after the deadline for comments on the proposed rule change, the Commission deems Amendment No. 1 to have been untimely filed.[163]

Even if the amendment had been timely filed, the Commission would still conclude that the Exchange has not met its burden to demonstrate that its proposal is consistent with Exchange Act Section 6(b)(5). The Exchange makes four primary changes in the amendment.[164] First, the Exchange argues that, based on a review of the Commission's past approvals and disapprovals of ETPs, the applicable standard does not require the underlying commodity market to be regulated, but rather requires that the listing exchange has in place a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying commodity. The Exchange states that, therefore, the CME bitcoin futures market is the proper market for the Commission to consider in determining whether the proposal is consistent with the Exchange Act.

The Commission does not disagree. As the Commission has clearly and consistently stated, an exchange that lists bitcoin-based ETPs can meet its obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[165] As discussed in detail in Section III.B.2, the Commission has considered the Exchange's arguments with respect to the CME bitcoin futures market, and the Commission concludes that the Exchange has failed to demonstrate that the CME bitcoin futures market is such a ''market of significant size.''

Second, the Exchange incorporates a version of the Sponsor Submission's lead-lag analysis into the amendment.[166] The Exchange states that the Sponsor attributes the ''mixed results'' in previous academic studies that have failed to demonstrate that the CME bitcoin futures market constitutes a market of significant size to the problems associated with high sparsity of some of the data used, the VECM econometric approach, and imputation of price data. The Sponsor believes that its framework of correlation-based lead-lag analysis using the HY estimator is more suitable.[167] The amendment includes a new table, not in the original Sponsor Submission, that asserts that—although the ''lead'' in seconds of the CME bitcoin futures market has steadily decreased over the sample period—the ''strength'' of CME bitcoin futures price leadership has not deteriorated based on the ''ratio'' of the CME bitcoin futures market's ''average lead among all markets over the absolute average of every market's overall lead-lag.''

However, the incorporation of the Sponsor's lead-lag analysis still contains the same shortcomings as the Sponsor's original submission.[168] The amendment elaborates on the *potential* bias that imputation or sampling for non-synchronous and/or infrequent data can introduce into results by citing an academic study by Buccheri et al.[169] that investigates the difficulties to identifying price discovery with VECM models due to the high sparsity of data in markets that record trades at the sub-millisecond level. The Exchange asserts that there is such ''high sparsity'' in CME bitcoin futures data, but provides no information that verifies this assertion. Further, even assuming CME bitcoin futures data has such ''high sparsity'' and that VECM-derived metrics using CME bitcoin futures data ''are potentially biased,'' neither the Exchange nor the Sponsor demonstrates that the Buccheri et al. critique of VECM methods applications to sub-millisecond frequencies *actually* applies to the bitcoin price data analyses and that the mixed conclusions in previous academic studies on whether the CME bitcoin futures market leads or lags bitcoin price discovery were *inaccurate* or misleading.

With respect to the Sponsor's own results using the HY estimator, the amendment still does not provide the specific results for each pairwise lead-lag analysis, or confidence intervals around such results; it merely provides *aggregated* results that show the *average* lead-lag that a market has with all other markets in a quarter.[170] Even accepting the results at face value and assuming their statistical significance, the Exchange has not explained why the ''ratio'' of the CME bitcoin futures market's lead over other markets is a better indicator of the ''strength'' of price leadership than the absolute average lead time in seconds. In particular, the Exchange has not explained how such ''ratio'' provides evidence that it is reasonably likely that a would-be manipulator of the proposed ETP would have to trade *on the CME* bitcoin futures market to manipulate the proposed ETP, notwithstanding that—accepting the Sponsor's results—the CME's absolute average lead in seconds

[156] *See* 15 U.S.C. 78s(b)(2)(C).

[157] 15 U.S.C. 78f(b)(5).

[158] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[159] *See* letter from Sam Ahn, dated June 8, 2021 (''Ahn Letter'').

[160] *See* Ahn Letter.

[161] *See* Anonymous Letter; Sponsor Submission at 4–5.

[162] *See supra* note 7.

[163] The untimely filing of Amendment No. 1 also does not allow the Commission sufficient time to solicit public comment.

[164] In addition, in Amendment No. 1, among other things, the Exchange amends its description of the Trust, the Index, the Custodian, and the CME bitcoin futures market.

[165] *See supra* notes 11 and 12 and accompanying text.

[166] *See supra* Section III.B.2.i.b.

[167] *See supra* note 119 and accompanying text.

[168] *See supra* Section III.B.2.i.b.

[169] G. Buccheri, G. Bormetti, F. Corsi & F. Lillo, *Comment on: Price discovery in high resolution,* 19 J. Financial Econometrics 439 (2021).

[170] *See supra* note 123 and accompanying text.

has steadily decreased over time as, in the Exchange's words, ''the window of arbitrage opportunity has closed with increasing speed.'' The Sponsor's analysis is thus flawed for these reasons. In any event, the Sponsor's analysis would constitute a result that is merely part of the ''mixed conclusions'' of studies on this topic without establishing a more definitive result from which the Commission could conclude that there is a reasonable likelihood that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP, and thus the Sponsor has not established that that the CME bitcoin futures market is a ''market of significant size'' with respect to the proposed ETP.

Third, the amendment sets forth new arguments to establish that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. According to the Exchange, a lead-lag analysis performed by the Sponsor concludes that the CME bitcoin futures market continues to ''lead'' price discovery after the launch of the ProShares Bitcoin Strategy ETF (''BITO''),[171] even though the trading volume *on CME* increased significantly after the launch. The Exchange states that it would be unreasonable to assume that such price leadership would deteriorate with increased trade activity in the spot market. The Exchange also presents a lead-lag analysis of BITO performed by the Sponsor to show that there is no significant lead-lag relationship between BITO and other bitcoin markets, and that BITO, as a general bitcoin ETP example, only has a minor impact on price discovery in the bitcoin markets. The Exchange states that it believes there would similarly be no material relationship between the Shares and the CME bitcoin futures market. The Exchange further states that, in the gold market, which it believes is an analogous market to bitcoin in terms of price discovery, futures lead price discovery despite the spot market having 10 times more volume. Finally, the Exchange states that trading of the Shares on the secondary market could have a ''positive impact'' on the CME bitcoin futures market's leading position because CME bitcoin futures are used in hedging activities by market participants. The Exchange states that ''[g]iven there is a lag between the secondary market transaction, the striking of NAV per Share in the primary market and the settlement of the primary market transaction,'' authorized participants will seek to hedge their exposure through the use of bitcoin futures.

The Commission does not have the opportunity to consider these new ''predominant influence'' contentions and the statistical analyses that underlie them given the untimeliness of Amendment No. 1. In any event, no contention has sufficient detail to demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. Among other things, the description of the lead-lag analysis regarding the launch of BITO lacks confidence intervals, and thus the Commission is unable to assess the specific results or statistical significance of those results. Moreover, even accepting the results at face value and assuming their statistical significance, the Exchange does not explain why results that show that increased trading volume in *CME bitcoin futures* did not reduce CME bitcoin futures' price leadership should also be considered to support the proposition that increased trading volume in *spot bitcoin* as a result of the proposed ETP also would not reduce CME bitcoin futures' price leadership. Moreover, the relevant question is not the impact of the proposed ETP on CME bitcoin futures' price *leadership,* but on CME bitcoin futures *prices* themselves. The Sponsor's lead-lag analysis does not address this. Further, with respect to the BITO lead-lag analysis, neither the Exchange nor the Sponsor provides any rationale for why it is reasonable to consider BITO—a CME bitcoin futures-based fund—to be relevant in the analysis regarding a spot bitcoin-based product such as the proposed ETP. Nor does the Exchange or the Sponsor explain why results that purport to indicate that BITO does not have significant price leadership over other bitcoin markets in general should also be considered evidence that the proposed ETP likely would not have significant price leadership over CME bitcoin futures in particular.[172] Further, even assuming the Exchange's summary of the academic literature regarding price discovery in the gold market is accurate, it does not help the Exchange to meet its burden with respect to the proposed ETP.[173] For example, except to conclude summarily that gold and bitcoin markets are ''analogous,'' the Exchange provides no explanation as to why price discovery results from the gold market would shed light on price discovery in the bitcoin market. In any event, as noted above, the Exchange has not explained the connection between price discovery results and whether trading in the proposed ETP would likely be the predominant influence on prices in the CME bitcoin futures market. Finally, even if, as the Exchange claims, authorized participants would use bitcoin futures to hedge any gap between their primary market and secondary market transactions, the Exchange has not explained why such participants would use the *CME* bitcoin futures market, as opposed to other bitcoin futures markets.

Fourth, citing the recent launch of exchange-traded funds that provide exposure to bitcoin through CME bitcoin futures (''Bitcoin Futures ETFs''), the Exchange claims that ''there is no basis for determining that the Bitcoin Futures ETFs satisfy Section 6(b)(5) of the Exchange Act while the Trust does not.'' The Exchange asserts that Bitcoin Futures ETFs and the Trust are ''exposed to the same underlying pricing data and the same risks of manipulation,'' and thus are ''substantially similar products.''

The Commission disagrees with the premise of these arguments. Among other things, the proposed rule change does not relate to the same underlying holdings as the Bitcoin Futures ETFs. The Commission considers the proposed rule change on its own merits and under the standards applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.[174]

[171] The Exchange states that the Sponsor selected BITO for its analysis as BITO is a Commission-registered ETF that seeks to invest primarily in CME bitcoin futures contracts, is listed and traded on a US regulated national securities exchange, and was launched on October 18, 2021.

[172] Nor does the Exchange explain why the results should be considered evidence that trading in the proposed ETP likely would not have a predominant influence on CME bitcoin futures prices, as the applicable standard requires.

[173] *See* USBT Order, 85 FR at 12613.

[174] *See supra* note 11. Moreover, the Exchange has not established that the Trust and the Bitcoin Futures ETFs have the ''same pricing sources.'' While the five constituent bitcoin platforms that currently underlie the Index are the same platforms that currently underlie the CME CF Bitcoin Reference Rate, even assuming the Index would generally track the CME CF Bitcoin Reference Rate, as discussed above in Section III.B.1, the Index is only used to value the Trust's bitcoin for purposes of calculating NAV. The Shares, by contrast, would trade at market-based prices in the secondary market, not at NAV. *See supra* note 81 and subsequent text.

Accordingly, even if the Exchange's Amendment No. 1 had been timely filed, there is no additional information in such amendment that would enable the Commission to approve the proposed rule change as amended.

## IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2021–039 be, and hereby is, disapproved.

By the Commission.

**Vanessa A. Countryman,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94064; File No. SR–NASDAQ–2022–007]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce NOM's Options Regulatory Fee

January 26, 2022.

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 January 20, 2022, 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 The Nasdaq Options Market LLC's (''NOM'') Pricing Schedule at Options 7, Section 5 to reduce the NOM Options Regulatory Fee or ''ORF''.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NOM previously filed to waive its ORF from October 1, 2021 through January 31, 2022.[3] The Waiver Filing provided that NOM would continue monitoring the amount of revenue collected from the ORF to determine if regulatory revenues would exceed regulatory costs when it recommenced assessing ORF on February 1, 2022. If so, the Exchange committed to adjust its ORF.[4] At this time, after a review of its regulatory revenues and regulatory costs, the Exchange proposes to reduce the ORF from $0.0020 (the amount of the ORF prior to the waiver) to $0.0016 per contract side as of February 1, 2022, to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The options industry continues to experience high options trading volumes and volatility. At this time, NOM believes that the options volume it experienced in the second half of 2021 is likely to persist into 2022. The anticipated options volume would impact NOM's ORF collection which, in turn, has caused NOM to propose reducing the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs.

[3] *See* Securities Exchange Act Release No. 92600 (August 6, 2021), 86 FR 44455 (August 12, 2021) (SR–NASDAQ–2021–057) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NOM's Options Regulatory Fee) (''Waiver Filing'').

[4] *Id* at 44456.

Collection of ORF

Upon recommencement of the ORF on February 1, 2022,[5] NOM will assess its ORF for each customer option transaction that is either: (1) Executed by a Participant on NOM; or (2) cleared by a NOM Participant at The Options Clearing Corporation (''OCC'') in the customer range,[6] even if the transaction was executed by a non-Participant of NOM, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a NOM Participant, ORF will be assessed and collected on all cleared customer contracts (after adjustment for CMTA [8]); and (2) if the OCC clearing member is not a NOM Participant, ORF will be collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.[9]

In the case where a Participant both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Participant. In the case where a Participant executes a transaction and a different member clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. In the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction. In the case where

[5] Prior to the Waiver Filing, the Exchange similarly collected ORF as described herein.

[6] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[9] By way of example, if Broker A, a NOM Participant, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by NOM from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than NOM, it was cleared by a NOM Participant in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between NOM and the transaction. If Broker A was not a NOM Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on NOM nor was it cleared by a NOM Participant.

a Participant executes a transaction on NOM and a non-member clears the transaction, the ORF will be assessed to the Participant that executed the transaction on NOM and collected from the non-member who cleared the transaction. In the case where a Participant executes a transaction at an away market and a non-member clears the transaction, the ORF will not be assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Participant customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses were approximately 38% of the total regulatory costs for 2021. Thus, direct expenses were approximately 62% of total regulatory costs for 2021.[10]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0020 per contract side to $0.0016 per contract side. The Exchange issued an Options Trader Alert on December 31, 2021 indicating the proposed rate change for February 1, 2022.[11]

The proposed reduction is based on a sustained high level of options volume in 2021. The below table displays average daily volume for 2021.[12]

| Date | Total Contracts | Customer Sides | Trading Days | Quarter Contracts | Quarter Cust Sides | Quarter ADC | Quarter Cust ADS |
|---|---|---|---|---|---|---|---|
| Jan 2021 | 838,339,790 | 784,399,878 | 19 | | | | |
| Feb 2021 | 823,413,002 | 782,113,450 | 19 | | | | |
| Mar 2021 | 898,653,388 | 837,247,059 | 23 | 2,560,406,180 | 2,403,760,387 | **41,973,872** | **39,405,908** |
| Apr 2021 | 711,388,828 | 667,208,963 | 21 | | | | |
| May 2021 | 718,368,993 | 659,913,862 | 20 | | | | |
| Jun 2021 | 866,099,522 | 809,242,842 | 22 | 2,295,857,343 | 2,136,365,667 | **36,442,180** | **33,910,566** |
| Jul 2021 | 790,038,364 | 729,239,647 | 21 | | | | |
| Aug 2021 | 801,578,079 | 741,111,748 | 22 | | | | |
| Sep 2021 | 811,458,905 | 744,936,837 | 21 | 2,403,075,348 | 2,215,288,232 | **37,548,052** | **34,613,879** |
| Oct 2021 | 821,102,002 | 760,524,395 | 21 | | | | |
| Nov 2021 | 944,355,975 | 866,102,667 | 21 | | | | |
| Dec 2021 | 561,154,417 | 503,350,470 | 13 | 2,326,612,394 | 2,129,977,532 | **42,302,044** | **38,726,864** |

To date, fourth quarter options average daily volume in 2021 has been higher than options average daily volume in any of the prior three quarters of 2021. With respect to customer options volume across the industry, total customer options contract average daily volume, to date, in 2021 is 36,565,398 as compared to total customer options contract average daily volume in 2020 which was 27,002,511.[13]

There can be no assurance that the Exchange's costs for 2022 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue that may be generated utilizing an ORF rate of $0.0020 per contract side may result in revenue which exceeds the Exchange's estimated regulatory costs for 2022 if options volume persists. In 2021, options volume remained high, due in large part to the extreme volatility in the marketplace as a result of the COVID–19 pandemic. The Exchange therefore proposes to reduce its ORF to $0.0016 per contract side to ensure that revenue does not exceed the Exchange's estimated regulatory costs in 2022. Particularly, the Exchange believes that reducing the ORF when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the rate of $0.0020 per contract side.[14]

[10] The Exchange will set a 2022 Regulatory Budget in the first quarter of 2022.

[11] *See* Options Trader Alert 2021–63.

[12] The OCC data from December 2021 numbers reflect only 13 trading days as this information is through December 17, 2021. Volume data in the table represents numbers of contracts; each contract has two sides.

[13] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type*.

[14] The Exchange notes that its regulatory responsibilities with respect to Participants compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying [15] its Participants via an Options Trader Alert.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the rate that would otherwise be in effect on February 1, 2022. Moreover, the proposed reduction is necessary for the Exchange to avoid collecting revenue, in combination with other regulatory fees and fines, that would be in excess of its anticipated regulatory costs which is consistent with the Exchange's practices.

The Exchange had designed the ORF to generate revenues that would be less than the amount of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may collect revenue which would exceed its regulatory costs. Indeed, the Exchange notes that when taking into account the potential that recent options volume persists, it estimates the ORF may generate revenues that would cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to reduce the ORF amount from $0.0020 to $0.0016 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Participants on all their transactions that clear in the customer range at OCC.[20] The Exchange believes the ORF ensures fairness by assessing higher fees to those Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Participant proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Participants, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [21] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its Participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

[15] The Exchange will provide Participants with such notice at least 30 calendar days prior to the effective date of the change.

[16] The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] If the OCC clearing member is a NOM Participant, ORF will be assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a NOM Participant, ORF will be collected only on the cleared customer contracts executed at NOM, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

[21] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

19(b)(3)(A)[22] of the Act and subparagraph (f)(2) of Rule 19b–4[23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[24] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2022–007 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–NASDAQ–2022–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2022–007, and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01972 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94068; File No. SR–NSCC–2021–016]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

January 26, 2022.

On December 13, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2021–016 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021,[3] and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is February 12, 2022.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act[6] and for the reasons stated above, the Commission designates March 29, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–NSCC–2021–016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01966 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93856 (December 22, 2021), 86 FR 74185 (December 29, 2021) (File No. SR–NSCC–2021–016).

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2021-016/srnscc2021016.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94073; File No. SR–CBOE–2021–075]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Increase Position Limits for Options on the SPDR Gold Trust and iShares Silver Trust

January 26, 2022.

On December 7, 2021, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase position limits for options on the SPDR Gold Trust and iShares Silver

Trust. The proposed rule change was published for comment in the **Federal Register** on December 27, 2021.[3] On January 24, 2022, the Exchange withdrew the proposed rule change (SR–CBOE–2021–075).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01971 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* Securities Exchange Act Release No. 93831 (December 20, 2021), 86 FR 73353.

[4] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94069; File No. SR–GEMX–2022–03]**

## Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce GEMX's Options Regulatory Fee

January 26, 2022.

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 January 20, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7, Section 5 to reduce the GEMX Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

GEMX previously filed to waive its ORF from October 1, 2021 through January 31, 2022.[3] The Waiver Filing provided that GEMX would continue monitoring the amount of revenue collected from the ORF to determine if regulatory revenues would exceed regulatory costs when it recommenced assessing ORF on February 1, 2022. If so, the Exchange committed to adjust its ORF.[4] At this time, after a review of its regulatory revenues and regulatory costs, the Exchange proposes to reduce the ORF from $0.0018 (the amount of the ORF prior to the waiver) to $0.0014 per contract side as of February 1, 2022, to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The options industry continues to experience high options trading volumes and volatility. At this time, GEMX believes that the options volume it experienced in the second half of 2021 is likely to persist into 2022. The anticipated options volume would impact GEMX's ORF collection which, in turn, has caused GEMX to propose reducing the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs.

[3] *See* Securities Exchange Act Release No. 92698 (August 18, 2021), 86 FR 47355 (August 24, 2021) (SR–GEMX–2021–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX's Options Regulatory Fee) (''Waiver Filing'').

[4] *Id.* at 47357.

Collection of ORF

Upon recommencement of the ORF on February 1, 2022,[5] GEMX will assess its ORF for each customer option transaction that is either: (1) Executed by a Member on GEMX; or (2) cleared by an GEMX Member at The Options Clearing Corporation (''OCC'') in the customer range,[6] even if the transaction was executed by a non-Member of GEMX, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a GEMX Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [8]); and (2) if the OCC clearing member is not a GEMX Member, ORF is collected only on the cleared customer contracts executed at GEMX, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.[9]

In the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. In the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. In the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. In the case where a Member executes a transaction on GEMX and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on GEMX and collected from the non-Member who cleared the transaction. In the case where a Member

[5] Prior to the Waiver Filing, the Exchange similarly collected ORF as described herein.

[6] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[9] By way of example, if Broker A, a GEMX Member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by GEMX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than GEMX, it was cleared by a GEMX Member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between GEMX and the transaction. If Broker A was not a GEMX Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on GEMX nor was it cleared by a GEMX Member.

executes a transaction at an away market and a non-Member clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses were approximately 38% of the total regulatory costs for 2021. Thus, direct expenses were approximately 62% of total regulatory costs for 2021.[10]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its Members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0018 per contract side to $0.0014 per contract side. The Exchange issued an Options Trader Alert on December 31, 2021 indicating the proposed rate change for February 1, 2022.[11]

The proposed reduction is based on a sustained high level of options volume in 2021. The below table displays average daily volume for 2021.[12]

| Date | Total Contracts | Customer Sides | Trading Days | Quarter Contracts | Quarter Cust Sides | Quarter ADC | Quarter Cust ADS |
|---|---|---|---|---|---|---|---|
| Jan 2021 | 838,339,790 | 784,399,878 | 19 | | | | |
| Feb 2021 | 823,413,002 | 782,113,450 | 19 | | | | |
| Mar 2021 | 898,653,388 | 837,247,059 | 23 | 2,560,406,180 | 2,403,760,387 | **41,973,872** | **39,405,908** |
| Apr 2021 | 711,388,828 | 667,208,963 | 21 | | | | |
| May 2021 | 718,368,993 | 659,913,862 | 20 | | | | |
| Jun 2021 | 866,099,522 | 809,242,842 | 22 | 2,295,857,343 | 2,136,365,667 | **36,442,180** | **33,910,566** |
| Jul 2021 | 790,038,364 | 729,239,647 | 21 | | | | |
| Aug 2021 | 801,578,079 | 741,111,748 | 22 | | | | |
| Sep 2021 | 811,458,905 | 744,936,837 | 21 | 2,403,075,348 | 2,215,288,232 | **37,548,052** | **34,613,879** |
| Oct 2021 | 821,102,002 | 760,524,395 | 21 | | | | |
| Nov 2021 | 944,355,975 | 866,102,667 | 21 | | | | |
| Dec 2021 | 561,154,417 | 503,350,470 | 13 | 2,326,612,394 | 2,129,977,532 | **42,302,044** | **38,726,864** |

To date, fourth quarter options average daily volume in 2021 has been higher than options average daily volume in any of the prior three quarters of 2021. With respect to customer options volume across the industry, total customer options contract average daily volume, to date, in 2021 is 36,565,398 as compared to total customer options contract average daily volume in 2020 which was 27,002,511.[13]

There can be no assurance that the Exchange's costs for 2022 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue that may be generated utilizing an ORF rate of $0.0018 per contract side may result in revenue which exceeds the Exchange's estimated regulatory costs for 2022 if options volume persists. In 2021, options volume remained high, due in large part to the extreme volatility in the marketplace as a result of the COVID–19 pandemic. The Exchange therefore proposes to reduce its ORF to $0.0014 per contract side to ensure that revenue does not exceed the Exchange's estimated regulatory costs in 2022. Particularly, the Exchange believes that reducing the ORF when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the rate of $0.0018 per contract side.[14]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and

[10] The Exchange will set a 2022 Regulatory Budget in the first quarter of 2022.

[11] *See* Options Trader Alert 2021–63.

[12] The OCC data from December 2021 numbers reflect only 13 trading days as this information is through December 17, 2021. Volume data in the table represents numbers of contracts; each contract has two sides.

[13] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type.*

[14] The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

notifying [15] its Members via an Options Trader Alert.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the rate that would otherwise be in effect on February 1, 2022. Moreover, the proposed reduction is necessary for the Exchange to avoid collecting revenue, in combination with other regulatory fees and fines, that would be in excess of its anticipated regulatory costs which is consistent with the Exchange's practices.

The Exchange designed the ORF to generate revenues that would be less than the amount of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may collect revenue which would exceed its regulatory costs. Indeed, the Exchange notes that when taking into account the potential that recent options volume persists, it estimates the ORF may generate revenues that would cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to reduce the ORF amount from $0.0018 to $0.0014 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at OCC.[20] The Exchange believes the ORF ensures fairness by assessing higher fees to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Members, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [21] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and paragraph (f) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[15] The Exchange will provide Members with such notice at least 30 calendar days prior to the effective date of the change.

[16] The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] If the OCC clearing member is a GEMX member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a GEMX member, ORF is collected only on the cleared customer contracts executed at GEMX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

[21] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–GEMX–2022–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–GEMX–2022–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–GEMX–2022–03, and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01967 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94067; File No. SR–DTC–2021–017]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

January 26, 2022.

On December 13, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2021–017 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on December 29, 2021,[3] and the Commission received no comment letters regarding the changes proposed in the Proposed Rule Change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is February 12, 2022.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act[5] and for the reasons stated above, the Commission designates March 29, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–DTC–2021–017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01965 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93854 (December 22, 2021), 86 FR 74122 (December 29, 2021) (File No. SR–DTC–2021–017).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94065; File No. SR–Phlx–2022–03]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce Phlx's Options Regulatory Fee

January 26, 2022.

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 January 20, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 Phlx's Pricing Schedule at Options 7, Section 6, Part D to reduce the Phlx Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/*

*rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Phlx previously filed to waive its ORF from October 1, 2021 through January 31, 2022.[3] The Waiver Filing provided that Phlx would continue monitoring the amount of revenue collected from the ORF to determine if regulatory revenues would exceed regulatory costs when it recommenced assessing ORF on February 1, 2022. If so, the Exchange committed to adjust its ORF.[4] At this time, after a review of its regulatory revenues and regulatory costs, the Exchange proposes to reduce the ORF from $0.0042 (the amount of the ORF prior to the waiver) to $0.0034 per contract side as of February 1, 2022, to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The options industry continues to experience high options trading volumes and volatility. At this time, Phlx believes that the options volume it experienced in the second half of 2021 is likely to persist into 2022. The anticipated options volume would impact Phlx's ORF collection which, in turn, has caused Phlx to propose reducing the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs.

Collection of ORF

Upon recommencement of the ORF on February 1, 2022,[5] Phlx will assess its ORF for each customer option transaction that is either: (1) Executed by a member organization [6] on Phlx; or (2) cleared by a Phlx member organization at The Options Clearing Corporation (''OCC'') in the customer range,[7] even if the transaction was executed by a non-member organization of Phlx, regardless of the exchange on which the transaction occurs.[8] If the OCC clearing member is a Phlx member organization, ORF will be assessed and collected on all cleared customer contracts (after adjustment for CMTA [9]); and (2) if the OCC clearing member is not a Phlx member organization, ORF will be collected only on the cleared customer contracts executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from a non-member organization.[10]

In the case where a member organization both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that member organization. In the case where a member organization executes a transaction and a different member organization clears the transaction, the ORF will be assessed to and collected from the member organization who clears the transaction and not the member organization who executes the transaction. In the case where a non-member organization executes a transaction at an away market and a member organization clears the transaction, the ORF will be assessed to and collected from the member organization who clears the transaction. In the case where a member executes a transaction on Phlx and a non-member organization clears the transaction, the ORF will be assessed to the member organization that executed the transaction on Phlx and collected from the non-member organization who cleared the transaction. In the case where a member organization executes a transaction at an away market and a non-member organization clears the transaction, the ORF will not be assessed to the member organization who executed the transaction or collected from the non-member organization who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the member organization executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of member [11] and member organization customer options business including

[3] *See* Securities Exchange Act Release No. 92585 (August 5, 2021), 86 FR 44096 (August 11, 2021) (SR–Phlx–2021–39) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Options Regulatory Fee) (''Waiver Filing'').

[4] *Id.* at 44098.

[5] Prior to the Waiver Filing, the Exchange similarly collected ORF as described herein.

[6] The term ''member organization'' means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6–4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. *See* General 1, Section 1(17).

[7] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that member organizations mark orders with the correct account origin code.

[8] The Exchange uses reports from OCC when assessing and collecting the ORF.

[9] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[10] By way of example, if Broker A, a Phlx member organization, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by Phlx from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than Phlx, it was cleared by a Phlx member organization in the member organization's OCC clearing account in the customer range, therefore there is a regulatory nexus between Phlx and the transaction. If Broker A was not a Phlx member organization, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on Phlx nor was it cleared by a Phlx member organization.

[11] The term ''member'' means a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member. *See* General 1, Section 1(16).

performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses were approximately 38% of the total regulatory costs for 2021. Thus, direct expenses were approximately 62% of total regulatory costs for 2021.[12]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members and member organizations, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0042 per contract side to $0.0034 per contract side. The Exchange issued an Options Trader Alert on December 31, 2021 indicating the proposed rate change for February 1, 2022.[13]

The proposed reduction is based on a sustained high level of options volume in 2021. The below table displays average daily volume for 2021.[14]

| Date | Total Contracts | Customer Sides | Trading Days | Quarter Contracts | Quarter Cust Sides | Quarter ADC | Quarter Cust ADS |
|---|---|---|---|---|---|---|---|
| Jan 2021 | 838,339,790 | 784,399,878 | 19 | | | | |
| Feb 2021 | 823,413,002 | 782,113,450 | 19 | | | | |
| Mar 2021 | 898,653,388 | 837,247,059 | 23 | 2,560,406,180 | 2,403,760,387 | **41,973,872** | **39,405,908** |
| Apr 2021 | 711,388,828 | 667,208,963 | 21 | | | | |
| May 2021 | 718,368,993 | 659,913,862 | 20 | | | | |
| Jun 2021 | 866,099,522 | 809,242,842 | 22 | 2,295,857,343 | 2,136,365,667 | **36,442,180** | **33,910,566** |
| Jul 2021 | 790,038,364 | 729,239,647 | 21 | | | | |
| Aug 2021 | 801,578,079 | 741,111,748 | 22 | | | | |
| Sep 2021 | 811,458,905 | 744,936,837 | 21 | 2,403,075,348 | 2,215,288,232 | **37,548,052** | **34,613,879** |
| Oct 2021 | 821,102,002 | 760,524,395 | 21 | | | | |
| Nov 2021 | 944,355,975 | 866,102,667 | 21 | | | | |
| Dec 2021 | 561,154,417 | 503,350,470 | 13 | 2,326,612,394 | 2,129,977,532 | **42,302,044** | **38,726,864** |

To date, fourth quarter options average daily volume in 2021 has been higher than options average daily volume in any of the prior three quarters of 2021. With respect to customer options volume across the industry, total customer options contract average daily volume, to date, in 2021 is 36,565,398 as compared to total customer options contract average daily volume in 2020 which was 27,002,511.[15]

There can be no assurance that the Exchange's costs for 2022 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue that may be generated utilizing an ORF rate of $0.0042 per contract side may result in revenue which exceeds the Exchange's estimated regulatory costs for 2022 if options volume persists. In 2021, options volume remained high, due in large part to the extreme volatility in the marketplace as a result of the COVID–19 pandemic. The Exchange therefore proposes to reduce its ORF to $0.0034 per contract side to ensure that revenue does not exceed the Exchange's estimated regulatory costs in 2022. Particularly, the Exchange believes that reducing the ORF when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the rate of $0.0042 per contract side.[16]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying[17] its members and member organizations via an Options Trader Alert.[18]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[19] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[20], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its

[12] The Exchange will set a 2022 Regulatory Budget in the first quarter of 2022.

[13] *See* Options Trader Alert 2021–63.

[14] The OCC data from December 2021 numbers reflect only 13 trading days as this information is through December 17, 2021. Volume data in the table represents numbers of contracts; each contract has two sides.

[15] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type.*

[16] The Exchange notes that its regulatory responsibilities with respect to member and member organization compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[17] The Exchange will provide members and member organizations with such notice at least 30 calendar days prior to the effective date of the change.

[18] The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

members, member organizations, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the rate that would otherwise be in effect on February 1, 2022. Moreover, the proposed reduction is necessary for the Exchange to avoid collecting revenue, in combination with other regulatory fees and fines, that would be in excess of its anticipated regulatory costs which is consistent with the Exchange's practices.

The Exchange had designed the ORF to generate revenues that would be less than the amount of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may collect revenue which would exceed its regulatory costs. Indeed, the Exchange notes that when taking into account the potential that recent options volume persists, it estimates the ORF may generate revenues that would cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to reduce the ORF amount from $0.0042 to $0.0034 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all member organizations on all their transactions that clear in the customer range at OCC.[22] The Exchange believes the ORF ensures fairness by assessing higher fees to those member organizations that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* member and member organization proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its members and member organizations, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [23] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its members and member organizations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [24] of the Act and subparagraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[21] 15 U.S.C. 78f(b)(5).

[22] If the OCC clearing member is a Phlx member organization, ORF will be assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a Phlx member organization, ORF will be collected only on the cleared customer contracts executed at Phlx, taking into account any CMTA instructions which may result in collecting the ORF from a non-member organization.

[23] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

*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–Phlx–2022–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2022–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2022–03, and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01973 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[27] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94071; File No. SR–NASDAQ–2022–004]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Listing Fees at Rule 5910(b) To Adopt a $15,000 All-Inclusive Annual Listing Fee Applicable to a Dually-Listed Company

January 26, 2022.

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 January 13, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's listing fees at Rule 5910(b) to insert language concerning a $15,000 annual listing fee applicable to a Dually Listed Company, which was erroneously removed, as described further below.

The text of the proposed rule change is detailed below: Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

**The Nasdaq Stock Market Rules**

* * * * *

**5910. The Nasdaq Global Market (including the Nasdaq Global Select Market)**

(a) No change.

(b) All-Inclusive Annual Listing Fee

(1) No change.

(2)(A)–(F) No change.

*(G) Dually-Listed Companies, whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq: $15,000. Such fee shall be assessed on the first anniversary of the Company's listing on Nasdaq, and annually thereafter on the anniversary of the Company's listing. If an issuer of such securities ceases to maintain its listing on the New York Stock Exchange that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except if the securities remain listed on the Nasdaq Global or Global Select Markets and are designated as national market securities pursuant to the plan governing Nasdaq securities such fee shall be applied to The Nasdaq Global Market All-Inclusive Annual Listing Fee due for that calendar year.*

(3) No change.

* * * * *

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to insert language concerning the relevant all-inclusive annual fee applicable to the listing of securities that are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on the Nasdaq Global or Global Select Markets, and maintains such listing and designation after it lists such securities on Nasdaq (''Dually-Listed Securities'').[3] Such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rules 5005(a)(11) (defining a Dually-Listed Security as a security, listed on The Nasdaq Global Market or The Nasdaq Global Select Market, which is also listed on the New York Stock Exchange). As explained below, former Rule 5910(c)(5) described and set forth the fees applicable to a Dually Listed Company but referenced only The Nasdaq Global

language was erroneously deleted in a previous filing.[4]

In 2014, Nasdaq adopted an all-inclusive annual listing fee schedule to simplify, clarify and enhance transparency around the annual fee to which listed companies are subject.[5] The new annual fee schedule became operative on January 1, 2015, and applied to all companies listed after that date. Effective January 1, 2018, all Nasdaq-listed companies became subject to the all-inclusive annual fee schedule and the standard annual fee schedule ceased to have applicability or effect for such companies.

In 2018, Nasdaq eliminated expired and obsolete provisions in connection with Nasdaq's completed transition to the all-inclusive annual fee program.[6] In the Annual Fee Transition Filing Nasdaq deleted the language in former Rules 5910(c)–(f) and 5920(c)–(e) that described and set forth the standard annual fee. However, former Rules 5910(c)(5) described and set forth the fees applicable to a company (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq (a ''Dually Listed Company''). The rule language further stated that if an issuer of such securities ceases to maintain such listing and designation and the securities are instead designated under the Rule 5400 Series, that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except such fee shall be applied to annual listing fee due for the calendar year of the transfer. In lieu of the annual fees applicable to a Nasdaq-listed company, a Dually Listed Company annual fee was set at $15,000 per year. Such annual fee was set to be assessed on the first anniversary of the Company's listing on Nasdaq.[7] While not identical to the current all-inclusive annual listing fee schedule, this provision was similar in that companies also were not subject to fees for listing additional shares or for substitution listing events.[8] The companies were still subject to fees in relation to request for written interpretation, compliance plan review and record-keeping. The foregoing fees are included in the all-inclusive annual fees and Dually Listed Companies will pay only a single annual fee to Nasdaq, which includes all the ordinary costs of listing for the year.[9]

Nasdaq believes it is appropriate to maintain the $15,000 fee on an all-inclusive basis because it is not the primary listing venue for such companies. The Dual Listing program was originally designed, and continues to operate, to encourage NYSE-listed companies to compare services provided by Nasdaq and NYSE without creating undue burden by assessing duplicated fees. As required by Listing Rules, Nasdaq monitors Dually Listed Companies for compliance with the Nasdaq listing standards. In that regard, based on Nasdaq's experience, Dually Listed Companies require less time and effort to review and to ensure compliance because they seldom involve time-consuming regulatory issues. This is, in part, due to the fact that NYSE listed companies are already subject to the ongoing scheme of regulation by the NYSE that is fairly similar to the Nasdaq's regulation regime.

Notwithstanding the similarities in regulatory regimes, the Dual Listing program increases the regulatory burden on a listed company, in part, by subjecting it to both the NYSE's and Nasdaq's corporate governance regulations. As a result, the program targets bigger and better established companies that are used to being a public company and can afford a moderate increase in the regulatory burden. Nasdaq believes that these larger companies will pay higher listing fees if and when they become listed exclusively on Nasdaq and become subject to the fee schedule applicable to Nasdaq listed companies thereby making their listing more valuable to Nasdaq. Nasdaq also believes that inducing these companies to compare services provided by Nasdaq and the NYSE, may encourage these companies to list exclusively on Nasdaq and to provide its listing market broader benefits from attracting the larger, better known companies that are listed on the NYSE. Accordingly, given the competitive nature of the dual listing program and the potential benefits it may bring to Nasdaq and its listing market, Nasdaq believes it is reasonable to set the all-inclusive annual fee for Dually Listed Companies at $15,000.

Absent this provision, a Dually Listed Company would be subject to the typical all-inclusive annual listing fee, which is higher than $15,000.[10] Nasdaq did not intend to subject the Dually Listed Companies to the all-inclusive annual listing fee applicable to other companies. Accordingly, Nasdaq now proposes to insert language, similar to the language covering annual fees paid by Dually Listed Companies that was erroneously removed, by adding proposed Rule 5910(b)(2)(G) setting the all-inclusive annual fee for Dually Listed Companies, which now covers fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above, at $15,000.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, will promote just and equitable principles of trade, and will remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule will insert language concerning the $15,000 annual listing fee applicable to a Dually Listed Company, which Nasdaq erroneously deleted, while also making this fee an all-inclusive fee, which now covers fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above. The Commission previously approved the $15,000 annual fee applicable to a Dually Listed Company, and the manner in which it is assessed,

Market. Nasdaq proposes to clarify that a Dually Listed Company may list on the Nasdaq Global or Global Select Markets.

[4] Securities Exchange Act Release No. 84634 (November 20, 2018), 83 FR 60522 (November 26, 2018) (SR–NASDAQ–2018–092) (The ''Annual Fee Transition Filing'').

[5] Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR–NASDAQ–2014–87).

[6] The Annual Fee Transition Filing, *supra* note 4.

[7] Former Rule 5920(c)(8) also included similar language about the fee for a Dually Listed Company on the Nasdaq Capital Market. However, under Rule 5005(a)(11) and IM–5220 companies are not (and were not previously) permitted to dually list on the Nasdaq Capital Market. As such this Capital Market fee was inapplicable to any companies and its deletion was appropriate.

[8] *See* former Rule 5910(b)(5) and 5910(f).

[9] *See* former Rules 5602, 5810(c) and 5910(e). In Nasdaq's experience, Dually Listed Companies are, typically, established companies that are used to being a public company and familiar with the exchanges' requirements thus rarely having a need to pay for written interpretation, compliance plan review and record-keeping fees.

[10] Under Rule 5910(b)(2)(A) the minimum all-inclusive annual fee for most companies is $48,000.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

and found it consistent with requirements of the Act that rules provide for equitable allocation of reasonable fees and not be designed to permit unfair discrimination between issuers.[13] There has been no changes to the objectives of the Dual Listing program since Nasdaq adopted the all-inclusive annual listing fee schedule for companies, and the NYSE annual fee schedule has been changing to accommodate the shifts in the competitive landscape.[14] Nasdaq believes that, to maintain consistency with the original objective of the Dual Listing program, the annual listing fee assessed towards Dually Listed Companies, noting the fact that they are paying the fees to the NYSE, should remain the same as previously adopted, although now covering fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above. The erroneous removal of language describing the fee, resulting in the need for this rule filing to reinsert it, does not change that conclusion.[15]

Nasdaq believes it is appropriate and not unfairly discriminatory to maintain the $15,000 fee on an all-inclusive basis because Nasdaq is not the primary listing venue for such companies. The Dual Listing program is designed to encourage NYSE-listed companies to compare services provided by Nasdaq and the NYSE without creating undue burden by assessing duplicated fees. Based on Nasdaq's experience, Dually Listed Companies require less time and effort to review and to ensure compliance because they seldom involve time-consuming regulatory issues. This is, in part, due to the fact that NYSE listed companies already are, and, typically, have been subject to the ongoing scheme of regulation by the NYSE that is fairly similar to the Nasdaq's regulation regime.

Notwithstanding the similarities in regulatory regimes, the Dual Listing program increases the regulatory burden on a listed company, in part, by subjecting it to both NYSE and Nasdaq corporate governance regulations. As a result, the program targets bigger and better established companies that are used to being a public company and can afford the increased regulatory burden. Nasdaq believes that these larger companies will pay higher listing fees if and when they become listed exclusively on Nasdaq and become subject to the fee schedule applicable to Nasdaq listed companies thereby making their listing more valuable to Nasdaq. Nasdaq also believes that inducing these companies to compare services provided by Nasdaq and the NYSE, may encourage these companies to list exclusively on Nasdaq and to provide its listing market broader benefits from attracting the larger, better known companies that are listed on the NYSE.

Finally, Nasdaq believes that the proposal does not result in unfair discrimination by offering its program only to companies already listed on the NYSE, and not on other exchanges, because Nasdaq believes attracting the NYSE-listed companies will bring greater future value to Nasdaq.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act but instead will reinstate a portion of the fee schedule that was erroneously deleted.

Nasdaq's dual listing program is designed to allow issuers to undertake focused comparison of the services and market quality offered by Nasdaq and NYSE, with the explicit goal to encourage eventual switch of companies that dual list. Without a lower annual fee, an NYSE-listed company would be unlikely to choose to dually list its securities, either initially or on an ongoing basis. Accordingly, reinstituting the proposed fee would promote competition among listing markets.[16]

The lower fees on Dually Listed Companies also will not burden competition between Dually Listed Companies and other companies listing on Nasdaq. The lower fee reflects that Dually Listed Companies are also subject to ongoing fees to the NYSE. In the Approval Order, the Commission found the fees applicable to Dually Listed Companies consistent with the requirements of the Act, and noted that ''[w]ithout this program, it is unlikely that an issuer would choose to dually list its securities'' and expressed its believe that ''competition among listing markets has the potential to benefit the public, issuers, and the listing markets.''

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–004 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–2022–004. 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/*

[13] Securities Exchange Act Release No. 51005 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR–NASD–2004–142, approving the predecessor NASD rule), 70 FR 2917 (January 18, 2005) (the ''Approval Order''). This finding was under Section 15A(b)(5) and (6) of the Act, which applied to Nasdaq at the time as a facility of the NASD.

[14] *See* Securities Exchange Act Release No. 93862 (December 22, 2021), 86 FR 74198 (December 29, 2021) (SR–NYSE–2021–76).

[15] Although the all-inclusive annual fee for Dually Listed Companies will now include some additional services for the same $15,000 annual fee, Nasdaq notes that Dually Listed Companies, typically, do not use these services. See footnote 9 above.

[16] Nasdaq believes that national securities exchanges other than the NYSE do not have established listing programs that attract marquee operating companies and therefore the dually listed program will not have any competitive impact on such exchanges because the goal of the program is to allow an established exchange-listed company to compare services provided by Nasdaq with those it already receives.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

*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–2022–004, and should be submitted on or before February 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01969 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 11643]**

### Notice of Public Meeting in Preparation for International Maritime Organization SSE 8 Meeting

The Department of State will conduct a public meeting at 1:00 p.m. on Thursday, February 17, 2022, to prepare for the eighth session of the International Maritime Organization's (IMO) Sub-Committee on Ship Systems and Equipment (SSE 8). SSE 8 will be held remotely from Monday, February 28, 2022 to Friday, March 4, 2022. This public meeting will be held by way of Microsoft Teams. Members of the public may participate up to the capacity of the Microsoft Teams meeting, which can handle 1,000 participants. To RSVP, participants should contact the meeting coordinator, LCDR Sarah Rodiño, by email at *Sarah.E.Rodino@uscg.mil.* LCDR Rodiño will provide log in information for Microsoft Teams. Members of the public may also participate via a phone conference by calling (410) 874–6752 and using Conference ID 552 073 07#.

The agenda items to be considered at the public meeting mirror those to be considered at SSE 8, and include:

—Adoption of the agenda
—Decisions of other IMO bodies
—New requirements for ventilation of survival craft
—Consequential work related to the new International Code for Ships Operating in Polar Waters
—Revision of SOLAS chapter III and the LSA Code
—Review of SOLAS chapter II–2 and associated codes to minimize the incidence and consequences of fires on ro-ro spaces and special category spaces of new and existing ro-ro passenger ships
—Amendments to *Guidelines for the approval of fixed dry chemical powder fire-extinguishing systems for the protection of ships carrying liquefied gases in bulk* (MSC.1/Circ. 1315)
—Development of amendments to the LSA Code and resolution of MSC.81(70) to address the in-water performance of SOLAS lifejackets
—Requirements for onboard lifting appliances and anchor handling winches
—Development of amendments to SOLAS chapter II–2 and the FSS Code concerning detection and control of fires in cargo holds and on the cargo deck of containerships
—Development of amendments to SOLAS chapter II–2 and MSC.1/Circ. 1456 addressing fire protection of control stations on cargo ships
—Development of provisions to prohibit the use of fire-fighting foams containing perfluorooctane sulfonic acid (PFOS) for fire-fighting on board ships
—Validated model training courses
—Revision of the Code of Safety for Diving Systems (Resolution A.831(19)) and the *Guidelines and specifications for hyperbaric evacuation systems* (resolution A.692(17))
—Unified interpretation of provisions of IMO safety, security and environment-related conventions
—Biennial status report and provisional agenda for SSE 9
—Election of Chair and Vice-Chair for 2023
—Any other business
—Report to the Maritime Safety Committee

*Please note:* The IMO may, on short notice, adjust the SSE 8 agenda to accommodate the constraints associated with the virtual meeting format. Any changes to the agenda will be reported to those who RSVP and those in attendance at the meeting.

Those who plan to participate may contact the meeting coordinator, LCDR Sarah Rodiño, by email at *Sarah.E.Rodino@uscg.mil,* or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509. Members of the public needing reasonable accommodation should advise LCDR Sarah Rodiño not later than February 9, 2022. Requests made after that date will be considered, but might not be possible to fulfill.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

**Emily A. Rose,**

*Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.*

[FR Doc. 2022–01963 Filed 1–31–22; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent of Waiver With Respect to Land; Rickenbacker International Airport, Columbus, Ohio

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA is considering a proposal to change approximately 328 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease and ultimate sale of airport property located at Rickenbacker International Airport, Columbus, Ohio. The aforementioned land is not needed for aeronautical use. The property is located southeast of the airfield and currently consists of vacant land, paved roadways, fencing and utilities. The land is proposed to be used to expand the Rickenbacker Global Logistics Park (RGLP) and all activities necessary to prepare the site as a Cargo Campus for development capable of accommodating growth in bulk warehouse/distribution facilities.

**DATES:** Comments must be received on or before March 3, 2022.

**ADDRESSES:** Documents are available for review by appointment at the FAA Detroit Airports District Office, Mark Grennell, Program Manager, 11677 South Wayne Road, Suite 107, Romulus, MI 48174, Telephone: (734) 229–2933/

[18] 17 CFR 200.30–3(a)(12).

Fax: (734) 229–2950 and the Columbus Regional Airport Authority, Mark Kelby, Airport Planner, 4600 International Gateway, Columbus, OH 43219, (614) 239–5014. Written comments on the Sponsor's request must be delivered or mailed to: Mark Grennell, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174, Telephone Number: (734) 229–2933/Fax: (734) 229–2950.

**FOR FURTHER INFORMATION CONTACT:** Mark Grennell, Program Manager, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174. Telephone Number: (734) 229–2933/Fax: (734) 229–2950.

**SUPPLEMENTARY INFORMATION:** In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The land was originally transferred from the United States of America by quitclaim deeds to the Rickenbacker Port Authority on March 30, 1984 and May 11, 1999, under the Surplus Property Act of 1944. On December 31, 2002, the Rickenbacker Port Authority transferred ownership of the airport to the Franklin County, Ohio Board of Commissioners. On the same day, the Franklin County, Ohio Board of Commissioners transferred ownership to the Columbus Municipal Airport Authority. The Columbus Municipal Airport Authority was re-structured to form the Columbus Regional Airport Authority on January 28, 2003. The land currently consists of vacant land, paved roadways, fencing, utilities, a small arms outdoor firing range and a former munitions site. The proposed future use of the land is for a cargo campus that will be capable of accommodating several industrial buildings ranging in size from 500,000 to 1,000,000 square feet. The Columbus Regional Airport Authority will receive fair market value for the initial lease and ultimate sale of this land.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Rickenbacker International Airport, Columbus, Ohio from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

**Description of 328.672 Acres**

Situated in the State of Ohio, Counties of Franklin and Pickaway, Township of Madison, lying in Sections 7 and 18, Township 10, Range 21 of the Congress Lands, and being part of 2,995.065 acre (Tract 1) as conveyed to Columbus Regional Airport Authority by deed of record in Instrument Number 200301020000768, records of the Recorder's Office, Franklin County, Ohio, also being a deed of record in Official Record 514, Page 2561, records of the Recorder's Office, Pickaway County, Ohio, and being more particularly described as follows:

Beginning at an angle point in the 2,995.065 acre tract at the northeasterly corner of Section 18 on the line between Franklin and Pickaway Counties;

Thence the following seven (7) courses and distances along the lines of said 2,995.065 acre (Tract 1):

1. South 03°55′27″ West, a distance of 2,644.31 feet, to a point;
2. North 86°24′01″ West, a distance of 437.75 feet, to a point;
3. North 06°36′41″ West, a distance of 402.20 feet, to a point;
4. North 01°05′17″ East, a distance of 750.00 feet, to a point;
5. North 86°24′43″ West, a distance of 550.00 feet, to a point;
6. South 03°35′17″ West, a distance of 1,145.00 feet, to a point;
7. North 86°24′01″ West, a distance of 2,156.03 feet, to a point;

Thence the following three (3) courses and distances across the said 2,995.065 acre tract:

1. North 44°30′28″ West, a distance of 2,197.96 feet, to a point;
2. North 45°29′32″ East, a distance of 4,510.96 feet, to a point;
3. South 44°25′27″ East, a distance of 789.72 feet, to a point on an easterly line of said 299.065 acre tract;

Thence the following four (4) courses and distances along the lines of said 2,995.065 acre (Tract 1):

1. South 03°53′50″ West, a distance of 516.90 feet, to a point;
2. South 43°04′26″ East, a distance of 1,208.90 feet, to a point;
3. South 23°57′33″ West, a distance of 325.08 feet, to a point;
4. South 86°11′07″ East, a distance of 536.00 feet, along the to the Point of Beginning, containing 328.672 acres, more or less, of which 88.312 acres lie in Franklin County and 240.360 acres lie in Pickaway County.

The bearings in the above description are based on the bearing of North 86°24′01″ West, for the southerly line of the 2,995.065 Acre (Tract 1) conveyed to Columbus Regional Airport Authority.

Issued in Romulus, Michigan, on January 27, 2022.

**Stephanie Swann,**

*Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 2022–02023 Filed 1–31–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No.: DOT–OST–2021–0160]**

## Transportation Research and Development Strategic Plan; Request for Information; Extension of Comment Period

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation (USDOT).

**ACTION:** Request for Information (RFI); extension of comment period.

**SUMMARY:** On December 30, 2021, the Office of the Assistant Secretary for Research and Technology (OST–R) of the U.S. Department of Transportation (USDOT) published in the **Federal Register** a request for information seeking input from the public to inform the development of USDOT's Research, Development, and Technology (RD&T) Strategic Plan for fiscal years (FY) 2022–2026. That request established a 30-day comment period closing on January 31, 2022. USDOT is extending the public comment period until March 4, 2022.

**DATES:** The comment period for the notice published on December 30, 2021 (86 FR 74429) is extended. The due date for submitting comments is March 4, 2022.

**ADDRESSES:** Written comments may be submitted by email or U.S. mail, identified by Docket Number DOT–OST–2021–0160. Respondents are encouraged to submit comments electronically to ensure timely receipt. Please include your name, title, organization, postal address, telephone number, and email address.

- *Electronic Submission:* Go to *http://www.regulations.gov.* Search by using Docket Number DOT–OST–2021–0160. Follow the instructions for sending comments.
- *Email: rdtplan@dot.gov.* Include the docket number in the subject line of the

message. Please include the full body of your comments in the text of the electronic message and as an attachment.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room PL–401, Washington, DC 20590–0001.

• *Instructions:* All submissions must include the agency name and docket numbers.

**FOR FURTHER INFORMATION CONTACT:** Jordan Katz, Community Planner, U.S. DOT Volpe Center, Telephone (617) 494–3783 or Email *rdtplan@dot.gov.*

**SUPPLEMENTARY INFORMATION:** USDOT published a request for information in the **Federal Register** on December 30, 2021 (86 FR 74429) seeking public input to inform the development of USDOT's RD&T Strategic Plan for FY 2022–2026. The public comment period is extended to March 4, 2022. All other information in the notice from December 30, 2021 remains the same.

Issued on January 27, 2022.

**Jordan Wainer Katz,**

*Community Planner.*

[FR Doc. 2022–02011 Filed 1–31–22; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Requesting Comments on Form 13997

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 13997, Validating Your TIN and Reasonable Cause.

**DATES:** Written comments should be received on or before April 4, 2022 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

**SUPPLEMENTARY INFORMATION:** The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

*Title:* Validating Your TIN and Reasonable Cause.

*OMB Number:* 1545–2144.

*Form Number:* Form 13997.

*Abstract:* Internal Revenue Code (IRC) section 6039E requires individuals to provide certain information with their application for a U.S. passport or with their application for permanent U.S. residence. Letter 4318 is sent to the individual when the taxpayer identification number (TIN) on the application is missing or invalid, informing the individual about the IRC provisions, proposed penalty, and instructions to correct the information on the application. Form 13997 is an attachment to the letter and is used to provide the IRS with a valid TIN, a written statement of reasonable cause, or an explanation from the individual as to why they don't have a TIN.

*Current Actions:* There is no change to the existing collection; however, the estimated time per respondent has been corrected.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and households.

*Estimated Number of Responses:* 2,000.

*Estimated Time per Respondent:* 1 hours, 5 minutes.

*Estimated Total Annual Burden Hours:* 2,160.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 27, 2022.

**Jon R. Callahan,**

*Tax Analyst.*

[FR Doc. 2022–01988 Filed 1–31–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Proposed Collection; Comment Request

**AGENCY:** Departmental Offices; Department of the Treasury.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions.

**DATES:** Written comments should be received on or before April 4, 2022 to be assured of consideration.

**ADDRESSES:** Direct all written comments on international capital transactions and positions to: Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 1050, 1500 Pennsylvania Avenue NW, Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*), or by telephone (cell: 202–923–0518).

Direct all written comments on foreign currency transactions and positions to: Christopher O'Brien, Department of the Treasury, Room 1328, 1500 Pennsylvania Avenue NW,

Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. O'Brien by email (*Christopher.O'Brien@treasury.gov*), or by telephone (202–622–2423).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on international capital transactions and positions should be directed to Mr. Wolkow, cell: 202–923–0518. Requests for additional information on foreign currency transactions and positions should be directed to Mr. O'Brien, 202–622–2423.

**SUPPLEMENTARY INFORMATION:**

*Title:* 31 CFR part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

*OMB Control Number:* 1505–0149.

*Abstract:* 31 CFR part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of International Affairs to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations.

*Current Actions:* No changes to recordkeeping requirements are proposed at this time.

*Type of Review:* Extension of a currently approved data collection.

*Affected Public:* Business or other for-profit organizations.

The forms prescribed by the Secretary and covered by this regulation, § 128.1(c), are Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3 (all 6 Bs, 1505–0016), CQ–1, CQ–2 (both Cs,1505–0024), D (1505–0199), S (1505–0001), SLT (1505–0235) and Treasury Foreign Currency Forms FC–1, FC–2, and FC–3 (all 3 FCs, 1505–0010).

*Estimated Number of Recordkeepers:* 2,063.

*Estimated Average Time per Respondent:* One-third hour per respondent per filing.

*Estimated Total Annual Burden Hours:* 6,993 hours, based on 20,980 filings per year.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the recordkeeping requirements in 31 CFR part 128.5 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Systems.*

**Christopher O'Brien,**

*Economic Research Analyst.*

[FR Doc. 2022–01981 Filed 1–31–22; 8:45 am]

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Part II

## Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Energy Conservation Standards for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 431**

**[EERE–2017–BT–STD–0017]**

**RIN 1904–AD92**

## Energy Conservation Program: Energy Conservation Standards for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems

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

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** In this notice of proposed rulemaking (NOPR), DOE proposes to establish new energy conservation standards for dehumidifying direct-expansion dedicated outdoor air systems (DX–DOASes) that are of equivalent stringency as the minimum levels specified in the amended American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 90.1 ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1'') when tested pursuant to the most recent applicable industry standard for this equipment. DOE has preliminarily determined that it lacks clear and convincing evidence to adopt standards more stringent than the levels specified in ASHRAE Standard 90.1. DOE also announces a public meeting via webinar to receive comment on these proposed standards and associated analyses and results.

**DATES:** DOE will hold a public meeting via webinar on Monday, February 28, 2022, from 1:00 p.m. to 4:00 p.m. See section VIII, ''Public Participation,'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

*Comments:* DOE will accept comments, data, and information regarding this NOPR no later than April 4, 2022.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before March 3, 2022.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0017, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *CommACHeatingEquipCat2017STD0017@ee.doe.gov.* Include docket number EERE–2017–BT–STD–0017 in the subject line of the message.

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

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 2019 (COVID–19) pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

*Docket:* The docket 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, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0017.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VIII for information on how to submit comments through *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy following the instructions at *www.reginfo.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public webinar, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE proposes to incorporate by reference the following industry standards into part 429:

Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 920–2020 (I–P), ''2020 Standard for Performance Rating of Direct Expansion-Dedicated Outdoor Air System Units,'' approved February 4, 2020.

American National Standards Institute (ANSI)/AHRI Standard 1060–2018, ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' approved 2018.

Copies of AHRI Standard 920–2020 (I–P), and ANSI/AHRI Standard 1060–2018 can be obtained from the Air-conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: *www.ahrinet.org.*

For a further discussion of these standards, see section VII.L of this document.

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## I. Synopsis of the Proposed Rule

Title III, Part C [1] of the Energy Policy and Conservation Act, as amended (EPCA),[2] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes dehumidifying direct-expansion dedicated outdoor air systems (DX–DOASes), the subject of this proposed rulemaking.

EPCA requires DOE to amend the existing Federal energy conservation standard for certain types of listed commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the updated efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii))

If DOE adopts as a uniform national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B))

ASHRAE officially released the 2016 edition of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2016) on October 26, 2016, which for the first time created separate equipment classes for DX–DOASes with corresponding standards, thereby triggering DOE's above referenced obligations pursuant to EPCA to either: (1) Establish uniform national standards for DX–DOASes at the minimum levels specified in the amended ASHRAE Standard 90.1; or (2) adopt more stringent standards based on clear and convincing evidence that adoption of such standards would produce significant additional energy savings and be technologically feasible and economically justified. ASHRAE Standard 90.1–2016 set minimum efficiency levels using the integrated seasonal moisture removal efficiency (ISMRE) metric for all DOAS classes and the integrated seasonal coefficient of performance (ISCOP) metric for air-source heat pump and water-source heat pump DOAS classes. ASHRAE Standard 90.1–2016 specifies that both metrics are measured in accordance with Air-conditioning, Heating, and Refrigeration Institute (AHRI) Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (AHRI 920–2015).[3] Subsequently, AHRI took to revise AHRI 920.

In October 2019, ASHRAE officially released the 2019 edition of ASHRAE Standard 90.1 (ASHRAE Standard 90.1–2019). ASHRAE Standard 90.1 did not update the energy efficiency levels for DX–DOASes established in ASHRAE Standard 90.1–2016. On February 4, 2020 AHRI officially released the 2020 edition of AHRI 920 (AHRI 920–2020), which addresses a number of issues with the prior test procedure and provides an updated ISMRE metric (*i.e.,* ISMRE2) and an updated ISCOP metric (*i.e.,* ISCOP2).

In accordance with the EPCA provisions discussed, DOE proposes new energy conservation standards for DX–DOASes. The proposed standards, which are expressed in terms of ISMRE2 for all DX–DOAS classes in dehumidification mode, and ISCOP2 for heat pump DX–DOAS classes in heating mode, are shown in Table I.1. DOE has tentatively determined that the proposed standards, which are expressed in terms of ISMRE2 and

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[2] 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).

[3] AHRI 920–2015 additionally references ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency'' (ASHRAE Standard 198–2013), as the method of test for DX–DOAS units.

ISCOP2, are of equivalent stringency as the standards in ASHRAE Standard 90.1–2016 (and ASHRAE Standard 90.1–2019), which are expressed in terms of ISMRE and ISCOP. DOE proposes that the standards, if adopted, would apply to all DX–DOASes listed in Table I.1 manufactured in, or imported into, the United States starting on the date 18 months following the effective date of a final rule adopting such standards.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR DX–DOASES

| Equipment type | Subcategory | Efficiency level |
|---|---|---|
| Dehumidifying direct-expansion dedicated outdoor air systems. | (AC)—Air-cooled without ventilation energy recovery systems. | ISMRE2 = 3.8. |
| | (AC w/VERS)—Air-cooled with ventilation energy recovery systems. | ISMRE2 = 5.0. |
| | (ASHP)—Air-source heat pumps without ventilation energy recovery systems. | ISMRE2 = 3.8, ISCOP2 = 2.05. |
| | (ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems. | ISMRE2 = 5.0, ISCOP2 = 3.20. |
| | (WC)—Water-cooled without ventilation energy recovery systems. | ISMRE2 = 4.7. |
| | (WC w/VERS)—Water-cooled with ventilation energy recovery systems. | ISMRE2 = 5.1. |
| | (WSHP)—Water-source heat pumps without ventilation energy recovery systems. | ISMRE2 = 3.8, ISCOP2 = 2.13. |
| | (WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems. | ISMRE2 = 4.6, ISCOP2 = 4.04. |

DOE has tentatively determined that, based on the information presented and its analyses, there is not clear and convincing evidence that more stringent efficiency levels for this equipment would result in a significant additional amount of energy savings, is technologically feasible and economically justified. Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified. DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more stringent energy conservation standards (*i.e.,* whether more stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). However, as discussed in the sections, III.D.1.a., III.D.1.b., III.D.3.a., and III.D.3.b of this NOPR, due to the lack of available market and performance data, DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty. As such, DOE is not proposing standards at levels more stringent than those specified in ASHRAE Standard 90.1–2016 (and ASHRAE Standard 90.1–2019).

## II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for DX–DOASes.

### *A. Authority*

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. As discussed in the following section, this includes Unitary DOASes and, more specifically, dehumidifying Unitary DOASes, which are the subject of this notice. (42 U.S.C. 6311(1)(B)–(D))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Additionally, DOE is to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE/IES Standard 90.1, and at a minimum, every six 6 years. (42 U.S.C. 6313(a)(6)(A)–(C))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6314) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C.

6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6316(b)(2)(D))

ASHRAE Standard 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively ''ASHRAE equipment''). For each type of listed equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii))

In deciding whether a more-stringent standard is economically justified, under either the provisions of 42 U.S.C. 6313(a)(6)(A) or 42 U.S.C. 6313(a)(6)(C), DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

In relevant part, subparagraph (B) specifies that: (1) In making a determination of economic justification, DOE must consider, to the maximum extent practicable, the benefits and burdens of an amended standard based on the seven criteria described in EPCA; (2) DOE may not prescribe any standard that increases the energy use or decreases the energy efficiency of a covered product; and (3) DOE may not prescribe any standard that interested persons have established by a preponderance of evidence is likely to result in the unavailability in the United States of any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(ii)–(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)))

Unitary DOASes (and DX–DOASes) had not previously been addressed in DOE rulemakings and are not currently subject to Federal test procedures or energy conservation standards.

*B. Background*

EPCA defines ''commercial package air conditioning and heating equipment'' as air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application.[4] (42 U.S.C. 6311(8)(A); 10 CFR 431.92) Industry standards generally describe unitary central air conditioning equipment as one or more factory-made assemblies that normally include an evaporator or cooling coil and a compressor and condenser combination. Units equipped to also perform a heating function are included as well.[5] Unitary DOASes provide conditioning of outdoor ventilation air using a refrigeration cycle (which normally consists of a compressor, condenser, expansion valve, and evaporator),[6] and therefore, DOE has initially concluded that Unitary DOASes are a category of commercial package air conditioning and heating equipment subject to EPCA.

From a functional perspective, Unitary DOASes operate similarly to other categories of commercial package air conditioning and heat pump equipment, in that they provide conditioning using a refrigeration cycle. Unitary DOASes provide ventilation and conditioning of 100-percent outdoor air to the conditioned space, whereas for typical commercial package air conditioners that are central air conditioners, outdoor air makes up only a small portion of the total airflow (usually less than 50 percent). Unitary DOASes are typically installed in addition to a local, primary cooling or heating system (*e.g.,* commercial unitary air conditioner, variable refrigerant flow system, chilled water system, water-source heat pumps)—the Unitary DOAS conditions the outdoor ventilation air, while the primary system provides cooling or heating to balance building shell and interior loads and solar heat gain.

An industry consensus test standard has been established for a subset of Unitary DOASes, dehumidifying Unitary DOASes (DX–DOASes). On July 7, 2021, DOE published a NOPR proposing definitions, a new Federal test procedure, energy efficiency metrics, and representation requirements for DX–DOASes[7] (the ''July 2021 Test Procedure NOPR''). 86 FR 36018.

1. ASHRAE Standard 90.1 Efficiency Levels for DX–DOASes

As first established in ASHRAE Standard 90.1–2016, ASHRAE Standard 90.1–2019 specifies 14 separate equipment classes for DX–DOASes and sets minimum efficiency levels using

[4] EPCA further classifies ''commercial package air conditioning and heating equipment'' into categories based on cooling capacity (*i.e.,* small, large, and very large categories). (42 U.S.C. 6311(8)(B)–(D); 10 CFR 431.92) ''Small commercial package air conditioning and heating equipment'' means equipment rated below 135,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(B); 10 CFR 431.92) ''Large commercial package air conditioning and heating equipment'' means equipment rated: (i) At or above 135,000 Btu per hour; and (ii) below 240,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(C); 10 CFR 431.92) ''Very large commercial package air conditioning and heating equipment'' means equipment rated: (i) At or above 240,000 Btu per hour; and (ii) below 760,000 Btu per hour (cooling capacity). (42 U.S.C. 6311(8)(D); 10 CFR 431.92) DOE generally refers to these broad classifications as ''equipment types.''

[5] *See* American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings.''

[6] Other types of dedicated outdoor air systems are available that do not utilize direct expansion (*e.g.,* units that use chilled water, rather than refrigerant, as the heat transfer medium).

[7] In the July 2021 Test Procedure NOPR, DOE refers to Unitary DOASes and DX–DOASes as DX–DOASes and DDX–DOASes, respectively. DOE has recently published a supplemental test procedure NOPR, in which DOE proposes to use the Unitary DOAS and DX–DOAS terminology. This NOPR uses the Unitary DOAS and DX–DOAS terminology, which is consistent with the supplemental test procedure NOPR.

the integrated seasonal moisture removal efficiency (ISMRE) metric for all DX–DOAS classes and also the integrated seasonal coefficient of performance (ISCOP) metric for air-source heat pump and water-source heat pump DX–DOAS classes. ASHRAE Standard 90.1–2019 specifies that both metrics are to be measured in accordance with ANSI/AHRI Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (ANSI/AHRI 920–2015). ANSI/AHRI 920–2015 specifies the method for testing DX–DOASes, in part, through a reference to ANSI/ASHRAE Standard 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency'' (ANSI/ASHRAE 198–2013). The energy efficiency standards specified in ASHRAE Standard 90.1 are based on ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013, and these standards are shown in Table II.1.

TABLE II.1—ASHRAE STANDARD 90.1 EFFICIENCY LEVELS FOR DX–DOASES

| Equipment class | Energy efficiency levels |
|---|---|
| Air-cooled: Without energy recovery | 4.0 ISMRE. |
| Air-cooled: With energy recovery | 5.2 ISMRE. |
| Air-source heat pumps: Without energy recovery | 4.0 ISMRE, 2.7 ISCOP. |
| Air-source heat pumps: With energy recovery | 5.2 ISMRE, 3.3 ISCOP. |
| Water-cooled: Cooling tower condenser water, without energy recovery | 4.9 ISMRE. |
| Water-cooled: Cooling tower condenser water, with energy recovery | 5.3 ISMRE. |
| Water-cooled: Chilled water, without energy recovery | 6.0 ISMRE. |
| Water-cooled: Chilled water, with energy recovery | 6.6 ISMRE. |
| Water-source heat pumps: Ground-source, closed loop, without energy recovery | 4.8 ISMRE, 2.0 ISCOP. |
| Water-source heat pumps: Ground-source, closed loop, with energy recovery | 5.2 ISMRE, 3.8 ISCOP. |
| Water-source heat pumps: Ground-water source, without energy recovery | 5.0 ISMRE, 3.2 ISCOP. |
| Water-source heat pumps: Ground-water source, with energy recovery | 5.8 ISMRE, 4.0 ISCOP. |
| Water-source heat pumps: Water-source, without energy recovery | 4.0 ISMRE, 3.5 ISCOP. |
| Water-source heat pumps: Water-source, with energy recovery | 4.8 ISMRE, 4.8 ISCOP. |

2. Update to the Industry Metric

As discussed in the July 2021 Test Procedure NOPR, AHRI revised AHRI 920 and published an updated version on February 4, 2020, AHRI Standard 920–2020 (I–P), ''Performance Rating of Direct Expansion Dedicated Outdoor Air System Units'' (AHRI 920–2020). 86 FR 36018, 36026. The updates to AHRI 920 include certain revised test conditions and weighting factors for ISMRE and ISCOP, which were redesignated as ISMRE2 and ISCOP2, respectively. These revisions result in the ISMRE2 and ISCOP2 metrics that more accurately reflect the actual energy use for DX–DOASes, improve the repeatability and reproducibility of the test methods, and also reduce testing burden compared to ISMRE and ISCOP. For example, the revised weighting factors reflect the number of hours per year for each test condition, and the revised test conditions are based on weather data from Typical Meteorological Year 2 (TMY2) [8] provided by the National Renewable Energy Laboratory. 86 FR 36018, 36029. A detailed discussion of the summary of the AHRI 920 updates is provide in the July 2021 Test Procedure NOPR. 86 FR 36018, 36026–36027.

The July 2021 Test Procedure NOPR proposes to add a new appendix B to subpart F of part 431, titled ''Uniform test method for measuring the energy consumption of dehumidifying direct expansion-dedicated outdoor air systems,'' that would include the new test procedure requirements for DX–DOASes. 86 FR 36018, 36022. The proposed appendix B test procedure for DX–DOASes incorporates by reference AHRI Standard 920–2020, the most recent version of the test procedure recognized by ASHRAE Standard 90.1 for DX–DOASes, and the relevant industry standards referenced therein. *Id.*

The amendments adopted in AHRI 920–2020 result in changes to the measured efficiency metrics as compared to the results under ANSI/AHRI 920–2015, which as noted above, is the test procedure used to measure DX–DOAS efficiency levels in Standard 90.1–2016 and 90.1–2019. In the July 2021 Test Procedure NOPR DOE noted that it will address any potential differences in the measured energy efficiency under the most recent industry test procedure as compared to the industry test procedure on which the ASHRAE Standard 90.1 levels are based at such time as DOE evaluates the ASHRAE Standard 90.1 levels for DX–DOASes (*i.e.,* by developing an appropriate ''crosswalk'', as necessary). 86 FR 36018, 36027.

Accordingly, because the measured energy efficiency metrics in the July 2021 Test Procedure NOPR are different from those used by the ASHRAE 90.1–2019, DOE has developed a crosswalk analysis for these proposed standards, which translates the existing ASHRAE Standard 90.1–2019 ISMRE and ISCOP standards to the new metrics proposed in the July 2021 Test Procedure NOPR. The crosswalk analysis is discussed in detail in section IV of this document.

3. History of Standards Rulemaking for DX–DOASes

On September 11, 2019—prior to the publication of AHRI 920–2020 and the July 2021 Test Procedure NOPR proposing to incorporate by reference the updated AHRI 920–2020—DOE published an analysis of new industry standards for DX–DOASes in a notice of data availability and request for information (the September 2019 NODA/RFI).[9] 84 FR 48006. The September 2019 NODA/RFI solicited information from the public to help DOE determine whether new standards for DX–DOASes at levels more stringent than specified in ASHRAE Standards 90.1 would result in significant energy savings and whether such standards would be technologically feasible and economically justified. The September 2019 NODA/RFI also presented incremental efficiency levels for air-

[8] TMY stands for ''typical meteorological year'' and is a widely used type of data available through the National Solar Radiation Database. TMYs contain one year of hourly data that best represents median weather conditions over a multiyear period. The datasets have been updated occasionally, thus TMY, TMY2, and TMY3 data are available. *See nsrdb.nrel.gov/about/tmy.html* (last accessed April 28, 2021).

[9] The September 2019 NODA/RFI also requested comment and data regarding standards for computer room air conditioners, which are being addressed in a separate rulemaking.

cooled DX–DOASes (based on the ANSI/AHRI 920–2015 metrics, ISMRE and ISCOP) and annual unit energy consumption estimates for these levels.

DOE received five comments relevant to DX–DOASes in response to the September 2019 NODA/RFI from the interested parties listed in Table II.2.

TABLE II.2—SEPTEMBER 2019 NODA/RFI WRITTEN COMMENTS

| Commenter(s) | Reference in this NOPR | Commenter type |
|---|---|---|
| 7 AC Technologies | 7AC | Manufacturer. |
| Air-conditioning, Heating, & Refrigeration Institute | AHRI | Trade Association. |
| Ingersoll Rand Trane | Trane | Manufacturer. |
| Pacific Gas and Electric Co., San Diego Gas and Electric Co., Southern California Edison | CA IOUs | Utilities. |
| Pano Koutrouvelis | DU | Individual. |

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[10]

*C. Timing of ASHRAE Test Procedures and Appendix A*

Section 8(d) of 10 CFR part 430, subpart C, appendix A (''appendix A'') establishes a general principal that new test procedures and amended test procedures that impact measured energy use or efficiency should be finalized prior to the close of the comment period for a NOPR proposing new or amended energy conservation standards. DOE also noted, however, that a one-size-fits-all requirement to finalize new or amended test procedures a set number of days before issuing a proposed standard does not allow DOE to account for the particular circumstances of a rulemaking and may result in unnecessary delays. 86 FR 70920. In this instance, ASHRAE 90.1–2016 (*i.e.,* the standard which triggered DOE to establish uniform national standards for DX–DOASes) was published over six years ago, however EPCA requires DOE to establish such standards no later than 18 months following the publication of ASHRAE 90.1–2016. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) DOE is proposing energy conservation standards for DX–DOASes before the current test procedure rule is finalized to accelerate DOE's efforts to meet its EPCA obligation to establish energy conservation standards. In addition, DOE notes that DOE has proposed in the July 2021 Test Procedure NOPR to incorporate by reference AHRI 920–2020, which was published roughly two years ago. Given DOE's obligation to adopt the relevant industry test procedure unless DOE determines, supported by clear and convincing evidence, that it does not produce results which reflect energy use during a representative average use cycle or is unduly burdensome to conduct (42 U.S.C. 6314(a)(2–4)), stakeholders would have had a reasonable level of confidence of the test procedure DOE would use as the basis of the proposed efficiency levels, and finalization of the test procedure rulemaking is unlikely to affect that understanding.

**III. General Discussion**

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

*A. Scope of Coverage*

As discussed in the September 2019 NODA/RFI, the inclusion of energy efficiency levels in ASHRAE Standard 90.1–2016 for DX–DOASes [11] triggered DOE to consider energy conservation standards for this type of equipment. 84 FR 48006, 48010.

As discussed in the July 2021 Test Procedure NOPR, Unitary DOASes meet the EPCA definition for ''commercial package air conditioning and heating equipment,'' and, thus, are to be considered as a category of that covered equipment (42 U.S.C. 6311(8)(A)), and the upper capacity limit of commercial package air conditioning subject to the DOE test procedures is 760,000 Btu per hour, based on the definition of ''very large commercial package air conditioning and heating equipment.'' (42 U.S.C. 6311(8)(D)) 86 FR 36018, 36023–36024. In response to the September 2019 NODA/RFI, AHRI commented that it supported a maximum capacity for regulated products that is equivalent to 760,000 Btu per hour at Standard Rating Condition A in AHRI 920. (AHRI, No. 7, p. 9) In the July 2021 Test Procedure NOPR DOE noted that for DX–DOASes, AHRI 920–2020 does not provide a method for determining capacity in terms of Btu per hour, but instead, it specifies a determination of capacity in terms of moisture removal capacity (MRC). 86 FR 36018, 36024. DOE is proposing to translate the upper capacity for coverage of commercial package air conditioning and heating units established in EPCA (*i.e.,* 760,000 Btu per hour) from Btu per hour to MRC for DX–DOASes. *Id.* The equivalent upper capacity limit proposed for DX–DOASes is 324 lbs moisture/hr at Standard Rating Condition A in AHRI 920. *Id.*

In this NOPR DOE proposes that the proposed energy conservation standards would apply to DX–DOASes with an MRC less than or equal to 324 lbs moisture/hr. This scope of coverage would be consistent with the definitions of ''Unitary DOAS'' and ''DX–DOAS'' proposed in the July 2021 Test Procedure NOPR:

(1) ''Direct expansion-dedicated outdoor air system, or Unitary DOAS, means a category of small, large, or very large commercial package air-conditioning and heating equipment which is capable of providing ventilation and conditioning of 100-percent outdoor air or marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability'' and

(2) ''Dehumidifying direct expansion-dedicated outdoor air system, or DX–DOAS, means a direct expansion-dedicated outdoor air system that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 (incorporated by reference, see § 431.95) with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 lb/h.''

86 FR 36018, 36057.

[10] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for DX–DOASes. (Docket No. EERE–2017–BT–STD–0017, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[11] The September 2019 NODA/RFI used the term ''DOAS''. *See generally* 84 FR 48006.

The CA IOUs requested that DOE clarify whether split-system DX–DOASes (with remote condenser units) are included within the scope of coverage, stating that AHRI 920 applies to both ''single package'' and ''remote condenser'' DX–DOASes. (CA IOUs, No. 6, p. 4) DOE is proposing to include split-system DX–DOASes within the scope of coverage, consistent with the scope of the ASHRAE Standard 90.1 minimum efficiency levels [12] for DX–DOASes and AHRI 920–2020. Just as split systems are included in the scope of other categories of commercial package air-conditioning and heating equipment (*e.g.,* computer room air conditioners, variable-refrigerant flow multi-split systems) DOE is proposing to include them in the scope for DX–DOASes. (*See,* for example, the definitions of ''Computer Room Air Conditioner'' and ''Variable Refrigerant Flow Multi-Split Air Conditioner'' at 10 CFR 431.92.)

*B. Equipment Classes*

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards.

ASHRAE Standard 90.1–2016 created 14 separate equipment classes for DX–DOASes. EPCA generally requires DOE to establish energy conservation standards for commercial package air-conditioning and heating equipment at the minimum efficiencies set forth in ASHRAE Standard 90.1. (*See* 42 U.S.C. 6313(a)(6)(A)) DOE is proposing to establish eight DX–DOAS equipment classes that correspond to eight of the 14 classes in ASHRAE Standard 90.1—this proposal, including the omission of the remaining six classes, is discussed in the following paragraphs.

14 separate equipment classes (indicated as ''equipment types'' and ''subcategories'') were created by ASHRAE Standard 90.1–2016 and maintained in ASHRAE Standard 90.1–2019 (see Table II.1). These are differentiated by condensing type (air-cooled, air-source heat pump, water-cooled, and water-source heat pump). ASHRAE Standard 90.1 does not delineate classes for DX–DOASes based on capacity. AHSRAE Standard 90.1 does separate classes into those with ventilation energy recovery systems (VERS)—often referred to as simply ''energy recovery''—and those without VERS. The July 2021 Test Procedure NOPR proposed to include a definition for VERS at 10 CFR 431.92 that reads, ''Ventilation energy recovery system, or VERS, means a system that pre-conditions outdoor ventilation air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.'' 86 FR 36018, 36057.

The ASHRAE Standard 90.1 requirements for water-cooled condensing units are divided into two application conditions: Cooling tower condenser water and chilled water. The requirements for water-source heat pump units are divided into three application conditions: Ground-source closed loop, ground-water-source, and water-source. However, these application rating conditions are labeled as ''subcategories'' in ASHRAE Standard 90.1–2019. Moreover, as discussed more below, AHRI 920–2020, the update to the industry test procedure upon which the DX–DOAS efficiency ratings in Standard 90.1 are based, but which has not yet been incorporated into Standard 90.1, identifies some of these application rating conditions as optional for purposes of the test procedure.

The EPCA definition for ''commercial package air conditioning and heating equipment'' does not include ground-water-source equipment (*see* 42 U.S.C. 6311(8)(A)), therefore DOE is not considering the ground-water-source application condition for its regulated equipment classes. In response to the September 2019 NODA/RFI, the CA IOUs commented in support of the exclusion of ground-water-source equipment from the regulated equipment classes. (CA IOUs, No. 6, p. 4)

In the September 2019 NODA/RFI, DOE requested comment on the approach of evaluating water-cooled DX–DOASes as a single category (with classes still disaggregated by those models with and without VERS) using the specified cooling tower condenser water entering temperature conditions, and evaluating water-source heat pump DX–DOASes as a single category (with classes still disaggregated by those models with and without VERS) using only the specified water-source inlet fluid temperature conditions. 84 FR 48006, 48021–48022. As part of its analysis for the September 2019 NODA/RFI, DOE considered whether to evaluate separately the two water-cooled DOAS classes or whether the water-cooled cooling tower condenser water classes and the water-cooled chilled water classes should be grouped together and represented as water-cooled DOASes (with classes still disaggregated by those models with energy recovery and those models without energy recovery). DOE also considered whether to evaluate separately the two remaining water-source heat pump classes or whether the water-source heat pump ground-source closed loop classes and the water-source heat pump water-source classes should be grouped together and represented as water-source heat pump DOASes (with classes still disaggregated by those models with energy recovery and those models without energy recovery). 84 FR 48021.

Based on DOE's review of equipment specifications of water-cooled and water-source heat pump DOASes and comments on the concurrent test procedure evaluation, DOE determined that most water-cooled DOASes use the same equipment for different applications and that water-source heat pump DOASes use the same equipment design for different applications. DOE stated that it is not aware of water-cooled DOAS units that are exclusively designed for use with cooling tower or chilled water. Likewise, DOE stated that it is not aware of water-source heat pump DOAS units that are exclusively designed for use with water-source or ground-source closed-loop applications. It is also DOE's understanding that ASHRAE Standard 90.1 efficiency levels are different across comparable classes within the water-cooled condensing type (*e.g.,* comparing energy recovery classes to energy recovery classes) and across comparable classes within the water-source condensing type because of the different test/application conditions, as opposed to equipment design differences. For example, when testing a DOAS to obtain a water-cooled chilled water DOAS rating, a colder condenser water entering temperature is used than when testing it to obtain a water-cooled cooling tower DOAS rating, reflecting the typically cooler temperature of chilled water loops in commercial buildings, as compared with cooling tower water loops. *Id.*

As a result, in the September 2019 NODA/RFI, DOE combined the water-cooled cooling tower condenser water classes and the water-cooled chilled water classes and evaluated water-cooled DOASes as a single set of classes (with classes disaggregated by those models with energy recovery and those models without energy recovery) that is subject to a single set of operating conditions. DOE also combined the water-source heat pump ground-source closed loop classes and the water-source heat pump water-source classes and

[12] Tables 6.8.1–13 and 6.8.1–14 of ASHRAE Standard 90.1–2019 indicates that it provides minimum efficiency levels for ''Electrically Operated DX–DOAS Units, Single-Package and Remote Condenser.''

evaluated the water-source heat pump DOASes as a single set of classes (with classes still disaggregated by those models with energy recovery and those models without energy recovery) that is subject to a single set of operating conditions. AHRI, the CA IOUs, and Trane commented in support of this proposed approach. (AHRI, No. 7, p. 9; CA IOUs, No. 6, p. 4; Trane, No. 5, p. 3)

In the July 2021 Test Procedure NOPR, DOE noted that AHRI 920–2020 still provides separate inlet fluid rating conditions for the different water-cooled and water-source heat pump DX–DOAS applications but identifies the chilled water conditions and ground-source closed loop conditions as optional application rating conditions. 86 FR 36018, 36033. On this topic, AHRI commented that in almost all cases, a single design is used for water-cooled equipment used with cooling tower water and chilled water, and, similarly, a single design is used for all of the water-source applications, adding that for each of these cases, a single set of water conditions can be used for testing. *Id.* Section 2.2.1(c)(i) of the proposed appendix B test procedure specifies the use of the ''Condenser Water Entering Temperature, Cooling Tower Water'' conditions for rating water-cooled DX–DOASes and the ''Water-Source Heat Pumps'' conditions for rating water-source heat pump DX–DOASes. 86 FR 36018, 36060. DOE stated in the July 2021 Test Procedure NOPR that it would consider establishing standards and the corresponding certification requirements in the context of these inlet fluid temperature conditions. 86 FR 36018, 36033.

Based on its review and feedback from stakeholders, DOE has determined that separate equipment classes for each one of these subcategories in the proposed standards is not necessary, and that the 8 proposed equipment classes are most representative of DX–DOAS equipment and rating applications in the field. DOE understands that the water-cooled equipment ''subcategories'' in ASHRAE Standard 90.1–2019 are meant to represent different application requirements for the same equipment, and thus DOE's proposed equipment class structure does not split water-cooled equipment into cooling tower water and chilled water subcategories. As proposed, all water-cooled equipment would be rated to the cooling tower water conditions, and standards would be established for water-cooled DX–DOASes with and without VERS. Similarly, the equipment class structure DOE is proposing does not split water-source heat pump equipment into the three subcategories in ASHRAE Standard 90.1–2019. Because of the statutory exclusion of ground-water-source equipment and because ground-source closed loop conditions are optional to test to in AHRI 920–2020, all water-source heat pump equipment would be rated to the water-source heat pump water conditions, and standards would be established for water-source heat pump DX–DOASes with and without VERS. This approach is consistent with other commercial package air conditioning and heating equipment. For example, water-source heat pumps include application test conditions for water-loop, ground-water, and ground-loop heat pumps, but DOE only requires that equipment be rated using the water-loop conditions (see Table 3 to 10 CFR 431.97). This approach avoids testing under multiple application conditions for a single equipment design. In addition, even if tested at different application conditions because the DOAS equipment uses a single design, it is expected that the relative ranking of equipment efficiency would be the same.

7AC commented that DX–DOASes with liquid desiccant heat exchangers (LDHXs) and variable-speed compressors may achieve high ISMRE efficiencies and recommended the addition of a new category with a minimum ISMRE of 7 that covers packaged units with and without exhaust air. (7AC, No. 4, p. 1) DOE understands that liquid-to-air transfer membranes can improve dehumidification efficiency when coupled with standard air conditioners. This technology uses porous membranes with liquid desiccants to absorb water vapor from the supply air stream. In its review of LDHX DX–DOASes, DOE has initially determined that this equipment would be covered under the definition of ''relief-air-cooled DX–DOAS'' in Section 3.6.2 of AHRI 920–2020 (which is incorporated into section 2.2.1(a) of the proposed appendix B test procedure) due to the way in which building return air is typically used to regenerate the liquid desiccant and cool the condenser in the refrigeration cycle. This definition specifically classifies relief-air-cooled units under the air-cooled equipment category. Furthermore, DX–DOASes with exhaust air streams are generally also included within the air-cooled equipment category demarcated in AHRI 920–2020, thus DOE is not proposing to create a separate equipment class for LDHX DX–DOASes or DX–DOASes with exhaust air.

DOE is proposing energy conservation standards for eight DX–DOASes equipment classes, consistent with the classes provided in ASHRAE Standard 90.1 as discussed above and shown in Table III.1.

TABLE III.1—PROPOSED EQUIPMENT CLASSES FOR DX–DOASES

| Equipment class in ASHRAE Standard 90.1 | Proposed equipment class in Federal Energy Conservation Standards |
|---|---|
| Air-cooled: Without energy recovery | (AC)—Air-cooled without ventilation energy recovery systems. |
| Air-cooled: With energy recovery | (AC w/VERS)—Air-cooled with ventilation energy recovery systems. |
| Air-source heat pumps: Without energy recovery | (ASHP)—Air-source heat pumps without ventilation energy recovery systems. |
| Air-source heat pumps: With energy recovery | (ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems. |
| Water-cooled: Cooling tower condenser water, without energy recovery | (WC)—Water-cooled without ventilation energy recovery systems. |
| Water-cooled: Cooling tower condenser water, with energy recovery | (WC w/VERS)—Water-cooled with ventilation energy recovery systems. |
| Water-source heat pumps: Water-source, without energy recovery | (WSHP)—Water-source heat pumps without ventilation energy recovery systems. |
| Water-source heat pumps: Water-source, with energy recovery | (WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems. |

Issue–1: DOE requests comment on the proposed eight equipment classes for energy conservation standards of DX–DOASes.

*C. Test Procedure*

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product.

DOE does not currently have test procedures or energy conservation standards established for DX–DOASes. In response to the September 2019 NODA/RFI, AHRI indicated that it strongly agreed with DOE's tentative conclusion that DOE's existing test procedures are not appropriate for DX–DOAS units. (AHRI, No. 7, p. 7)

ASHRAE Standard 90.1–2019 references ANSI/AHRI 920–2015, which relies on the metrics of ISMRE and ISCOP, and the standards for DX–DOASes in ASHRAE Standard 90.1–2019 are in terms of ISMRE and ISCOP. ANSI/AHRI 920–2015 was superseded with the publication of AHRI 920–2020, which relies on the updated metric ISMRE2 and ISCOP2.

The July 2021 Test Procedure NOPR proposes a new Federal test procedure for DX–DOASes that would incorporate AHRI 920–2020, which is the most recent version of the test procedure recognized by ASHRAE Standard 90.1 for DX–DOASes. 86 FR 36018, 36022. The proposed test procedure incorporates AHRI 920–2020 in its entirety, with certain minor clarifications DOE has preliminarily determined would be consistent with the industry test procedure. 86 FR 36018, 36047. AHRI 920–2020 specifies Standard Rating Conditions (*i.e.,* controlled operating conditions) with instructions for instrumentation, test set-up, tolerances, method of test, and calculations of capacity and efficiency. The proposed DOE test procedure would establish ISMRE2 as the dehumidification efficiency metric for all DX–DOASes and ISCOP2 as the heating efficiency metric for heat pump DX–DOASes. 86 FR 36018, 36027–36029. DOE is proposing to define ISMRE2 and ISCOP2 consistent with AHRI 920–2020. *Id.*

AHRI commented that, among other things, the current version of AHRI 920 transitions the efficiency metrics for DX–DOASes from ISMRE and ISCOP to ISMRE2 and ISCOP2. AHRI stated that two major differences between ISMRE and ISMRE2 are: With the new metric, DX–DOASes will no longer be required to reheat conditioned air to space-neutral conditions (70–75 °F supply air), and excess dehumidification beyond the design supply air dew point is no longer credited at part-load conditions. AHRI commented that the heating metric changes are similar: The heating coefficient of performance is now determined at the staging that most closely provides a supply air temperature within the allowable range. AHRI also noted that two new application rating metrics were added in AHRI 920–2020: $ISMRE2_{70}$ and $COP_{DOAS,x}$. Additionally, AHRI commented that new provisions have been included in AHRI 920–2020 for the testing and performance calculations of DX–DOASes with VERS. (AHRI, No. 7, p. 8–9)

The CA IOUs raised the concern that a dehumidification efficiency metric may not be appropriate for DX–DOASes based on an analysis showing that, on a national shipment-weighted basis, the outdoor air dew point is above 55 °F [13] only 36.7 percent of the time; therefore, the CA IOUs suggested that DOE consider adjustments to the DX–DOAS test procedure that contribute to a standard that reflects sensible cooling and/or fan-only ventilation conditions. The CA IOUs did not dispute that the primary use-case of a DX–DOAS system is to cool and dehumidify outdoor air, however they claim not all installation locations will have dehumidification requirements as aggressive as the tested conditions required for an ISMRE rating. (CA IOUs, No. 6, p. 6)

DOE addressed this subject in the July 2021 Test Procedure NOPR (*see* 86 FR 36027). In particular, DOE received comments from AHRI stating that DX–DOASes are installed with separate complementary sensible-cooling-only systems that provide cooling to address the interior loads, and that adding sensible cooling to the metric for DX–DOAS would skew efficiency values toward the non-primary function of the DX–DOAS. This focus of DX–DOAS performance on dehumidification loads supports DOE's proposal to adopt the ISMRE2 dehumidification efficiency metric in AHRI 920–2020. 86 FR 36018, 36027. Nevertheless, the sensible cooling provided by a DX–DOAS unit may be valuable in many applications because it reduces the cooling that must be provided by interior cooling systems, especially at high outdoor temperatures. DOE may consider in a future rulemaking whether the efficiency metric should be revised to include sensible cooling; however, EPCA prescribes that the test procedures for commercial package air conditioning and heating equipment must be those generally accepted industry testing procedures or rating procedures developed or recognized by industry as referenced in ASHRAE Standard 90.1 (*i.e.,* AHRI 920 for DX–DOASes). (42 U.S.C. 6314(a)(4)(A))

The July 2021 Test Procedure NOPR discusses major updates to the AHRI 920 test procedure, as well as the efficiency metrics, in depth. 86 FR 36018, 36025–36045. DOE is addressing comments regarding specific aspects of the proposed test procedure in the concurrent test procedure rulemaking.

In this NOPR, DOE is proposing to establish energy conservation standards for DX–DOASes in terms of ISMRE2 and ISCOP2.

*D. Considerations for Energy Conservation Standards*

In this proposed rulemaking to establish energy conservation standards for DX–DOASes, DOE is proposing to adopt ISMRE2 and ISCOP2 minimum efficiency levels of equivalent stringency to the ISMRE and ISCOP minimum efficiency levels currently published in ASHRAE Standard 90.1.

As discussed in section II.A of this document, EPCA requires DOE to amend the existing Federal energy conservation standard for covered equipment each time ASHRAE amends [14] Standard 90.1 with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) When triggered in this manner, DOE must adopt the minimum level specified in the amended ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that a more stringent standard level would produce significant additional conservation of energy and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE makes such a determination, it must publish a final rule to establish the more stringent standards. (42 U.S.C. 6313(a)(6)(B)) DOE

[13] AHRI 920–2020 requires that DX–DOASes dehumidify outdoor ventilation air to a maximum dew point of 55 °F as a representative set point for dehumidified building supply air. Therefore, if the outdoor air dew point temperature is below 55 °F, there would typically not be any dehumidification load on the DX–DOAS, and the remaining cooling load would be for sensible cooling only.

[14] Although EPCA does not explicitly define the term ''amended'' in the context of what type of revision to ASHRAE Standard 90.1 would trigger DOE's obligation, DOE's longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE Standard 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007).

states in Section 9(b) of Appendix A to subpart C of part 430 that clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrate that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified.

DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more stringent energy conservation standards (*i.e.,* whether more stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). Table III.2 shows the statutory requirements and DOE's corresponding analytical approach, including DOE's approach to the seven-factor analysis for determining whether a standard is economically justified.

TABLE III.2—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

| EPCA requirement | Corresponding DOE analysis |
|---|---|
| Significant Energy Savings | • Shipments Analysis.<br>• National Impact Analysis.<br>• Energy Use Determination. |
| Technological Feasibility | • Market and Technology Assessment.<br>• Screening Analysis.<br>• Engineering Analysis. |
| Economic Justification: | |
| 1. Economic Impact on Manufacturers and Consumers | • Manufacturer Impact Analysis.<br>• Life-Cycle Cost and Payback Period Analysis.<br>• Life-Cycle Cost Subgroup Analysis. |
| 2. Lifetime Operating Cost Savings Compared to Increased Cost for the Product | • Shipments Analysis.<br>• Markups for Product Price Determination.<br>• Energy and Water Use Determination.<br>• Life-Cycle Cost and Payback Period Analysis. |
| 3. Total Projected Energy Savings | • Shipments Analysis.<br>• National Impact Analysis. |
| 4. Impact on Utility or Performance | • Screening Analysis.<br>• Engineering Analysis. |
| 5. Impact of Any Lessening of Competition | • Manufacturer Impact Analysis. |
| 6. Need for National Energy and Water Conservation | • Shipments Analysis.<br>• National Impact Analysis. |
| 7. Other Factors the Secretary Considers Relevant | • Employment Impact Analysis.<br>• Utility Impact Analysis.<br>• Emissions Analysis.<br>• Monetization of Emission Reductions Benefits.<br>• Regulatory Impact Analysis. |

DOE received comments from DU regarding the EPCA seven-factor test and the analytical framework for establishing energy conservation standards. DU commented that the sixth factor for economic justification, ''need for national energy and water conservation,'' is too broad and should specify a goal for savings by the year the amended standards go into effect. DU also requested clarification on whether the analytical methods used to determine national energy savings are limited to a cross-sectional analysis and if so, the rationale behind eliminating the time series. (DU, No. 3, p. 1) DOE notes that the seven factors in EPCA were specified by Congress. Regarding the national energy savings (NES), DOE notes that it is not a cross-sectional analysis. In the September 2019 NODA/RFI, a 30-year time series of shipments was used to calculate the NES for DX–DOASes.

As previously described, DOE normally conducts the analysis depicted in Table III.2 to determine whether clear and convincing evidence supports more stringent energy conservation standards. In this instance, however, DOE has tentatively determined that a lack of data precludes such an analysis and therefore precludes a finding of clear and convincing evidence. DOE provided a technical support document (TSD) [15] with the September 2019 NODA/RFI to present initial findings for certain of these analyses for DX–DOASes. Chapter 4 of the September 2019 NODA/RFI TSD discusses DOE's detailed methodology for estimating national energy savings. When DOE conducts a national energy savings analysis, it calculates the cumulative energy savings over the analysis period by summing the annual energy savings for each year in the analysis period, thereby considering the long-term impacts—as opposed to a limited cross-section of time. However, as described in the following subsections, DOE does not have sufficient data to revise and expand upon these analyses presented in the TSD at this time.

1. Technological Feasibility

a. General

To evaluate whether more stringent standards than those in the updated ASHRAE Standard 90.1 would be technologically feasible, DOE generally first conducts a market and technology assessment to survey all current technology options in products on the market and prototype designs that could improve the efficiency of the subject equipment. DOE then conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically

[15] The September 2019 NODA/RFI TSD is available as Document No. 2 at *www.regulations.gov/docket/EERE-2017-BT-STD-0017.*

feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(i) and 7(b)(1).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(ii)–(v) and 7(b)(2)–(5).

DOE is not aware of an existing database or compilation containing a comprehensive list of DX–DOAS models and performance metrics. As noted, DX–DOASes are not currently subject to Federal energy conservation standards, and so manufacturers of DOASes are not required to certify or report to DOE the energy efficiency of such equipment. The AHRI Directory does not currently list DX–DOAS equipment performance ratings. Similarly, DOE was not able to find ISMRE or ISCOP ratings in much of the manufacturer equipment specifications. It is unclear to what extent the market has responded to the industry standards initially specified in ASHRAE Standard 90.1–2016.

Also as discussed, in the edition of AHRI 920 immediately following the edition in which an industry testing standard was established for DOAS, AHRI adopted updated metrics for DX–DOASes (*i.e.,* ISMRE2 and ISCOP2). Similarly, DOE was not able to find ISMRE2 or ISCOP2 ratings in much of the manufacturer equipment specifications. Because this test procedure was fairly recently published, it is not clear to what extent the test data has been developed based on the updated industry testing standard (*i.e.,* AHRI 920–2020), although DOE expects that this test procedure represents the industry consensus for testing DX–DOASes.

In the September 2019 NODA/RFI, DOE analyzed two incremental efficiency levels (ELs) above the ASHRAE Standard 90.1 minimum ISMRE efficiency levels for air-cooled DX–DOASes (with and without VERS) based on technology options that are expected to be available for DX–DOASes. 84 FR 48006, 48026. The ELs were also based, in part, on an initial assessment of EER data for commercial unitary air conditioners due to the lack of market data using the AHRI 920 performance metrics. 84 FR 48006, 48026. DOE tentatively determined based on manufacturer feedback that the baseline design would likely include staged compressors, and that the design change from the baseline efficiency level (the ASHRAE Standard 90.1 minimum) to EL 1 would involve changing from staged compressor operation to variable-capacity digital scroll compressors. The design changes from EL 1 to EL 2 include increasing the condenser heat exchanger size and fin density, increasing the total condenser fans horsepower, and reducing the capacity of the compressors needed. Due to the similarity in designs, DOE considered that the same technology options and resulting increase in efficiency from the analysis for DX–DOASes without VERS would be applied for DX–DOASes with VERS. *Id.*

The CA IOUs commented that the analysis should take into account all equipment classes of DX–DOAS because, while air-cooled DX–DOASes may comprise the vast majority of DX–DOAS shipments, there are other equipment classes with the potential for energy savings. (CA IOUs, No. 6, p. 6) The CA IOUs also disagreed with the efficiency level distribution and asked DOE to develop a more sophisticated efficiency analysis. (CA IOUs, No. 6, p. 7) AHRI also disagreed with DOE's incremental efficiency levels because they were derived from a single manufacturer's equipment at a single capacity size. (AHRI, No. 7, p. 8) The CA IOUs urged DOE to conduct a cost-effectiveness analysis for new DX–DOAS standards and apply the experience curve methodology DOE recommended in 2011 [16], including both price decline to-date and a forecast of continued price decline, in order to avoid overestimating the true costs of efficiency improvements. (CA IOUs, No. 6, pp. 7–8) AHRI provided confidential business data containing limited estimations of the ISMRE ranges for DX–DOASes by cooling capacity (in Btu/hr) and disaggregated by VERS (without distinguishing between the 8 DX–DOAS equipment classes), as noted in AHRI's public comment. (AHRI, No. 7, p. 10)

DOE acknowledges that the efficiency levels for air-cooled DX–DOASes presented in the September 2019 NODA/RFI may not be representative of the DX–DOAS market because they were derived from a very limited amount of publicly available data, and additionally, these efficiency levels are no longer in terms of the metrics DOE is proposing to regulate. In this NOPR, DOE has tentatively determined that this type of engineering analysis cannot be completed due to the lack of available market and performance data. A lack of performance data using the ISMRE2 and ISCOP2 metrics impedes DOE's ability to correlate efficiency levels to DX–DOAS design options, and AHRI's data did not provide further details for this aspect of the analysis. As a result, the development of cost-efficiency curves is not possible at this time.

AHRI commented that the efficiency benefits of employing variable-capacity digital scroll compressors were overestimated in the September 2019 NODA/RFI analysis, and that this technology option is implemented primarily for control purposes. AHRI stated that while a digital scroll compressor provides capacity control, it does not provide an efficiency increase over three- or four-step compressor control, and, furthermore, a digital scroll compressor would provide a modest improvement over a single- or two-step DX–DOASes based on the equipment cycling. AHRI also asserted that DX–DOASes with single- or two-step staging do not provide the necessary control consumers require, and so they are rarely purchased. (AHRI, No. 7, p. 10) Trane also commented that the benefits of digital scroll compressors are more closely correlated to staging control than efficiency. (Trane, No. 5, p. 3)

Both AHRI and Trane commented that there is considerable variation in the technology options that may be utilized at the baseline efficiency level. (AHRI, No. 7, p. 10; Trane, No. 5, p. 3) However, AHRI generalized that small equipment (below 10 tons) utilize two-stage or digital compressors, without inverter control, with small heat exchangers; and above 10 tons, equipment typically utilizes four-stage or digital compressors, without inverter control, with larger heat exchangers. (AHRI, No. 7, p. 10) AHRI stated that for the purposes of the technology analysis, industry would support the first step to improving energy efficiency being the addition of inverter control, and the second step being including a larger condenser with more surface area. (*Id*). Additionally, the CA IOUs provided that DX–DOAS heat exchangers tend to be larger than those in typical commercial unitary air conditioners. (CA IOUs, No. 6, p. 7)

DOE appreciates these comments on technology options and has incorporated this feedback into aspects of the crosswalk analysis. DOE included

[16] In 2011, DOE published a notice of data availability discussing the experience curve methodology. 76 FR 9696 (Feb. 22, 2011).

DX–DOASes with two stages of capacity and digital scroll compressors in its ISMRE-to-ISMRE2 crosswalk analysis. Additionally, the technology options referenced by AHRI were used in DOE's analytical modeling of baseline heat pump DX–DOASes to evaluate the impact of the test procedure changes for the heating efficiency metric. DOE has initially determined that the proposed ISCOP2 standards for heat pump DX–DOASes are technologically feasible because DOE performed the ISCOP-to-ISCOP2 crosswalk based on the baseline technology options recommended by stakeholders—*i.e.,* staged scroll compressors, no inverter control, and representative baseline heat exchangers for DX–DOASes. This is discussed in section IV.C.2 of this NOPR.

As discussed in section III.B of this NOPR, 7AC indicated that combining a variable-speed compressor with an economically-sized LDHX can result in an ISMRE of 7.5 without VERS and an ISMRE of 8.5 with VERS. (7AC, No. 4, p. 1) Because DOE could not identify any other manufacturers of DX–DOASes which employ LDHXs in commercially-distributed equipment, and DOE expects that this technology option utilizes proprietary technology that represents a unique pathway to achieving a particular efficiency level. For this reason, DOE did not consider LDHX technology in its analysis of whether more stringent standards would be technologically feasible or as part of the crosswalk analysis.

Issue–2: DOE continues to seek information that may inform a market and technology assessment for the DX–DOAS industry, including data on technology options which may increase the ISMRE2 and/or ISCOP2 efficiencies of DX–DOASes.

b. Maximum Technologically Feasible Levels

When evaluating more stringent standards, DOE typically must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (*See* 42 U.S.C. 6313(a)(6)(A)(ii)(II)) Accordingly, in the engineering analysis, DOE typically determines the maximum technologically feasible (''max-tech'') improvements in energy efficiency using the design parameters for the most efficient equipment available on the market or in working prototypes.

Prior to the publication of AHRI 920–2020, the September 2019 NODA/RFI DOE estimated that the max-tech efficiency for air-cooled DX–DOASes without VERS was an ISMRE of 6.0, whereas for air-cooled DX–DOASes with VERS the max-tech efficiency was an ISMRE of 7.2. 84 FR 48006, 48026. In response, the CA IOUs provided data that showed the range of manufacturer-published ISMRE ratings reached a maximum of 8.9 ISMRE for air-cooled DX–DOASes without VERS and 10.8 ISMRE for air-cooled DX–DOASes with VERS. (CA IOUs, No. 6, p. 7)

As discussed, DOE has proposed to incorporate by reference AHRI 920–2020 in its test procedure, which relies on different metrics than what were presented in the September 2019 NODA/RFI and what were provided by commenters. As discussed further in section IV.B.1 of this NOPR, the DX–DOAS designs that are likely to yield the highest ISMRE and ISCOP efficiencies under the ANSI/AHRI 920–2015 test procedure are not likely to yield the highest ISMRE2 and ISCOP2 efficiencies under AHRI 920–2020 (and the proposed DOE test procedure) due to significant differences in the test procedures, and therefore DOE cannot rely on ISMRE/ISCOP efficiency ratings alone (*i.e.,* without knowledge of the specific design options utilized) to identify max-tech efficiencies using the proposed test procedure.

Due to the lack of data in terms of AHRI 920–2020 efficiency metrics, DOE is currently unable to identify the most efficient equipment available on the market in terms of the proposed metrics. As such, DOE is unable to estimate the field-installed energy use and cost of the most efficient equipment (in terms of the proposed metrics) available on the market (factoring in parameters such as price markups, installation application, life-cycle cost and payback period, and overall shipments). Hence, DOE was unable to evaluate the technological feasibility of standards more stringent than the levels in the updated ASHRAE Standard 90.1.

2. Significant Additional Conservation of Energy

The ''significant additional conservation of energy'' language in 42 U.S.C. 6313(a)(6)(A) indicates that Congress intended for DOE to ensure that, in addition to the savings from the ASHRAE standards, DOE's standards would yield additional energy savings that are significant. In DOE's view, this statutory provision shares the requirement with the statutory provision applicable to covered products and non-ASHRAE equipment that ''significant conservation of energy'' must be present (42 U.S.C. 6295(o)(3)(B))—and supported with ''clear and convincing evidence''—to permit DOE to set a more stringent requirement than ASHRAE. *See* 85 FR 8626, 8666–8667.

In determining whether energy savings are significant, DOE considers the specific circumstances surrounding a given rulemaking.[17] In making this determination, DOE looks at, among other things, the FFC effects of the proposed standards. These effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards, including greenhouse gas emissions.

DOE has initially determined that there is insufficient data on the developing DX–DOAS market to conduct an analysis of potential energy savings resulting from more stringent standards. AHRI 920–2020 is a relatively recent industry test standard, published in February 2020, and thus AHRI has not yet established a certification database listing DX–DOAS ISMRE2 and ISCOP2 ratings. In the September 2019 NODA/RFI DOE also noted that the AHRI Directory does not list DX–DOAS equipment performance ratings, and that DOE was not able to find ISMRE or ISCOP ratings in much of the manufacturer equipment specifications. 84 FR 48006, 48026. DOE requested data on the market efficiency distribution, field installation applications and performance, the determination of unit energy consumption (UEC), equipment lifetimes, and shipments (*see* 84 FR 48006, 48036); however, DOE did not receive sufficient information with regards to these aspects of its analysis in order to determine the energy savings of more stringent efficiency levels for each of the 8 proposed DX–DOAS equipment classes.

3. Economic Justification

As noted previously, EPCA provides seven factors to be considered in determining whether standard levels more stringent than the levels specified in the updated ASHRAE Standard 90.1 are economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) The following sections provide an overview of each of those seven factors and consideration of the factors in this NOPR.

[17] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential standard on manufacturers, DOE typically conducts a manufacturer impact analysis (MIA). DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in life-cycle costs (LCC) and the payback period (PBP) associated with new or amended standards. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

As noted, DOE is unaware of any database or compilation containing a comprehensive list of DX–DOAS models and performance metrics. This presents significant challenges to performing an accurate assessment of the DX–DOAS industry structure.

DOE normally uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, industry net present value (NPV), and future manufacturer cash flows. The shipments model typically takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the national energy savings and NPV because operating costs for any year depend on the age distribution of the stock.

For the September 2019 NODA/RFI, DOE developed DX–DOAS shipments estimates based on manufacturer feedback that shipments in 2016 were around 36,000 units and that DX–DOAS growth is expected to be similar to that of variable refrigerant flow multi-split system equipment. 84 FR 48006, 48030. A report by the Cadeo Group estimated variable refrigerant flow multi-split system equipment shipments to have double-digit growth through 2022. Therefore, to project shipments past 2016, DOE used a 10-percent growth rate through 2022 and then followed the same growth rate as other commercial unitary air-conditioning equipment, basing that growth rate on the reference case shipment projections in the National Impact Analysis spreadsheet from the January 15, 2016 direct final rule for commercial unitary air conditioners and heat pumps and commercial warm air furnaces (81 FR 2420). *Id.*

Manufacturers estimated that air-cooled DX–DOASes represent 95 percent of all DX–DOAS shipments, and DOE assumed that this percentage would remain constant for the duration of the 30-year shipments analysis. *Id.* For the September 2019 NODA/RFI, DOE only analyzed the two air-cooled DX–DOAS equipment classes, and so reduced the annual shipments projections developed above by 5 percent to capture only the air-cooled product classes. *Id.* DOE allocated 59-percent of shipments to air-cooled DOAS without energy recovery and 41-percent of shipments to air-cooled DOAS with energy recovery, based on manufacturer estimates of the breakdown by equipment class. *Id.*

In response, the CA IOUs provided an analysis of an online database of construction projects called ConstructConnect Insight, which suggests that DX–DOAS shipments have been increasing at an 18% annual rate since 2012. (CA IOUs, No. 6, p. 5) Additionally, the CA IOUs agreed that variable refrigerant flow and water-source heat pump systems are a good starting point for estimating DX–DOAS shipments but encouraged DOE to take into account radiant cooling, PTAC, and fan-coil installation projects as well. (*Id.*) AHRI suggested that DX–DOASes can also be paired with chilled beams and room fan coils. (AHRI, No. 7, p. 11) Trane suggested that DOE may have significantly overstated the DX–DOAS market in the September 2019 NODA/RFI. (Trane, No. 5, p. 3) AHRI provided a similar statement, specifically indicating that the 2016 shipments value for DX–DOAS was overestimated. (AHRI, No. 7, pp. 10–11) AHRI also noted that significant DX–DOAS shipment volume is relatively new to the market. (*Id.*) AHRI submitted confidential business data containing shipments estimates for DX–DOASes.

DOE acknowledges that DX–DOASes are paired with many types of space conditioning systems and that while most DX–DOASes are installed with variable refrigerant flow and water source heat pumps, other systems such as chilled beams, package terminal systems, and fan coils are paired with DX–DOASes. The confidential data submission from AHRI provided a time series of DX–DOAS shipments from 2010 to 2018. The time series provides the total number of DX–DOAS shipments along with estimates of the market share by equipment capacity and the availability of units with VERS, and this would allow DOE to improve its shipments projections. However, the shipments data does not break the shipments down by equipment class. DOE received no comments regarding the estimate that air-cooled DX–DOASes represent 95 percent of shipments or on the breakdown of DX–DOAS with and without VERS. However, DOE still lacks the breakdown of shipments for the other equipment classes. As stated earlier in this section, the shipments model is used to measure the national impacts of potential amended or new energy conservation standards. Without an engineering analysis (*see* section III.D.2.c of this document) and an energy use analysis (*see* section III.D.2.d of this document), DOE is unable to produce the other inputs necessary to project the national impact of standards more stringent than those in ASHRAE Standard 90.1–2019. Therefore DOE did not update the shipments model for this NOPR.

Were DOE to establish standards as proposed, as well as accompanying certification requirements, this information would become more readily available should DOE consider amending standards for DX–DOASes in any future rulemaking.[18] Chapter 2 of

[18] In situations where ASHRAE has not acted to amend the levels in Standard 90.1 for the equipment types enumerated in the statute, EPCA provides for a 6-year-lookback to consider the potential for amending the uniform national standards. (42 U.S.C. 6313(a)(6)(C)) Specifically, pursuant to the amendments to EPCA under the American Energy Manufacturing Technical Corrections Act (Pub. L. 112–210 (Dec. 18, 2012)), DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard

the September 2019 NODA/RFI TSD presents DOE's market assessment to the extent that DOE was able to retrieve publicly accessible information for DX–DOASes. Since the September 2019 NODA/RFI, DOE has, identified additional manufacturers of DX–DOASes, and these manufacturers are listed in Table III.3 (which supersedes Table 2.3 in the September 2019 NODA/RFI TSD).

TABLE III.3—MANUFACTURERS OF DX–DOASES

| Manufacturers | AHRI member |
|---|---|
| AAON | Yes. |
| AnnexAir | No. |
| Daikin | Yes. |
| Greenheck | Yes. |
| Ingersoll Rand | Yes. |
| Johnson Controls | Yes. |
| Madison Industries | Yes. |
| Modine Manufacturing Company | Yes. |
| Multistack | Yes. |
| Munters Group AB | No. |
| Nortek Global HVAC | Yes. |
| Soler and Palau Industries | Yes. |

DOE did not perform an MIA for this rulemaking because there is not enough information available on the DX–DOAS market to determine which entities are already compliant with the proposed energy conservation standards (*i.e.,* producing DX–DOASes which currently meet or exceed the proposed ISMRE2 and ISCOP2 minimum efficiency levels) and what portion of annual cash flow these DX–DOASes comprise. However, DOE did examine potential impacts on small manufacturers in its regulatory flexibility analysis, which is presented in section VII.B of this NOPR.

For individual consumers, DOE measures the economic impact by calculating the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE would also calculate the national net present value of the consumer costs and benefits expected to result from particular standards, while taking into account the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

DOE continues to seek information that may inform a market and technology assessment for the DX–DOAS industry, including data on ISMRE2 and ISCOP2 market efficiency distributions, and shipments.

DOE did not perform an LCC or an assessment of NPV for this rulemaking because there was not enough information available to develop the inputs required to measure the individual or aggregate consumer savings from higher standards. The LCC would require an engineering analysis, an energy use analysis, operating cost inputs, and a distribution of efficiencies that are available on the market. These inputs allow DOE to develop equipment prices, representative efficiency levels, annual operating costs, and a no-standards case distribution of equipment efficiencies to determine which consumers will be impacted by a higher standard. The NIA takes the weighted average national results from the LCC and combines them with shipments forecasts by equipment class and efficiency level in order to measure the national impact, in terms of consumer NPV and full-fuel-cycle energy savings. As stated previously, DOE was unable to develop cost-efficiency curves for DX–DOASes or to conduct an energy use analysis with enough degree of certainty that would allow it to propose a standard level more stringent than ASHRAE Standard 90.1 (*see* section III.D.2 of this document). Without these inputs, DOE is unable to produce the LCC and NIA for this NOPR.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards.

In the September 2019 NODA/RFI DOE developed an efficiency distribution that assumed that one-third of the products were at each of the three efficiency levels. 84 FR 48006, 48030. DOE requested comment on this approach and input on how to determine the no-standards case efficiency distribution given the lack of publicly available data on equipment efficiency. DOE also sought historical shipment weighted efficiency data by equipment class.

In response, AHRI and Trane both generally supported the approach DOE took which assumed that one-third of the units were at each of the proposed efficiency levels. (AHRI, No. 7, p. 11; Trane, No. 5, p. 3). AHRI and Trane both commented that they do not collect shipments data by efficiency level. (AHRI, No. 7, p. 11; Trane, No. 5, p. 3)

DOE also lacked data on the equipment lifetime for DX–DOASes in the September 2019 NODA/RFI. However, DOE had developed lifetimes for other commercial package air conditioning equipment in previous rulemakings,[19] therefore the DX–DOAS lifetime was set to be the same as that of a 15-ton commercial package air conditioner. 84 FR 48006, 48031. DOE also requested comment on DX–DOAS lifetimes.

In response, AHRI, the CA IOUs, and Trane all agreed with the approach that a DX–DOAS lifetime would be similar to that of a 15-ton commercial package air conditioner. (AHRI, No. 7, p. 11,

90.1 ''every 6 years'' to determine whether the applicable energy conservation standards need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) DOE must publish either a NOPR to propose amended standards or a notice of determination that existing standards do not need to be amended. (42 U.S.C. 6313(a)(6)(C)) In proposing new standards under the 6-year review, DOE must undertake the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II))

[19] Direct Final Rule Life-Cycle-Cost Analysis Spreadsheet is available at: *www.regulations.gov/document?D=EERE-2013-BT-STD-0007-0106.* (Last accessed on August 9, 2021)

Trane, No. 5, p. 3, CA IOUs, No. 6, p. 7)

A preliminary energy use analysis was presented in the September 2019 NODA/RFI, and DOE requested feedback on its calculation approach as well as data from field studies and laboratory testing to further inform the estimation of real-world energy usage from performance ratings. 84 FR 48006, 48026–48027.

7AC commented that the actual energy consumption in buildings can be significantly higher than the tested ISMRE suggests, primarily at lower loads where the regular on/off cycling reduces actual energy load. (7AC, No. 4, p. 1) DOE understands that 7AC is referring to cycling start-up losses which occur when staged compressor systems turn on and off to meet a reduced cooling (or heating) demand. The impact of cycling losses is now captured in AHRI 920–2020, which DOE has proposed to incorporate into a new DOE test procedure for DX–DOASes. Specifically, the updated test procedure includes provisions for weighted averaging when the target conditions can be bracketed by two stages, as well as cyclic degradation calculations and a supplementary cooling penalty when the lowest stage provides excess conditioning capacity (which is when cycling losses would occur). 86 FR 36018, 36032–36033.

7AC also agreed that field data should be sought to complement the lab data and correlate ISMRE in the lab with performance in the field. (7AC, No. 4, p. 1) Additionally, 7AC indicated that LDHX-based units are being installed with remote monitoring equipment that will enable the measurement of total cooling and total power use, the cost of which has come down dramatically and that DOE should seek similar arrangements with other equipment providers. (*Id.*) 7AC did not provide data correlating tested performance ratings to performance in field-installed conditions. AHRI stated that it was unable to provide data in response to DOE's request. (AHRI, No. 7, p. 10) AHRI suggested that DOE consider addendum ''bi'' of ASHRAE Standard 90.1–2013, which limits heating supply air to a maximum of 60 °F when the majority of a building is expected to require cooling, in any energy use estimates. (AHRI, No. 7, p. 11)

The elimination of the supplemental heat penalty in the ISMRE2 metric (*see* section IV.B.1 of this document) makes it so that DX–DOASes are no longer required to deliver supply air of at least 70 °F in the test procedure. In the July 2021 Test Procedure NOPR, DOE discussed that DX–DOASes typically cool air to, at most, a few degrees above the 55 °F dew point temperature that is specified in AHRI 920. 86 FR 36018, 36031. Therefore, DOE expects that the establishment of ISMRE2 as a regulated metric for DX–DOASes would not preclude manufacturers from producing DX–DOASes which are compliant with the aforementioned provision in ASHRAE Standard 90.1–2013.

The energy use analysis presented in the September 2019 NODA/RFI relied on the energy use for ventilation and space cooling from the 2012 Commercial Building Energy Consumption Survey [20] (CBECS 2012) to develop the ASHRAE level unit energy consumption (UEC) estimates. The UECs for higher ELs were scaled based on the ISMRE levels presented in the September 2019 NODA/RFI. 84 FR 48006, 48026–48027. With an integrated metric, the power consumption at part loads is critical to understanding the energy consumption at various efficiency levels; however, no part-load data was available to DOE at the time of publication in September 2019. DOE included 30 percent of the space cooling energy use from CBECS 2012 along with the ventilation energy use to derive the UEC. 84 FR 48006, 48027.

Trane agreed with associating building ventilation cooling with the DX–DOAS unit but disagreed with adding 30 percent of the building annual cooling load to this value because it may overstate the typical cooling duty cycle. (Trane, No. 5, p. 3) Trane stated that many DX–DOAS systems are designed to provide no cooling for the building and requested that published case studies be cited to determine the estimated cooling load percentage handled by the DX–DOAS. (*Id.*)

DOE would consider such data in its energy use analysis should it become available. However, DOE is not presenting an energy use analysis in this NOPR due to insufficient market data, performance data, and field use data. In response to Trane, while DX–DOASes may not be designed to provide space cooling, there is no variable in CBECS 2012 for dehumidification. DX–DOASes provide dehumidification by cooling the ventilation air, therefore DOE included 30 percent of the space cooling energy use from CBECS 2012 along with the ventilation energy use to derive the UEC.

DOE requested field data or performance data of DX–DOASes in the September 2019 NODA/RFI and received no data. In order to develop UECs that are representative of DX–DOAS installations across the U.S., DOE would require data on the equipment performance at different load conditions. This data could consist of manufacturer performance data or field data for equipment rated using ISMRE2 and ISCOP2, if applicable. As DX–DOASes would be newly regulated equipment and ISMRE2 and ISCOP2 are new metrics even within the DX–DOAS market, there is no energy consumption data available. In addition, DOE was unable to develop appropriate efficiency levels to analyze (*see* section III.D.2.c of this document). Given the lack of available data regarding the performance of DX–DOASes, DOE is unable to estimate the UECs.

DOE did not perform an LCC and PBP analysis for this NOPR. As discussed in the preceding paragraphs there is not enough information available to develop the inputs to the LCC and PBP models.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III))

In the September 2019 NODA/RFI, DOE presented its initial national energy savings methodology and estimates for air-cooled DX–DOASes with and without VERS. 84 FR 48006, 48030–48033. The NES requires inputs from the energy use analysis. As stated in section III.D.2.d, DOE was unable to conduct an energy use analysis. Therefore, DOE has not conducted or updated an NES analysis for this NOPR.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6313(a)(6)(B)(ii)(IV)) DOE has tentatively determined that the standards proposed in this document would not reduce the utility or performance of the equipment under consideration in this rulemaking because DOE is proposing to adopt standards of equivalent stringency to those already found in ASHRAE Standard 90.1.

[20] *See www.eia.gov/consumption/commercial/data/2012/index.php?view=microdata* (Last accessed on August 9, 2021).

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6313(a)(6)(B)(ii)(V)) DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use.

The utility impact analysis, emissions analysis, and emissions monetization all rely on the national energy savings estimates from the NIA. As discussed previously, DOE did not conduct an NIA and as a result could not conduct these downstream analyses.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

## IV. Crosswalk Analysis

### *A. Overview*

As discussed in section III.D of this NOPR, DOE is proposing to adopt ISMRE2 and ISCOP2 minimum efficiency levels of equivalent stringency to the ISMRE and ISCOP minimum efficiency levels currently published in ASHRAE Standard 90.1. The determination of these equivalent ISMRE2 and ISCOP2 efficiency levels is referred to as a ''crosswalk analysis.''

AHRI commented that the current ASHRAE Standard 90.1 levels reflect the current DX–DOAS market, however, that use of ANSI/AHRI 920–2015 is not ideal and this test procedure was undergoing revisions at the time. AHRI stated that harmonizing the Federal energy conservation standards with ASHRAE Standard 90.1 energy efficiency levels would help reduce compliance and test burdens on manufacturers; however, the metrics would change with the revision to AHRI 920. AHRI commented that the changes may seem drastic between the first and second edition of a standard, but they were agreed to by relevant stakeholders. (AHRI, No. 7, pp. 7–9) Trane commented that the conditions and rating calculations were changed in the update to AHRI 920 so that independent test labs could easily generate reliable results for these products, and Trane prefers that AHRI 920–2020 be the basis for any new standard levels adopted by DOE for DX–DOASes. (Trane, No. 5 at p. 3)

As discussed in section II.B of this NOPR, in the July 2021 Test Procedure NOPR, DOE proposed a new Federal test procedure for DX–DOASes that would incorporate AHRI 920–2020, which is the most recent version of the test procedure (AHRI 920) recognized by ASHRAE Standard 90.1 for DX–DOASes. 86 FR 36018, 36022. The proposed test procedure incorporates AHRI 920–2020 in its entirety, with certain minor clarifications DOE has preliminarily determined would be consistent with the industry test procedure. 86 FR 36018, 36047. The updates to AHRI 920 include certain revised test conditions and weighting factors for ISMRE and ISCOP, which were redesignated as ISMRE2 and ISCOP2, respectively. These revisions result in the ISMRE2 and ISCOP2 metrics that more accurately reflect the actual energy use for DX–DOASes, improve the repeatability and reproducibility of the test methods, and also reduce testing burden compared to ISMRE and ISCOP.

The minimum energy efficiency levels specified for DX–DOASes in ASHRAE Standard 90.1–2019 are not based on equipment efficiency as measured pursuant to AHRI 920–2020 (*i.e.,* ISMRE2 and ISCOP2). As a result, should DOE adopt the test procedure as proposed in the July 2021 TP NOPR, the efficiency measurements from the version of the industry test procedure recognized in ASHRAE Standard 90.1–2019 for DX–DOASes (*i.e.,* ISMRE and ISCOP), would not be comparable to efficiency measurements under the DOE test procedure. DOE would generally be required to adopt the ISMRE and ISCOP levels in ASHRAE Standard 90.1–2019 as the basis for energy conservation standards; however, in the case of an amended test procedure that would alter the measured energy efficiency or measured energy use of a covered ASHRAE equipment, EPCA prescribes requirements to amend the applicable energy conservation standard so that products or equipment that complied under the prior test procedure remain compliant under the amended test procedure. (*See generally* 42 U.S.C. 6293(e); 42 U.S.C. 6314(a)(4)(C)) While these provisions are not explicitly applicable to DX–DOASes in the present case because DOE currently has no test procedure or energy conservation standards for this equipment, DOE considers them as generally instructive for conducting the crosswalk analysis.

EPCA provides that in the case of any amended test procedure, DOE must determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of the subject ASHRAE equipment as determined under the existing test procedure. (*See* 42 U.S.C 6293(e); 42 U.S.C. 6314(a)(4)(C)) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In such case, under the process prescribed in EPCA DOE is directed to measure, pursuant to the amended test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. (*See* 42 U.S.C. 6293(e)(2); 42 U.S.C. 6314(a)(4)(C)) The average of such energy efficiency or energy use determined under the amended test procedure constitutes the amended energy conservation standard for the applicable covered products. (*Id.*)

As stated, EPCA requires DOE to adopt uniform national standards for DX–DOASes at the minimum level specified in the amended ASHRAE Standard 90.1, unless the Secretary determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended

ASHRAE Standard 90.1 would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) DOE has preliminarily determined that, in the present case given the limited data available, conducting a crosswalk analysis generally consistent with the process prescribed in 42 U.S.C. 6293(e)(2) would result in efficiency levels that are of the same stringency as those in ASHRAE Standard 90.1–2019.

A crosswalk analysis requires data on the performance of a representative sample of DX–DOASes under both test procedures. In response to the September 2019 NODA/RFI, 7AC offered to provide DOE with a full performance map of a 10-ton LDHX DX–DOAS. (7AC, No. 4, p. 1) However, as noted in section III.D.1.a of this NOPR, DOE understands LDHX technology to be a proprietary technology and thus could not consider it as representative for the crosswalk analysis. Trane suggested that it could provide information as confidential business information. (Trane, No. 5, p. 3) AHRI committed to working with DOE to develop an acceptable crosswalk based on calculations and test data, if available. (AHRI, No. 7, p. 9) DOE did not receive any submissions from stakeholders containing data that would help DOE conduct the crosswalk analysis. DOE determined the ISMRE-to-ISMRE2 crosswalk based on testing conducted by DOE and Pacific Gas and Electric. DOE determined the ISCOP-to-ISCOP2 crosswalk based on a technical analysis of heat pump performance. The methodology and results of the crosswalk analysis are presented in detail in the Crosswalk Analysis Support Document (CASD) [21] and are summarized in the following sections of this document.

*B. ISMRE-to-ISMRE2 Crosswalk*

1. Dehumidification Efficiency Test Procedure Changes

In the September 2019 NODA/RFI, DOE requested comment and data on developing a potential crosswalk from the efficiency levels in ASHRAE 90.1–2016 based on ANSI/AHRI 920–2015 to efficiency levels based on the revisions to AHRI 920 (*i.e.,* AHRI 920–2020). 84 FR 48006, 48022. While DOE is proposing to adopt the test procedure in AHRI 920–2020 with minor revisions, these revisions are not expected to have an impact on DX–DOAS ratings. 86 FR 36018, 36046. As such, the minor revisions to the procedure in AHRI 920–2020 proposed by DOE would not impact the crosswalk or the following discussion.

DOE received comments from two stakeholders regarding the test procedure updates in AHRI 920–2020 which affect the dehumidification efficiency rating. (AHRI, No. 7, pp. 8–9; CA IOUs, No. 6, pp. 6–7) The comments from stakeholders regarding the potential impacts of the update from ANSI/AHRI 920–2015 to AHRI 920–2020 on the ISMRE-to-ISMRE2 crosswalk are presented in Table IV.1. Although the comments do not provide quantitative indication of the expected change in the measurement, they suggest the direction and general magnitude of the change in the ISMRE-to-ISMRE2 crosswalk.

TABLE IV.1—TEST PROCEDURE UPDATES IMPACTING ISMRE-TO-ISMRE2 CROSSWALK

| ANSI/AHRI 920–2015 | AHRI 920–2020 | Expected impact on dehumidification efficiency rating |
|---|---|---|
| Specifies inlet (outdoor ventilation air and return air) dry bulb and wet bulb conditions for four Standard Rating Conditions (SRCs) A, B, C, and D. | Revises inlet conditions at SRCs C & D [a] ..... | Decrease in MRE at SRC D for units with VERS due to less favorable conditions.[a] |
| Specifies minimum required external static pressures (ESPs) for supply air streams as a function of supply airflow rate. | Increases minimum required ESPs for supply air streams; [a] establishes minimum required ESPs for return air streams (for units with VERS) [a b]. | Decrease in ISMRE2 due to increased fan power at higher static pressures.[b] |
| Specifies weighting coefficients to calculate ISMRE from the moisture removal efficiencies (MREs) at the four SRCs. | Revises weighting coefficients; [a b] re-labels efficiency metric as ISMRE2 [a b]. | Increase in ISMRE2 due to greater weight on SRCs A and B.[b] |
| Does not include instructions for achieving the target supply air conditions for units with staged capacity control. | Provides an interpolation method and a degradation coefficient calculation to determine efficiency for units with staged capacity control [a]. | Decrease in ISMRE2 for units with staged capacity because excess dehumidification is not credited.[a] |
| Penalizes delivery of supply air below 70 °F (the ''supplementary heat penalty''). | Eliminates the supplementary heat penalty for ISMRE2 [a b]. | Increase in ISMRE2 due to removal of penalty; [b] increase in ISMRE2 due to decrease in discharge head pressure (higher head pressures are required to increase reheat capacity, but also increase compressor power draw).[b] |
| Does not require a consistent supply air dew point temperature across all SRCs. | Requires that SRCs B–D target the supply air dew point temperature achieved at SRC A within a 0.3 °F condition tolerance [a]. | Decrease in ISMRE2 for units with staged capacity because excess dehumidification is not credited.[a] |
| Does not specify how to calculate MRE for units with VERS. | Includes instructions for calculating the total moisture removal capacity for units with VERS; [a] provides specific equations to apply the interpolation method and degradation coefficient method to units with VERS [a]. | Decrease in ISMRE2 for units with staged capacity because excess dehumidification is not credited.[a] |

[a] (AHRI, No. 7, pp. 8–9).
[b] (CA IOUs, No. 6, pp. 6–7).

[21] The CASD is available at *www.regulations.gov/docket/EERE-2017-BT-STD-0017.*

Comments from AHRI and the CA IOUs indicated that the various test procedure updates may generally lend to decreases in the dehumidification efficiency rating. (AHRI, No. 7, pp. 8–9; CA IOUs, No. 6, pp. 6–7)

2. Technical Analysis

DOE conducted investigative testing on four DX–DOASes and collaborated with Pacific Gas and Electric on testing of a fifth DX–DOAS to measure the average impact of the test procedure updates on the dehumidification efficiency metric.[22] A crosswalk consistent with the process prescribed at 42 U.S.C. 6293(e) would typically involve testing minimally compliant units, or in this case, testing units that had efficiencies at the minimum level specified in ASHRAE Standard 90.1–2019. As noted previously, ISMRE ratings for DX–DOASes are generally not available to determine which models may perform at the minimum ISMRE levels in ASHRAE Standard 90.1–2019. In its testing DOE determined that these DX–DOAS units had efficiencies above the ISMRE minima specified in ASHRAE Standard 90.1–2019. In order to account for this, DOE assessed the ISMRE-to-ISMRE2 crosswalk on the basis of an overall percent-change in the dehumidification efficiency metric, which can then be used to estimate the net impact of the updates to AHRI 920. The test results are summarized in Table IV.2.

TABLE IV.2—INVESTIGATIVE TESTING RESULTS

| Sample No. | Equipment class | MRC at SRC A | ASHRAE Standard 90.1 minimum ISMRE | Tested ISMRE | Tested ISMRE2 | Percent change |
|---|---|---|---|---|---|---|
| 1 | AC w/o VERS | 111 lb/h | 4.0 | 5.1 | 5.7 | +12% |
| 2 | AC w/o VERS | 94 lb/h | 4.0 | 7.6 | 6.4 | −16% |
| 3 | AC w/o VERS | 72 lb/h | 4.0 | 4.6 | 5.2 | +14% |
| 4 | AC w/ VERS | 256 lb/h | 5.2 | 6.9 | 6.0 | −13% |
| 5 | WSHP w/ VERS | 136 lb/h | 4.8 | 8.6 | 6.8 | −21% |
| *Average* | | | | | | −5% |

On average, the updates to AHRI 920 have a net impact of reducing the dehumidification efficiency ratings of DX–DOASes by five percent. These results are consistent with the comments provided by stakeholders indicating a general decrease in ratings. The tested units ranged from a reduction of 21% to an increase of 14%. The units which were negatively impacted by the test procedure changes were those which had the highest ISMRE ratings compared to the ASHRAE Standard 90.1–2019 minima (samples no. 2, 4, and 5). The units which had ISMRE ratings closer to the ASHRAE Standard 90.1–2019 minima (samples no. 1 and 3), by contrast, increased in rating; therefore, DOE tentatively does not expect DX–DOASes which are only minimally compliant with the ASHRAE Standard 90.1–2019 ISMRE levels to reduce in rating by more than five percent based on the limited test data available indicating that an increase in rating is possible for these designs. DOE would consider additional crosswalk data from DX–DOAS models which are minimally compliant with the ASHRAE Standard 90.1–2019 ISMRE levels should such data become publicly available.

Based on the available data, DOE is proposing ISMRE2 standards that are five percent lower than the ASHRAE Standard 90.1–2019 ISMRE levels. DOE's methodology is described in further detail in sections 2.2–2.3 of the CASD, and the resulting ISMRE2 levels are proposed in Table IV.4 of this NOPR.

*C. ISCOP-to-ISCOP2 Crosswalk*

1. Heating Efficiency Test Procedure Changes

DOE received comments from AHRI regarding the test procedure updates in AHRI 920–2020 which affect the heating efficiency rating. (AHRI, No. 7, pp. 8–9) These comments are presented in Table IV.3. DOE did not receive comments indicating the actual impacts of each test procedure update on the heating efficiency metric.

TABLE IV.3—TEST PROCEDURE UPDATES IMPACTING ISCOP-TO-ISCOP2 CROSSWALK

| ANSI/AHRI 920–2015 | AHRI 920–2020 & July 2021 test procedure NOPR |
|---|---|
| Specifies inlet (outdoor ventilation air and return air) dry bulb and wet bulb conditions for two SRCs E and F. | Revises inlet conditions at SRCs E & F. |
| Specifies minimum required external static pressures (ESPs) for supply air streams as a function of supply airflow rate. | Increases minimum required ESPs for supply air streams;[a] establishes minimum required ESPs for return air streams (for units with VERS).[a] |
| Specifies weighting coefficients to calculate ISCOP from the coefficients of performance (COPs) at the two SRCs. | Revises weighting coefficients;[a] re-labels efficiency metric as ISMRE2.[a] |
| Implies testing at both SRCs in order to calculate an ISCOP rating | Makes SRC F optional to test (with the resulting $COP_F$ = 1.0) in order to calculate an ISCOP2 rating. |
| Instructs that the target supply air dry bulb temperature must be as close to 75 °F as possible. Credits delivery of supply air above 75 °F in determination of total heating capacity. | Provides an interpolation method to determine efficiency for units with staged capacity control; specifies that the supply air temperature for the determination of total heating capacity must be 70–75 °F.[a] |

[22] Data from Sample No. 3 was collected as part of a collaboration between Pacific Gas & Electric and DOE. Sample point no. 3 is the result of testing one DX–DOAS with multiple control configurations, as discussed in section 2.2 of the CASD. These configurations investigated a range of staging, reheat, and airflow control options available to manufacturers for testing DX–DOASes within the allowances of ANSI/AHRI 920–2015 and AHRI 920–2020. The data shown in Table IV.4 for Sample point no. 3 are the average results of the control configurations tested. Data for each individual configuration is provided in the CASD.

TABLE IV.3—TEST PROCEDURE UPDATES IMPACTING ISCOP-TO-ISCOP2 CROSSWALK—Continued

| ANSI/AHRI 920–2015 | AHRI 920–2020 & July 2021 test procedure NOPR |
|---|---|
| Specifies multiple inlet water conditions for water-source heat pump DX–DOASes at each SRC. | Revises inlet water conditions; assigns 'water-source heat pump' as the inlet condition for ISCOP2 ratings. |

[a] (AHRI, No. 7, pp. 8–9).

DOE considered the updates in AHRI 920–2020 in its calculated performance of heat pump DX–DOASes. One notable factor affecting the ratings of heat pump DX–DOASes is that ANSI/AHRI 920–2015 did not specify a target supply air dry bulb temperature range for determining ratings, whereas AHRI 920–2020 specifies that ratings must be based on temperatures between 70 °F and 75 °F. As a result, heating in excess of 75 °F was credited in ANSI/AHRI 920–2015 but is no longer considered in AHRI 920–2020 (the supplementary heat penalty for delivery of supply air below 70 °F is maintained in both test procedures). The impact of this would be a decrease in rating for units that have coarse staging of compressor capacity, which may result in overshooting the 75 °F limit due to the inability to unload capacity.

2. Technical Analysis

DOE did not receive data from commenters regarding ISCOP or ISCOP2 performance ratings. DOE is aware of only one manufacturer publishing ISCOP ratings and one other manufacturer publishing ISCOP2 ratings. Due to insufficient market data for the ISCOP-to-ISCOP2 crosswalk, DOE evaluated the performance of representative heat pump DX–DOAS designs under both test procedures using engineering-based analysis to determine the crosswalk.

DOE calculated results for a two-stage heat pump system delivering approximately 15 tons of capacity based on a design description consistent with AHRI comments (*see* section III.D.3.c of this NOPR) and based on the calculated results identified that that the test procedure updates affect each heat pump equipment class in different ways. DOE also calculated results for smaller 3–4 ton heat pump systems with only one compressor stage. The assumptions and inputs of this calculation are provided in detail in section 3.3 of the CASD. DOE assumed that air-source heat pumps without VERS would deactivate heat pump operation at SRC F and assume a default $COP_F$ of 1.0 for both ISCOP and ISCOP2; air-source heat pumps with VERS would also deactivate heat pump operation at SRC F but would be capable of running the VERS to provide some sensible heating capacity for both ISCOP and ISCOP2. The outputs are provided in sections 3.4 and 3.5 of the CASD. In general, DOE observed that air-source heat pump DX–DOASes without VERS may reduce in rating because AHRI 920–2020 does not credit excess heating above 75 °F. Air-source heat pump DX–DOASes with VERS may use VERS-only operation as the lowest-capacity stage to interpolate to a supply air temperature between 70 °F and 75 °F, thus avoiding being penalized for excess heating. As a result, air-source heat pump DX–DOASes may slightly increase in rating. DOE observed (in testing of a water-source heat pump DX–DOAS, as well as in its calculations) that water-source heat pump DX–DOASes generally perform better at SRC F than at SRC E (under both test procedures), but the reduction in the averaging weight for SRC F for ISCOP2 would cause the ISCOP2 value to decrease for water-source heat pump DX–DOASes as compared to ISCOP. Like the air-source heat pump DX–DOASes, DOE found that water-source heat pump DX–DOASes without VERS might be more sensitive to the target supply air temperature requirements than water-source heat pump DX–DOASes with VERS. DOE applied the average change in rating to the ASHRAE Standard 90.1 ISCOP levels, and the resulting ISCOP2 levels are provided in Table IV.4.

*D. Crosswalked Standard Levels*

DOE crosswalked the ASHRAE Standard 90.1–2019 minimum ISMRE and ISCOP efficiency levels for DX–DOASes to determine standards of an equivalent stringency in terms of the updated metrics ISMRE2 and ISCOP2. The results of this analysis are shown in Table IV.4.

TABLE IV.4—CROSSWALKED EFFICIENCY LEVELS FOR DX–DOASES

| Subcategory | ASHRAE Standard 90.1–2019 level using ANSI/AHRI 920–2015 | Equivalent stringency level using proposed DOE TP |
|---|---|---|
| (AC)—Air-cooled without ventilation energy recovery systems. | ISMRE = 4.0 | ISMRE2 = 3.8. |
| (AC w/VERS)—Air-cooled with ventilation energy recovery systems. | ISMRE = 5.2 | ISMRE2 = 5.0. |
| (ASHP)—Air-source heat pumps without ventilation energy recovery systems. | ISMRE = 4.0, ISCOP = 2.7 | ISMRE2 = 3.8, ISCOP2 = 2.05. |
| (ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems. | ISMRE = 5.2, ISCOP = 3.3 | ISMRE2 = 5.0, ISCOP2 = 3.20. |
| (WC)—Water-cooled without ventilation energy recovery systems. | ISMRE = 4.9 | ISMRE2 = 4.7. |
| (WC w/VERS)—Water-cooled with ventilation energy recovery systems. | ISMRE = 5.3 | ISMRE2 = 5.1. |
| (WSHP)—Water-source heat pumps without ventilation energy recovery systems. | ISMRE = 4.0, ISCOP = 3.5 | ISMRE2 = 3.8, ISCOP2 = 2.13. |
| (WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems. | ISMRE = 4.8, ISCOP = 4.8 | ISMRE2 = 4.6, ISCOP2 = 4.04. |

Issue-3: DOE requests comment on the proposed minimum ISMRE2 and ISCOP2 standards for DX–DOASes, as well as comment on any aspect of its crosswalk analysis, which is detailed in the CASD. DOE continues to seek information which compares ISMRE and ISCOP ratings to ISMRE2 and ISCOP2 ratings for the DX–DOASes that are representative of the market baseline efficiency level.

## V. Conclusions

### *A. Proposed Energy Conservation Standards*

EPCA requires DOE to establish an amended uniform national standard for small, large, and very large commercial package air conditioning and heating equipment, which includes DX–DOASes, at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)). DOE is proposing to adopt energy conservation standards for DX–DOASes that are of equivalent stringency as the minimum levels specified in ASHRAE Standard 90.1–2019. As discussed in the following section, DOE has tentatively determined it lacks clear and convincing evidence that adoption of more stringent standards would result in additional conservation of energy and would be technologically feasible and economically justified.

DOE is proposing standards using the ISMRE2 and ISCOP2 metrics, which are the metrics used in the most recent version of the industry test procedure for DX–DOAS recognized by ASHRAE Standard 90.1–2019 (*i.e.,* AHRI 920–2020) Based on the crosswalk analysis presented, DOE preliminarily determines that the proposed energy conservation standards in terms of ISMRE2 and ISCOP2 are of equivalent stringency to the standards for DX–DOAS in ASHRAE Standard 90.1–2019, which rely on the ISMRE and ISCOP metrics.

The proposed standards for DX are shown in Table V.1 of this NOPR. The proposed standards, if adopted would apply to all DX–DOASes with an MRC of less than 324 lbs moisture/hr manufactured in, or imported into, the United States starting on the compliance date discussed in section VI.C of this document.

TABLE V.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR DX–DOASES

| Equipment type | Subcategory | Efficiency level |
|---|---|---|
| Dehumidifying direct-expansion dedicated outdoor air systems. | (AC)—Air-cooled without ventilation energy recovery systems. | ISMRE2 = 3.8. |
| | (AC w/VERS)—Air-cooled with ventilation energy recovery systems. | ISMRE2 = 5.0. |
| | (ASHP)—Air-source heat pumps without ventilation energy recovery systems. | ISMRE2 = 3.8, ISCOP2 = 2.05. |
| | (ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems. | ISMRE2 = 5.0, ISCOP2 = 3.20. |
| | (WC)—Water-cooled without ventilation energy recovery systems. | ISMRE2 = 4.7. |
| | (WC w/VERS)—Water-cooled with ventilation energy recovery systems. | ISMRE2 = 5.1. |
| | (WSHP)—Water-source heat pumps without ventilation energy recovery systems. | ISMRE2 = 3.8, ISCOP2 = 2.13. |
| | (WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems. | ISMRE2 = 4.6, ISCOP2 = 4.04. |

### *B. Consideration of More Stringent Efficiency Levels*

As stated, EPCA requires DOE to establish an amended uniform national standard for equipment classes at the minimum level specified in the amended ASHRAE Standard 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)). As noted above, clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrate that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified. Process Rule section 9(b).

As discussed, DOE has not established standards or test procedures for DX–DOASes, and ASHRAE did not specify standards for such equipment until 2016. The market for DX–DOASes is still developing. Efficiency in terms of ISMRE and ISCOP is generally not provided by manufacturers and only a limited number of units are rated in terms of ISMRE2. DOE is not aware of any market or performance database for DX–DOASes. DOE has requested data that is representative of the market, but to date has not received any such data.

As discussed in the sections, III.D.1.a., III.D.1.b., III.D.3.a., and III.D.3.b of this NOPR, due to the lack of available market and performance data, DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty. An estimation of energy savings potentials of more stringent energy efficiency levels would require developing efficiency data for the entire DX–DOASes market, which would be a much broader analysis than that conducted for the crosswalk. The crosswalk analysis presented in this NOPR requires only that DOE translate the efficiency levels between the metrics at the baseline levels, and not that DOE translate all efficiency levels currently represented in the market. As noted, there is a lack of market data regarding the performance of DX–DOASes. As

such, DOE has preliminarily determined that it lacks clear and convincing evidence that more stringent standards would result in significant additional conservation of energy and would be technologically feasible and economically justified.

## VI. Representations, Certification and Compliance Requirements

### *A. Representations*

The July 2021 Test Procedure NOPR proposed several provisions for the determination of represented values for DX–DOASes, including a definition for a basic model of DX–DOAS, sampling plan requirements, considerations for equipment compatible with multiple refrigerants, alternative energy determination methods (AEDMs), and rounding requirements. 86 FR 36018, 36043–36045.

DOE proposed that a basic model for a DX–DOAS means all units manufactured by one manufacturer within a single equipment class; with the same or comparably performing compressor(s), heat exchangers, ventilation energy recovery system(s) (if present), and air moving system(s), and with a common ''nominal'' moisture removal capacity. 86 FR 36018, 36044. This proposed definition of a basic model of a DX–DOAS would be included in the regulatory text in 10 CFR 431.92. *Id.*

Because DX–DOASes and Unitary DOASes are types of commercial package air-conditioning and heating equipment, DOE proposed to apply the existing sampling plan requirements for commercial package air-conditioning and heating equipment under 10 CFR 429.43, *Commercial heating, ventilating, air conditioning (HVAC) equipment,* to DX–DOASes. 86 FR 36018, 36044.

As discussed in the July 2021 Test Procedure NOPR, DOE recognizes that some commercial package air-conditioning and heating equipment may be sold with more than one refrigerant option (*e.g.,* R–410A or R–407C). 86 FR 36018, 36044. Typically, manufacturers specify a single refrigerant in their literature for each unique model, but in its review, DOE has identified at least one manufacturer that provides two refrigerant options under the same model number. The refrigerant chosen by the customer in the field installation may impact the energy efficiency of a unit. For this reason, DOE proposed representation requirements specific for models approved for use with multiple refrigerants. *Id.*

Use of a refrigerant that requires different hardware (such as R–407C as compared to R–410A) would represent a different basic model, and according to the current CFR, separate representations of energy efficiency are required for each basic model. 86 FR 36018, 36044. However, some refrigerants (such as R–422D and R–427A) would not require different hardware, and a manufacturer may consider them to be the same basic model, which is not currently addressed. DOE proposed to add a new paragraph at 10 CFR 429.43(a)(3) specifying that a manufacturer must determine the represented values for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest ISMRE2 and ISCOP2 efficiencies, respectively. *Id.* These represented values would apply to the basic model for all refrigerants specified by the manufacturer as appropriate for use, regardless of which one may actually be used in the field, where only one set of values is reported. *Id.*

DOE proposed to allow manufacturers to use AEDMs for determining ISMRE2 and ISCOP2 ratings consistent with the existing provisions for commercial package air conditioning and heating equipment. 86 FR 36018, 36044. DOE also proposed to create four validation classes of DX–DOASes within the *Validation classes* table at 10 CFR 429.70(c)(2)(iv): Air-cooled/air-source and water-cooled/water-source, each with and without VERS. *Id.* This proposal requires testing of two basic models to validate the AEDMs for each validation class, with a tolerance of 10 percent when comparing test results with certified ISMRE2 and ISCOP2 ratings—identical to the requirements for other categories of commercial package air-conditioning and heating equipment. 86 FR 36018, 36045.

Finally, DOE proposed to adopt the performance metric rounding requirements found in Sections 6.1.2.1 through 6.1.2.8 of AHRI 920–2020 as part of the DOE test procedure, as enumerated in section 2.2.1(c)(iv) of the proposed appendix B. 86 FR 36018, 36045.

In this NOPR, DOE is proposing new provisions regarding DX–DOAS representations in addition to those proposed in the July 2021 Test Procedure NOPR. DOE is proposing to require that the represented value of MRC be either the mean of the MRCs measured for the units in the selected sample (*see* 10 CFR 429.43(a)(1)(ii)) rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020 or the MRC output simulated by an AEDM rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020. This provision seeks to ensure that the reported MRC is accurate to test or AEDM results and that the reported MRC is consistent with the requirements in AHRI 920–2020. The proposed definition for ''DX–DOAS'' includes a maximum MRC limitation of 324 lb/hr, hence DOE seeks to provide clear instructions for the determination of the MRC in representations.

Issue-4: DOE seeks feedback on the proposed representation requirement regarding MRC.

### *B. Certification and Enforcement Provisions*

#### 1. Scope

As discussed in section III.A of this NOPR, DOE is proposing a definition of DX–DOAS which specifies the capability to dehumidify outdoor air to a low dew point and a maximum MRC limit of 324 lbs moisture per hour (which is consistent with the 760,000 Btu per hour maximum capacity limit for other commercial package air-conditioning and heating equipment). Effective upon the compliance date for standards promulgated for DX–DOASes, manufacturers would be required to certify to DOE equipment meeting the DX–DOAS definition. However, as noted in section VI.B.3, DOE will address specific certification requirements for DX–DOASes in a different rulemaking prior to the compliance date for standards promulgated for DX–DOASes.

#### 2. Equipment Selection and Sampling Plan

In the July 2021 Test Procedure NOPR, DOE stated by proposing to define (at 10 CFR 431.92) DX–DOAS as a subset of Unitary DOAS, and to define Unitary DOAS as a category of small, large, or very large commercial package air conditioning and heating equipment, the proposal would apply the same sampling requirements to DX–DOASes as applicable to other commercial package air conditioning and heating equipment under 10 CFR 429.43, *Commercial heating, ventilating, air conditioning (HVAC) equipment.* 86 FR 36018, 36044. DX–DOAS-specific requirements are discussed in section VI.A of this document.

In the July 2021 Test Procedure NOPR DOE discussed one comment received on the sampling plan requirements. Lennox had recommended that DOE harmonize the certification criteria for commercial HVAC equipment in 10 CFR 429.43 with those for central air conditioners, a consumer product, in 10 CFR 429.16.; Lennox stated that

commercial equipment currently has a more stringent confidence limit of 95 percent, but the commenter argued that current testing technology does not support this level of precision. 86 FR 36018, 36044. DOE noted that other manufacturers did not raise concerns regarding the confidence limit required for sampling more typical commercial package air conditioning and heat pump equipment, and Lennox had not provided data regarding variability of units in production and testing; therefore, absent more specific information or data regarding the stringency of the confidence level, DOE did not propose a change. *Id.*

As discussed in section VI.A of this NOPR, DOE is maintaining its previous proposals regarding equipment selection and sampling plan requirements.

3. Certification Requirements

Manufacturers, including importers, must use equipment-specific certification templates to certify compliance to DOE. There are currently no certification or reporting requirements for DX–DOASes. For covered equipment, the certification template reflects the general certification requirements specified at 10 CFR 429.12 as well as the equipment-specific requirements. Certification reports for commercial package air-conditioning and heating equipment must include supplemental test information. 10 CFR 429.43(b)(4). In particular, the equipment-specific, supplemental information must include any additional testing and testing set up instructions (*e.g.,* charging instructions) for the basic model; identification of all special features that were included in rating the basic model; and all other information (*e.g.,* operational codes or component settings) necessary to operate the basic model under the required conditions specified by the relevant test procedure. (10 CFR 429.43(b)(4)).

DOE is not proposing to establish certification requirements for DX–DOASes in this NOPR. Instead, DOE may consider proposals to establish certification requirements for DX–DOASes under a separate rulemaking regarding appliance and equipment certification. To help interested parties better appreciate the proposed requirements, a draft certification template will be included in the docket of the certification rulemaking.

4. Enforcement Provisions

Enforcement provisions for commercial package air-conditioners and heat pumps are set forth at 10 CFR 429.110(e)(2). The existing provisions specify reliance on an initial sample size of not more than four units. 10 CFR 429.110(e)(2). For an ''assessment test,'' DOE may obtain one or more units for testing at any time. *See* 10 CFR 429.104. For an ''enforcement test,'' DOE issues a test notice requiring the manufacturer to provide units for testing. 10 CFR 429.110(b). DOE uses the results of assessment testing as one tool when determining whether to pursue enforcement testing. *See* 10 CFR 429.106. DOE may pursue enforcement testing if it has reason to believe that a basic model is not in compliance with applicable standards (10 CFR 429.110(a))—a determination that is informed but not based solely on assessment test results. DOE has set forth different sampling plans for DOE enforcement testing of covered equipment and certain low-volume covered products. Appendix B to subpart C of part 429. These sampling plans utilize a test sample of no more than 4 units for low-volume, built-to-order basic models, which would include DX–DOASes. These sampling plans are set forth in appendix B to subpart C to part 429. DOE proposes that the enforcement provisions generally applicable to commercial package air-conditioning and heating equipment would be applicable to DX–DOASes.

In addition, when determining compliance of any DX–DOAS units tested for enforcement purposes, DOE proposes to adopt provisions at 10 CFR 429.134 that specify how DOE would determine the ISMRE2 and ISCOP2 for DX–DOASes with VERS. Specifically, if the unit is rated based on testing to either Option 1 or Option 2, manufacturers may choose to use VERS EATR ratings based on AHRI 1060–2018 (or AHRI 1060 performance rating software) or default EATR values to calculate MRC and/or total heating capacity to rate the DX–DOAS. For Option 2, manufacturers may use VERS effectiveness and EATR ratings based on AHRI 1060–2018 or default values to set the simulated test conditions for rating the DOAS.

If a manufacturer chooses to use default VERS performance values, DOE proposes that it could choose to use those values, or alternatively test the VERS according to AHRI 1060–2018 to obtain those values. If a manufacturer used AHRI 1060–2018 rated values,[23] DOE proposes that it may conduct enforcement testing to AHRI 1060–2018 (with a zero-degree purge angle). In this case, DOE would determine the ISMRE2 and/or ISCOP2 using the certified VERS performance values from AHRI 1060–2018 if all certified values of sensible effectiveness are found to be no greater than 105 percent of the mean of the measured values (for Option 2), all values of latent effectiveness are found to be no greater than 107 percent of the mean of the measured values (for Option 2), and EATR is found to be no more than one percentage point less than the mean of the measured values (for Options 1 and 2). Otherwise, DOE would use the mean of the measured values to determine ISMRE2 and/or ISCOP2.

DOE is proposing these tolerances on the certified values based on tolerances specified in AHRI 1060–2018. DOE believes these tolerances are also appropriate for DOE's enforcement testing program as they represent typical variability for this equipment.

In addition, DOE proposes that if a manufacturer is relying on AHRI-certified product performance calculation software for VERS as part of its representation of DX–DOAS efficiency, a manufacturer would be required to retain all data underlying those AHRI-certified results as part of its underlying test data for DOE certification testing as specified in 10 CFR 429.71(a)–(c).

Issue–5: DOE requests comment on its proposed DX–DOAS-specific enforcement provisions, and in particular, the appropriateness of the proposed tolerances on certified values.

*C. Compliance Dates*

When establishing energy conservation standards at the same level as in ASHRAE Standard 90.1, EPCA requires DOE to establish such standards no later than 18 months following the ASHRAE Standard 90.1 update. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE prescribes energy conservation standards at the efficiency levels contained in an amended ASHRAE Standard 90.1, EPCA states that compliance with any such standards shall be required on or after a date which is two or three years (depending on equipment size) after the compliance date of the applicable minimum energy efficiency requirement in the amended ASHRAE standard. (42 U.S.C. 6313(a)(6)(D)) With respect to small commercial package air conditioning and heating equipment, the initial compliance date must be a date on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement

[23] AHRI's certification database for AHRI 1060 ratings certifies product performance calculation software.

in the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(D)(i)) With respect to large and very large commercial package air conditioning and heating equipment, the initial compliance date must be a date on or after a date which is three years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(D)(ii))

If DOE were to prescribe standards more stringent than the efficiency levels contained in ASHRAE Standard 90.1–2019, EPCA dictates that any such standard will become effective for equipment manufactured on or after a date which is four years after the date of publication of a final rule in the **Federal Register**. (42 U.S.C. 6313(a)(6)(D))

Moreover, there currently is not a DOE test procedure for DX–DOASes, and DOE has proposed a test procedure that relies on the metrics ISCOP2 and ISMRE2 in the July 2021 Test Procedure NOPR. 86 FR 36018. Were DOE to adopt the proposed test procedure, beginning 360 days following the final test procedure rule, manufacturers would be prohibited from making representations respecting the energy consumption of DX–DOASes, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing. (42 U.S.C. 6314(d)(1))

In this NOPR, DOE is proposing to adopt energy conservation standards for DX–DOASes that are equivalent to those contained in ASHRAE Standard 90.1–2016. Because ASHRAE Standard 90.1–2016 established equipment classes for DX–DOASes that do not distinguish units based on the small, large, or very large categories, DOE has tentatively decided to assign a single compliance date regardless of equipment size and apply the three-year lead time.

As previously noted, when establishing energy conservation standards at the same level as in ASHRAE Standard 90.1, DOE must establish such standards no later than 18 months following the ASHRAE Standard 90.1 update, and manufacturers must comply with such standards 2 to 3 years after the ASHRAE Standard 90.1 update, depending on the size of the equipment. (42 U.S.C. 6313(a)(6)(A)(ii)(I) & (a)(6)(D)) In order to provide DX–DOAS manufacturers with a reasonable lead-time to comply with the proposed standards, DOE proposes that manufacturers would be required to comply with the new standards for DX–DOASes 18 months following the publication date of a final rule establishing these standards. The proposed compliance date is consistent with the lead-time following DOE's establishment of standards at ASHRAE Standard 90.1 levels 18 months after the ASHRAE update and manufacturers' compliance with said standards 3 years after the ASHRAE update (*i.e.,* 18 months following publication of a final rule) that is provided for under EPCA.

## VII. Procedural Issues and Regulatory Review

### *A. Review Under Executive Orders 12866 and 13563*

Section 1(b)(1) of Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this NOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances and equipment that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming.

This regulatory action was determined not to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, DOE has not prepared a regulatory impact analysis for this proposed rule, and the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has not reviewed this proposed rule.

DOE has also reviewed this proposed regulation pursuant to E.O. 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, agencies are required by E.O. 13563 to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19,

2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this proposed rulemaking.

For manufacturers of dehumidifying direct-expansion dedicated outdoor air systems (DX–DOASes), the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the Regulatory Flexibility Act. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* The equipment covered by this proposed rule are classified under North American Industry Classification System (''NAICS'') code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment. These products include DX–DOASes, the subject of this proposed rulemaking. EPCA requires DOE to consider amending the existing Federal energy conservation standard for certain types of listed commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) This is referred to as ''the ASHRAE trigger.''

2. Objectives of, and Legal Basis for, Rule

In addition to the ASHRAE trigger for energy conservation standards, EPCA also requires that the test procedures for commercial package air conditioning and heating equipment—of which DX–DOASes are a type—be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the statutory requirements for test procedures regarding representativeness and burden. (42 U.S.C. 6314(a)(4)(B))

The industry test procedure referenced by ASHRAE Standard 90.1–2019 (the latest version of ASHRAE Standard 90.1) for DX–DOASes is ANSI/AHRI Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (ANSI/AHRI 920–2015). ANSI/AHRI 920–2015 underwent major updates which resulted in a new version of the test procedure released in February 2020: AHRI 920–2020. Due to these test procedure updates, the minimum energy efficiency levels specified for DX–DOASes in ASHRAE Standard 90.1–2019 (which uses the metrics ISMRE and ISCOP) are not based on equipment efficiency as measured pursuant to the latest version of the industry consensus test procedure, AHRI 920–2020 (which uses the metrics ISMRE2 and ISCOP2). As a result, should DOE adopt the test procedure as proposed in the July 2021 TP NOPR, the efficiency measurements from the version of the industry test procedure recognized in ASHRAE Standard 90.1–2019 for DX–DOASes (*i.e.,* ISMRE and ISCOP), would not be comparable to efficiency measurements under the DOE test procedure. DOE would generally be required to adopt the ISMRE and ISCOP levels in ASHRAE Standard 90.1–2019 as the basis for energy conservation standards; however, in the case of an amended test procedure that would alter the measured energy efficiency or measured energy use of a covered ASHRAE equipment, EPCA prescribes requirements to amend the applicable energy conservation standard so that products or equipment that complied under the prior test procedure remain compliant under the amended test procedure. (*See generally* 42 U.S.C. 6293(e); 42 U.S.C. 6314(a)(4)(C))

As such, in this proposed rule, DOE is proposing to adopt minimum efficiency levels using the new metrics established in AHRI 920–2020 at equivalent stringency to those levels currently published in ASHRAE Standard 90.1 (which are in terms of the metrics established in ANSI/AHRI 920–2015). DOE has done so by determining a ''crosswalk,'' or, an equivalent translation, of the metrics.

DOE conducted a crosswalk informed by the crosswalk procedure established in EPCA and required for amended test procedures that result in changes to the measured energy efficiency or energy use as compared to the existing DOE test procedure. (*See* 42 U.S.C. 6293(e); 42 U.S.C. 6314(a)(4)(C)) This EPCA crosswalk provision is not applicable in the present case as there is not an existing DOE test procedure for DX–DOASes; however, DOE found it to be instructive for determining standards using the ISMRE2 and ISCOP2 metrics that are of equivalent stringency as the levels specified in ASHRAE Standard 90.1–2019. The crosswalk approach relied on by DOE in this NOPR used an average difference in measured energy efficiency between ANSI/AHRI 920–2015 (which relies on ISMRE and ISCOP) and AHRI 920–2020 (which relies on ISMRE2 and ISCOP2).

3. Description on Estimated Number of Small Entities Regulated

For manufacturers of small, large, and very large air-conditioning and heating equipment (including DX–DOASes), commercial warm-air furnaces, and commercial water heaters, the Small Business Administration (SBA) has set a size threshold which defines those entities classified as ''small businesses''. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of this rule. *See* 13 CFR part 121. The equipment covered by this rule are classified under North American Industry Classification

System (NAICS) code 333415,[24] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

In reviewing the DX–DOAS market, DOE used company websites, marketing research tools, product catalogues, and other public information to identify companies that manufacture DX–DOASes. DOE identified 12 original equipment manufacturers (''OEMs'') of DX–DOASes affected by this rulemaking. DOE screened out companies that do not meet the definition of ''small business'' or are foreign-owned and operated. DOE used subscription-based business information tools to determine headcount, revenue, and geographic presence of the small businesses. Out of these 12 OEMs, DOE determined that there is one domestic small manufacturer. DOE understands the annual revenue of the small manufacturer to be approximately $66 million.

Issue–6: DOE requests comment and information on the number of small, domestic OEMs of the DX–DOASes.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

The proposed standards for DX–DOASes were determined by a crosswalk of the ASHRAE Standard 90.1–2019 efficiency levels to new efficiency metrics defined in AHRI 920–2020. As noted in Section 2 of the Review Under the Regulatory Flexibility Act, the crosswalk was based on the average difference in efficiency under the amended test procedure. While DOE expects it to be unlikely, some models currently on the market that are minimally compliant with ASHRAE Standard 90.1–2019 may not meet the crosswalked levels, since some units will fall above the average and some units will fall below the average. At this time, identification of such models is not possible due lack of data, as manufacturers do not publish sufficient model performance information.

The proposed adoption of the crosswalked ASHRAE level may require small manufacturers to redesign a portion of equipment offerings. However, adopting more stringent standards above the cross-walked ASHRAE levels would lead to higher costs to manufacturers. Therefore, DOE determined that the proposed efficiency level provides the least cost option for small manufacturers.

Issue–7: DOE requests comment on the potential number of basic models that small, domestic OEMs would need to redesign and the costs associated with the redesign process. Further, DOE request comments on its conclusion that adopting levels other than ASHRAE would lead to higher costs for small manufacturers.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered in this action.

6. Significant Alternatives to the Rule

As EPCA requires DOE to either adopt the ASHRAE levels or to propose higher standards, DOE is limited in options to mitigate impacts to small businesses. In this proposed rulemaking, DOE is adopting the ASHRAE levels (cross-walked to metrics adopted in the DX–DOAS test procedure), which is the least cost option to industry.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

*C. Review Under the Paperwork Reduction Act*

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless that collection of information displays a currently valid OMB Control Number.

OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered equipment, including DX–DOASes.

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

Certification data will be required for DX–DOASes; however, DOE is not proposing certification or reporting requirements for DX–DOASes in this NOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for DX–DOASes under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*D. Review Under the National Environmental Policy Act of 1969*

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1

[24] The business size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (Last Accessed July 29th, 2021).

because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

*E. Review Under Executive Order 13132*

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (*See* 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This proposed rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. In this document, DOE is proposing to adopt energy conservation standards at an equivalent stringency level as the existing industry standards in ASHRAE Standard 90.1–2019. The determination of the proposed energy conservation standards is based on a crosswalk of the ASHRAE Standard 90.1–2019 minimum efficiency levels to updated efficiency metrics, and thus DOE does not expect that units which are minimally compliant with ASHRAE Standard 90.1–2019 would require redesign. As a result, the analytical requirements of UMRA do not apply.

*H. Review Under Executive Order 12630*

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*I. Review Under Executive Order 13211*

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new energy conservation standards for DX–DOASes, is not a significant energy action because this action is not a significant regulatory action under Executive Order 12866, the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it

been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

*J. Information Quality*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[25] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present rulemaking.

*K. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed energy conservation standards for DX–DOASes would incorporate the following commercial standards: AHRI 920–2020 and AHRI 1060–2018. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

*L. Description of Materials Incorporated by Reference*

In this NOPR, DOE proposes to incorporate by reference the following industry standards:

(1) The test standard published by AHRI, titled ''2020 Standard for Performance Rating of DX-Dedicated Outdoor Air System Units,'' AHRI Standard 920–2020 (I–P). AHRI Standard 920–2020 (I–P) is an industry-accepted test procedure for measuring the performance of dehumidifying direct-expansion dedicated outdoor air system units (DX–DOASes). AHRI Standard 920–2020 (I–P) is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_920_I-P_2020.pdf.*

(2) The test standard published by AHRI, titled ''2018 Standard for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' ANSI/AHRI Standard 1060–2018. ANSI/AHRI Standard 1060–2018 is an industry-accepted test procedure for measuring the performance of air-to-air exchangers for energy recovery ventilation equipment (VERS). ANSI/AHRI Standard 1060–2018 is available on AHRI's website at: *www.ahrinet.org/App_Content/ahri/files/STANDARDS/AHRI/AHRI_Standard_1060_I-P_2018.pdf.*

## VIII. Public Participation

*A. Participation in the Webinar*

The time and date of the webinar meeting is listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

*B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this proposed rule, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

*C. Conduct of the Webinar*

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the

[25] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (Last accessed August 6, 2021).

procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

*D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public webinar, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

However, your contact information will be publicly viewable if you include it in the comment itself 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. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (''faxes'') will be accepted.

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

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

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

*E. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*F. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue–1: DOE requests comment on the proposed eight equipment classes for energy conservation standards of DX–DOASes.

Issue–2: DOE continues to seek information that may inform a market and technology assessment for the DX–DOAS industry, including data on technology options which may increase the ISMRE2 and/or ISCOP2 efficiencies of DX–DOASes.

Issue–3: DOE requests comment on the proposed minimum ISMRE2 and ISCOP2 standards for DX–DOASes, as well as comment on any aspect of its crosswalk analysis, which is detailed in the CASD. DOE continues to seek information which compares ISMRE and ISCOP ratings to ISMRE2 and ISCOP2 ratings for the DX–DOASes that are representative of the market baseline efficiency level.

Issue–4: DOE seeks feedback on the proposed representation requirement regarding MRC.

Issue–5: DOE requests comment on its proposed DX–DOAS-specific enforcement provisions, and in particular, the appropriateness of the proposed tolerances on certified values.

Issue–6: DOE requests comment and information on the number of small, domestic OEMs of the DX–DOASes.

Issue–7: DOE requests comment on the potential number of basic models that small, domestic OEMs would need to redesign and the costs associated with the redesign process. Further, DOE request comments on its conclusion that adopting levels other than ASHRAE would lead to higher costs for small manufacturers.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

## IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

## List of Subjects

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Incorporation by reference, Reporting and recordkeeping requirements.

*10 CFR Part 431*

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Reporting and recordkeeping requirements.

## Signing Authority

This document of the Department of Energy was signed on January 19, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 20, 2022.

**Treena V. Garrett,**

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:
■ a. Revising paragraph (a) and the introductory text to paragraph (c);
■ b. Redesignating paragraph (c)(2) as (4); and
■ c. Adding new paragraphs (c)(2) and (3).

The revision and additions read as follows:

### § 429.4 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–2945, *https://www.energy.gov/eere/buildings/appliance-and-equipment-standards-program,* and may be obtained from the other sources in this section. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(c) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or go to: *www.ahrinet.org.*

* * * * *

(2) AHRI Standard 920–2020 (I–P), (''AHRI 920–2020''), ''2020 Standard for Performance Rating of DX-Dedicated Outdoor Air System Units,'' approved February 4, 2020, IBR approved for § 429.134.

(3) AHRI Standard 1060–2018, (''AHRI 1060–2018''), ''2018 Standard

for Performance Rating of Air-to-Air Exchangers for Energy Recovery Ventilation Equipment,'' approved 2018, (AHRI 1060–2018), IBR approved for § 429.134.

* * * * *

■ 3. Amend § 429.43 by reserving paragraph (a)(3) and adding paragraph (a)(4) to read as follows:

**§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.**

(a) * * *

(3) [Reserved]

(4) *Product-specific provisions for determination of represented values for dehumidifying direct-expansion dedicated outdoor air systems.* (i) When certifying, the following provisions apply.

(A) For ratings based on tested samples, the represented value of moisture removal capacity shall be the mean of the moisture removal capacities measured for the units in the sample selected, as described in paragraph (a)(1)(ii) of this section, rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020 (incorporated by reference; see § 429.4).

(B) For ratings based on an AEDM, the represented value of moisture removal capacity shall be the moisture removal capacity output simulated by the AEDM, as described in paragraph (a)(2) of this section, rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020.

(ii) [Reserved]

* * * * *

■ 4. Amend § 429.134 by adding paragraph (s) to read as follows:

**§ 429.134 Product-specific enforcement provisions.**

* * * * *

(s) *Dehumidifying direct-expansion dedicated outdoor air systems (DX–DOASes) with ventilation energy recovery systems (VERS).* (1) If the manufacturer certified testing in accordance with Option 1 using default VERS exhaust air transfer ratio (EATR) values or Option 2 using default VERS effectiveness and EATR values, DOE may determine the integrated seasonal moisture removal efficiency 2 (ISMRE2) and/or the integrated seasonal coefficient of performance 2 (ISCOP2) using the default values or by conducting testing to determine VERS performance according to AHRI 1060–2018 (incorporated by reference, see § 429.4) (with the minimum purge angle and zero pressure differential between supply and return air).

(2) If the manufacturer certified testing in accordance with Option 1 using VERS exhaust air transfer ratio (EATR) values or Option 2 using VERS effectiveness and EATR values determined using an analysis tool certified in accordance with AHRI 1060–2018, DOE may conduct its own testing to determine VERS performance in accordance with AHRI 1060–2018.

(i) DOE would use the values of VERS performance certified to DOE (*i.e.* EATR, sensible effectiveness, and latent effectiveness) as the basis for determining the ISMRE2 and/or ISCOP2 of the basic model only if, for Option 1, the certified EATR is found to be no more than one percentage point less than the mean of the measured values (*i.e.* the difference between the measured EATR and the certified EATR is no more than 0.01), or for Option 2, all certified values of sensible effectiveness are found to be no greater than 105 percent of the mean of the measured values (*i.e.* the certified effectiveness divided by the measured effectiveness is no greater than 1.05), all certified values of latent effectiveness are found to be no greater than 107 percent of the mean of the measured values, and the certified EATR is found to be no more than one percentage point less than the mean of the measured values.

(ii) If any of the conditions in paragraph (s)(2)(i) of this section do not hold true, then the mean of the measured values will be used as the basis for determining the ISMRE2 and/or ISCOP2 of the basic model.

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Amend § 431.97 by adding paragraph (g) and Table 14 to read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**

* * * * *

(g) Each dehumidifying direct-expansion dedicated outdoor air system manufactured on or after the compliance date listed in this table must meet the applicable minimum energy efficiency standard level(s) set forth in this section.

TABLE 14 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR DEHUMIDIFYING DIRECT-EXPANSION DEDICATED OUTDOOR AIR SYSTEMS

| Equipment type | Subcategory | Efficiency level | Compliance date: Equipment manufactured starting on . . . |
|---|---|---|---|
| Dehumidifying direct-expansion dedicated outdoor air systems. | (AC)—Air-cooled without ventilation energy recovery systems. | ISMRE2 = 3.8 ..... | *[date 18 months after the publication of a standards final rule].* |
| | (AC w/VERS)—Air-cooled with ventilation energy recovery systems. | ISMRE2 = 5.0 ..... | *[date 18 months after the publication of a standards final rule].* |
| | (ASHP)—Air-source heat pumps without ventilation energy recovery systems. | ISMRE2 = 3.8 .....<br>ISCOP2 = 2.05 ..... | *[date 18 months after the publication of a standards final rule].* |
| | (ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems. | ISMRE2 = 5.0 .....<br>ISCOP2 = 3.20 ..... | *[date 18 months after the publication of a standards final rule].* |
| | (WC)—Water-cooled without ventilation energy recovery systems. | ISMRE2 = 4.7 ..... | *[date 18 months after the publication of a standards final rule].* |
| | (WC w/VERS)—Water-cooled with ventilation energy recovery systems. | ISMRE2 = 5.1 ..... | *[date 18 months after the publication of a standards final rule].* |
| | (WSHP)—Water-source heat pumps without ventilation energy recovery systems. | ISMRE2 = 3.8 .....<br>ISCOP2 = 2.13 ..... | *[date 18 months after the publication of a standards final rule].* |

TABLE 14 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR DEHUMIDIFYING DIRECT-EXPANSION DEDICATED OUTDOOR AIR SYSTEMS—Continued

| Equipment type | Subcategory | Efficiency level | Compliance date: Equipment manufactured starting on . . . |
|---|---|---|---|
| | (WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems. | ISMRE2 = 4.6 .....<br>ISCOP2 = 4.04 ..... | *[date 18 months after the publication of a standards final rule].* |

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Part III

## Securities and Exchange Commission

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, To Adopt New Rules 6.1P–O, 6.37AP–O, 6.40P–O, 6.41P–O, 6.62P–O, 6.64P–O, 6.76P–O, and 6.76AP–O and Amendments to Rules 1.1, 6.1–O, 6.1A–O, 6.37–O, 6.65A–O and 6.96–O; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94072; File No. SR–NYSEArca–2021–47]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, To Adopt New Rules 6.1P–O, 6.37AP–O, 6.40P–O, 6.41P–O, 6.62P–O, 6.64P–O, 6.76P–O, and 6.76AP–O and Amendments to Rules 1.1, 6.1–O, 6.1A–O, 6.37–O, 6.65A–O and 6.96–O

January 26, 2022.

### I. Introduction

On June 21, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rules 6.1P–O (Applicability), 6.37AP–O (Market Maker Quotations), 6.40P–O (Pre-Trade and Activity-Based Risk Controls), 6.41P–O (Price Reasonability Checks—Orders and Quotes), 6.62P–O (Orders and Modifiers), 6.64P–O (Auction Process), 6.76P–O (Order Ranking and Display), and 6.76AP–O (Order Execution and Routing) and proposed amendments to Rules 1.1 (Definitions), 6.1–O (Applicability, Definitions and References), 6.1A–O (Definitions and References—OX), 6.37–O (Obligations of Market Makers), 6.65A–O (Limit-Up and Limit-Down During Extraordinary Market Volatility), and 6.96–O (Operation of Routing Broker) to reflect the implementation of the Exchange's Pillar trading technology on its options market. The proposed rule change was published for comment in the **Federal Register** on July 9, 2021.[3]

On August 18, 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 approve or disapprove the proposed rule change.[5] On September 28, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed in its entirety.[6] On September 29, 2021, the Commission published the proposed rule change, as modified by Amendment No. 1, for notice and comment and instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7]

On December 16, 2021, the Commission desiFgnated a longer period within which to approve the proposed rule change or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On December 16, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filing, as amended by Amendment No. 1, in its entirety.[9] On January 19, 2022, the Exchange filed Amendment No. 3 to the proposed rule change, which superseded the original filing, as amended by Amendment No. 1 and 2, in its entirety. On January 21, the Exchange withdrew Amendment No. 3 and filed Amendment No. 4, which superseded the original filing, as amended by Amendment No. 1, 2, and 3, in its entirety.[10] The Commission has received no comments on the proposed rule change.

The Commission is publishing this notice to solicit comments on Amendment No. 4 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 4, on an accelerated basis.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Background

The Exchange plans to transition its options trading platform to its Pillar technology platform. The Exchange's and its national securities exchange affiliates' [11] (together with the Exchange, the ''NYSE Exchanges'') cash equity markets are currently operating on Pillar. For this transition, the Exchange proposes to use the same Pillar

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92304 (June 30, 2021), 86 FR 36440 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92696, 86 FR 47350 (August 24, 2021). The Commission designated October 7, 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] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-9304467-259869.pdf.*

[7] *See* Securities Exchange Act Release No. 93193, 86 FR 55926 (October 7, 2021).

[8] *See* Securities Exchange Act Release No. 93797, 86 FR 72674 (December 22, 2021).

[9] Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20109876-264219.pdf.*

[10] Amendment No. 4 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20112491-265389.pdf.* In Amendment No. 4, compared to the original proposal, as modified by Amendment No. 1, 2, and 3, the Exchange, among other things: provides more background information regarding the proposed rule changes, makes clarifying changes to certain proposed rules without any substantive differences as compared to the original filing, and makes the following substantive changes from the original filing: (1) Adds a definition of Away Market BBO (ABBO) to replace the term Away Market NBBO; (2) revises the description of a Market Marker quotation, as described in proposed Rule 6.37A–O(a)(1); (3) revises how the Specified Threshold would be calculated for Limit Order Price Protection in proposed Rule 6.62P–O(a)(3)(A) to include prices equal to the Reference Price; (4) revises how a Trading Collar would be assigned, as described in proposed Rule 6.62P–O(4)(A) and (B), to provide that a Trading Collar would be reassigned to an order after a trading halt, and makes related changes to proposed Rule 6.64P–O(f)(3)(A)(ii); (5) revises proposed Rule 6.62P–O(g) to reorganize and streamline the proposed rule to specify that a Cross Order is a Qualified Contingent Cross Order and to describe the order type in paragraph (g)(1)(A) and to add proposed Complex QCC Orders; (6) revises proposed Rule 6.62P–O(h)(1) to specify that a Clear-the-Book Order would be entered contemporaneous with executing an order in open outcry; (7) revises proposed Rule 6.62P–O(i)(2) to specify which order with a Minimum Trade Size modifier would not be subject to self-trade prevention modifiers; (8) revises proposed Rule 6.62P–O to remove the proposed Non-Display Remove Modifier; (9) revises proposed Rule 6.64P–O(a) to add a definition for the term ''Auction Price'' and to modify the definition of ''Legal Quote Width''; (10) revises proposed Rule 6.64P–O(g)(2) to provide that during a trading halt, any unexecuted quantity of an order for which the 500-millisecond Trading Collar timer has started would be cancelled; (11) revises proposed Rule 6.64P–O(d)(3) and (4) to reduce the length of the proposed Opening MMQ Timers (from one minute to 30 seconds) and reduce the time before commencing opening of a series when there is a Calculated NBBO that is wider than the Legal Width Quote in a series (from five minutes to 90 seconds), both of which measures would shorten the time the Exchange would wait before automatically opening a series in the specified circumstances; and (12) revises proposed Rule 6.76AP–O(a)(1)(A) to provide that only the first LMM quote in time priority would be eligible for the LMM Guarantee.

[11] The Exchange's national securities exchange affiliates are the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE National, Inc. (''NYSE National''), and NYSE Chicago, Inc. (''NYSE Chicago'').

technology already in operation for its cash equity market. In doing so, the Exchange will be able to offer not only common specifications for connecting to both of its cash equity and equity options markets, but also common trading functions. This Amendment No. 4 supersedes and replaces Amendment No. 2 to the original filing in its entirety.[12]

The Exchange plans to roll out the new technology platform over a period of time based on a range of underlying symbols, anticipated for the first quarter of 2022. As was the case for the other NYSE Exchanges that have transitioned to Pillar, the Exchange anticipates a three-week roll-out period and will announce by Trader Update[13] when underlying symbols will be transitioning to the Pillar trading platform. With this transition, certain rules would continue to be applicable to options overlying symbols trading on the current trading platform—the OX system,[14] but would not be applicable to options overlying symbols that have transitioned to trading on Pillar.

Instead, the Exchange proposes new rules to reflect how options would trade on the Exchange once Pillar is implemented. These proposed rule changes will (1) use Pillar terminology that is based on Exchange Rule 7–E Pillar terminology governing cash equity trading; (2) provide for common functionality on both its options and cash equity markets; and (3) introduce new functionality.

The Exchange notes that certain of the proposed new Pillar rules concern functionality not currently available on the OX system and that would be unique to how option contracts trade, and therefore would be new rules with no parallel version for the Exchange's cash equity market.

Proposed Use of ''P'' Modifier

As proposed, new rules governing options trading on Pillar would have the same numbering as current rules that address the same functionality, but with the modifier ''P'' appended to the rule number. For example, Rule 6.76–O, governing Order Ranking and Display—OX, would remain unchanged and continue to apply to any trading in symbols on the OX system. Proposed Rule 6.76P–O would govern Order Ranking and Display for trading in options symbols migrated to the Pillar platform. All other current rules that have not had a version added with a ''P'' modifier will be applicable to how trading functions on both the OX system and Pillar. Once options overlying all symbols have migrated to the Pillar platform, the Exchange will file a separate rule proposal to delete rules that are no longer operative because they apply only to trading on the OX system.

To reflect how the ''P'' modifier would operate, the Exchange proposes to add rule text immediately following the title ''Rule 6–O Options Trading,'' and before ''Rules Principally Applicable to Trading of Option Contracts'' that would provide that rules with a ''P'' modifier would be operative for symbols that are trading on the Pillar trading platform. As further proposed, and consistent with the handling of the transition to Pillar by the Exchange's cash equity platform, if a symbol (and the option overlying such symbol) is trading on the Pillar trading platform, a rule with the same number as a rule with a ''P'' modifier would no longer be operative for that symbol.[15]

The Exchange believes that adding this explanation regarding the ''P'' modifier in Exchange rules would provide transparency regarding which rules and definitions would be operative during the symbol migration to Pillar.

Summary of Proposed Rule Changes

In this filing, the Exchange proposes the following new Pillar rules: Rules 6.1P–O (Applicability), 6.37AP–O (Market Maker Quotations), 6.40P–O (Pre-Trade and Activity-Based Risk Controls), 6.41P–O (Price Reasonability Checks—Orders and Quotes), 6.62P–O (Orders and Modifiers), 6.64P–O (Auction Process), 6.76P–O (Order Ranking and Display), and 6.76AP–O (Order Execution and Routing). The Exchange also proposes to amend Rules 1.1 (Definitions), 6.1–O (Applicability, Definitions and References), and 6.1A–O (Definitions and References—OX) to reflect definitions that would be applicable for options trading on Pillar and make conforming amendments to Rules 6.37–O (Obligations of Market Makers), 6.65A–O (Limit-Up and Limit-Down During Extraordinary Market Volatility), and 6.96–O (Operation of Routing Broker). These proposed rules would set forth the foundation of the Exchange's options trading model on Pillar and, among other things, would use existing Pillar terminology currently in effect for the Exchange's cash equity platform.

Because certain proposed rules have definitions and functions that carry forward to other proposed rules, the Exchange proposes to describe the new rules in the following order (rather than by rule number order): Definitions, applicability, ranking and display, execution and routing, orders and modifiers, market maker quotations, pre-trade and activity-based risk

[12] Amendment No. 4 provides more background information regarding the proposed rule changes, makes clarifying changes to certain proposed rules without any substantive differences as compared to the original filing, and makes the following substantive changes from the original filing: (1) Added definition of Away Market BBO (ABBO) to replace the term Away Market NBBO; (2) revises the description of a Market Marker quotation, as described in proposed Rule 6.37A–O(a)(1); (3) revises how the Specified Threshold would be calculated for Limit Order Price Protection in proposed Rule 6.62P–O(a)(3)(A) to include prices equal to the Reference Price; (4) revises how a Trading Collar would be assigned, as described in proposed Rule 6.62P–O(4)(A) and (B), to provide that a Trading Collar would be reassigned to an order after a trading halt, and makes related changes to proposed Rule 6.64P–O(f)(3)(A)(ii); (5) revises proposed Rule 6.62P–O(g) to reorganize and streamline the proposed rule to specify that a Cross Order is a Qualified Contingent Cross Order and to describe the order type in paragraph (g)(1)(A) and to add proposed Complex QCC Orders; (6) revises proposed Rule 6.62P–O(h)(1) to specify that a Clear-the-Book Order would be entered contemporaneous with executing an order in open outcry; (7) revises proposed Rule 6.62P–O(i)(2) to specify which order with a Minimum Trade Size modifier would not be subject to self-trade prevention modifiers; (8) revises proposed Rule 6.62P–O to remove the proposed Non-Display Remove Modifier; (9) revises proposed Rule 6.64P–O(a) to add a definition for the term ''Auction Price'' and to modify the definition of ''Legal Quote Width''; (10) revises proposed Rule 6.64P–O(g)(2) to provide that during a trading halt, any unexecuted quantity of an order for which the 500-millisecond Trading Collar timer has started would be cancelled; (11) revises proposed Rule 6.64P–O(d)(3) and (4) to reduce the length of the proposed Opening MMQ Timers (from one minute to 30 seconds) and reduce the time before commencing opening of a series when there is a Calculated NBBO that is wider than the Legal Width Quote in a series (from five minutes to 90 seconds), both of which measures would shorten the time the Exchange would wait before automatically opening a series in the specified circumstances; and (12) revises proposed Rule 6.76AP–O(a)(1)(A) to provide that only the first LMM quote in time priority would be eligible for the LMM Guarantee.

[13] Trader Updates are available here: *https://www.nyse.com/trader-update/history.* Anyone can subscribe to email updates of Trader Updates, available here: *https://www.nyse.com/subscriptions.*

[14] ''OX'' refers to the Exchange's current electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display. *See* Rule 6.1A–O(a)(13). ''OX Book'' refers to the OX's electronic file of orders and quotes, which contain all of the orders in each of the Display Order and Working Order processes and all of the Market Makers' quotes in the Display Order Process. *See* Rule 6.1A–O(a)(14). With the transition to Pillar, the Exchange would no longer use the terms ''OX'' or ''OX Book'' and rules using those terms would not be applicable to trading on Pillar. Once the transition is complete, the Exchange will file a subsequent proposed rule change to delete references to OX and OX Book from the rulebook.

[15] The Exchange used the same description when it transitioned its cash equity platform to Pillar. *See* Securities Exchange Act Release Nos. 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEArca–2015–38) (Approval Order) and 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (''NYSE Arca Equities Pillar Notice'').

controls, price reasonability checks, and auctions.

To promote clarity and transparency, the Exchange further proposes to add a preamble to the following current rules specifying that they would not be applicable to trading on Pillar: Rule 6.1–O (Applicability, Definitions and References), 6.1A–O (Definitions and References—OX), Rule 6.37A–O (Market Maker Quotations), 6.40–O (Risk Limitation Mechanism), 6.60–O (Price Protection—Orders), 6.61–O (Price Protections—Quotes), 6.62–O (Certain Types of Orders Defined), 6.64–O (OX Opening Process), 6.76–O (Order Ranking and Display—OX), 6.76A–O (Order Execution—OX), 6.88–O (Directed Orders), and 6.90–O (Qualified Contingent Crosses).

As discussed in greater detail below, the Exchange is not proposing fundamentally different functionality applicable to options trading on Pillar than on the OX system. However, with Pillar, the Exchange would introduce new terminology, and as applicable, new or updated functionality that would be available for options trading on the Pillar platform.

The Exchange notes that new rules relating to electronic complex trading on Pillar are addressed in a separate proposed rule change.[16]

Proposed Rule Changes

Rule 1.1—Definitions

Rule 1.1 sets forth definitions that are applicable to both the Exchange's cash equity and options markets. Rule 6.1–O(b) sets forth definitions that are applicable to the trading of option contracts on the Exchange. Rule 6.1A–O sets forth definitions that are applicable to trading on the Exchange's current OX system. In connection with the transition of options trading to Pillar, the Exchange proposes to copy the definitions currently set forth in Rules 6.1–O(b) and 6.1A–O into Rule 1.1, with changes as described below. This proposed rule change would streamline the Exchange's rules by consolidating definitions that would be applicable for trading on Pillar into Rule 1.1. Once the transition to Pillar is complete, the Exchange will file a subsequent proposed rule change to delete current Rules 6.1–O and 6.1A–O as discussed further below.

In connection with adding definitions to Rule 1.1, the Exchange proposes to delete the sub-paragraph numbering currently set forth in Rule 1.1. The Exchange does not believe that the sub-paragraph numbering is necessary because the definitions are organized in alphabetical order and would continue to be organized in alphabetical order. In addition, removing the sub-paragraph numbering would make any future amendments to Rule 1.1 easier to process as any new definitions would simply be added in alphabetical order.

Certain definitions in Rule 1.1 currently specify that they are only for ''equities'' trading. With the proposed consolidation of definitions, some of those definitions will become applicable to both options and cash equity trading, and others will continue to be applicable only to cash equity trading. With the proposed consolidation, the Exchange proposes to remove existing language limiting those definitions to ''equities'' traded on the Exchange if the definition would be equally applicable to options trading. In addition, to the extent that a proposed definition would continue to be applicable only to cash equity trading, the Exchange proposes to make a global change to update references to ''equities'' traded on the Exchange to ''cash equity securities'' traded on the Exchange. The Exchange believes these proposed modifications would add clarity and consistency to Exchange rules.

The Exchange proposes the following amendments to Rule 1.1.

First, definitions set forth in Rule 6.1–O(b) would be added to Rule 1.1 in alphabetical order with certain differences described in greater detail below.[17] To promote clarity, if the definition that is being copied is not specifically about options trading, the Exchange proposes to add an introductory clause to the definition to specify that the term is for options traded on the Exchange. The Exchange does not propose to copy the definition of ''Quote with Size,'' which is currently defined in Rule 6.1–O(b)(33), to Rule 1.1 because that term would not be used in the Pillar rules, and does not propose to copy the definition of ''Short Term Options Series,'' because it is duplicative of Commentary .07 to Rule 6.4–O. In addition, the Exchange is not including the definition of ''Foreign Broker/Dealer,'' which is currently defined in Rule 6.1–O(b)(31), in Rule 1.1, as this term is not used anywhere else in Exchange rules.[18] The Exchange also proposes changes to certain definitions that are being copied from Rule 6.1–O(b) to Rule 1.1, as follows:

- The Exchange proposes to amend certain definitions that are being copied to Rule 1.1 to use the term ''underlying security'' rather than referring separately to an ''underlying stock or Exchange-Traded Fund Share.'' The Exchange believes that this proposed change would not make any substantive changes because an Exchange-Traded Fund Share is a ''security'' as that term is defined in Rule 1.1 (and is also an NMS stock). Accordingly, the term ''underlying security,'' by definition, would include Exchange-Traded Fund Shares. The Exchange proposes to make this change to the following definitions that are proposed to be added to Rule 1.1: ''Call,'' ''Class of Options,'' ''Covered,'' ''Exercise Price,'' ''Primary Market,'' ''Put,'' ''Option Issue,'' and ''Underlying Stock or Underlying Security.''[19]
- The Exchange proposes to streamline the definitions of ''Closing Purchase Transaction,'' ''Closing Sale Transaction,'' ''Opening Purchase Transaction,'' and ''Opening Writing Transaction'' without any substantive differences, as follows:
  - The term ''Closing Purchase Transaction'' is currently defined in Rule 6.1–O(b)(23) to mean ''an option transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction.'' The proposed Rule 1.1 definition of this term would be ''a transaction in a series in which the purchaser intends to reduce or eliminate a short position in such series.''
  - The term ''Closing Sale Transaction'' is currently defined in Rule 6.1–O(b)(22) to mean an ''option transaction in which the seller's

[16] *See* Securities Exchange Act Release No. 92563 (August 4, 2021), 86 FR 43704 (August 10, 2021) (Notice of proposed Rule 6.91P–O, regarding complex order trading on Pillar) (''Complex Pillar Notice'').

[17] Rule 6.1–O(b) has definitions for: Options Clearing Corporation, Rules of the Options Clearing Corporation, Clearing Member, Participating Exchange, Option Contract, Exchange Option Transaction and Exchange Transaction, Type of Option, Call, Put, Class of Options, Series of Options, Option Issue, Underlying Stock or Underlying Security, Exercise Price, Aggregate Exercise Price, Expiration Month, Expiration Date, Long Position, Short Position, Opening Purchase Transaction, Opening Writing Transaction, Closing Sale Transaction, Closing Purchase Transaction, Covered, Uncovered, Outstanding, Primary Market, Options Trading, Customer, Trading Crowd, Foreign Broker/Dealer, Exchange-Traded Fund Share, Quote with Size, Trading Official, Non-OTP Firm or Non-OTP Holder Market Maker, Firm, Consolidated Book, Crowd Participants, Electronic Order Capture System, Short Term Option Series, and Quarterly Options Series. Unless otherwise specified, the Exchange proposes to copy the definitions from Rule 6.1–O(b) to Rule 1.1 without any differences.

[18] The Exchange is not proposing to delete the definitions of ''Quote with Size, ''Foreign Broker/Dealer,'' or ''Short Term Options Series'' at this time as such terms would be deleted in the subsequent filing to delete Rule 6.1–O.

[19] The Exchange proposes to make a similar non-substantive change to delete the term ''Exchange-Trade Fund Share'' in Rule 6.37–O(c).

intention is to reduce or eliminate a long position in the series of options involved in such transaction.'' The proposed Rule 1.1 definition of this term would be ''a transaction in a series in which the seller intends to reduce or eliminate a long position in such series.''

○ The term ''Opening Purchase Transaction'' is currently defined in Rule 6.1–O(b)(20) to mean ''an option transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction.'' The proposed Rule 1.1 definition of this term would be ''a transaction in a series in which the purchaser intends to create or increase a long position in such series.''

○ The term ''Opening Writing Transaction'' is currently defined in Rule 6.1–O(b)(21) to mean ''an option transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.'' The proposed Rule 1.1 definition of this term would be ''a transaction in a series in which the seller (writer) intends to create or increase a short position in such series.''

• The Exchange proposes to revise the definition of ''Crowd Participants,'' which is currently defined in Rule 6.1–O(b)(38) to mean ''the Market Makers appointed to an option issue under Rule 6.35–O, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series,'' to not include the clause ''for a particular option series'' as unnecessary text. The Exchange considers that the definition of ''Crowd Participants'' as distinct from the current definition of ''Trading Crowd.'' Specifically, the term ''Trading Crowd'' refers to the physical location of the trading post for open outcry trading, whereas the term ''Crowd Participants'' refers to the individual Market Makers and Floor Brokers that comprise the Trading Crowd.[20]

• The Exchange proposes to revise the definition of ''Electronic Order Capture System'' to eliminate reference to the Commission's order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which was the initial authority for the Exchange to specify requirements relating to the Electronic Order Capture System. The Exchange will continue to include requirements for the Electronic Order Capture System in its rules and does not believe it is necessary to continue to cite to the original authority for this requirement in Exchange rules.

• The Exchange proposes to streamline the definition of ''Expiration Date'' to eliminate now obsolete language limiting the definition to options expiring before, on, or after February 15, 2015. In addition, the Exchange does not propose to include the following text in the Rule 1.1 definition of ''Expiration Date'': ''Notwithstanding the foregoing, in the case of certain long-term options expiring on or after February 1, 2015 that the Options Clearing Corporation has designated as grandfathered, the term ''expiration date'' shall mean the Saturday immediately following the third Friday of the expiration month.'' This rule text is now obsolete as the Exchange does not have any series trading on the Exchange with such Saturday expiration dates.

• The Exchange proposes to amend the definition of ''Options Trading,'' which is currently defined in Rule 6.1–O(b)(28), to delete the phrase ''issued by the Options Clearing Corporation.'' Accordingly, the proposed Rule 1.1 definition of ''options trading'' would be as follows: ''when not preceded by the word 'Exchange,' means trading in any option contract, whether or not approved for trading on the Exchange.'' The Exchange believes that this proposed change is immaterial because the Exchange trades only options that have been issued by the Options Clearing Corporation, and therefore reference to the OCC is redundant and unnecessary.

• The Exchange proposes to add to the definition of ''Option Contract,'' which is currently defined in Rule 6.1–O(b)(5), that option contracts would be included within the definition of ''security'' or ''securities'' as such terms are used in the Bylaws and Rules of the Exchange. This proposed text is copied from the last sentence of current Rule 6.1–O(a). As described below, proposed Rule 6.1P–O would not include this text. The Exchange believes that adding this text to the proposed Rule 1.1 definition of ''option contract'' would promote clarity and transparency in Exchange rules by consolidating related definitions in a single location.

• The Exchange proposes to streamline the definition of ''Outstanding'' without any substantive differences. Specifically, the Exchange proposes to replace the following Rule 6.1–O(b)(26) text, ''has neither been the subject of a closing sale transaction on the Exchange or a comparable closing transaction on another participating Exchange nor been exercised nor reached its expiration date,'' with the following, ''has not been the subject of a closing sale transaction, exercised, or expired.'' The Exchange believes that the proposed revised text has the same meaning, with more clear text.

• The Exchange proposes to modify the definition of ''Routing Agreement'' to replace references to ''NYSE Arca, L.L.C.,'' an entity that no longer exists, with the term ''the Exchange,'' which is a defined term in Rule 1.1.

• The Exchange proposes to modify the definition of ''Trading Crowd,'' which is currently defined in Rule 6.1–O(b)(30), to include Floor Brokers, which change is consistent with how this concept is defined on other options exchanges.[21]

• The Exchange proposes to modify the definition of an ''Uncovered'' position, which ''in respect of a short position in an option contract means that the short position is not covered.'' Because a ''covered'' position is also defined in proposed Rule 1.1, the Exchange proposes to add quotation marks around ''covered'' and, immediately after this term, to add ''as defined above,'' to make clear the cross-reference is to another defined term, which would add transparency to the rule text.

Second, definitions set forth in Rule 6.1A–O(a) would be added to Rule 1.1 in alphabetical order without any substantive differences.[22] Because certain of these definitions are already set forth in Rule 1.1 for cash equity trading, the Exchange proposes to amend those existing definitions to specify that they would be applicable to options trading, and if applicable, set

[20] For example, current Rule 6.76–O(d) refers to Floor Brokers representing orders ''in the Trading Crowd,'' *i.e.,* the physical location for such open outcry trading. By contrast, current Rule 6.76–O(d)(2) refers to the requirement that priority be afforded to Crowd Participants in accordance with Rule 6.75–O(f), which refers to the individual Market Makers or Floor Brokers that are located within the Trading Crowd and that may be eligible for priority. As discussed below, the Exchange proposes to maintain this distinction in proposed Rule 6.76P–O(h).

[21] *See, e.g.,* Cboe Exchange Inc. (''Cboe'') Rule 1.1 (defining the terms ''in-crowd market participant'' and ''ICMP'' to include ''an in-crowd Market-Maker, an on-floor DPM or LMM with an allocation in a class, or a Floor Broker or PAR Official representing an order in the trading crowd on the trading floor'').

[22] Rule 6.1A–O(a) has definitions for: Authorized Trader, BBO, Complex BBO, Core Trading Hours, Customer, Professional Customer, Lead Market Maker, Market Center, Marketable, Market Maker, Market Maker Authorized Trader, Minimum Price Variation, NBBO, Complex NBBO, NOW Recipient, OX, OX Book, Routing Broker, Sponsored Participant, Sponsoring OTP Firm, Sponsorship Provisions, User, Directed Order Market Maker, and Order Flow Provider.

forth differences for options trading, as described in more detail below.

The Exchange does not propose to add the definition of ''Directed Order Market Maker'' to Rule 1.1 because in Pillar the Exchange would no longer support Directed Order Market Makers. In addition, the Exchange does not propose to add the definitions of ''Complex BBO'' or ''Complex NBBO'' to Rule 1.1, and instead has proposed to define terms relating to complex trading in a separate proposed rule change relating to electronic complex trading.[23] The Exchange also does not propose to add options-related definitions to Rule 1.1 relating to ''Sponsored Participant,'' ''Sponsoring OTP Firm,'' and ''Sponsorship Provisions'' because there are currently not any Sponsored Participants trading options on the Exchange, and the Exchange does not propose to reintroduce this category of participants. As noted above, the terms ''OX'' and ''OX Book'' will not be used in Pillar rules.

Finally, in addition to definitions that are being added to Rule 1.1 without any changes from the defined terms from Rule 6.1A–O(a), the Exchange proposes the following specific changes to the definitions that would be included in the Rule 1.1 definitions:[24]

- *Approved Person:* The Exchange proposes a non-substantive amendment to change the word ''a'' to ''an'' before ''OTP Firm.''
- *Authorized Trader:* The Exchange proposes to amend the Rule 1.1 definition of ''Authorized Trader'' to remove the limitation to equities trading so that it is applicable to both cash equity securities and options traded on the Exchange, and to add that it can mean a person who may submit orders to the Exchange's Trading Facilities on behalf of his or her OTP Holder. These proposed amendments combine the definition of Authorized Trader currently set forth in Rule 6.1A–O(a)(1) with the existing Rule 1.1 definition of Authorized Trader.[25]
- *Away Market:* The Exchange proposes to amend the Rule 1.1 definition of ''Away Market'' to add how that term would be used for options trading on the Exchange. As proposed, the new text would provide: ''[w]ith respect to options traded on the Exchange, the term 'Away Market' means any Trading Center (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to orders routed from the Exchange.'' This proposed definition is based on the Rule 6.1A–O(a)(12) definition of ''NOW Recipient,'' which is currently defined as ''any Market Center (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to NOW Orders routed from OX. The Exchange shall designate from time to time those Market Centers that qualify as NOW Recipients and shall periodically publish such information via its website.'' The Exchange proposes four non-substantive differences for the Pillar options trading definition of ''Away Market'': (1) Use the Pillar term of ''Away Market'' instead of the term ''NOW Recipient;'' (2) use the term ''Trading Center'' instead of ''Market Center''; (3) refer to ''orders routed from the Exchange'' instead of ''NOW Orders routed from OX''; and (4) delete the text relating to the Exchange designating and publishing to its website certain Away Markets. The Exchange does not believe that this text needs to be included in the definition of Away Market because such markets are by definition those with which the Exchange maintains electronic linkage (*i.e.,* pursuant to the Options Order Protection and Locked/Crossed Market Plan).
- *''Away Market BBO'' (''ABBO''):* The Exchange proposes to add a new definition to Rule 1.1 for the Away Market BBO or ABBO which, with respect to options traded on the Exchange, refers to the best bid(s) or offer(s) disseminated by Away Markets (defined immediately below) and calculated by the Exchange based on market information the Exchange receives from OPRA.[26] Consistent with this proposal, the Exchange also proposes that the term ''ABB'' would mean the best Away Market bid and the term ''ABO'' would mean the best Away Market offer. The Exchange notes that the proposed definition of ABBO is consistent with how this concept is defined on other options exchanges.[27]

In addition, the Exchange proposes that it would adjust its calculation of the ABBO for options traded on the Exchange in the same manner that the Exchange would calculate the NBBO (as described below). Accordingly, the Exchange proposes that, unless otherwise specified, the Exchange may adjust its calculation of the ABBO based on information about orders it sends to Away Markets, execution reports received from those Away Markets, and certain orders received by the Exchange.[28] This proposed text reflects how the Exchange currently calculates the ABBO for options trading and uses text based on Rule 7.37–E(d)(2) to use Pillar terminology to describe current functionality.[29] The Exchange believes that including this detail in the proposed definition of ABBO would promote clarity and transparency in Exchange rules.

- *BBO:* The Exchange proposes to amend the Rule 1.1 definition of ''BBO'' to add how that term would be used for options trading on the Exchange. As proposed, with respect to options traded on the Exchange, BBO would mean the best displayed bid or best displayed offer on the Exchange. This definition is based on the Rule 6.1A–O(a)(2)(a) definition of BBO, which currently defines BBO as the ''best bid or offer on OX.'' The Exchange believes that the proposed difference would add granularity to be clear that non-displayed quotes and orders would not be included in the BBO, which is consistent with current functionality.[30] The Exchange also proposes to use the term ''Exchange'' instead of ''OX.''
- *Consolidated Book:* The term ''Consolidated Book'' is currently defined in Rule 6.1–O(b)(37)[31] and the

[23] *See* Complex Pillar Notice, *supra* note 16.

[24] The Exchange also proposes a non-substantive amendment to the definition of ''Exchange'' to add a period at the end of the sentence.

[25] The proposed (combined) definition of ''Authorized Trader'' for cash equity and options trading would still include reference to ''Sponsored Participants,'' which remains applicable to cash equity trading (although, as noted above, is no longer applicable to options trading).

[26] *See, e.g., infra,* discussion regarding proposed Rule 6.62P–O(a)(1)(A)(iii), which would use the term ''ABBO'' when referring to a calculation of the national best bid and best offer that does not include the Exchange's BBO.

[27] *See, e.g.,* Cboe Rule 1.1. (defining the term ''ABBO'' to means ''the best bid(s) or offer(s) disseminated by Eligible Exchanges (as defined in [Cboe] Rule 5.65) and calculated by the Exchange based on market information the Exchange receives from OPRA''). The Exchange notes that Cboe's reference to Eligible Exchanges is substantively the same as the Exchange's reference to ''Away Markets.''

[28] Although the Exchange has not presently identified any circumstances under which it would use an unadjusted ABBO, it has included the ''[u]nless otherwise specified'' text to allow for this possibility. Should the Exchange opt to utilize an unadjusted ABBO for purposes of a specified rule, it would file a subsequent rule change to this effect.

[29] *See* Securities Exchange Act Release No. 91564 (April 14, 2021), 86 FR 20541 (April 20, 2021) (SR–NYSEArca–2021–21) (Notice of filing and immediate effectiveness of proposed rule change to specify when the Exchange may adjust its calculation of the PBBO).

[30] For determining the BBO for cash equities trading, the Exchange considers ''the best bid or offer that is a protected quotation on the NYSE Arca Marketplace,'' which ''protected quotations'' are, by definition, displayed. Thus, only displayed interest in included in the Exchange's calculation of the BBO on both its options and cash equities markets. *See* proposed Rule 1.1 (defining Protected Bid, Protected Offer, Protected Quotation) and current Rule 1.1 (ss) (defining same).

[31] The term ''Consolidated Book'' is currently defined as ''the Exchange's electronic book of limit orders for the accounts of Public Customers and

term ''OX Book'' is currently defined in Rule 6.1A–O(a)(14).[32] For Pillar, the Exchange proposes to define the term ''Consolidated Book'' in Rule 1.1 to mean the Exchange's electronic book of orders and quotes and state that all orders and quotes that are entered into the Consolidated Book would be ranked and maintained in accordance with the rules of priority, as provided for in proposed Rule 6.76P–O. This proposed definition uses terminology similar to the existing Rule 1.1 definition of ''NYSE Arca Book,'' which would be amended to specify that the definition would only be for cash equity securities traded on the Exchange. The Exchange believes that the proposed definition of ''Consolidated Book'' for options trading on Pillar is not substantively different from either the current Rule 6.1–O definition of ''Consolidated Book'' or the current Rule 6.1A–O definition of ''OX Book.'' Rather, the changes are designed to eliminate text that would not be applicable on Pillar without changing the substance of the proposed definition and would use more streamlined text to describe the Exchange's electronic order book. For example, the Exchange is not proposing to copy from Rule 6.1–O(b)(37) the (now antiquated) provision that ''[t]here is no limit to the size of orders or quotes that may be entered into the Consolidated Book'' because other options exchanges do not specify any capacity limit to orders and quotes in their defined terms relating to their electronic books.[33] Further, the Exchange believes that the proposed use of the phrase ''electronic book of orders and quotes'' makes clear that the Consolidated Book would include all orders and quotes, including orders from both ''Public Customers and broker-dealers,'' and it is not necessary to separately reference what entity may be entering orders. In addition, as noted above, the Exchange does not propose to use the term ''Quote with Size'' in connection with options trading on Pillar and therefore does not propose to include reference to that term in the Pillar proposed definition for ''Consolidated Book.'' And, as described in greater detail below in connection with proposed Rule 6.76P–O, on Pillar, the Exchange does not propose to use the terms ''Display Order and Working Order Processes'' and therefore these terms would not be included in the Rule 1.1 definition of Consolidated Book.

- *Core Trading Hours:* The Exchange proposes that the current definition of Core Trading Hours in Rule 1.1, which is defined as ''the hours of 9:30 a.m. Eastern Time through 4:00 p.m. (Eastern Time) or such other hours as may be determined by the Exchange from time to time,'' would be applicable to both cash equity securities and options trading on the Exchange. Because options trading may extend past 4:00 p.m., the Exchange proposes to amend Rule 1.1 to provide that for options traded on the Exchange, transactions may be effected on the Exchange for an equity options class until close of trading of the Primary Market for the securities underlying an options class. This proposed text is based on current Rule 6.1A–O(a)(3).[34]
- *Customer and Professional Customer:* The Exchange proposes to amend Rule 1.1 to add the definitions of ''Customer'' and ''Professional Customer.'' The proposed definitions use the same text as the definitions of Customer and Professional Customer set forth in Rules 6.1A–O(a)(4) and (4A) with non-substantive differences only to specify that these definitions would be applicable for options traded on the Exchange, eliminate redundant headers,[35] and re-number the sub-paragraphs. The Exchange also proposes to include a cross-reference to the definition of a broker or dealer as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act and rules thereunder, which specificity adds clarity and transparency to the proposed definition. The Exchange notes that the proposed definition of Customer is consistent with how this concept is defined on other options exchanges.[36]
- *Floor:* The Exchange proposes to amend the Rule 1.1 definition of ''Floor,'' which refers to the options trading floor, to include the synonymous defined terms ''Trading Floor'' and ''Options Trading Floor,'' which terms are used throughout existing Exchange rules and make one change to remove the term ''shall.'' These proposed changes would add clarity and consistency to Exchange rules.
- *Lead Market Maker:* The Exchange proposes to amend the Rule 1.1 definition of ''Lead Market Maker'' to add how that term would be used for options trading. As proposed, the new text would provide that for options traded on the Exchange, the term ''Lead Market Maker'' or ''LMM'' would ''mean a person that has been deemed qualified by the Exchange for the purpose of making transactions on the Exchange in accordance with Rule 6.82–O. Each LMM must be registered with the Exchange as a Market Maker. Any OTP Holder or OTP Firm registered as a Market Maker with the Exchange is eligible to be qualified as an LMM.'' This proposed definition is based on the Rule 6.1A–O(a)(5) definition of Lead Market Maker without any substantive differences. The Exchange proposes one non-substantive difference to use the term ''person'' instead of ''individual or entity,'' because the term ''person,'' as currently defined in Rule 1.1, is inclusive of natural persons and entities.
- *Marketable:* The Exchange proposes to amend the Rule 1.1 definition of ''Marketable'' to extend it to address options traded on the Exchange by deleting the phrase ''[w]ith respect to equities traded on the Exchange.''[37] The

broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 6.76–O. There is no limit to the size of orders or quotes that may be entered into the Consolidated Book.''

[32] *See supra* note 14 (noting that the term ''OX Book'' is currently defined as ''the OX's electronic file of orders and quotes, which contains all of the orders in each of the Display Order and Working Order Processes and all of the Market Makers' quotes in the Display Order Process'').

[33] *See, e.g.,* Cboe Rule 1.1. (defining ''Book'' and ''Simple Book'' as referring to ''the electronic book of simple orders and quotes maintained by the System, which single book is used during both the RTH and GTH trading sessions,'' without reference to any size limitations); MIAX Options Exchange (''MIAX'') Rule 100 (defining ''Book'' as referring to ''the electronic book of buy and sell orders and quotes maintained by the System,'' without reference to any size limitations).

[34] Rule 6.1A–O(a)(3) currently defines ''Core Trading Hours'' to mean ''the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange; provided, however, that transactions may be effected on the Exchange until the regular time set for the normal close of trading in the primary markets with respect to equity option classes and ETF option classes, and 15 minutes after the regular time set for the normal close of trading in the primary markets with respect to index option classes, or such other hours as may be determined by the Exchange from time to time.'' The Exchange does not propose to include in the Rule 1.1 definition of Core Trading Hours for options trading the current text regarding trading that continues 15 minutes after the regular time set for the normal close of trading in the primary markets with respect to index options classes, as this is already addressed in Rule 5.20–O(a) (Trading Sessions).

[35] The Exchange proposes that the Rule 1.1 definition of Professional Customer would not include the sub-header of ''Calculation of Professional Customer Orders'' as redundant of the following text in the rule that would provide ''[e]xcept as noted below, each order of any order type counts as one order for Professional order counting purposes.''

[36] *See, e.g.,* Cboe Rule 1.1. (defining ''Public Customer'' as referring to ''a person that is not a Broker-Dealer). Thus, the Exchange does not propose to add to Rule 1.1 the definition of ''Customer'' that is set forth in Rule 6.1–O(b)(29) (which simply cross-references ''paragraph (c)(6) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended'') as unnecessary and potentially confusing.

[37] The term ''Marketable'' is currently defined in Rule 1.1 to mean, ''[w]ith respect to equities traded

Continued

current description of the term ''Marketable,'' for purposes of Market Orders, is the same in both Rules 1.1 and 6.1A–O(a)(7).[38] Accordingly, the existing Rule 1.1 text relating to the term ''Marketable'' with respect to Market Orders would be applicable to options trading without any differences. With respect to Limit Orders, in Rule 1.1, the term ''Marketable'' currently means an order that can be immediately executed or routed. The current Rule 6.1A–O(a)(7) definition of the term ''Marketable'' for Limit Orders means when the price of the order matches or crosses the NBBO on the other side of the market. The current Rule 1.1 definition relating to Limit Orders means substantively the same thing as the current Rule 6.1A–O(a)(7) description for Limit Orders, and the Exchange proposes to use the existing Rule 1.1 definition of the term ''Marketable'' for both cash equity and options trading of Limit Orders. The Exchange also proposes a non-substantive amendment to add a comma after the phrase, ''the term 'Marketable' means'' and before ''for a Limit Order.''

• *Market Maker:* The Exchange proposes to amend the Rule 1.1 definition of ''Market Maker'' to add how that term would be used for options trading. As proposed, the new text would provide that for options traded on the Exchange, the term ''Market Maker'' would refer ''to an OTP Holder or OTP Firm that acts as a Market Maker pursuant to Rule 6.32–O.'' This proposed definition is based on the Rule 6.1A–O(a)(8) definition of Market Maker, which is defined as ''an OTP Holder or OTP Firm that acts as a Market Maker pursuant to Rule 6.32–O.'' Accordingly, the proposed Rule 1.1 definition of the term ''Market Maker'' for options trading would not have any differences from the current Rule 6.1A–O definition. The Exchange also proposes to include in the Rule 1.1 definition of Market Maker for options trading that for purposes of Exchange rules, the term Market Maker includes Lead Market Makers, unless the context otherwise indicates. This proposed text is based on Rule 6.1–O(c), References, with a non-substantive difference to use the term ''Exchange'' instead of ''NYSE Arca.'' The Exchange believes this proposed change would streamline and clarify this definition by consolidating definitions relating to Market Makers in a single location.

• *Market Maker Authorized Trader:* The Exchange proposes to amend the Rule 1.1 definition of ''Market Maker Authorized Trader'' to add how that term would be used for options trading. As proposed, the new text would provide that for options traded on the Exchange, the term ''Market Maker Authorized Trader'' or ''MMAT'' would ''mean an authorized trader who performs market making activities pursuant to Rule 6–O on behalf of an OTP Firm or OTP Holder registered as a Market Maker.'' This proposed definition is based on the Rule 6.1A–O(a)(9) definition of Market Maker Authorized Trader without any differences.

• *Market Participant Identifier (''MPID''):* The Exchange proposes to add a new definition to Rule 1.1 for ''Market Participant Identifier ('MPID').'' This term is currently used in, but not defined in, Rules 7.19–E and 7.31–E(i)(2) for cash equities trading. Because this term would also be used for options trading on Pillar, the Exchange believes that defining this term in Rule 1.1 would promote clarity and transparency. The proposed definition would provide that ''Market Participant Identifier'' or ''MPID'' refers to the identifier assigned to the orders and quotes of a single ETP Holder, OTP Holder, or OTP Firm for the execution and clearing of trades on the Exchange by that permit holder. The definition would further provide that an ETP Holder, OTP Holder, or OTP Firm may obtain multiple MPIDs and each such MPID may be associated with one or more sub-identifiers of that MPID. The Exchange believes that using the term MPID on the Exchange for options trading would promote clarity as this is an identifier commonly used by members of exchanges and the Exchange believes that using this term for its OTP Holders and OTP Firms would promote consistency, particularly for those firms that are also ETP Holders on the Exchange.

• *Minimum Price Variation or MPV:* The Exchange proposes to amend Rule 1.1 to add the definition of ''Minimum Price Variation'' or ''MPV'' for both cash equity securities and options that are traded on the Exchange. The Exchange proposes that the term ''Minimum Price Variation'' or ''MPV'' means the minimum price variations established by the Exchange. The Exchange further proposes that the MPVs for quoting cash equity securities traded on the Exchange are set forth in Rule 7.6–E. The Exchange further proposes that the MPVs for quoting and trading options traded on the Exchange are set forth in Rule 6.72–O(a). The proposed definition as it relates to options trading is based on the Rule 6.1A–O(a)(10) definition of MPV, which defines the term ''Minimum Price Variation'' to mean ''the variations established by the Exchange pursuant to Rule 6.72–O(a).'' Similar to this current rule, the proposed Rule 1.1 definition of MPV for options trading would cross reference Rule 6.72–O(a). The Exchange proposes a difference to add reference to ''quoting and trading options'' to distinguish how the MPV for options would be determined from how the MPV for quoting cash equity securities would be determined.

• *NBBO:* The Exchange proposes to amend the Rule 1.1 definition of ''NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)'' to add how the term NBBO would be used for options trading. The Exchange proposes that: ''[w]ith respect to options traded on the Exchange, the term 'NBBO' means the national best bid or offer. The terms 'NBB' means the national best bid and 'NBO' means the national best offer.'' This proposed definition includes the current definition of NBBO from Rule 6.1A–O(a)(11)(a), which defines that term as ''the national best bid or best offer.'' The Exchange proposes to add the terms ''NBB'' and ''NBO'' as clarifying terms for options trading.

In addition, the Exchange proposes that, unless otherwise specified, for options trading, the Exchange may adjust its calculation of the NBBO based on information about orders it sends to Away Markets, execution reports received from those Away Markets, and certain orders received by the Exchange. This proposed text reflects how the Exchange currently calculates the NBBO for options trading and is based on how the PBBO is calculated on the Exchange's cash equity market, as described in Rule 7.37–E(d)(2).[39] The Exchange proposes that it would adjust its calculation of the NBBO for options traded on the Exchange in the same manner that the Exchange calculates the PBBO for cash equity securities traded on the Exchange. The Exchange believes that adding this detail to the proposed definition of NBBO would promote clarity and transparency in Exchange rules. The Exchange further notes that there are limited circumstances when

on the Exchange, the term 'Marketable' means for a Limit Order, an order that can be immediately executed or routed. Market Orders are always considered marketable.''

[38] The term ''Marketable'' is currently defined in Rule 6.1A–O(a)(7) for options trading to mean ''for a Limit Order, the price matches or crosses the NBBO on the other side of the market. Market orders are always considered marketable.''

[39] *See* Securities Exchange Act Release No. 91564 (April 14, 2021), 86 FR 20541 (April 20, 2021) (SR–NYSEArca–2021–21) (Notice of filing and immediate effectiveness of proposed rule change to specify when the Exchange may adjust its calculation of the PBBO).

the Exchange would not adjust its calculation of the NBBO and would determine the NBBO for options in the same way that the Exchange determines the NBBO for cash equity securities traded on the Exchange. As described in detail below, the Exchange will specify in its rules when it would not be using an adjusted NBBO for purposes of a specific rule.

• *NYSE Arca Book:* The Exchange proposes to amend the Rule 1.1 definition of ''NYSE Arca Book'' to specify that this term is applicable only for cash equity securities traded on the Exchange. As noted above, the Exchange uses the term ''Consolidated Book'' for options traded on the Exchange and would continue to use that term on Pillar for options trading.

• *NYSE Arca Marketplace:* The Exchange proposes to amend the Rule 1.1 definition of ''NYSE Arca Marketplace'' to specify that this term is applicable only for cash equity securities traded on the Exchange.

• *Order Flow Provider or OFP:* The Exchange proposes to add the definition of ''Order Flow Provider or OFP'' to Rule 1.1 to mean ''any OTP Holder that submits, as agent, orders to the Exchange.'' This proposed definition is based on the Rule 6.1A–O(a)(21) definition of ''Order Flow Provider'' without any differences.

• *Trading Center:* The Exchange proposes to amend the Rule 1.1 definition of ''Trading Center'' to add how this term would be used for options trading. As proposed: ''[w]ith respect to options traded on the Exchange, for purposes of Rule 6–O, the term ''Trading Center'' means a national securities exchange that has qualified for participation in the Options Clearing Corporation pursuant to the provisions of the rules of the Options Clearing Corporation.'' This proposed definition is based on the Rule 6.1A–O(a)(6) definition of ''Market Center'' with a non-substantive difference to use the term ''Trading Center'' instead of ''Market Center.''

• *User:* The Exchange proposes to amend the Rule 1.1 definition of ''User'' to add how this term would be used for options trading. As proposed: ''[w]ith respect to options traded on the Exchange, the term 'User' shall mean any OTP Holder or OTP Firm who is authorized to obtain access to the Exchange pursuant to Rule 6.2A–O.'' This proposed definition is based on the Rule 6.1A–O(a)(19) definition of User, with one difference not to include the reference to Sponsored Participant, which, as described above, is no longer used in connection with options trading.

• *User Agreement:* The Exchange proposes a non-substantive amendment to the Rule 1.1 definition of ''User Agreement'' to replace the term ''NYSE Arca, L.L.C'' with the term the ''Exchange.''

In addition to proposed amendments to Rule 1.1, the Exchange proposes to amend Rule 6.96–O to add the definition of ''Routing Broker,'' which is currently defined in Rule 6.1A–O(a)(15) to mean ''the broker-dealer affiliate of NYSE Arca, Inc. and/or any other non-affiliate that acts as a facility of NYSE Arca, Inc. for routing orders entered into OX of OTP Holders, OTP Firms and OTP Firms' Sponsored Participants to other Market Centers for execution whenever such routing is required by NYSE Arca Rules.'' For options trading on Pillar, the Exchange proposes to define the term in Rule 6.96–O (Operation of a Routing Broker) to mean ''the broker-dealer affiliate of the Exchange and/or any other non-affiliate that acts as a facility of the Exchange for routing orders submitted to the Exchange to other Trading Centers for execution whenever such routing is required by Exchange Rules and federal securities laws.'' [40] The proposed rule text is based on the current definition in Rule 6.1A–O(a)(15), with non-substantive differences to streamline the definition and to use Pillar terminology. Specifically, the Exchange does not propose to include terms that would no longer be applicable to trading on Pillar, including reference to OX, Market Centers, and Sponsored Participants. The Exchange notes that including the definition of ''Routing Broker'' in its rule governing the operation of the routing broker is consistent with the Exchange's cash equity rules, which also defines the term ''Routing Broker'' in Rule 7.45–E(a) (Operation of Routing Broker).

In connection with the proposed amendments to Rule 1.1, the Exchange proposes to add the following preamble to Rule 6.1A–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.1A–O would not be applicable to trading on Pillar.

## Proposed Rule 6.1P–O: Applicability

Current Rule 6.1–O sets forth the applicability, definitions, and references in connection with options trading. As noted above, the definitions in Rule 6.1–O(b) and reference in Rule 6.1–O(c) to LMMs being included in the definition of Market Maker will be copied to proposed Rule 1.1 for purposes of trading on Pillar.

The Exchange proposes new Rule 6.1P–O to include only those portions of Rule 6.1–O relating to applicability of Exchange Rules that would continue to be applicable after the transition to Pillar. Proposed Rule 6.1P–O(a) would be identical to the first two sentences of current Rule 6.1–O(a). As noted above, the proposed definition of ''option contract'' would incorporate the final sentence of Rule 6.1–O(a), which states that option contracts are included in the definition of ''security'' or ''securities.'' Accordingly, the Exchange does not propose to include this text in proposed Rule 6.1P–O(a).

Proposed Rule 6.1P–O(b) would provide that unless otherwise stated, Exchange rules would be applicable to transactions on the Exchange in option contracts. The proposed rule is similar to Rule 6.1–O(e) because it addresses the applicability of other Exchange Rules.'' [41] The Exchange proposes differences from current Rule 6.1–O(e) to eliminate obsolete and duplicative text and to streamline the proposed rule text without any substantive differences. For example, the Exchange does not believe it is necessary to identify which rules are or are not applicable to trading of option contracts because any rule with ''–O'' appended to it is applicable to trading of option contracts. In addition, Rule 1.1 is now applicable to trading of options contracts. And, as discussed above, the Exchange has proposed to amend the definition of ''option contract'' to specify that they are included in the definition of ''security'' or ''securities.'' Finally, the reference in Rule 6.1–O(e) to '' 'specialist' means 'Market Maker' '' is duplicative of Rule 6.32–O, and therefore is not necessary to add to proposed Rule 6.1P–O(b).

In connection with proposed Rule 6.1P–O, the Exchange proposes to add the following preamble to Rule 6.1–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is

[40] The Exchange also proposes non-substantive amendments to Rule 6.96–O to refer to ''the Exchange,'' a defined term in Rule 1.1 (rather than NYSE Arca, Inc.) and to renumber current paragraphs (a), (b), and (c), as paragraphs (b), (c), and (d).

[41] Rule 6.1–O(e) provides: *Applicability of Other Exchange Rules.* The following Rules apply to transactions on the Exchange in option contracts issued or subject to issuance by the Options Clearing Corporation: Rules 4.15–O–4.19–O, 5.1–O, 9.21–O–9.28–O and 11.6. The following Rules do not apply to transactions on the Exchange in option contracts: Rule 1.1. All other Exchange rules are applicable to transactions on the Exchange in option contracts unless the context clearly indicates otherwise. In applying the Rules of the Exchange to transactions on the Exchange in option contracts, 'security' or 'securities' includes option contracts, 'specialist' means Market Maker on the Options Trading Floor.''

designed to promote clarity and transparency in Exchange rules that Rule 6.1–O would not be applicable to trading on Pillar.

Proposed Rule 6.76P–O: Order Ranking and Display

Rule 6.76–O governs order ranking and display for the current Exchange options trading system. Proposed Rule 6.76P–O would address order ranking and display for options trading under Pillar, including accounting for the quoting activity of options Market Makers as noted below. With the transition to Pillar, the Exchange does not propose any substantive differences to how orders and quotes would be ranked and displayed on the Exchange and, unless otherwise specified in the proposed rules, the Exchange proposes that same-priced orders and quotes would be ranked no differently than how they are ranked in the OX system. For example, same-priced displayed orders and quotes would be ranked ahead of same-priced non-displayed orders and quotes, and within each category of displayed or non-displayed interest, orders and quotes would be ranked in time priority. However, the Exchange proposes to eliminate the terminology relating to the ''Display Order Process'' and ''Working Order Process'' (each of which are described below) and instead use Pillar terminology based on Rule 7.36–E, which governs order ranking and display on the Exchange's cash equity market.[42]

Options Market Makers enter quotes and orders and the current OX system processes quotes and orders together with respect to ranking and display. The Exchange proposes that it would operate the same way using the Pillar technology. As discussed in detail below, the Exchange believes that the proposed new rule text provides transparency with respect to how the Exchange's price-time priority model would operate through the use of new terminology applicable to all orders and quotes on the Pillar trading platform. In addition, throughout proposed Rule 6.76P–O, the Exchange proposes to change the term ''shall'' to ''will,'' which is a stylistic preference that would add consistency to Exchange rules.

Proposed Rule 6.76P–O(a) would set forth definitions for purposes of all of Rule 6–O (Options Trading) on the Pillar trading platform, including proposed Rule 6.76AP–O (Order Execution and Routing), described below. The proposed definitions are based on Rule 7.36–E(a) definitions for purposes of Rule 7–E cash equity trading, with terminology differences, as noted above, to reference ''orders and quotes'' throughout proposed Rule 6.76P–O. The Exchange believes that these proposed definitions would provide transparency regarding how the Exchange would operate its options platform on Pillar and serve as the foundation for how orders/quotes and modifiers would be described for options trading on Pillar, as discussed in more detail below. In addition, the Exchange believes that even with using Pillar terminology that is based on the Exchange's cash equity rules, unless otherwise specified, the definitions that are described in these proposed rules do not differ in substance from current Rule 6.76–O relating to options trading.

- Proposed Rule 6.76P–O(a)(1) would define the term ''display price'' to mean the price at which an order or quote ranked Priority 2—Display Orders or Market Order is displayed, which price may be different from the limit price or working price of the order (*i.e.,* if it is a Non-Routable Limit Order or an ALO Order as described below in proposed Rule 6.62P–O(e)(1), (2), respectively). This proposed definition uses Pillar terminology based on Rule 7.36–E(a)(1). To incorporate quotes, the Exchange proposes one difference in terminology to refer to ''order or quote ranked Priority 2—Display Orders,'' versus referring to ''Limit Order,'' as set forth in Rule 7.36–E(a)(1). The term ''Priority 2—Display Orders'' is described in more detail below. The Exchange also proposes a second difference compared to the Exchange's cash equity rules to include Market Orders as interest that may have a display price (for example, as described below and consistent with current functionality, a Market Order could be displayed at its Trading Collar, which is unique to options trading and not available on the cash equity platform).
- Proposed Rule 6.76P–O(a)(2) would define the term ''limit price'' to mean the highest (lowest) specified price at which a Limit Order or quote to buy (sell) is eligible to trade. The limit price is designated by the User. As noted in the proposed definitions of display price and working price, the limit price designated by the User may differ from the price at which the order/quote would be displayed or eligible to trade. This proposed definition uses Pillar terminology based on Rule 7.36–E(a)(2), with a terminology difference to refer to the specified price of a ''Limit Order or quote,'' versus referring to ''Limit Order,'' as set forth in Rule 7.36–E(a)(2).
- Proposed Rule 6.76P–O(a)(3) would define the term ''working price'' to mean the price at which an order or quote is eligible to trade at any given time, which may be different from the limit price or display price of an order. This proposed definition is based on Rule 7.36–E(a)(3), with a terminology difference to refer to ''order or quote'' for purposes of determining ranking priority, versus referring solely to an ''an order,'' as set forth in Rule 7.36–E(a)(3). The Exchange believes that the term ''working price'' would provide clarity regarding the price at which an order/quote may be executed at any given time. Specifically, the Exchange believes that use of the term ''working'' denotes that this is a price that is subject to change, depending on the circumstances. The Exchange will be using this term in connection with orders/quotes and modifiers, as described in more detail below.
- Proposed Rule 6.76P–O(a)(4) would define the term ''working time'' to mean the effective time sequence assigned to an order or quote for purposes of determining its priority ranking. The Exchange proposes to use the term ''working time'' in its rules for trading on the Pillar trading platform instead of terms such as ''time sequence'' or ''time priority,'' which are used in rules governing options trading on the Exchange's current system. The Exchange believes that use of the term ''working'' denotes that this is a time assigned to an order/quote for purposes of ranking and is subject to change, depending on circumstances. This proposed definition is based on Rule 7.36–E(a)(4), with a terminology difference to refer to an ''order or quote,'' versus referring solely to ''an order,'' as set forth in Rule 7.36–E(a)(4).
- Proposed Rule 6.76P–O(a)(5) would define an ''Aggressing Order'' or ''Aggressing Quote'' to mean a buy (sell) order or quote that is or becomes marketable against sell (buy) interest on the Consolidated Book. The proposed terms would therefore refer to orders or quotes that are marketable against other orders or quotes on the Consolidated Book. These terms would be applicable to incoming orders or quotes, orders that have returned unexecuted after routing, or resting orders or quotes that become marketable due to one or more events. For the most part, resting orders or quotes will have already traded with contra-side interest against which they are marketable.

To maximize the potential for orders or quotes to trade, the Exchange continually evaluates whether resting

[42] As noted herein (*see supra* note 14), the Exchange also proposes to eliminate the use of the terms ''OX'' and ''OX Book,'' as these terms would not be applicable to trading on Pillar.

interest may become marketable. Events that could trigger a resting order to become marketable include updates to the working price of such order or quote, updates to the NBBO, changes to other interest resting on the Consolidated Book, or processing of inbound messages. To address such circumstances, the Exchange proposes to include in proposed Rule 6.76P–O(a)(5) that a resting order or quote may become an Aggressing Order or Aggressing Quote if its working price changes, if the NBBO is updated, because of changes to other orders or quotes on the Consolidated Book, or when processing inbound messages.

The proposed definition of an ''Aggressing Order'' is based on Rule 7.36–E(a)(5), with differences in the proposed rule to account for options trading, such as including the defined term ''Aggressing Quote''; referring to an ''order or quote'' versus ''an order''; referring to the Consolidated Book rather than NYSE Arca Book; and referring to the NBBO instead of the PBBO, which is not a term used in options trading. The Exchange believes that these proposed definitions would promote transparency in Exchange rules by providing detail regarding circumstances when a resting order or quote may become marketable, and thus would be an Aggressing Order or Aggressing Quote.

Under current Rule 6.76–O, bids and offers are ranked and maintained in the Display Order Process and/or the Working Order Process of the OX Book according to price-time priority. In the Display Order Process, all Limit Orders (with no other conditions), quotes, and the displayed portion of Reserve Orders (not the reserve size) are ranked in price-time priority, displayed on an anonymous basis (except as permitted by Rule 6.76A–O), and the best-ranked interest is disseminated.[43] In the Working Order Process, the reserve portion of Reserve Orders,[44] All-or-None Orders, Stop and Stop Limit Orders and Stock Contingency Orders are ranked in price-time priority based on the limit price or, in the case of Stop and Stop Limit Orders, the stop price. As described in more detail below, proposed Rule 6.62P–O, relating to orders and modifiers, would specify whether an order or quote would be displayable, *i.e.,* ranked Priority 2 Display Orders, or non-displayable, *i.e.,* ranked Priority 3—Non-Display Orders.

Proposed Rule 6.76P–O(b) would govern the display of non-marketable Limit Orders and quotes. As proposed, the Exchange would display ''all non-marketable Limit Orders and quotes ranked Priority 2—Display Orders unless the order or modifier instruction specifies that all or a portion of the order is not to be displayed,'' which functionality is the same as that set forth in the first sentence of the preamble to the current Rule 6.76–O, stating that the Exchange displays ''all non-marketable limit orders in the Display Order Process.'' The Exchange proposes to use Pillar ranking terminology (described further below) to describe the same functionality and references to the Display Order Process would not be included.

Rule 6.76P–O(b)(1), which is substantially identical to current Rule 6.76–O(b), would provide that except as otherwise permitted in proposed new Rule 6.76AP–O (discussed below), all non-marketable displayed interest would be displayed on an anonymous basis.[45]

Proposed Rule 6.76P–O(b)(2) is substantially identical to the second sentence of the preamble to current Rule 6.76–O, and mirroring that text, would provide that the Exchange would ''disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Exchange and other Trading Centers, consistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.''[46]

Finally, proposed Rule 6.76P–O(b)(3) would provide that if ''an Away Market locks or crosses the Exchange BBO, the Exchange will not change the display price of any Limit Orders or quotes ranked Priority 2—Display Orders and any such orders will be eligible to be displayed as the Exchange's BBO.'' This proposed rule describes Pillar functionality, which is the same as current functionality. The Exchange believes that including this text in the proposed rules would promote clarity and granularity. In addition, this proposed concept, which is based on Rule 7.36–E(b)(4), makes clear that resting displayed interest that did not cause a locked or crossed market condition can stand its ground and maintain priority at the price at which it was originally displayed. This provision uses Pillar terminology and functionality described in Rule 7.36–E(b)(4), but does not include text from the cash equity rule providing for the treatment of displayed Limit Orders that are ''marketable against protected quotations on Away Market'' before ''resuming trading and publishing a quote in a UTP Security following a Regulatory Halts,'' because the concept of trading a security on an unlisted trading privileges basis and how a non-primary cash equity market would resume trading after a primary listing exchanges resumes trading following a trading halt is not applicable to options trading.

Proposed Rule 6.76P–O(c) would describe the Exchange's general process for ranking orders and quotes, which process is the same as that set forth in current Rule 6.76–O(a), with differences to use Pillar ranking terminology and include additional detail related to order/quote modifiers.[47] As proposed, Rule 6.76P–O(c) would provide that all non-marketable orders and quotes would be ranked and maintained in the Consolidated Book according to price-time priority in the following manner: (1) Price; (2) priority category; (3) time; and (4) ranking restrictions applicable to an order/quote or modifier condition. Accordingly, orders and quotes would be first ranked by price. Next, at each price level, orders and quotes would be assigned a priority category, which is similar to the Exchange's current process to assign orders and quotes as being part of either the ''Display Order Process'' or ''Working Order Process.'' Orders and quotes in each priority category would be required to be exhausted before moving to the next priority category. Within each priority

[43] *See* Rule 6.76–O(a)(1)(A)–(B), (b) and (c). When the displayed portion of the Reserve Order is decremented completely, the displayed portion of the Reserve Order shall be refreshed for the displayed amount; or the entire reserve amount, if the remaining reserve amount is smaller than the displayed amount, from the reserve portion and shall be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed. *See* Rule 6.76–O(a)(1)(B). As discussed in more detail below, the Exchange proposes to describe how Reserve Orders would function in proposed Rule 6.62P–O(d)(1).

[44] *See* Rule 6.76–O(a)(2)(A)–(E). After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion remains ranked based on the original time of order entry, while the displayed portion is sent to the Display Order Process with a new time-stamp. *See* Rule 6.76–O(a)(2)(A).

[45] Rule 6.76–O(b) provides that ''[e]xcept as otherwise permitted by Rule 6.76A–O, all bids and offers at all price levels in the Display Order Process of the OX Book shall be displayed on an anonymous basis.''

[46] The second sentence of the preamble to current Rule 6.76–O states, ''OX also will disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Exchange and other Market Centers, consistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.'' The Exchange proposes a difference to use the term ''Trading Centers'' instead of ''Market Centers.''

[47] Rule 6.76–O(a) states that the Exchange ranks bids and offers ''according to price-time priority, such that within each price level, all bids and offers shall be organized by the time of entry''.

category, orders and quotes would be ranked by time. These general requirements for ranking are applicable to all orders and quotes, unless an order or quote or modifier has a specified exception to this ranking methodology, as described in more detail below. The Exchange is proposing this ranking description instead of using the above-described terms of ''Display Order Process'' and ''Working Order Process'' in Rule 6.76–O. However, substantively there would be no difference in how the Exchange would rank orders and quotes on the Pillar trading platform from how it ranks orders and quotes in the current option trading system. For example, a non-displayed order would always be ranked after a displayed order at the same price, even if the non-displayed order has an earlier working time. In addition, this proposed rule would use Pillar terminology based on Rule 7.36–E(c), with terminology differences to reflect options trading, including that the proposed rule references ''non-marketable orders and quotes,'' not solely ''non-marketable orders,'' and references the ''Consolidated Book,'' rather than the ''NYSE Arca Book.'' These differences between the equity rules and the proposed rules reflect the differences between cash equities and options trading; interest on the Exchange's options market would be ranked (in price-time priority) as it is on the Exchange's cash equity market.

Proposed Rule 6.76P–O(d) would describe how orders and quotes would be ranked based on price, which additional detail would provide transparency regarding the Exchange's price-ranking process. Specifically, as proposed, all orders and quotes would be ranked based on the working price of an order or quote. Orders and quotes to buy would be ranked from highest working price to lowest working price and orders and quotes to sell would be ranked from lowest working price to highest working price. The rule would further provide that if the working price of an order or quote changes, the price priority of an order or quote would change. This proposed pricing priority is current functionality, but the new rule would add detail regarding the concept of ''working price'' and its impact on priority and would use Pillar terminology. In addition, this proposed rule uses Pillar terminology from Rule 7.36–E(d), with terminology differences to reflect options trading to reference ''orders and quotes'' as opposed to solely ''orders.''

Proposed Rule 6.76P–O(e) would describe the proposed priority categories for ranking purposes, which added detail and terminology would be new for options trading without any functional differences.[48] As proposed, at each price, all orders and quotes would be assigned a priority category. If, at a price, there are no orders or quotes in a priority category, the next category would have first priority. The Exchange does not propose to include in Rule 6.76P–O, which sets forth the general rule regarding ranking, specifics about how one or more order or quote types may be ranked and displayed. Instead, as described in more detail below, the Exchange will address separately in new Rule 6.62P–O governing orders and modifiers which priority category correlates to different order types and modifiers. Accordingly, details regarding which proposed priority categories would be assigned to the display and reserve portions of Reserve Orders, which is currently addressed in Rule 6.76–O (a)(1)(B) and (a)(2)(A), will be addressed in proposed Rule 6.62P–O and therefore would not be included in proposed Rule 6.76P–O.[49]

The proposed changes are also the same as the terms used for priority categories for cash equity trading as set forth in Rule 7.36–E(e)(1)–(3), with terminology differences to include options-specific reference to ''orders and quotes'' rather than just orders as it relates to interest ranked Priority 2 and 3. In addition, the Exchange does not propose to include the Priority 4—Tracking Orders category, which relates to an order type not available for options trading. The proposed terminology changes to use priority categories rather than refer to the ''Display Order Process'' and ''Working Order Process'' would not result in any changes in how the Exchange would rank orders and quotes on Pillar from how it currently ranks orders and quotes on the OX system.

The proposed priority categories would be:

- Proposed Rule 6.76P–O(e)(1) would specify ''Priority 1—Market Orders,'' which provides that unexecuted Market Orders would have priority over all other same-side orders with the same working price. As described in greater detail below, a Market Order subject to a Trading Collar would be displayed on the Consolidated Book. In such circumstances, the displayed Market Order would have priority over all other resting orders at that price. Under current options trading functionality, Market Orders have priority over all other same-side orders with the same working price. The proposed level of detail and priority categorization would be new terminology for options trading and the Exchange believes that the proposed rule change would add transparency and specificity to Exchange rules without changing functionality.
- Proposed Rule 6.76P–O(e)(2) would specify ''Priority 2—Display Orders.'' This proposed priority category would replace the ''Display Order Process,'' which is described above. As proposed, non-marketable Limit Orders or quotes with a displayed working price would have second priority, which treatment of displayed orders and quotes is consistent with current functionality. For an order or quote that has a display price that differs from the working price of the order or quote, the order or quote would be ranked Priority 3—Non-Display Orders at the working price.[50] This aspect of the proposed rule is consistent with current functionality. For example, as described above, currently, the display portion of a Reserve Order is subject to the Display Order Process and the reserve portion is subject to the Working Order Process. The proposed level of detail and priority categorization would be new for options trading and the Exchange believes that it would add transparency and specificity to Exchange rules. In addition, this priority category operates the same as how Priority 2—Display Orders function on the Exchange's cash equity market, as described in Rule 7.36–E(e)(2), with a terminology difference for the proposed rule to reflect options trading by including reference to quotes, which would not be processed differently on Pillar as compared to the OX system.
- Proposed Rule 6.76P–O(e)(3) would specify ''Priority 3—Non-Display Orders.'' This priority category would be used in Pillar rules instead of reference to the ''Working Order Process,'' which is described above. As proposed, non-marketable Limit Orders or quotes for which the working price is not displayed, including the reserve interest of Reserve Orders, would have third priority. This proposed rule is consistent with current functionality. The proposed level of detail and priority categorization would be new for options trading and the Exchange believes that it would add transparency and specificity to Exchange rules. In addition, this priority category operates

[48] *See supra* notes 43 and 43 (regarding treatment of Reserve Orders per Rule 6.76–O(a)(1)(B) and (a)(2)(A)).

[49] *See, e.g.,* Rule 6.76–O(a)(1) and (2) (setting forth the price-time ranking and priority structure for bids and offers submitted to the Exchange, including ranking of certain order types with contingencies).

[50] *See, e.g., infra,* discussion regarding proposed Non-Routable Limit Order per Rule 6.62P–O(e)(1).

the same as how Priority 3—Non-Display Orders function on the Exchange's cash equity market, as described in Rule 7.36–E(e)(3), with a terminology difference for the proposed rule to reflect options trading by including reference to quotes, which would not be processed differently on Pillar as compared to the OX system.

Proposed Rule 6.76P–O(f) would set forth that at each price level within each priority category, orders and quotes would be ranked based on time priority. This proposed rule is consistent with current Rule 6.76–(O)(a), which provides, in relevant part, that ''within each price level, all bids and offers shall be organized by the time of entry.'' The proposed changes set forth below are consistent with current functionality and would add detail not included in existing option rules. In addition, the proposed changes use terminology based on Rule 7.36–E(f)(1) and (3), with differences to reference options terminology of ''orders and quotes'' rather than just ''orders'' and to the ''Consolidated Book'' rather than the ''NYSE Arca Book,'' which differences are designed to address the distinction between cash equities and options trading without altering how such interest would be ranked (in price-time priority) on each market.[51]

• Proposed Rule 6.76P–O(f)(1) would provide that an order or quote would be assigned a working time when it is first added to the Consolidated Book based on the time such order or quote is received by the Exchange. This proposed process of assigning a working time to orders is current functionality and is substantively the same as current references to the ''time of original order entry'' found in several places in Rule 6.76–O. This proposed rule uses Pillar terminology that is substantially the same as in Rule 7.36–E(f)(1). To provide transparency in Exchange rules, the Exchange further proposes to include in proposed Rule 6.76P–O(f) how the working time would be determined for orders that are routed, which is consistent with current options trading functionality. As proposed:

○ Proposed Rule 6.76P–O(f)(1)(A) would specify that an order that is fully routed to an Away Market on arrival, per proposed Rule 6.76AP–O(b)(1), would not be assigned a working time unless and until any unexecuted portion of the order returns to the Consolidated Book. The Exchange notes that this is the current process for assigning a working time to an order (although this detail would be new to option trading rules) and uses Pillar terminology that is substantially the same as in Rule 7.36–E(f)(1)(A), with a terminology difference that the proposed rule includes reference to the ''Consolidated Book'' rather than the ''NYSE Arca Book.'' This proposed rule is also consistent with current Rule 6.76A–O(c)(2)(C), which provides that when an order or portion of an order has been routed away and is not executed either in whole or in part at the other Market Center, it will be ranked and displayed in the OX Book in accordance with the terms of the order.

○ Proposed Rule 6.76P–O(f)(1)(B) would specify that for an order that, on arrival, is partially routed to an Away Market, the portion that is not routed would be assigned a working time. If any unexecuted portion of the order returns to the Consolidated Book and joins any remaining resting portion of the original order, the returned portion of the order would be assigned the same working time as the resting portion of the order. If the resting portion of the original order has already executed and any unexecuted portion of the order returns to the Consolidated Book, the returned portion of the order would be assigned a new working time. This process for assigning a working time to partially routed orders is the same as currently used by the Exchange (although this detail would be new to option trading rules) and uses Pillar terminology that is substantially the same as in Rule 7.36–E(f)(1)(B)), with a terminology difference that the proposed rule would reference the ''Consolidated Book'' rather than the ''NYSE Arca Book.''

• Proposed Rule 6.76P–O(f)(2) would provide that an order or quote would be assigned a new working time if: (A) The display price of an order or quote changes, even if the working price does not change, or (B) the working price of an order or quote changes, unless the working price is adjusted to be the same as the display price of an order or quote. This proposed text would be new and is different from how the Exchange adjusts the working time for cash equities trading when the working price of an order is updated to be the same as the display price.[52] The Exchange believes that for its options market, adjusting the working time any time the display price of an order or quote changes, would respect the priority of orders/quotes that were previously displayed at the price to which the display price is changing. In addition, the Exchange believes it is appropriate to adjust the working time of an order or quote any time its working price changes, unless the display price does not change. This proposed order handling in Exchange rules is consistent with the rules of other options exchanges.[53]

• Proposed Rule 6.76P–O(f)(3) would provide that an order or quote would be assigned a new working time if the size of an order or quote increases and that an order or quote retains its working time if the size of the order or quote is decreased. This proposed detail about the process for assigning (or not) a new working time when the size of an order changes is not currently described in the Exchange's option rules and is consistent with existing functionality for how orders (but not quotes) are processed on the OX system and would use Pillar terminology.[54] This provision is substantively identical to Rule 7.36–E(f)(3), with a terminology difference to reference ''orders or quotes'' as opposed to solely ''an order.''

Proposed Rule 6.76P–O(g) would specify that the Exchange would apply ranking restrictions applicable to specified order, quote, or modifier instructions. These order, quote, and modifier instructions would be identified in proposed new Rule 6.62P–O, described below. Proposed Rule 6.76P–O(g) uses Pillar terminology substantially the same as is used in Rule 7.36–E(g), with a difference to reference quotes, which is unique to options trading. Current Rule 6.76–O(a)(2)(C)–(E) discusses ranking of certain order types with contingencies in the Working Order Process. The Exchange proposes that for Pillar, ranking details regarding

[51] As discussed, *infra,* the Exchange proposes to rank orders and quotes on Pillar in the same manner as it does on the OX system, unless otherwise specified in the proposed rules (*e.g.,* same-priced displayed orders and quotes would be ranked ahead of same-priced non-displayed orders and quotes, and within each category of displayed or non-displayed interest, orders and quotes would be ranked in time priority).

[52] Currently, for cash equity trading, Rule 7.36–E(f)(2) provides that, ''[a]n order is assigned a new working time any time the working price of an order changes.'' The Exchange plans to propose changes to this cash equity rule to align with that being proposed for its options market at a later date.

[53] *See, e.g.,* Cboe BZX (''BZX'') Rule 11.9(g)(1)(B) (providing that, for orders subject to ''display price sliding,'' BZX ''will re-rank an order at the same price as the displayed price in the event such order's displayed price is locked or crossed by a Protected Quotation of an external market'' and that ''[s]uch event will not result in a change in priority for the order at its displayed price'').

[54] Currently, on the Exchange's OX system, if the size of a quote is reduced, the Exchange processes the reduced quantity as a new quote that is assigned a new effective time sequence. By contrast, orders reduced in size are not assigned a new working time by the OX system. The Exchange proposes that, on Pillar, both quotes and orders reduced in size would not receive a new working time. The proposed provision would provide for consistent handling of orders and quotes when the size of such interest is reduced.

orders and quotes designated with contingencies would be described in proposed Rule 6.62P–O(d) and (e). Accordingly, the Exchange does not propose to include the detail described in Rule 6.76–O(a)(2)(C)–(E) in proposed Rule 6.76P–O.[55]

Finally, proposed Rule 6.76P–O(h) would be applicable to ''Orders Executed Manually'' and would contain the same text as set forth in Rule 6.76–O(d) without any substantive differences except for the non-substantive change of capitalizing the defined term Trading Crowd (per proposed Rule 1.1), removing the superfluous clause ''in addition,'' and updating the cross-reference to reflect the new Pillar rule.[56]

In connection with proposed Rule 6.76P–O, the Exchange proposes to add the following preamble to Rule 6.76–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.76–O would not be applicable to trading on Pillar.

Proposed Rule 6.76AP–O: Order Execution and Routing

Current Rule 6.76A–O, titled ''Order Execution—OX,'' governs order execution and routing at the Exchange. The Exchange proposes that Rule 6.76AP–O would set forth the order execution and routing rules for options trading on Pillar. The Exchange proposes that the title for new Rule 6.76AP–O would be ''Order Execution and Routing'' instead of ''Order Execution—OX'' because the Exchange does not propose to use the term ''OX'' in connection with Pillar. The Exchange believes that because proposed Rule 6.76AP–O, like Rule 6.76A–O, would specify the Exchange's routing procedures, referencing to ''Routing'' in the rule's title would provide additional transparency in Exchange rules regarding what topics would be covered in new Rule 6.76AP–O. This proposed rule is based on Rule 7.37–E, which describes the order execution and routing rules for cash equity securities trading on the Pillar platform, with differences described below to reflect differences for options trading. In addition, throughout proposed Rule 6.76AP–O, the Exchange proposes to use the term ''will'' instead of ''shall,'' which is a stylistic preference that would add consistency to Exchange rules.

Proposed Rule 6.76AP–O(a) and its subparagraphs would set forth the Exchange's order execution process and would cover the same subject as the preamble to Rule 6.76A–O, which provides that like-priced orders and quotes are matched for execution, provided the execution price is equal to or better than the NBBO, unless such order has been routed to an Away Market at the NBBO.[57] The Exchange proposes a difference from current Rule 6.76A–O(a)–(c) to use Pillar terminology of ''Aggressing Order'' and ''Aggressing Quote''—rather than refer to an ''incoming marketable bid or offer,'' because (as described above) the proposed terms are more expansive and allow for interest to be (or become) marketable even after arrival (*i.e.,* not limited to ''incoming'' interest). As proposed, per Rule 6.76AP–O(a), an Aggressing Order or Aggressing Quote would be matched for execution against contra-side orders or quotes in the Consolidated Book according to the price-time priority ranking of the resting interest, subject to specified parameters.

The Exchange does not propose to include in proposed Rule 6.76AP–O text based on current Rule 6.76A–O(a)(1), which describes ''Step 1: Display Order Process,'' or text based on current Rule 6.76A–O(b), which describes ''Step 2: Working Order Process,'' because by proposing detailed text in Rule 6.76P–O(c)–(f) regarding how orders and quotes would be ranked on the Exchange, it would be duplicative and unnecessary to describe this process again in proposed Rule 6.76AP–O. Instead, the Exchange believes that cross referencing the price-time priority ranking of the resting interest, per proposed Rule 6.76P–O, would provide transparency regarding how an Aggressing Order or Aggressing Quote would trade with resting interest. The Exchange notes that it made a similar stylistic change for its cash equity platform to eliminate references to the ''Display Order Process'' and ''Working Order Process'' in Rule 7.37–E (which was replaced by the aforementioned priority categories) when it transitioned to Pillar.[58]

Proposed Rule 6.76AP–O(a)(1) would set forth the LMM Guarantee, which is substantively the same as the current LMM Guarantee, as described in Rule 6.76A–O(a)(1)(A)–(D). Specifically, as with the current OX system, if an LMM is quoting at the NBBO, that LMM quote would be guaranteed to trade with 40% of the incoming bid or offer. This LMM guarantee is currently described in Rule 6.76A–O(a)(1)(A), which provides, in relevant part, that an LMM or Directed Order Market Maker (''DOMM'') that is quoting at the NBBO may be entitled to an allocation guarantee of the greater of: An amount equal to 40% of the incoming bid or offer up to the LMM's or DOMM's disseminated quote size; or the LMM's or DOMM's share in the order of ranking. However, current Rule 6.76A–O(a)(1)(A)(ii) provides that if there are Customer orders ranked ahead of the LMM (or DOMM, as applicable), or if there is no LMM (or DOMM) quoting at the NBBO, the incoming bid or offer will be matched against orders and quotes in the Display Process strictly in the order of their ranking. The Exchange proposes a substantive difference from current rules because, on Pillar, the Exchange would no longer support DOMMs or Directed Orders. Accordingly, rule text relating to DOMMs or Directed Orders is not included in proposed Rule 6.76AP–O and, as described below, only LMM's would be entitled to the LMM Guarantee.[59]

Proposed Rule 6.76AP–O(a)(1) would describe the LMM Guarantee on Pillar and would provide that an LMM would be entitled to an allocation guarantee when the execution price is equal to the NBB (NBO), the LMM has a displayed quote at the NBB (NBO), and there is no displayed Customer interest in time priority at the NBBO in the Consolidated Book. If the execution would meet these conditions, which are the same as under the Exchange's current options rules, the Aggressing Order or Aggressing Quote would be matched against the quote of the LMM for an amount equal to 40% of the Aggressing Order or Aggressing Quote, up to the size of the LMM's quote (the ''LMM Guarantee''). The Exchange proposes to use the term ''Aggressing Order or Aggressing Quote'' instead of the term ''incoming bid or offer'' to provide greater specificity that the LMM

[55] As discussed, *supra* note 51, on Pillar, the Exchange would rank orders and quotes—including those with contingencies (*i.e.,* MMALO and MMRP)–the same way it does on the OX system, unless otherwise specified in the proposed rules. *See* proposed Rule 6.62P–O(e) (for discussion of Non-Routable Limit Orders and ALO Orders, both of which have contingencies and may be designated as quotations under Pillar).

[56] *See* proposed Rule 6.76P–O(h)(1) (removing ''in addition'') (B) (regarding ''Trading Crowd'') and (D) (updating the cross-reference to new subparagraph (B) in connection with the Section 11(a)(1)(G) of the Exchange Act and Rule 11a1–1(T) thereunder (''G exemption rule'')).

[57] Rule 6.76A–O(a)–(c) sets forth a three-step process—the Display Order Process, the Working Order Process, and Routing Away, Steps 1–3, respectively—governing the handling of incoming marketable bids and offers.

[58] *See* NYSE Arca Equities Pillar Notice, *supra* note 15 at 28728–29.

[59] The Exchange proposes to add a preamble to Rule 6.88–O (Directed Orders) to provide that the Rule would not be applicable to trading on Pillar.

Guarantee would be applied against any order or quote that becomes an Aggressing Order or Aggressing Quote, which is consistent with current functionality and uses Pillar terminology to describe that same functionality. Accordingly, the LMM Guarantee would function on Pillar, as described in current Rule 6.76A–O(a)(1), except as noted above to exclude reference to Directed Orders or DOMMs. The Exchange proposes non-substantive clarifying differences to specify that the execution price must be equal to the NBBO in addition to the proposed text that the LMM must have a displayed quote at the NBBO, which adds specificity compared to existing rule text that such LMM must be ''quoting at the NBBO.''

Proposed Rule 6.76AP–O(a)(1)(A) would provide that if an LMM has more than one quote at a price, the LMM Guarantee would be applied only to the first LMM quote in time priority, which text would add granularity and transparency to Exchange rules. This text would be new and reflects that on Pillar, the Exchange would permit multiple quotes from the same LMM at the same price and that only the first quote in time priority would be eligible for the LMM Guarantee. On the OX system, an LMM may send only one same-side quotation using the OTP associated with its status as LMM.[60] Under Pillar, as described below regarding proposed Rule 6.37AP–O (Market Maker Quotations), LMMs would be able to send multiple same-side quotes associated with its OTP by utilizing different order/quote entry ports (*i.e.,* in Pillar, LMM1 can send a bid for 1.00 in XYZ over order/quote entry port 1 and another bid for 1.00 in XYZ over order/quote entry port 2 and the bid sent via order/quote entry port 2 would not replace the quote sent over order/quote entry port 1). Because an LMM using Pillar could have more than one same-side, same-priced quote in an assigned series,[61] proposed Rule 6.76AP–O(a)(1)(A) is necessary to provide that only one such LMM quote (the first in time) would be eligible for the LMM Guarantee, consistent with current functionality.

Proposed Rule 6.76AP–O(a)(1)(B), which is substantively identical to current Rule 6.76A–O(a)(1)(B), would provide that if an LMM is entitled to an allocation (*i.e.,* an LMM Guarantee pursuant to proposed paragraph (a)(1)) and the Aggressing Order or Aggressing Quote had an original size of five (5) contracts or fewer, then such order or quote would be matched against the quote of the LMM for an amount equal to 100%, up to the size of the LMM's quote. The Exchange also proposes to add Commentary .01 to the proposed rule (which is substantively identical to Commentary .02 of current Rule 6.76A–O) to make clear that on a quarterly basis, the Exchange would evaluate what percentage of the volume executed on the Exchange comprised of orders for five (5) contracts or fewer that was allocated to LMMs and would reduce the size of the orders included in this provision if such percentage is over 40%.[62]

Proposed Rule 6.76AP–O(a)(1)(C) would specify that if the result of applying the LMM Guarantee is a fractional allocation of contracts, the LMM Guarantee would be rounded down to the nearest contract and if the result of applying the LMM Guarantee results in less than one contract, the LMM Guarantee would be equal to one contract. The Exchange believes that including this additional detail (which is based on current functionality) in the proposed rule would add transparency to Exchange rules.

Finally, the Exchange proposes Rule 6.76AP–O(a)(1)(D), which would provide that after applying any LMM Guarantee, the Aggressing Order or Aggressing Quote would be allocated pursuant to proposed paragraph (a) of this Rule, *i.e.,* that such orders or quotes would be matched for execution against contra-side interest resting in the Consolidated Book according to price-time priority. This proposed text is substantively identical to Rule 6.76A–O(a)(1)(C) and uses Pillar terminology, and eliminates the now obsolete reference to DOMMs, Directed Orders, and the Display Order Process.

Consistent with the Exchange's proposed approach to new Rule 6.76P–O, proposed Rule 6.76AP–O would not include references to specific order types and instead would state the Exchange's general order execution methodology. Any exceptions to such general requirements would be set forth in connection with specific order or modifier definitions in proposed Rule 6.62P–O, described below.

Proposed Rule 6.76AP–O(b) would set forth the Exchange's routing process and is intended to address the same subject as Rule 6.76A–O(c), which is currently referred to as ''Step 3: Routing Away'' in order processing, without any substantive differences. Under current Rule 6.76A–O(c), the Exchange will route to another Market Center any unexecuted portion of an order that is eligible to route.[63] Proposed Rule 6.76AP–O(b) would provide that, absent an instruction not to route, the Exchange would route marketable orders to Away Market(s) after such orders are matched for execution with any contra-side interest in the Consolidated Book in accordance with proposed paragraph (a) of this Rule regarding Order Execution. Proposed Rule 6.76AP–O(b) also uses the same Pillar terminology that is used in current Rule 7.37–E(b), which governs the Exchange's routing process on the Exchange's cash equity platform, with differences to use option trading terminology such as ''Consolidated Book.''

The proposed rule would then set forth additional details regarding routing that are consistent with current routing functionality, but are not described in current rules:

- Proposed Rule 6.76AP–O(b)(1) would provide that an order that cannot meet the pricing parameters of proposed Rule 6.76AP–O(a) may be routed to Away Market(s) before being matched for execution against contra-side interest in the Consolidated Book. The Exchange believes that this proposed rule text, which is consistent with current functionality, provides transparency that an order may be routed before being matched for execution, for example, to prevent locking or crossing or trading through the NBBO. This rule uses Pillar terminology that is substantially the same as in Rule 7.37–E(b)(1), with a terminology difference to reference the ''Consolidated Book'' rather than the ''NYSE Arca Book.''
- Proposed Rule 6.76AP–O(b)(2) would provide that an order with an instruction not to route would be

[60] While not specified in the current rules, the OX system utilizes a unique identifier for LMMs to send quotes and each LMM may only send LMM quotes in their assigned series using this single unique identifier. Therefore, LMM quotes are subject to the current Rule 6.37A(a)(1) requirement that a new same-side quote sent by that LMM updates the previous bid or offer, if any. Unlike LMMs, on the OX system, Market Makers not acting as an LMM may opt to utilize multiple OTPs to send more than one same-side quote in the same assigned series. *See infra* note 140.

[61] *See, e.g., infra,* discussion regarding proposed Rule 6.37AP–O(a)(1).

[62] *See* proposed Rule 6.76AP–O, Commentary .01, which will not include cross-reference that appears in the current rule Commentary .02 to Rule 6.76A–O because the Exchange determined such cross-reference was superfluous and opted to remove excess verbiage.

[63] Under the current rule, each eligible order is routed ''as limit order equal to the price and up to the size of the quote published by the Market Center(s)'' or, if ''a marketable Reserve Order, the Exchange may route such order serially as component orders, such that each component corresponds to the displayed size.'' *See* Rule 6.76AP–O(c)(1)(A), (B). In the proposed Pillar rule, the Exchange proposes to use the term ''Away Market'' instead of ''Market Center.''

processed as provided for in proposed Rule 6.62P–O.[64] As described in greater detail below, the Exchange proposes to describe how orders and quotes with an instruction not to route would be processed in proposed Rule 6.62P–O(e).

• Proposed Rule 6.76AP–O(b)(3) would provide that any order or portion thereof that has been routed would not be eligible to trade on the Consolidated Book, unless all or a portion of the order returns unexecuted. This routing methodology is current functionality and covers that same subject as current Rule 6.76A–O(c)(2) with no substantive differences and is based in part on Pillar terminology used in Rule 7.37–E(b)(6). Similar to Rule 6.76A–O(c)(2)(A), which provides that an order routed to an Away Market is subject to the trading rules of that market and, while so routed, has no standing relative to other orders on the Exchange in the OX Book, the Exchange proposes that Rule 6.76AP–O(b)(3) would state that once routed, an order would not be eligible to trade on the Consolidated Book. The Exchange does not believe it is necessary to include the text that once routed an order would be subject to the routing destination's trading rules, as such detail is obvious and unnecessary. In addition, because, as discussed above, the working time assigned to orders that are routed is being proposed to be addressed in new Rule 6.76P–O(f)(1)(A) and (B), the Exchange believes it would be unnecessary to restate this information in new Rule 6.76AP–O.

• Proposed Rule 6.76AP–O(b)(4) would provide that requests to cancel an order that has been routed in whole or part would not be processed unless and until all or a portion of the order returns unexecuted. This proposed rule uses Pillar terminology and operates substantively the same as Rule 7.37–E(b)(7)(A). This rule represents current functionality and is based on Rule 6.76A–O(c)(2)(B), except that, unlike the current rule, the proposed rule does not state that such orders (while still routed away) are subject to the applicable trading rules of the market to which such order was routed.

• Finally, proposed Rule 6.76AP–O(c) would provide that after trading with eligible contra-side interest on the Consolidated Book and/or returning unexecuted after routing to Away Market(s), any unexecuted non-marketable portion of an order would be ranked consistent with new Rule 6.76P–O. This rule represents current functionality as set forth in Rule 6.76A–O generally and paragraph (c)(2)(C) as it pertains to orders that were routed away and then returned unexecuted in whole or part to the Exchange without any substantive differences. This proposed rule uses Pillar terminology and operates substantively the same as Rule 7.37–E(c).

The Exchange believes that the specific routing methodologies for an order type or modifier should be included with how the order type is defined, which will be described in proposed Rule 6.62P–O. Accordingly, the Exchange does not believe it needs to specify in proposed Rule 6.76AP–O whether an order is eligible to route, and if so, whether there are any specific routing instructions applicable to the order and therefore will not be carrying over such specifics that are currently included in Rule 6.76A–O.

In connection with proposed Rule 6.76AP–O, the Exchange proposes to add the following preamble to Rule 6.76A–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.76A–O would not be applicable to trading on Pillar.

Proposed Rule 6.62P–O: Orders and Modifiers

Current Rule 6.62–O (Certain Types of Orders Defined) defines the order types that are currently available for options trading both on the OX system and for open outcry trading on the Exchange. The Exchange proposes that new Rule 6.62P–O would set forth the order types and modifiers that would be available for options trading both on Pillar (*i.e.,* electronic order entry) and in open outcry trading. The Exchange proposes to specify that Rule 6.62–O would not be applicable to trading on Pillar.

Because the Exchange proposes to use for options trading the Pillar technology that is currently used for cash equity trading, the Exchange has identified opportunities to offer additional order, quote, and modifier functionality for options trading that is based on existing functionality on cash equity trading but has not previously been available for options trading. In addition, certain order and quote types and modifiers that would be available for options trading on Pillar would be based on, or similar to, order types and modifiers available on the Exchange's cash equity market. Because there would be similar orders and modifiers on both the Exchange's cash equity and options markets using similar terminology, the Exchange proposes to structure proposed Rule 6.62P–O based on Rule 7.31–E and use similar terminology. The Exchange also proposes to title proposed Rule 6.62P–O as ''Orders and Modifiers,'' which is the title of Rule 7.31–E.

*Primary Order Types.* Proposed Rule 6.62P–O(a) would specify the Exchange's primary order types, which would be Market Orders and Limit Orders, and is based on Rule 7.31–E(a), which sets forth the Exchange's cash equity primary order types. Similar to Rule 7.31–E(a), proposed Rule 6.62P–O(a) would also set forth the Exchange's proposed Limit Order Price Protection functionality and Trading Collars.

*Market Orders.* Proposed Rule 6.62P–O(a)(1) would define a Market Order as an unpriced order message to buy or sell a stated number of option contracts at the best price obtainable, subject to the Trading Collar assigned to the order, and would further specify that unexecuted Market Orders may be designated Day or GTC, which represents current functionality, and that unexecuted Market Orders would be ranked Priority 1—Market Orders.[65] This proposed rule text uses Pillar terminology similar to Rule 7.31–E(a)(1) to describe Market Orders for options trading, with differences to reflect options trading functionality. For example, proposed Rule 6.62P–O(a)(1) would specify the ability to designate a Market Order as GTC, which is current options trading functionality that would continue on Pillar (but which modifier is not available on the Exchange's cash equity platform).[66] Similarly, the Exchange proposes to reference that trading of a Market Order would be subject to the Trading Collar assigned to

[64] *See, e.g., infra,* discussion regarding proposed Rule 6.62P–O(e), Orders with Instructions Not to Route.

[65] Market Orders are currently defined in Rule 6.62–O(a) as follows: ''A Market Order is an order to buy or sell a stated number of option contracts and is to be executed at the best price obtainable when the order reaches the Exchange. Market Orders entered before the opening of trading will be eligible for trading during the Opening Auction Process. The system will reject a Market Order entered during Core Trading Hours if at the time the order is received there is not an NBB and an NBO (''collectively NBBO'') for that series as disseminated by OPRA. If the Exchange receives a Market Order to buy (sell) and there is an NBB (NBO) but no NBO (NBB) as disseminated by OPRA at the time the order is received, the order will be processed pursuant to Rule 6.60–O(a)—Trade Collar Protection.''

[66] The ability for a Market Order to be designated Day or GTC is based on current Rules 6.62–O(m) (describing a ''Day Order'') and 6.62–O(n) (describing a ''Good-til-Cancelled Order'' or ''GTC Order'') and Commentary .01 to Rule 6.62–O, which requires all orders to be either ''day,'' ''immediate or cancel,'' or ''good 'til cancelled.'' As described in more detail below, on Pillar, the time-in-force designation, *e.g.,* Day or GTC, would be a modifier that can be added to an order type and would not be described in the rules as a separate order type. Similar to Rule 7.31–E, the Exchange would specify which time-in-force designations are available for each order type.

the order, which is similar to the third paragraph of the current definition of Market Order in Rule 6.62–O(a). As described in greater detail below, the Exchange proposes changes to its Trading Collar functionality on Pillar.

Proposed Rule 6.62P–O(a)(1) would further provide that for purposes of processing Market Orders, the Exchange would not use an adjusted NBBO.[67] On the Exchange's cash equity market, the Exchange does not use an adjusted NBBO when processing Market Orders. The Exchange proposes to similarly not use an adjusted NBBO when processing Market Orders on its options market, which would be new for options trading. The Exchange believes that because Market Orders trade immediately on arrival, using an unadjusted NBBO would provide a price protection mechanism by using a more conservative view of the NBBO.

Proposed Rule 6.62P–O(a)(1)(A) would provide that a Market Order that arrives during continuous trading would be rejected, or that was routed, returns unexecuted, and has no resting quantity to join would be cancelled if it fails the validations specified in proposed Rule 6.62P–O(a)(1)(A)(i)—(iv). This proposed rule is based in part on Rule 6.62–O(a), which specifies that a Market Order will be rejected during Core Trading Hours if, when received, there is no NBBO for the applicable option series as disseminated by OPRA, with differences to use Pillar terminology and to expand the circumstances when a Market Order would be rejected beyond the absence of an NBBO. As proposed, a Market Order would be rejected (or cancelled if routed first) if:[68]

- There is no NBO (proposed Rule 6.62P–O(a)(1)(A)(i)). This criterion is similar to the current rule, which provides that a Market Order will be rejected if there is no NBO. The Exchange believes that in the absence of an NBO, Market Orders should not trade as there is no market for the option.
- There is no NBB and the NBO is higher than $0.50 (for sell Market Orders only). The Exchange further proposes that if there is no NBB and the NBO is $0.50 or below, a Market Order to sell would not be rejected and would have a working price and display price one MPV above zero and would not be subject to a Trading Collar (proposed Rule 6.62P–O(a)(1)(A)(ii)). The Exchange believes that if there is no NBB, but an NBO $0.50 or below, the Exchange would be able to price that Market Order to sell at one MPV above zero. The functionality described in this proposed rule would be new and is designed to provide an opportunity for an arriving sell Market Order to trade when the NBO is below $0.50. The proposed rule would further provide that a Market Order to sell would be cancelled if it was assigned a Trading Collar, routed, and when it returns unexecuted, it has no resting portion to join and there is no NBB, regardless of the price of the NBO. Accordingly, in this scenario, if there is no NBB and there is an NBO that is $0.50 or below, the returned, unexecuted Market Order would be cancelled rather than displayed at one MPV above zero.
- There are no contra-side Market Maker quotes on the Exchange or contra-side ABBO, provided that a Market Order to sell would be accepted as provided for in proposed Rule 6.62P–O(a)(1)(A)(ii) (proposed Rule 6.62P–O(a)(1)(A)(iii)). This functionality would be new and is designed to prevent a Market Order from trading at prices that may not be current for that series in the absence of Market Maker quotations or an ABBO.
- The NBBO is not locked or crossed, and the spread is equal to or greater than a minimum amount based on the midpoint of the NBBO (proposed Rule 6.62P–O(a)(1)(A)(iv)). The proposed ''wide-spread'' parameter for purposes of determining whether to reject a Market Order is similar to the wide-spread parameter applied when determining whether a trade is a Catastrophic Error, as set forth in Rule 6.87–O(b)(3), with two differences. First, as shown below, the lowest bucket would be $0.00 up to and including $2.00, instead of $0.00 to $1.99, which means the $2.00 price point would be included in this bucket. The Exchange proposes this difference because it would simplify the application to have the break points after whole dollar price points. Second, the wide-spread calculation would be based off of the midpoint of the NBBO, rather than off of the bid price, as follows:

| The midpoint of the NBBO | Spread parameter |
|---|---|
| $0.00 to $2.00 | $0.75 |
| Above $2.00 to and including $5.00 | 1.25 |
| Above $5.00 to and including $10.00 | 1.50 |
| Above $10.00 to and including $20.00 | 2.50 |
| Above $20.00 to and including $50.00 | 3.00 |
| Above $50.00 to and including $100.00 | 4.50 |
| Above $100.00 | 6.00 |

The Exchange notes that this proposed protection for Market Orders is a new risk control designed to protect against erroneous executions and use of the midpoint of the NBBO as a basis for a price protection mechanism is consistent with similar functionality on other options markets.[69]

Proposed Rule 6.62P–O(a)(1)(B) would provide that an Aggressing Market Order to buy (sell) would trade with all orders or quotes to sell (buy) on the Consolidated Book priced at or below (above) the Trading Collar before routing to Away Market(s) at each price.[70] Proposed Rule 6.62P–O(a)(1)(B) would further provide that after trading or routing, or both, a Market Order would be displayed at the Trading Collar, subject to proposed Rule 6.62P–O(a)(1)(C), which is consistent with current functionality that Market Orders would be displayed at a Trading Collar, per Rule 6.60–O(a)(5).

Proposed Rule 6.62P–O(a)(1)(C) would provide that a Market Order would be cancelled before being displayed if there are no remaining contra-side Market Maker quotes on the Exchange or contra-side ABBO. Proposed Rule 6.62P–O(a)(1)(D) would provide that a Market Order would be cancelled after being displayed at its Trading Collar if there ceases to be a contra-side NBBO. These proposed cancellation events are similar to functionality described in Rule 6.60–O(a)(4)(E), which provides that ''[t]he Exchange will cancel a Market Order, or the balance thereof, that has been collared pursuant to paragraph (a)(1)(A) or (B) [of that Rule] above, if after exhausting trading opportunities within the Collar Range, the Exchange determines there are no quotes on the Exchange and/or no interest on another

[67] *See* discussion *supra,* regarding the proposed Rule 1.1 definition of ''NBBO'' and that when using an unadjusted NBBO, the NBBO would not be adjusted based on information about orders the Exchange sends to Away Markets, execution reports received from those Away Markets, and certain orders received by the Exchange. The Exchange believes that the unadjusted NBBO is a more conservative view of the NBBO because the Exchange waits for an update from OPRA rather than updating it based on its view of the NBBO.

[68] The Exchange will also reject a Market Order if it is entered when the underlying NMS stock is either in a Limit State or a Straddle State, which is current functionality. *See* Rule 6.65A–O(a)(1). The Exchange proposes a non-substantive amendment to Rule 6.65A–O(a)(1) to add a cross reference to proposed Rule 6.62P–O(a)(1). The Exchange also proposes to amend the second sentence of Rule 6.65A–O(a)(1) to remove references to trading collars, and instead specify that the Exchange would cancel any resting Market Orders if the underlying NMS stock enters a Limit State or a Straddle State and would notify OTP Holders of the reason for such cancellation. This proposed change would describe both how Market Orders function today on the OX system and how they would be processed on Pillar.

[69] *See, e.g.,* Cboe Rule 5.34(a)(2) (setting forth the ''Market Order NBBO Width Protection'' wherein Cboe cancels or rejects market orders submitted ''when the NBBO width is greater than x% of the midpoint of the NBBO,'' subject to minimum and maximum dollar values determined by Cboe).

[70] The Exchange has defined an Aggressing Order in proposed Rule 6.76P–O(a)(5). An Aggressing Market Order is a Market Order that is an Aggressing Order.

market in the affected option series.'' As proposed, in Pillar, the Exchange would cancel a Market Order in similar circumstances, with proposed modifications that a Market Order would be cancelled only if there are no remaining contra-side Market Maker quotes on the Exchange or if there is no contra-side ABBO. The Exchange believes that this proposed change from the current rule would provide that a Market Order would be cancelled when there is no contra-side interest against which to determine the price at which such order could trade.

Finally, proposed Rule 6.62P–O(a)(1)(E) would provide that a resting, displayed Market Order that is locked or crossed by an Away Market would be routed to that Away Market. Because Market Orders are intended to trade at the best price obtainable, the Exchange proposes to route displayed Market Orders if they are locked or crossed by an Away Market.[71] This proposed Rule is based on current functionality, which is not described in current rule. Therefore, the proposed rule is designed to promote clarity and transparency in Exchange rules.

*Limit Orders.* Proposed Rule 6.62P–O(a)(2) would define a Limit Order as an order message to buy or sell a stated number of option contracts at a specified price or better, subject to Limit Order Price Protection and the Trading Collar assigned to the order, and that a Limit Order may be designated Day, IOC, or GTC. In addition, unless otherwise specified, the working price and the display price of a Limit Order would be equal to the limit price of the order, it is eligible to be routed, and it would be ranked under the proposed category of ''Priority 2—Display Orders.'' This proposed rule text uses Pillar terminology that is based in part on Rule 7.31–E(a)(2). The ability for a Limit Order to be designated IOC, Day, or GTC is based on current Rules 6.62–O(k), (m) and (n), respectively, and therefore would differ from the cash equity rules because (unlike on the cash equity platform) a Limit Order could be designated GTC, but is consistent with current options trading functionality. In addition, unlike cash equity trading, but consistent with current options trading functionality, Limit Orders would be subject to trading collars. As described in more detail below, on Pillar, trading collars will differ from both current options trading collar functionality and trading collar functionality available on the Exchange's cash equity platform (which is available only for Market Orders).

Proposed Rule 6.62P–O(a)(2)(A) would provide that a marketable Limit Order to buy (sell) received by the Exchange would trade with all orders and quotes to sell (buy) on the Consolidated Book priced at or below (above) the NBO (NBB) before routing to the ABO (ABB) and may route to prices higher (lower) than the NBO (NBB) only after trading with orders and quotes to sell (buy) on the Consolidated Book at each price point, and once no longer marketable, the Limit Order would be ranked and displayed on the Consolidated Book. This proposed rule text is based on Rule 6.62–O(b), which provides that a '' 'marketable' limit order is a Limit Order to buy (sell) at or above (below) the NBBO.'' The proposed rule text is more specific and uses the same Pillar terminology used to describe Limit Orders in Rule 7.31–E(a)(2)(A) for cash equity trading. In addition, proposed Rule 6.62P–O(a)(2)(A) would use terminology specific to options trading (*i.e.,* the proposed rule refers to the Consolidated Book rather than the NYSE Arca Book as well as to the NBBO as opposed to the PBBO).

*Limit Order Price Protection.* The Exchange proposes to describe its proposed Limit Order Price Protection functionality in proposed Rule 6.62P–O(a)(3). On the OX system, the concept of ''Limit Order Price Protection'' for orders is set forth in Rule 6.60–O(b) and is called the ''Limit Order Filter.'' For quotes, price protection filters are described in Rule 6.61–O. The proposed ''Limit Order Price Protection'' on Pillar would be applicable to both Limit Orders and quotes and, at a high level, would work similarly to how the current price protection mechanisms function on the OX system because a Limit Order or quote would be rejected if it is priced at a specified threshold away from the contra-side NBB or NBO.[72] The Exchange proposes to enhance the functionality for options trading on Pillar by using new thresholds and reference prices (as discussed further below) that would be applicable to both orders and quotes. The concept of a ''Reference Price'' as used in connection with risk controls would be new for options but consistent with Pillar terminology for the Exchange's cash equity market as well as how this term is used on other option exchanges.[73] Thus, this term is not new or novel.

Proposed Rule 6.62P–O(a)(3)(A) would provide that each trading day, a Limit Order or quote to buy (sell) would be rejected or cancelled (if resting) if it is priced at a ''Specified Threshold,'' described below, equal to or above (below) the Reference Price, rounded down to the nearest price within the MPV for the Series (''Limit Order Price Protection''). In other words, a Limit Order designated GTC would be re-evaluated for Limit Order Price Protection on each day that it is eligible to trade and would be cancelled if the limit price is through the Specified Threshold. In addition, the proposed rounding down is consistent with current functionality, is standard on Pillar for price protection mechanisms, and is based on how Limit Order Price Protection is calculated on the Exchange's cash equity market if it is not within the MPV for the security, as described in the last sentence of Rule 7.31–E(a)(2)(B). The proposed text would therefore promote granularity in Exchange rules. The proposed rule would further provide that Cross Orders and Limit-on-Open (''LOO'') Orders (described below) as well as orders represented in open outcry (except CTB Orders), would not be subject to Limit Order Price Protection and that Limit Order Price Protection would not be applied to a Limit Order or quote if there is no Reference Price, which is consistent with current functionality.

- Proposed Rule 6.62P–O(a)(3)(A)(i) would provide that a Limit Order or quote that arrives when a series is open would be evaluated for Limit Order Price Protection on arrival.
- Proposed Rule 6.62P–O(a)(3)(A)(ii) would provide that a Limit Order or quote received during a pre-open state would be evaluated for Limit Order

[71] As described above for proposed Rule 6.76P–O(b)(3), displayed interest other than displayed Market Orders would stand their ground if locked or crossed by an Away Market. The Exchange would provide an option for Limit Orders to instead be routed, *see* discussion *infra,* regarding proposed Rule 6.62P–O(i)(1) and the proposed Proactive if Locked/Crossed Modifier.

[72] Current Rule 6.60–O(b) provides that unless otherwise determined by the Exchange, the specified threshold percentage for orders is 100% when the contra-side NBB or NBO is priced at or below $1.00 and 50% when the contra-side NBB or NBO is priced above $1.00. Current Rule 6.61–O(a)(1)(A) provides that unless otherwise determined by the Exchange, the specified threshold for Market Maker bids is $1.00 if the contra-side NBO is priced at or below $1.00 and for Market Maker offers no limit if the NBB is priced at or below $1.00. Current Rule 6.61–O(a)(1)(B) provides that unless otherwise determined by the Exchange, the specified threshold for Market Maker bids is 50% if the contra-side NBO (NBB) is priced above $1.00.

[73] *See, e.g.,* Cboe Rule 5.6(c) (setting forth the ''reference price'' applicable to orders for which Cboe delta-adjusts the execution price after the market close). As discussed infra, the Exchange likewise proposes to use the term Reference Price in connection with Trading Collars (proposed Rule 6.62P–O(a)(4)) and other risk checks (proposed Rule 6.41P–O).

Price Protection after an Auction concludes.[74]

• Proposed Rule 6.62P–O(a)(3)(A)(iii) would provide that a Limit Order or quote that was resting on the Consolidated Book before a trading halt would be evaluated for Limit Order Price Protection again after the Trading Halt Auction concludes.

The Exchange believes that these proposed rules would add clarity and transparency to when the Exchange would evaluate a Limit Order or quote for Limit Order Price Protection.

Proposed Rule 6.62P–O(a)(3)(B) would specify that the Reference Price for calculating Limit Order Price Protection for an order or quote to buy (sell) would be the NBO (NBB), provided that, immediately following an Auction, the Reference Price would be the Auction Price, or if none, the upper (lower) Auction Collar price, or, if none, the NBO (NBB). The Exchange believes that adjusting the Reference Price for Limit Order Price Protection immediately following an Auction would ensure that the most up-to-date price would be used to assess whether to cancel a Limit Order that was received during a pre-open state or would be reevaluated after a Trading Halt Auction. The Exchange further proposes that for purposes of calculating Limit Order Price Protection, the Exchange would not use an adjusted NBBO, which use of an unadjusted NBBO is consistent with how Limit Order Price Protection currently functions on the Exchange's cash equity market, as described in Rule 7.31–E(a)(2)(B).[75] The Exchange believes that using an unadjusted NBBO for risk protection mechanisms is consistent with the goal of such mechanisms to prevent erroneous executions by using a more conservative view of the NBBO.

Proposed Rule 6.62P–O(a)(3)(C) would specify the Specified Threshold and would provide that unless determined otherwise by the Exchange and announced to OTP Holders and OTP Firms by Trader Update, the Specified Threshold applicable to Limit Order Price Protection would be:

| Reference price | Specified threshold |
|---|---|
| $0.00 to $1.00 | $0.30 |
| $1.01 to $10.00 | 50% |
| $10.01 to $20.00 | 40% |
| $20.01 to $50.00 | 30% |
| $50.01 to $100.00 | 20% |
| $100.01 and higher | 10% |

The Exchange believes that it would provide a more reasonable and deterministic trading outcome to use a fixed dollar amount (of $0.30) rather than a percentage calculation when the Reference Price is $1.00 or less. The Exchange believes that the balance of the proposed thresholds, which are percentages tied to the amount of the Reference Price that decrease as that Price increases, are more granular than those currently specified in Rules 6.60–O(b) (for orders) and 6.61–O(a)(1)(A) and (B) (for quotes) and therefore determining whether to reject a Limit Order or quote will be more tailored to the applicable Reference Price.[76] In addition, consistent with Rules 6.60–O(b) and 6.61–O(a)(1), the Exchange proposes that these thresholds could change, subject to announcing the changes by Trader Update. Providing flexibility in Exchange rules regarding how the Specified Thresholds would be set is consistent with the rules of other options exchanges.[77]

*Trading Collar.* Trading Collars on the OX system are currently described in Rule 6.60–O(a). Under the current rules, incoming Market Orders and marketable Limit Orders are limited in having an immediate execution if they would trade at a price greater than one ''Trading Collar.'' A collared order is displayed at that price and then can be repriced to new collars as the NBBO updates. On Pillar, the Exchange proposes Trading Collar functionality that would be new for Pillar and is not currently available on the Exchange's cash equity platform.

Unlike current options trading collar functionality, which permits a collared order to be repriced, as proposed, a Market Order or Limit Order would be assigned a single Trading Collar that would be applicable to that order until it is fully executed or cancelled (unless the series is halted). The new proposed Trading Collar would function as a ceiling (for buy orders) or floor (for sell orders) of the price at which such order could be traded, displayed, or routed. The Exchange further proposes that when an order is working at its assigned Trading Collar, it would cancel if not executed within a specified time period.

More specifically, proposed Rule 6.62P–O(a)(4) would provide that a Market Order or Limit Order to buy (sell) would not trade or route to an Away Market at a price above (below) the Trading Collar assigned to that order. As further proposed, Auction-Only Orders, Limit Orders designated IOC or FOK, Cross Orders, ISOs, and Market Maker quotes would not be subject to Trading Collars, which interest is excluded under current functionality.[78] The proposed rule, however, would explicitly add reference to Auction-Only Orders, Cross Orders, and ISOs being excluded from Trading Collars, which new detail would add granularity to the proposed rule and would also address that the proposed Day ISOs, described below, would not be subject to Trading Collars. In addition, Trading Collars would not be applicable during Auctions but (as described below) would be calculated after such Auction concludes.

Proposed Rule 6.62P–O(a)(4)(A) would provide that a Trading Collar assigned to an order would be calculated once per trading day and would be updated only if the series is halted. Accordingly, an order designated GTC would receive a new Trading Collar each day, but that Trading Collar would not be updated intraday unless the series is halted. Proposed Rule 6.62P–O(a)(4)(A)(i) would provide that an order that is received during continuous trading would be assigned a Trading Collar before being processed for either trading, repricing, or routing and that an order that is routed on arrival and returned unexecuted would use the Trading Collar previously assigned to it. Proposed Rule 6.62P–O(a)(4)(A)(ii) would provide that an order received during a pre-open state would be assigned a Trading Collar after an Auction concludes. Finally, proposed Rule 6.62P–O(a)(4)(A)(iii) would provide that the Trading Collar for an order resting on the Consolidated Book

[74] *See* discussion *infra,* regarding proposed Rule 6.64P–O(a) and proposed definitions for the terms ''Auction,'' ''Auction Price,'' Auction Collar,'' ''pre-open state,'' and ''Trading Halt Auction.''

[75] References to the NBBO, NBB, and NBO in Rule 7.31–E refer to using a determination of the national best bid and offer that has not been adjusted.

[76] On the OX system, the thresholds for price protection on orders and quotes (per Rules 6.60–O(b) and 6.61–O(a)(1), respectively), depend solely on whether the contra-side NBBO (*i.e.,* the reference price) is more or less than $1.00. The Exchange believes the additional Reference Price levels—and corresponding Specified Thresholds—would make the application of the Limit Order Price Protection more precise to the benefit of all market participants.

[77] *See, e.g.,* Cboe Rule 5.34(a)(4) (describing the ''Drill-Through Protection'' and that Cboe ''determines the buffer amount on a class and premium basis'' without specifying the amount of such buffers); and the Nasdaq Stock Market LLC (''Nasdaq'') Options 3, Section 15(a)(1)(B) (specifying that ''Order Price Protection'' can be a configurable dollar amount not to exceed $1.00 through such contra-side Reference BBO as specified by Nasdaq and announced via an Options Trader Alert).

[78] *See* Rule 6.60–O(a)(3) (''Trade Collar Protection does not apply to quotes, IOC Orders, AON Orders, FOK Orders, and NOW Orders.'').

before a trading halt would be calculated again after the Trading Halt Auction concludes. The Exchange believes that because Trading Collars are intended as a price protection mechanism, updating the Trading Collar after a series has reopened would allow for the Trading Collar assigned to an order to reflect more updated pricing.

Proposed Rule 6.62P–O(a)(4)(B) would provide that the Reference Price for calculating the Trading Collar for an order to buy (sell) would be the NBO (NBB), which is consistent with how trading collars are currently determined for Limit Orders, with differences to use this Reference Price for all orders and for how the Reference Price would be determined after an Auction.[79] The Exchange proposes to use the Pillar term ''Reference Price'' to describe what would be used for Trading Collar calculations.[80] The proposed rule would further provide that for Auction-eligible orders to buy (sell) that were received during a pre-open state or orders that were re-assigned a Trading Collar after a trading halt, the Reference Price would be the Auction Price or, if none, the upper (lower) Auction Collar price or, if none, the NBO (NBB). For reasons similar to those described above, the Exchange proposes to use a more conservative view of the NBBO for purposes of risk protection mechanisms. Therefore, the Exchange proposes that for purposes of calculating a Trading Collar, the Exchange would not use an adjusted NBBO. Proposed Rule 6.62P–O(a)(4)(B)(i) would further provide that a Trading Collar would not be assigned to a Limit Order if there is no Reference Price at the time of calculation, which is consistent with current functionality and the proposed rule would add granularity to Exchange rules.

Proposed Rule 6.62P–O(a)(4)(C) would describe how the Trading Collar would be calculated and would provide that the Trading Collar for an order to buy (sell) would be a specified amount above (below) the Reference Price, as follows: (1) For orders with a Reference Price of $1.00 or lower, $0.25; or (2) for orders with a Reference Price above $1.00, the lower of $2.50 or 25%. Trading Collars under the current rule are based on a specified dollar amount (set forth in four tranches).[81] The Exchange believes the proposed functionality (set forth in two tranches) would tailor the Trading Collar calculations with either a specified dollar amount or percentage, depending on the Reference Price of the order, while at the same time providing that the thresholds would be within the current parameters for determining whether a trade is an Obvious Error or Catastrophic Error.[82] Proposed Rule 6.62P–O(a)(4)(C)(i) would further provide that if the calculation of a Trading Collar would not be in the MPV for the series, it would be rounded down to the nearest price within the applicable MPV, which is consistent with current functionality and based on how Trading Collars are calculated on the Exchange's cash equity market, as described in Rule 7.31–E(a)(1)(B). Proposed Rule 6.62P–O(a)(4)(C)(ii) would further provide that for orders to sell, if subtracting the Trading Collar from the Reference Price would result in a negative number, the Trading Collar for Limit Orders would be the limit price and the Trading Collar for Market Orders would be one MPV above zero, which would provide more granularity in Exchange rules and would ensure that there will be a Trading Collar calculated for low-priced orders to sell.

Proposed Rule 6.62P–O(a)(4)(D) would describe how the Trading Collar would be applied and would provide that if an order to buy (sell) would trade or route above (below) the Trading Collar or would have its working price repriced to a Trading Collar that is below (above) its limit price, the order would be added to the Consolidated Book at the Trading Collar for 500 milliseconds and if not traded within that period, would be cancelled. In addition, once the 500-millisecond timer begins for an order, the order would be cancelled at the end of the timer even if it repriced or has been routed to an Away Market during that period, in which case any portion of the order that is returned unexecuted would be cancelled.

The Exchange believes that the proposed Trading Collar functionality is designed to provide a similar type of order protection as is currently available (as described in Rule 6.60–O(a)) because it would limit the price at which a marketable order could be traded, routed, or displayed. The Exchange believes that the proposed differences are designed to simplify the functionality by applying a static ceiling price (for a buy order) or floor price (for a sell order) at which such order could be traded or routed that would be determined at the time of entry (or after a series opens or reopens) and would be applicable to the order until it is traded or cancelled. The Exchange believes that the proposed functionality would provide greater determinism to an OTP Holder or OTP Firm of the Trading Collar that would be applicable to a Market Order or Limit Order and when such order may be cancelled if it reaches its Trading Collar.

*Time in Force Modifiers.* Proposed Rule 6.62P–O(b) would set forth the time-in-force modifiers that would be available for options trading on Pillar and uses Pillar terminology similar to that used in Rule 7.31–E(b), with differences to offer time-in-force modifiers currently available for options trading that are not available for cash equity trading. The Exchange proposes to offer the same time-in-force modifiers that are currently available for options trading on the Exchange and use Pillar terminology to describe the functionality. As noted above, the Exchange proposes to describe the Time in Force Modifiers in proposed Rule 6.62P–O(b), and then specify for each order type which Time in Force Modifiers would be available for such orders or quotes.

*Day Modifier.* Proposed Rule 6.62P–O(b)(1) would provide that any order or quote to buy or sell designated Day, if not traded, would expire at the end of the trading day on which it was entered and that a Day Modifier cannot be combined with any other Time in Force Modifier. This proposed rule text uses Pillar terminology based on Rule 7.31–E(b)(1) with one difference to reference ''quotes'' in addition to orders. This proposed functionality would operate no differently than how a ''Day Order,'' as described in Rule 6.62–O(m), currently functions.

*Immediate-or-Cancel (''IOC'') Modifier.* Proposed Rule 6.62P–O(b)(2) would provide that a Limit Order may be designated IOC or Routable IOC, as described in proposed Rules 6.62P–O(b)(2)(A) and (B) and that a Limit Order designated IOC would not be eligible to participate in any Auctions. This proposed rule text is based on the first and third sentences of Rule 7.31–E(b)(2) without any differences and makes explicit current (but not defined) functionality.[83] The Exchange proposes

[79] Under current rules, trading collars are calculated based off of the contra-side NBBO. *See* Rule 6.60–O(a)(1)(A)(ii).

[80] *See* discussion regarding Cboe Rule 5.34(a)(4) and Nasdaq Options 3, Section 15(a)(1)(B), *supra* note 77.

[81] Under the current rule, the Trading Collar for buy (sell) orders is as follows: $0.25 for each option contract for which the NBB (NBO) is less than $2.00; $0.40 where the NBB (NBO) is between $2.00–$5.00; $0.50 where the NBB (NBO) is between $5.01–$10.00; $0.80 where the NBB (NBO) is between $10.01 but does not exceed—$20.00; and $1.00 when the NBB (NBO) is $20.01 or more.

[82] *See* Rules 6.87–O(c)(1) (thresholds for Obvious Errors) and 6.87–O(d)(1) (thresholds for Catastrophic Errors).

[83] The proposed rule does not include the second sentence of Rule 7.31–E(b)(2), which provides that the ''IOC Modifier will override any posting or

to use Pillar terminology based on Rule 7.31–E(b)(2) to describe this functionality.

Proposed Rule 6.62P–O(b)(2)(A) would define a ''Limit IOC Order'' as a Limit Order designated IOC that would be traded in whole or in part on the Exchange as soon as such order is received, and the unexecuted quantity would be cancelled and that a Limit IOC Order does not route. This proposed rule text uses Pillar terminology based on Rule 7.31–E(b)(2)(A) without any substantive differences. The proposed Pillar Limit IOC Order would function the same as an ''Immediate-or-Cancel Order (IOC Order),'' as currently described in Rule 6.62–O(k), without any differences.

Proposed Rule 6.62P–O(b)(2)(B) would define a ''Limit Routable IOC Order'' as a Limit Order designated Routable IOC that would be traded in whole or in part on the Exchange as soon as such order is received, and the unexecuted quantity routed to Away Market(s) and that any quantity not immediately traded either on the Exchange or an Away Market would be cancelled. This proposed rule text uses Pillar terminology based on Rule 7.31–E(b)(2)(B) without any substantive differences. The proposed Pillar Limit Routable IOC Order is also based on the ''NOW Order,'' as currently described in Rule 6.62–O(o) and uses Pillar terminology.

*Fill-or-Kill (''FOK'') Modifier:* Proposed Rule 6.62P–O(b)(3) would provide that a Limit Order designated FOK would be traded in whole on the Exchange as soon as such order is received, and if not so traded is to be cancelled and that a Limit Order designated FOK does not route and does not participate in any Auctions. The Exchange does not offer the FOK Modifier on its cash equity market, and this proposed rule uses Pillar terminology to offer the same functionality that is currently described in Rule 6.62–O(l) as the ''Fill-or-Kill Order (FOK Order)'' without any substantive differences.

*Good-'Til-Cancelled (''GTC'') Modifier.* Proposed Rule 6.62P–O(b)(4) would provide that a Limit or Market Order designated GTC remains in force until the order is filled, cancelled, the MPV in the series changes overnight, the option contract expires, or a corporate action results in an adjustment to the terms of the option contract. The Exchange does not offer the GTC Modifier on its cash equity market, and this proposed rule uses Pillar terminology to offer the same functionality that is currently described in Rule 6.62–O(n) as the ''Good-Till-Cancelled (GTC Order),'' with the substantive difference that the proposed text makes clear (consistent with current functionality) that such orders may be cancelled if the MPV changes overnight. Otherwise, the proposed Rule describes the same functionality that is currently described in Rule 6.62–O(n) as the ''Good-Till-Cancelled (GTC Order).''

*Auction-Only Orders.* Proposed Rule 6.62P–O(c) would define an ''Auction-Only Order'' as a Limit Order or Market Order that is to be traded only in an Auction pursuant to Rule 6.64P–O,[84] which uses Pillar terminology based on Rule 7.31–E(c) in lieu of the current description of an ''Opening Only Order'' set forth in Rule 6.62–O(r), without any functional differences to how such orders trade on Pillar.[85] The proposed rule would further provide that an Auction-Only Order would not be accepted when a series is opened for trading (*i.e.,* would be accepted only during a pre-open state, which includes a trading halt) and any portion of an Auction-Only Order that is not traded in a Core Open Auction or Trading Halt Auction would be cancelled. This represents current functionality.[86] The proposed rule is designed to provide clarity and uses Pillar terminology from both the last sentence of Rule 7.31–E(c)(1) and the last sentence of Rule 7.31–E(c)(2) for options trading.

Proposed Rule 6.62P–O(c)(1) would define a ''Limit-on-Open Order ('LOO Order')'' as a Limit Order that is to be traded only in an Auction. This proposed rule uses Pillar terminology based on Rule 7.31–E(c)(1) to describe functionality that would be no different from current functionality, as described in Rule 6.62–O(r).

Proposed Rule 6.62P–O(c)(2) would define a ''Market-on-Open Order ('MOO Order')'' as a Market Order that is to be traded only in an Auction (whether a Core Open Auction or Trading Halt Auction, per proposed Rule 6.64P–O(a)(1)(A), (B)). This proposed rule uses Pillar terminology based on Rule 7.31–E(c)(2) to describe functionality for options that would be no different from current functionality, as described in Rule 6.62–O(r).

Proposed Rule 6.62P–O(c)(3) would define an ''Imbalance Offset Order ('IO Order').'' The Exchange currently offers an IO Order for participation in Trading Halt Auctions on its cash equity market but does not offer this order type for options trading on the OX system. For cash equity trading, the IO Order is a conditional order type that is eligible to participate in a Trading Halt Auction only if it would offset the imbalance. To provide OTP Holders and OTP Firms with greater flexibility for options trading on Pillar, the Exchange proposes to offer more expansive functionality than is currently available for cash equity trading and to offer the IO Order for both Core Open Auctions and Trading Halt Auctions.

As proposed, the IO Order would function no differently than how an IO Order currently functions on the Exchange's cash equity market (except that it would be eligible to trade in all Auctions). Accordingly, proposed Rule 6.62P–O(c)(3) would define an IO Order as a Limit Order that is to be traded only in an Auction, which is based on Rule 7.31–E(c)(5), with a difference that for options trading, it would also be available for Core Open Auctions.

- Proposed Rule 6.62P–O(c)(3)(A) would provide that an IO Order would participate in an Auction only if: (1) There is an Imbalance in the series on the opposite side of the market from the IO Order after taking into account all other orders and quotes eligible to trade at the Indicative Match Price; and (2) the limit price of the IO Order to buy (sell) would be at or above (below) the Indicative Match Price. This proposed text is based on Rule 7.31–E(c)(5)(B) except that it includes reference to quotes, which are unique to options trading, and does not limit the order type to Trading Halt Auctions.
- Proposed Rule 6.62P–O(c)(3)(B) would provide that the working price of an IO Order to buy (sell) would be adjusted to be equal to the Indicative Match Price, provided that the working price of an IO Order would not be higher (lower) than its limit price. This proposed text is based on Rule 7.31–E(c)(5)(C) without any differences.

*Orders with a Conditional or Undisplayed Price and/or Size.* Proposed Rule 6.62P–O(d) would set forth the orders with a conditional or undisplayed price and/or size that would be available for options trading

routing instructions of orders that include the IOC Modifier,'' as this functionality is not applicable to options because an order that is not eligible to include an IOC Modifier would be rejected on Pillar.

[84] *See* discussion *infra,* regarding proposed Rule 6.64P–O and definitions relating to Auctions. As proposed, an ''Auction'' includes the opening or reopening of a series for trading either on a trade or quote. *See* proposed Rule 6.64P–O(a)(5).

[85] Rule 6.62–O(r) defines an ''Opening Only Order'' as ''a Market Order or Limit Order which is to be executed in whole or in part during the opening auction of an options series or not at all. Any portion not so executed is to be treated as cancelled.'' Per Rule 6.64–O(d), the Exchange utilizes the same process for orders eligible to participate in the opening or reopening (following a trading halt) of a series.

[86] *See* Rule 6.62–O(r) (providing that any portion of an Opening Only Order ''not so executed is to be treated as cancelled'').

on Pillar. On Pillar, the Exchange proposes to offer the same type of orders that are available in the OX system and that are currently described in Rule 6.62–O(d) as a ''Contingency Order or Working Order,'' with changes as described below.[87]

*Reserve Order.* Reserve Orders are currently defined in Rule 6.62–O(d)(3). The Exchange proposes that for options traded on Pillar, Reserve Orders would function similarly to how Reserve Orders function on its cash equity market, as described in Rule 7.31–E(d)(1), with differences described below. Accordingly, the Exchange proposes that proposed Rule 6.62P–O(d)(1), which would define Reserve Orders for options trading on Pillar, would use Pillar terminology based on Rule 7.31–E(d)(1), with differences to reflect differences in options and cash equity trading. For example, options trading does not have a concept of ''round lot'' or ''odd lot'' trading, and therefore the proposed options trading version of the Rule would not include a description of behavior that correlates to such functionality.

Proposed Rule 6.62P–O(d)(1) would define a Reserve Order as a Limit Order with a quantity of the size displayed and with a reserve quantity of the size (''reserve interest'') that is not displayed and that the displayed quantity of a Reserve Order is ranked under the proposed category of ''Priority 2—Display Orders'' and the reserve interest is ranked under the proposed category of ''Priority 3—Non-Display Orders.'' This proposed rule text is based on Rule 7.31–E(d)(1) without any differences. This proposed rule text is also consistent with Rule 6.76–O(a)(1)(B) and (a)(2), with orders ranked under the proposed category of ''Priority 2—Display Orders'' functioning the same as orders in the current ''Display Order Process'' and orders ranked under the proposed category of ''Priority 3—Non-Displayed Orders'' functioning the same as orders in the current ''Working Order Process.'' Proposed Rule 6.62P–O(d)(1) would further provide that both the display quantity and the reserve interest of an arriving marketable Reserve Order would be eligible to trade with resting interest in the Consolidated Book or route to Away Markets, unless designated as a Non-Routable Limit Order, which is based on the third sentence of Rule 7.31–E(d)(1) with a non-substantive difference to add reference to Non-Routable Limit Order.

Proposed Rule 6.62P–O(d)(1) would further provide that the working price of the reserve interest of a resting Reserve Order to buy (sell) would be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in paragraph (d)(2)(A) of this Rule, provided that it would never be priced higher (lower) than the working price of the display quantity of the Reserve Order. This proposed rule text is based on the last sentence of Rule 7.31–E(d)(1) with one difference to reference that the reserve interest could never have a working price that is more aggressive than the working price of the display quantity of the Reserve Order, which would be new functionality on Pillar for options trading (and not currently available for cash equity trading) designed to ensure that the reserve interest of a Reserve Order to buy (sell) would never trade at a price higher (lower) than the working price of the display quantity of the Reserve Order.[88]

- Proposed Rule 6.62P–O(d)(1)(A) would provide that the displayed portion of a Reserve Order would be replenished when the display quantity is decremented to zero and that the replenish quantity would be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity. This proposed rule text is based on Rule 7.31–E(d)(1)(A) with differences to reflect that options are not traded in ''round lots'' or ''odd lots.'' Accordingly, the Exchange would not replenish a Reserve Order on the options trading platform until the display portion is fully decremented, which is consistent with current functionality as described in Rule 6.76–O(a)(1)(B).
- Proposed Rule 6.62P–O(d)(1)(B) would provide that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time would be assigned to the replenished quantity, which is consistent with current Rule 6.76–O(a)(1)(B)(ii), which provides that when refreshed, the new display quantity will be ranked at the new time that the displayed portion of the order was refreshed. This proposed rule text is based in part on Rule 7.31–E(d)(1)(B) with differences to reflect that for options traded on Pillar, there would never be more than one display quantity of a Reserve Order, and therefore the Exchange would not have different ''child'' display quantities of a Reserve Order with different working times, as could occur for a Reserve Order on the Exchange's cash equity trading platform.
- Proposed Rule 6.62P–O(d)(1)(C) would provide that a Reserve Order may be designated as a Non-Routable Limit Order and if so designated, the reserve interest that replenishes the display quantity would be assigned a display price and working price consistent with the instructions for the order. This proposed rule text is based on Rule 7.31–E(d)(1)(B)(ii) without any substantive differences. The Exchange believes that the proposed rule would promote transparency and granularity in Exchange rules.
- Proposed Rule 6.62P–O(d)(1)(D) would provide that a routable Reserve Order would be evaluated for routing both on arrival and each time the display quantity is replenished, which is consistent with Rule 6.76A–O(c)(1)(B), which provides that a Reserve Order may be routed serially as component orders. Proposed Rule 6.62P–O(d)(1)(D)(i) would provide that if routing is required, the Exchange would route from reserve interest before publishing the display quantity. And proposed Rule 6.62P–O(d)(1)(D)(ii) would provide that any quantity of a Reserve Order that is returned unexecuted would join the working time of the reserve interest and that if there is no reserve interest to join, the returned quantity would be assigned a new working time. This proposed rule text is based on Rule 7.31–E(d)(1)(D) and subparagraphs (i) and (ii) with differences to reflect that there is no concept of round lots or multiple child display orders for options trading. The Exchange believes that the proposed rule would promote transparency and granularity in Exchange rules.
- Proposed Rule 6.62P–O(d)(1)(E) would provide that a request to reduce the size of a Reserve Order would cancel the reserve interest before cancelling the display quantity. This proposed rule text is based on Rule 7.31–E(d)(1)(E) with differences only to reflect that there would not be more than one child display order for options trading of Reserve Orders on Pillar. The Exchange believes that the proposed rule would promote transparency and granularity in Exchange rules.

[87] As discussed, *supra,* regarding proposed Rule 6.76P–O(g), the Exchange proposes to include details about ranking of orders and quotes with contingencies in this proposed Rule 6.62P–O(d) using the Pillar priority scheme. Also, as discussed infra, *see e.g.,* note 44 [sic], the ranking and priority of quotes under Pillar is consistent with handling on the OX system unless otherwise noted herein.

[88] For example, as described in more detail below, the proposed Non-Routable Limit Order would be eligible to be repriced only once after it is resting in the Consolidated Book (*see* proposed Rule 6.62P–O(e)(1)). If the display quantity of a Non-Routable Limit Order that is combined with a Reserve Order has already been repriced and is no longer eligible to be repriced, and the ABBO adjusts, the reserve quantity would not adjust to a price that would be more aggressive than the working price of the display quantity of the order. This functionality is not currently available on the Exchange's cash equity market.

• Proposed Rule 6.62P–O(d)(1)(F) would provide that a Reserve Order may be designated Day or GTC, but it may not be designated as an ALO Order. This proposed rule text is based in part on Rule 7.31–E(d)(1)(C), with differences to reflect that the GTC Modifier would be available for Reserve Orders trading on the Pillar options trading platform (consistent with current functionality) and that Primary Pegged Orders would not be available for options traded on Pillar (also consistent with current functionality). The Exchange believes that the proposed rule would promote transparency and granularity in Exchange rules.

*Non-Displayed Limit Order.* The Exchange proposes to offer the Non-Displayed Limit Order for options trading on Pillar, which would be new for options trading and would provide OTP Holders and OTP Firms with a non-displayed order type in lieu of non-displayed PNP Blind Orders, which latter order type would not be available on Pillar.[89] The proposed order type would function similarly to the existing Non-Displayed Limit Order as described in Rule 7.31–E(d)(2). Proposed Rule 6.62P–O(d)(2) would define a Non-Displayed Limit Order as a Limit Order that is not displayed, does not route, and is ranked under the proposed category of ''Priority 3—Non-Display Orders''; and that a Non-Displayed Limit Order may be designated Day or GTC and would not participate in any Auctions. This proposed rule text uses the same Pillar terminology as used in Rule 7.31–E(d)(2) with differences to reflect that the GTC Time-in-Force Modifier is available for options trading on Pillar.

• Proposed Rule 6.62P–O(d)(2)(A) would provide that the working price of a Non-Displayed Limit Order would be assigned on arrival and adjusted when resting on the Consolidated Book and that the working price of a Non-Displayed Limit Order to buy (sell) would be the lower (higher) of the limit price or the NBO (NBB). This proposed rule text is based on Rule 7.31–E(d)(2)(A) with non-substantive differences to reference the Consolidated Book instead of the NYSE Arca Book and to streamline the rule text without any substantive differences.

*All-or-None (''AON'') Order.* AON Orders are currently defined in Rule 6.62–O(d)(4). AON Orders are not available on the Exchange's cash equity market, and for options trading on Pillar, would function similarly to how AON Orders currently function because such orders would only execute if they can be satisfied in their entirety. However, unlike the OX system, where AON Orders are not integrated in the Consolidated Book, on Pillar, the Exchange proposes that AON Orders would be ranked in the Consolidated Book and function as conditional orders that would trade only if their condition could be met, similar to how orders with a Minimum Trade Size (''MTS'') Modifier function on Pillar on the Exchange's cash equity market. In addition, on Pillar, the Exchange would not support Market Orders designated as AON, which would be a change from current functionality. The Exchange does not believe it needs to continue offering AON Market Orders because such functionality was not used often on the OX system, indicating a lack of market participant interest in this functionality. Because of the new functionality that would be available for AON Orders on Pillar, the Exchange proposes to use Pillar terminology to describe this order type.

Proposed Rule 6.62P–O(d)(3) would provide that an AON Order is a Limit Order that is to be traded in whole on the Exchange at the same time or not at all, which represents current functionality as described in the first sentence of Rule 6.62–O(d)(4). Proposed Rule 6.62P–O(d)(3) would further provide that an AON Order that does not trade on arrival would be ranked under the proposed category of ''Priority 3—Non-Display Orders'' and that an AON Order may be designated Day or GTC, does not route, and would not participate in any Auctions. This proposed rule text uses Pillar terminology to describe the proposed new functionality that such orders would be ranked on the Consolidated Book.

• Proposed Rule 6.62P–O(d)(3)(A) would provide that the working price of an AON Order would be assigned on arrival and adjusted when resting on the Consolidated Book and that the working price of an AON Order to buy (sell) would be the lower (higher) of the limit price or NBO (NBB). Because an AON Order is non-displayed, the Exchange proposes that its working price should be adjusted in the same manner as the proposed Non-Displayed Limit Order.

• Proposed Rule 6.62P–O(d)(3)(B) would provide that an Aggressing AON Order to buy (sell) would trade with sell (buy) orders and quotes that in the aggregate can satisfy the AON Order in its entirety. This proposed rule text is new and promotes clarity in Exchange rules that an Aggressing AON Order (whether on arrival or as a resting order that becomes an Aggressing Order) would be eligible to trade with more than one contra-side order or quote, provided that multiple orders and quotes in the aggregate would satisfy the AON Order in its entirety.

• Proposed Rule 6.62P–O(d)(3)(C) would provide that a resting AON Order to buy (sell) would trade with an Aggressing Order or Aggressing Quote to sell (buy) that individually can satisfy the whole AON Order. This is proposed new functionality, because currently, an AON Order can trade only against resting interest in the Consolidated Book. The Exchange believes this proposed change would provide an AON Order with additional execution opportunities.

• Proposed Rule 6.62P–O(d)(3)(C)(i) would provide that if an Aggressing Order or Aggressing Quote to sell (buy) does not satisfy the resting AON Order to buy (sell), that Aggressing Order or Aggressing Quote would not trade with and may trade through such AON Order. Proposed Rule 6.62P–O(d)(3)(C)(ii) would further provide that if a resting non-displayed order to sell (buy) does not satisfy the quantity of a same-priced resting AON Order to buy (sell), a subsequently arriving order or quote to sell (buy) that satisfies the AON Order would trade before such resting non-displayed order or quote to sell (buy) at that price. Both of these proposed rules are similar to current Rule 6.62–O(d)(4), which provides that a resting AON Order can be ignored if its condition is not met. Similar to current functionality, even though an AON would be ranked in the Consolidated Book, it is still a conditional order type and therefore, by its terms, can be skipped over for an execution. This proposed rule text is also based on how the MTS Modifier functions on the cash equity market, as described in Rule 7.31–E(i)(3)(E)(i) and (ii).

• Proposed Rule 6.62P–O(d)(3)(D) would provide that a resting AON Order to buy (sell) would not be eligible to trade against an Aggressing Order or Aggressing Quote to sell (buy): (i) At a price equal to or above (below) any orders or quotes to sell (buy) that are displayed at a price equal to or below (above) the working price of such AON Order; or (ii) at a price above (below) any orders or quotes to sell (buy) that are not displayed and that have a working price below (above) the working price of such AON Order. This proposed rule text is new functionality for AON Orders that is designed to

[89] The Exchange notes that a Non-Displayed Limit Order would function similarly to a PNP Blind Order that locks or crosses the contra-side NBBO. In such case, a PNP Blind Order is not displayed, as described in Rule 6.62–O(u) (''if the PNP Blind Order would lock or cross the NBBO, the price and size of the order will not be disseminated'').

protect the priority of resting orders and quotes and is based on how the MTS Modifier functions on the cash equity market, as described in Rule 7.31–E(i)(3)(C) and its subparagraphs (i) and (ii).

• Proposed Rule 6.62P–O(d)(3)(E) would provide that if a resting AON Order to buy (sell) becomes an Aggressing Order it would trade as provided in paragraph (d)(3)(B) of this Rule; however, other resting orders or quotes to buy (sell) ranked Priority 3—Non-Display Orders that become Aggressing Orders or Aggressing Quotes at the same time as the resting AON Order would be processed before the AON Order. This is proposed new functionality and is designed to promote clarity in Exchange rules that if multiple orders ranked Priority 3—Non-Display Orders, including AON and non-AON Orders, become Aggressing Orders or Aggressing Quotes at the same time, the AON Order would not be eligible trade until the other orders ranked Priority 3—Non-Display Orders have been processed, even if they have later working times. The Exchange believes that it would be consistent with the conditional nature of AON Orders for other same-side non-displayed orders to have a trading opportunity before the AON Order.

*Stop Order.* Stop Orders are currently defined in Rule 6.62–O(d)(1). The Exchange proposes to use Pillar terminology with more granularity to describe Stop Orders in proposed Rule 6.62P–O(d)(4), as specified below. Proposed Rule 6.62P–O(d)(4) would provide that a Stop Order is an order to buy (sell) a particular option contract that becomes a Market Order (or is ''elected'') when the Exchange BB (BO) or the most recent consolidated last sale price reported after the order was placed in the Consolidated Book (the ''Consolidated Last Sale'') (either, the ''trigger'') is equal to or higher (lower) than the specified ''stop'' price. The proposed functionality is consistent with existing functionality and provides more granularity of the circumstances when a Stop Order would be elected.[90] Because a Stop Order becomes a Market Order when it is elected, the Exchange proposes that when it is elected, it would be cancelled if it does not meet the validations specified in proposed Rule 6.62P–O(a)(1)(A) and if not cancelled, it would be assigned a Trading Collar. This is consistent with current functionality, which is not described in the current rule describing Stop Orders, that once converted to a Market Order, such order is subject to the checks applicable in the current rule for Market Orders, *i.e.,* cancelling such order if there is no NBBO. The proposed rule references the checks that would be applicable to a Market Order on Pillar and thus adds greater granularity and transparency to Exchange rules.

Proposed Rule 6.62P–O(d)(4)(A) would provide that a Stop Order would be assigned a working time when it is received but would not be ranked or displayed in the Consolidated Book until it is elected and that once converted to a Market Order, the order would be assigned a new working time and be ranked Priority 1—Market Orders. The original working time assigned to a Stop Order would be used to rank multiple Stop Orders elected at the same time. This is consistent with the current rule, which provides that a Stop Order is not displayed and has no standing in any Order Process in the Consolidated Book, unless or until it is triggered. The proposed rule is designed to provide greater granularity and clarity regarding the treatment of Stop Orders, both when received and when elected.

Proposed Rule 6.62P–O(d)(4)(B) would specify additional events that are designed to limit when a Stop Order may be elected so that a Market Order does not trade during a period of pricing uncertainty:

• Proposed Rule 6.62P–O(d)(4)(B)(i) would provide that if not elected on arrival, a Stop Order that is resting would not be eligible to be elected based on a Consolidated Last Sale unless the Consolidated Last Sale is equal to or in between the NBBO. This proposed rule text provides additional transparency of when a resting Stop Order would be eligible to be elected.

• Proposed Rule 6.62P–O(d)(4)(B)(ii) would provide that a Stop Order would not be elected if the NBBO is crossed.

• Proposed Rule 6.62P–O(d)(4)(B)(iii) would provide that after a Limit State or Straddle State is lifted, the trigger to elect a Stop Order would be either the Consolidated Last Sale received after such state was lifted or the Exchange BB (BO).[91]

*Stop Limit Order.* Stop Limit Orders are currently defined in Rule 6.62–O(d)(2). The Exchange proposes to use Pillar terminology with more granularity to describe Stop Limit Orders in proposed Rule 6.62P–O(d)(5), as specified below.

Proposed Rule 6.62P–O(d)(5) would provide that a Stop Limit Order is an order to buy (sell) a particular option contract that becomes a Limit Order (or is ''elected'') when the Exchange BB (BO) or the Consolidated Last Sale (either, the ''trigger'') is equal to or higher (lower) than the specified ''stop'' price.[92] The proposed functionality is consistent with existing functionality and provides more granularity of when a Stop Limit Order would be elected than the current Rule 6.62–O(d)(2) definition of Stop Limit Order. As further proposed, a Stop Limit Order to buy (sell) would be rejected if the stop price is higher (lower) than its limit price, which rejection would be new functionality under Pillar and would prevent the Exchange from accepting potentially erroneously-priced orders. Because a Stop Limit Order becomes a Limit Order when it is elected, the Exchange proposes that when it is elected, it would be cancelled if it fails Limit Order Price Protection or a Price Reasonability Check and if not cancelled, it would be assigned a Trading Collar.[93] This functionality is consistent with current functionality, though it is not explicitly stated in the current rule describing Stop Limit Orders. Specifically, both in the current OX System and as proposed on Pillar, once converted to a Limit Order, such order is subject to the checks applicable in the current rule for Limit Orders, *i.e.,* Limit Order Filter on the OX System. The proposed rule references the checks that would be applicable to a Limit Order on Pillar and thus adds greater granularity and transparency to Exchange rules.

Proposed Rule 6.62P–O(d)(5)(A) would provide that a Stop Limit Order would be assigned a working time when it is received but would not be ranked or displayed in the Consolidated Book until it is elected and that once converted to a Limit Order, the order would be assigned a new working time and be ranked under the proposed category of ''Priority 2—Display Orders.'' This functionality is consistent with the current rule, which provides that a Stop Limit Order is not displayed and has no standing in any Order Process in the Consolidated Book, unless or until it is triggered. The proposed rule is designed to provide greater granularity and clarity.

[90] The current rule states that a Stop Order to buy (sell) will be triggered (*i.e.,* elected) if ''trades at a price equal to or greater (less) than the specified 'stop' price on the Exchange or another Market Center.'' *See* Rule 6.62–O(d)(1).

[91] Rule 6.65A–O(a)(2) currently provides that the Exchange will not elect Stop Orders when the underlying NMS stock is either in a Limit State or a Straddle State, which would continue to be applicable on Pillar. The Exchange proposes a non-substantive amendment to Rule 6.65A–O(a)(2) to add a cross-reference to proposed Rule 6.62P–O(d)(4).

[92] The term ''Consolidated Last Sale'' is defined in proposed Rule 6.62P–O(d)(4).

[93] *See* discussion *infra,* regarding proposed Rule 6.41P–O and Price Reasonability Checks.

Proposed Rule 6.62P–O(d)(5)(B) would specify additional events that are designed to limit when a Stop Limit Order may be elected so that a Limit Order would not have a possibility of trading or being added to the Consolidated Book during a period of pricing uncertainty.

- Proposed Rule 6.62P–O(d)(5)(B)(i) would provide that if not elected on arrival, a Stop Limit Order that is resting would not be eligible to be elected based on a Consolidated Last Sale unless the Consolidated Last Sale is equal to or in between the NBBO.
- Proposed Rule 6.62P–O(d)(5)(B)(ii) would provide that a Stop Limit Order would not be elected if the NBBO is crossed.

*Orders with Instructions Not to Route.* Currently, the Exchange defines non-routable orders in Rule 6.62–O as a PNP Order (which includes a Repricing PNP Order (''RPNP'')) (current Rule 6.62–O(p)), a Liquidity Adding Order (''ALO'') (which includes a Repricing ALO (''RALO'') (current Rule 6.62–O(t)); a PNP-Blind Order (current Rule 6.62–O(u)); and a PNP-Light Order (Rule 6.62–O(v)). The Exchange also defines Intermarket Sweep Orders (current Rule 6.62–O(aa)), which are also non-routable.

The Exchange separately defines quotes—all of which are non-routable [94]—in Rule 6.37A–O and such quotes may be designated as a Market Maker—Light Only Quotation (''MMLO'') (current Rule 6.37A–O(a)(3)(A)); a Market Maker—Add Liquidity Only Quotation (''MMALO'') (current Rule 6.37A–O(a)(3)(B)); and a Market Maker—Repricing Quotation (''MMRP'') (current Rule 6.37A–O(a)(3)(C)). On the OX system, Market Maker quotes not designated as MMALO or MMRP will cancel (rather than reprice) if they would lock or cross the NBBO, per Rule 6. 37A–O(a)(4)(C).

On Pillar, the Exchange proposes to streamline the non-routable order types and quotes that would be available for options trading, use terminology that is similar to how non-routable orders are described for cash equity trading as described in Rule 7.31–E(e), and describe the functionality that would be applicable to both orders and quotes in proposed Rule 6.62P–O(e).[95] As described in greater detail below, proposed Rule 6.37AP–O governing Market Maker Quotations would no longer define how quotations would function. Instead, that rule would specify that a Market Maker may designate either a Non-Routable Limit Order or ALO Order as a Market Maker quote. Because the way in which non-routable orders and quotes would function on Pillar would be virtually identical (with differences described below), and because Market Makers could enter a Non-Routable Limit Order or an ALO Order and then choose to designate it either as a quote or an order, the Exchange believes that it would promote transparency in Exchange rules to consolidate the description of the functionality in a single rule and eliminate duplication in Exchange rules. As described below, proposed Rule 6.37A–O would cross reference proposed Rule 6.62P–O(e).

On Pillar, the Exchange would no longer offer functionality based on the PNP-Blind Order, PNP-Light Order, or MMLO because it believes that the proposed orders/quotes with instructions not to route on Pillar would continue to provide OTP Firms and OTP Holders with the core functionality associated with these existing order and quotation types, including that the proposed rules would provide for non-routable functionality and the ability to either reprice or cancel such orders/quotes. In addition, as discussed above, the Exchange believes that the proposed Non-Displayed Limit Order would provide functionality similar to what is currently available with the PNP-Blind Order, thus obviating the need for the Exchange to offer PNP-Blind Orders under Pillar.[96]

*Non-Routable Limit Order.* Proposed Rule 6.62P–O(e)(1) would define the Non-Routable Limit Order. As explained further below, this proposed order type incorporates functionality currently available in both the existing PNP and RPNP order types, as defined in Rule 6.62–O, and the existing MMRP quotation type, as defined in Rule 6.37A–O(a)(3)(C),[97] and uses Pillar terminology. As described below, a Market Maker can designate a Non-Routable Limit Order as either a quote or an order and such interest so designated would be handled the same except as specified below. Accordingly, references to the capitalized term ''Non-Routable Limit Order'' describes functionality for either a quote or an order, unless otherwise specified.

Proposed Rule 6.62P–O(e)(1) would provide that a Non-Routable Limit Order is a Limit Order or quote that does not route and may be designated Day or GTC and would further provide that a Non-Routable Limit Order with a working price different from the display price would be ranked under the proposed category of ''Priority 3—Non-Display Orders'' and a Non-Routable Limit Order with a working price equal to the display price would be ranked under the proposed category of ''Priority 2—Display Orders.'' This proposed rule uses Pillar terminology and describes the same functionality as set forth in the Exchange's cash equity market in Rules 7.31–E(e)(1) and 7.31–E(e)(1)(B), including references to the Pillar concepts of ''working'' and ''display'' price as well to Priority rankings as proposed in Rule 6.76P–O(e)(2), (3). This proposed rule also describes functionality similar to that described in the first clause of current Rule 6.62–O(p) relating to a PNP Order, which states that the portion of such order not executed on arrival is ranked in the Consolidated Book without routing any portion of the order to another Market Center (although the current rule does not include Pillar concepts of ''working'' and ''display'' price or Pillar Priority rankings).

Proposed Rule 6.62P–O(e)(1)(A) would provide that a Non-Routable Limit Order would not be displayed at a price that would lock or cross the ABBO and that a Non-Routable Limit Order to buy (sell) would trade with orders or quotes to sell (buy) in the Consolidated Book priced at or below (above) the ABO (ABB). This proposed text is designed to provide granularity that a Non-Routable Limit Order would never be displayed at a price that would lock or cross the ABBO, which is consistent with current PNP and RPNP Order functionality and with current Market Maker quoting functionality, as described in Rules 6.62–O(p), (p)(1), and 6.37A–O(a)(3)–(4), respectively. The Exchange proposes to use the term ''ABBO'' to provide more granularity in Exchange rules.

Proposed Rule 6.62P–O(e)(1)(A)(i) would provide that a Non-Routable Limit Order can be designated to be cancelled if it would be displayed at a price other than its limit price. This would be an optional designation and would provide OTP Holders and OTP Firms with functionality similar to how a PNP Order or a Market Maker quote not designated as MMALO or MMRP

[94] *See* Rule 6.37A–O(a)(2) (providing that ''[a] quotation will not route'').

[95] As discussed, *supra,* regarding proposed Rule 6.76P–O(g), the Exchange proposes to include details about ranking of orders and quotes with contingencies in this proposed Rule 6.62P–O)(e) using the Pillar priority scheme. Also, as discussed infra, *see e.g.,* note 44, the ranking and priority of quotes under Pillar is consistent with handling on the OX system unless otherwise noted herein.

[96] *See* discussion, *infra,* regarding Non-Displayed Limit Orders generally, per proposed Rule 6.62P–O(e).

[97] Both RPNPs and MMRPs function similarly. *Compare* current Rule 6.37A–O(a)(4)(B) and subparagraphs (i) and (ii) *with* current Rule 6.62–O(p)(1)(A) and subparagraphs (i) and (ii). They are defined in separate rules only because the former is for quotes and the latter for orders.

currently functions, which cancel if such order or quote locks or crosses the NBBO.[98] The Exchange proposes a substantive difference from the current PNP Order functionality such that if an OTP Holder or OTP Firm opts to cancel instead of reprice a Non-Routable Limit Order, such order would be cancelled only if it could not be displayed at its limit price—which could be because the order would be repriced to display at a price that would not lock or cross the ABBO or because it would be repriced due to Trading Collars.[99] Stated otherwise, if a Non-Routable Limit Order with a designation to cancel could be displayed at its original limit price and not lock or cross the ABBO, such order or quote would not be cancelled. The Exchange believes that the proposed rule provides granularity of the operation of a Non-Routable Limit Order and when such order or quote would be cancelled, if so designated, including specifying circumstances when such order could be repriced, such as to avoid locking or crossing the ABBO or because of Trading collars. This proposed functionality is not currently available for cash equity trading.

Proposed Rule 6.62P–O(e)(1)(A)(ii) would provide that if not designated to cancel, if the limit price of a Non-Routable Limit Order to buy (sell) would lock or cross the ABO (ABB), it would be repriced to have a working price equal to the ABO (ABB) and a display price one MPV below (above) that ABO (ABB). Accordingly, the proposed Non-Routable Limit Order, if not designated to cancel, would reprice in the same manner as an RPNP order or MMRP quotation reprices on arrival per Rules 6.62–O(p)(1)(A) and 6.37A–O(a)(4)(B), which both offer similar functionality. The Exchange proposes functionality on Pillar for the Non-Routable Limit Order that is consistent with but different in application to the RPNP Order or MMRP on OX. Specifically, proposed Rule 6.62P–O(e)(1)(B) would provide that the display price of a resting Non-Routable Limit Order to buy (sell) that has been repriced would be repriced higher (lower) only one additional time.[100] If after that second repricing, the display price could be repriced higher (lower) again, the order can be designated to either remain at its last working price and display price or be cancelled, provided that a resting Non-Routable Limit Order that is designated as a quote cannot be designated to be cancelled.[101] As compared to the proposal on Pillar to limit the number of times that Non-Routable Limit Orders may be repriced, the OX system restricts repricing of RPNPs and MMRPs based on the limit price of the interest being a configurable number of MPVs away from its initial display price.[102] The Exchange therefore believes that the proposed functionality is consistent with current functionality because in either case, there will be limited repricing of resting interest, and adds determinism to order execution based on the explicit restriction on the number of times resting interest may be repriced.

The Exchange notes that a designation to cancel after an order has been repriced once is separate from the designation to cancel if a Non-Routable Limit Order cannot be displayed at its limit price. When a Non-Routable Limit Order is designated to cancel if it cannot be displayed at its limit price, there is no repricing and therefore the option of a second cancellation designation is moot. Rather, this second cancellation designation is applicable only to a resting Non-Routable Limit Order that has been designated to reprice on arrival and was repriced before it was displayed on the Consolidated Book. This functionality provides OTP Holders and OTP Firms with an option to cancel a resting order if market conditions are such that a resting order could be repriced again, *e.g.,* the contra-side ABBO changes. The Exchange proposes that this second cancellation option would not be available for any Non-Routable Limit Orders designated by a Market Maker as a quote. The Exchange believes that this proposed difference would assist Market Makers in maintaining quotes in their assigned series by reducing the potential to interfere with a Market Maker's ability to maintain their continuous quoting obligations.[103]

Proposed Rule 6.62P–O(e)(1)(B)(i) would provide that if the limit price of the resting Non-Routable Limit Order to buy (sell) that has been repriced no longer locks or crosses the ABO (ABB), it would be assigned a working price and display price equal to its limit price. This proposed rule text is based on the way in which Non-Routable Limit Orders function on the Exchange's cash equity market, as described in Rule 7.31–E(e)(1)(A)(iv), with a difference that the proposed rule does not include text describing that, in such circumstances, the order ''will not be assigned a new working price or display price based on changes to the PBO (PBB).'' The Exchange does not propose to include this text because it is redundant of proposed Rule 6.76P–O(b)(3), which describes that once an order is displayed, it can stand its ground if it is locked or crossed by the Away Market PBBO, which is consistent with current functionality as described immediately below.[104]

Proposed Rule 6.62P–O(e)(1)(B)(ii) would provide that the working price of a resting Non-Routable Limit Order to buy (sell) that has been repriced would be adjusted to be equal to its display price if the ABO (ABB) is equal to or lower (higher) than its display price This proposed rule is based in part on how an RPNP or MMRP reprices when the NBO (NBB) updates to lock or cross its display price (as described in Rules

[98] A PNP Order cannot route, and any unexecuted portion is ranked in the Consolidated Book except that such order is canceled if it would lock or cross the NBBO. *See* Rule 6.62–O(p). A Market Maker quote not designated as MMALO or MMRP will cancel (rather than reprice) if such quote would lock or cross the NBBO. *See* Rule 6. 37A–O(a)(4)(C).

[99] Current Rule 6.62–O(p)(1)(B) provides than an incoming RPNP order would cancel if its limit price is more than a configurable number of MPVs outside its initial display price (on arrival). Under Pillar, because Trading Collars would be applicable to Non-Routable Limit Orders (and such orders may be repriced or ''collared'' on arrival), the Exchange does not propose to cancel an incoming Non-Routable Limit Order if its limit price is more than a configurable number of MPVs outside its initial display price. As such, this aspect of RPNP functionality is not incorporated in the proposed Pillar rules and the Exchange instead proposes to incorporate Trading Collar functionality into the Non-Routable Limit Order.

[100] For example, on arrival, a Non-Routable Limit Order to buy (sell) with a limit price higher (lower) than the ABO (ABB), would have a display price one MPV below (above) the ABO (ABB) and a working price equal to the ABO (ABB). If the ABO (ABB) reprices higher (lower), the resting Non-Routable Limit Order to buy (sell) would similarly be repriced higher (lower). If the ABO (ABB) adjusts higher (lower) again, the resting Non-Routable Limit Order would not be adjusted again.

[101] The working time of a Non-Routable Limit Order would be adjusted as described in proposed Rule 6.76P–O(f)(2), which would be applicable to any scenario when the working time of an order may change, including a Non-Routable Limit Order. Similar to how the Pillar rules function on the Exchange's cash equity market, the Exchange does not propose to separately describe how the working time of an order changes in proposed Rule 6.62P–O.

[102] *See, e.g.,* Rule 6.62–O(p)1(B) (providing that ''[a]n incoming RPNP will be cancelled if its limit price to buy (sell) is more than a configurable number of MPVs above (below) the initial display price (on arrival), after first trading with eligible interest, if any,'' which configurable number of MPVs will be determined by the Exchange and be announced by Trader Update) and Rule 6.37A–O(a)(4)(C) (providing that, an MMRP to buy (sell) will be canceled after trading with marketable interest in the Consolidated Book up (down) to the NBO (NBB), if its limit price is more than a configurable number of MPVs above (below) the initial display price (on arrival)).

[103] Proposed Rules 6.37AP–O(b) and (c) set forth the continuous quoting obligations of Lead Market Makers and Market Makers, respectively.

[104] *See* discussion *supra* regarding proposed Rule 6.76P–O(b)(3), which describes how the Exchange would not change the display price of any Limit Orders or quotes ranked under the proposed category of ''Priority 2—Display Orders.''

6.62–O(p)(1)(A)(i) and 6.37A–O(a)(4)(B)(i)) and uses Pillar terminology (*i.e.,* ABBO and concepts of working price and display price).[105] The proposed rule would further provide that once the working price and display price of a Non-Routable Limit Order to buy (sell) are the same, the working price would be adjusted higher (lower) only if the display price of the order is adjusted.[106]

Finally, proposed Rule 6.62P–O(e)(1)(C) would provide that the designation to cancel a Non-Routable Limit Order (including those designated as quotations [107]) would not be applicable in an Auction and, per proposed Rule 6.64P–O(g)(2) (described below) such order would participate in an Auction at its limit price. This proposed rule text promotes clarity and transparency that a Non-Routable Limit Order would be eligible to participate in an Auction, but that it would be repriced to its limit price for participation in such Auction, which is consistent with current RPNP functionality, as described in the last sentence of Rule 6.62–O(p) and providing that an RPNP would be processed as a Limit Order and would not be repriced for purposes of participating in an opening or reopening auction. This proposal is also consistent with Rule 6.37A–O(a)(5), which provides that MMRPs received when a series is not open for trading will be eligible to participate in the opening auction and re-opening auction (as applicable) at the limit price of the MMRP.

*ALO Order.* Proposed Rule 6.62P–O(e)(2) would define an ALO Order as a Limit Order or quote that is a Non-Routable Limit Order that would not remove liquidity from the Consolidated Book. This proposed order type incorporates functionality currently available with ALO and RALO order types, as defined in Rule 6.62–O(t), and with the MMALO quotation type, as defined in Rule 6.37A–O(a)(3)(B), with differences described below, including an option to cancel or reprice an ALO Order if such non-routable interest would trade as a liquidity taker. Unless otherwise specified in proposed Rule 6.62P–O(e)(2), an ALO Order would function the same as a Non-Routable Limit Order, including that it would participate in an Auction at its limit price. As described below, per proposed Rule 6.37AP–O, a Market Maker can designate an ALO Order as either a quote or an order and such interest would be handled the same, except as specified below. Accordingly, references to the capitalized term ''ALO Order'' describe functionality for both quotes and orders.

Proposed Rule 6.62P–O(e)(2)(A) would provide that an ALO Order would not be displayed at a price that would lock or cross the ABBO, would lock or cross displayed interest in the Consolidated Book, or would cross non-displayed interest in the Consolidated Book.[108] Because an ALO Order would never remove liquidity, this proposed rule text ensures that such ALO Order would not be displayed at a price that would lock or cross displayed interest either on the Exchange or an Away Market, and would not be displayed at a price that crosses non-displayed interest in the Consolidated Book. This proposed rule text is consistent with current functionality, as described for MMALO in Rule 6.37A–O(a)(3)(B) and for Liquidity Adding Order in Rule 6.62–O(t), that such quotes or orders would not trade as takers.

Proposed Rule 6.62P–O(e)(2)(A)(i) would provide that an ALO Order can be designated to be cancelled if it would be displayed at a price other than its limit price. This proposed designation to cancel would be optional and an ALO Order so designated would function similarly to a Liquidity Adding Order, as defined in Rule 6.62–O(t), which is rejected if it would be marketable against the NBBO. While the Exchange does not currently offer a cancellation option for a quote designated as MMALO, the default behavior for any Market Maker quote on the OX system is to cancel if such quote locks or crosses the NBBO and is not designated as MMALO (or MMRP).

Proposed Rule 6.62P–O(e)(2)(A)(ii) would provide that an ALO Order to buy (sell) would be displayed at its limit price if it locks non-displayed orders or quotes to sell (buy) on the Consolidated Book. This proposed functionality would be new for options trading on Pillar.[109] Allowing a conditional order to lock interest in the Consolidated Book is consistent with current functionality for other non-displayed orders. For example, an AON is a non-displayed conditional order type that could be priced to trade at a price that locks contra-side interest, but the interest would not interact if the AON condition could not be satisfied, in which case, two orders with locking prices, one that is non-displayed, would both be accepted by the Exchange. The proposed ALO Order is also a conditional order type because it can never be a liquidity taker. The Exchange believes that allowing an ALO Order to lock non-displayed interest would reduce potential repricing or cancellation events for an incoming ALO Order and would likewise reduce potential information leakage about non-displayed interest in the Consolidated Book. This behavior is also consistent with how ALO Orders function on the Exchange's cash equity platform.[110] Because an ALO Order would not be repriced in this scenario, this functionality would be the same regardless of whether the ALO Order includes the optional designation to cancel.

Proposed Rule 6.62P–O(e)(2)(A)(iii) would provide that an ALO Order to buy (sell) would not consider an AON Order or an order with an MTS Modifier to sell (buy) for purposes of determining whether it needs to be repriced or cancelled. This proposed rule would be new functionality and is designed to promote transparency that a resting contra-side order with conditional instructions, *i.e.,* an AON Order or an order with an MTS Modifier, would not have any bearing on whether an Aggressing ALO Order would need to be repriced. Accordingly, an ALO Order

[105] Rule 6.62–O(p)(1)(A)(i) provides that ''if the NBO (NBB) updates to lock or cross the RPNP's display price, such RPNP will trade at its display price in time priority behind other eligible interest already displayed at that price.'' Rule 6.37A–O(a)(4)(B)(i) provides that ''if the NBO (NBB) updates to lock or cross the MMRP's display price, such MMRP will trade at its display price in time priority behind other eligible interest already displayed at that price.'' On Pillar, however, if the NBO (NBB) updates to lock or cross the display price of a Non-Routable Order, and the working price is adjusted to be equal to the display price, the order will not receive a new working time. *See* discussion *supra* regarding proposed Rule 6.76P–O(f)(2)(B).

[106] For example, if the ABO is 1.05 and the Exchange receives a Non-Routable Limit Order to buy priced at 1.10, it would be assigned a display price of 1.00 and a working price of 1.05. If the ABO adjusts to 1.00, the working price of the Non-Routable Limit Order to buy would be adjusted to 1.00 to be equal to its display price. However, if the Away Market BO moves back to 1.05, the Non-Routable Limit Order's working price would not adjust again to 1.05 and would stay at 1.00.

[107] *See* discussion, *infra,* regarding proposed Rule 6.64P–O(g)(1), which provides that ''all resting Market Maker quotations''—including Non-Routable Limit Orders designated as quotations—will be canceled in the event of a Trading Halt, which functionality is consistent with current Rule 6.37A–O(a)(5), which likewise provides that ''[a]ll resting quotations will be cancelled in the event of a trading halt'').

[108] This functionality is consistent with the current rule, which states that an ALO Order is accepted only if it is ''*not* executable at the time of receipt'' (emphasis added). *See* Rule 6.62–O(t).

[109] Currently, an order designated as a RALO to buy (sell) that would trade with any undisplayed sell (buy) interest will be displayed at a price one MPV below (above) that undisplayed sell interest. *See* Rule 6.62–O(t)(1)(A). *See also* Rule 6.37A–O(a)(4)(A)(i) (describing similar functionality for a quote designated as a MMALO).

[110] *See, e.g.,* Rule 7.31–E(e)(2)(B)(iv).

would not trade as the liquidity taker with such orders (even if it could satisfy their size condition) and could be displayed at a price that would lock or cross the price of such orders. Once the ALO Order is resting on the Consolidated Book, the Exchange would reevaluate the orders on the Consolidated Book. For example, if the ALO Order could satisfy the size condition of the resting AON Order, the resting AON Order would become the Aggressing Order and would trade as the liquidity taker with such resting ALO Order.

Proposed Rule 6.62P–O(e)(2)(B) would describe how an ALO Order would be processed if it is not designated to cancel, as follows:

- If the limit price of an ALO Order to buy (sell) would lock or cross displayed orders or quotes to sell (buy) on the Consolidated Book, it would be repriced to have a working price and display price one MPV below (above) the lowest (highest) priced displayed order or quote to sell (buy) on the Consolidated Book (proposed Rule 6.62P–O(e)(2)(B)(i)). This proposed rule is consistent with how both RALO and MMALO reprice under current rules.[111]
- If the limit price of an ALO Order to buy (sell) would lock or cross the ABO (ABB), it would be repriced to have a working price equal to the ABO (ABB) and a display price one MPV below (above) the ABO (ABB) (proposed Rule 6.62P–O(e)(2)(B)(ii)). This proposed functionality is consistent with how both RALO and MMALO reprice under current rules.[112]
- If the limit price of an ALO Order to buy (sell) would cross non-displayed orders or quotes [113] on the Consolidated Book, it would be repriced to have a working price and display price equal to the lowest (highest) priced non-displayed order or quote to sell (buy) on the Consolidated Book (proposed Rule 6.62P–O(e)(2)(B)(iii). This functionality would be new on Pillar for options trading and would provide that an ALO Order would never take liquidity thereby eliminating the potential for an ALO to cross non-displayed interest in the Consolidated Book. This proposed functionality is therefore different not only from how RALOs and MMALOs currently function, but is also different from how ALO Orders currently function on the Exchange's cash equity market.[114] For the reasons discussed above, the Exchange believes that displaying ALO Orders at a price that locks the best-priced non-displayed interest would reduce potential information leakage about the non-displayed orders on the Consolidated Book.

Because an ALO would never be a liquidity-taking order, the above-described repricing scenarios provide clarity and transparency regarding how an ALO Order would be repriced (or cancelled, if this optional designation is selected) to prevent either trading with interest on the Consolidated Book or routing to an Away Market. Accordingly, with the exception of how an ALO Order that locks or crosses non-displayed interest would be processed, the proposed ALO Order would be consistent with the current functionality available for RALO, as described in Rule 6.62–O(t)(1)(A) and for MMALO, as described in Rule 6.37–O(a)(4)(A).

Proposed Rule 6.62P–O(e)(2)(C) would provide that the display price of a resting ALO Order to buy (sell) that has been repriced would be repriced higher (lower) only one additional time and that if, after that repricing, the display price could be repriced higher (lower) again, the order can be designated to either remain at its last working price and display price or be cancelled, provided that a resting ALO Order that is a quote cannot be designated to be cancelled. This proposed functionality would be new to Pillar and is based on how the proposed Non-Routable Limit Order would function, as described above.[115] Consistent with the treatment of Non-Routable Limit Orders designated as Market Maker quotations, the Exchange likewise proposes that this second cancellation designation would not be available for an ALO Order designated by a Market Maker as a quote. The purpose of this proposed functionality is to assist Market Makers in maintaining quotes in their assigned series and to avoid any interference with Market Makers' ability to maintain their continuous quoting obligations.[116]

Proposed Rule 6.62P–O(e)(2)(C)(i) would provide that if the limit price of an ALO Order to buy (sell) that has been repriced no longer locks or crosses displayed orders or quotes in the Consolidated Book, locks or crosses the ABBO, or crosses non-displayed orders or quotes in the Consolidated Book, it would be assigned a working price and display price equal to its limit price. This proposed rule text is similar to proposed Rule 6.62P–O(e)(1)(B)(i) for Non-Routable Limit Orders, with differences to reflect the additional circumstances when an ALO Order would be repriced based off of contra-side displayed or non-displayed interest in the Consolidated Book because, unlike a Non-Routable Limit Order, an ALO Order would not trade as a liquidity taker. The proposed rule is designed to provide granularity and clarity regarding when a resting ALO Order would be assigned a working price and display price equal to its limit price.[117]

Proposed Rule 6.62P–O(e)(2)(D) would provide that the working price of a resting ALO Order to buy (sell) that has been repriced would be adjusted to be equal to its display price (and would not be adjusted again unless the display price of the order is adjusted) if:

- The ABO (ABB) re-prices to be equal to or lower (higher) than the display price of the resting ALO Order to buy (sell) (proposed Rule 6.62P–O(e)(2)(D)(i)); or
- an ALO Order or Day ISO ALO to sell (buy) is displayed on the Consolidated Book at a price equal to the working price of the resting ALO Order to buy (sell) (proposed Rule 6.62P–O(e)(2)(D)(ii)).

This proposed rule text is similar to proposed Rule 6.62P–O(e)(1)(C) for Non-Routable Limit Orders, with differences to reflect the additional circumstances when an ALO Order would be repriced as a result of contra-side interest on the Consolidated Book so that the ALO Order would not be a liquidity taker. Specifically, the Exchange proposes that for an ALO Order that has been repriced and has a non-displayed working price, if the Exchange receives a contra-side ALO Order (or Day ISO ALO) with a

[111] Current Rule 6.62–O(t)(1) provides that a RALO will be repriced instead of rejected if it would trade as a liquidity taker or display at a price that locks or crosses any interest on the Exchange or the NBBO. Current Rule 6.62–O(t)(1)(A) further provides that if an RALO would trade with any displayed or undisplayed contra-side interest on the Consolidated Book, it would be displayed at a price one MPV inside such interest. *See also* Rule 6.37–O(a)(4)(A)(i).

[112] *See* Rules 6.62–O(t)(1)(A) and 6.37A–O(a)(4)(A)(i).

[113] For example, a contra-side Market Maker quote designated as a Non-Routable Limit Order could have a non-displayed working price.

[114] *See* Rule 7.31–E(e)(2)(B)(ii).

[115] This proposed feature to limit the number of times an ALO Order may be repriced differs from the treatment of RALOs, which may be continuously repriced (both the displayed and undisplayed price) as interest in the Consolidated Book or NBBO moves. *See* Rule 6.62–O(t)(1)(A).

[116] Proposed Rules 6.37AP–O(b) and (c) set forth the continuous quoting obligations of Lead Market Makers and Market Makers, respectively.

[117] The proposed rule is similar to RALO functionality currently described in Rule 6.62–O(t)(1)(A)(ii) (if the NBO (NBB) updates to lock or cross the RALO's display price, such RALO will trade at its display price''). *See also* Rule 6.37A–O(a)(4)(A)(i)(b) (describing similar functionality for MMALO).

limit price that is equal to or crosses the working price of the resting ALO Order, the working price of the resting ALO Order would be adjusted to be equal to its display price. This proposed functionality would reduce the potential for two contra-side ALO Orders to have working prices that are locked on the Consolidated Book. The proposed rule text is designed to provide more granularity than the current Rule regarding circumstances when an ALO Order would be repriced.

Proposed Rule 6.62P–O(e)(2)(E) would provide that when the working price and display price of an ALO Order to buy (sell) are the same, the working price would be adjusted higher (lower) only if the display price of the order is adjusted. This proposed functionality would be new for Pillar and is not currently available on the Exchange's cash equity platform.

Proposed Rule 6.62P–O(e)(2)(F) would provide that the ALO designation would be ignored for ALO Orders that participate in an Auction, including those designated as quotations.[118] This proposed rule is based on Rule 7.31–E(e)(2)(A), which similarly provides that an ALO Order can participate in an auction and that its ALO designation would be ignored. This is also new functionality for options because currently, the Exchange rejects ALOs and MMALOs if entered outside of Core Trading Hours or during a trading halt and if resting, are cancelled during a trading halt.[119] The Exchange proposes this new functionality to provide such ALO Orders with an execution opportunity in an Auction.

*Intermarket Sweep Order (''ISO'').* ISOs are currently defined in Rule 6.62–O as a Limit Order for an options series that instructs the Exchange to execute the order up to the price of its limit, regardless of the Away Market Protected Quotations [120] and that ISOs may only be entered with a time-in-force of IOC, and the entering OTP Holder must comply with the provisions of Rule 6.92–O(a)(8). The Exchange proposes to offer identical functionality on Pillar and to describe such functionality in proposed Rule 6.62P–O(e)(3) using Pillar terminology, including that an ISO is a Limit Order that does not route and meets the requirements of Rule 6.92–O(a)(8).

Currently, an ISO must be entered with a time-in-force of IOC. On Pillar, the Exchange proposes to add the ability for an OTP Holder or OTP Firm to designate an ISO either as IOC, which is current functionality, or with a Day time-in-force designation, which would be new for options trading. The Exchange also proposes to offer new functionality for options trading to designate a Day ISO as ALO. Both the proposed Day ISO and Day ISO ALO functionality are available on the Exchange's cash equity market as described in Rule 7.31–E(e)(3). The Exchange proposes to describe the functionality for each type of ISO separately, as follows:

- *IOC ISO.* Proposed Rule 6.62P–O(e)(3)(A) would define an IOC ISO as an ISO designated IOC to buy (sell) that would be immediately traded with orders and quotes to sell (buy) in the Consolidated Book up to its full size and limit price and may trade through Away Market Protected Quotations and any untraded quantity of an IOC ISO would be immediately and automatically cancelled. This proposed rule uses the same Pillar terminology as used in Rule 7.31–E(e)(3)(B) to describe functionality that would be offered on Pillar without any differences from how ISOs currently function. The Exchange proposes a non-substantive difference in the proposed Pillar options rule to reference that an IOC ISO may trade through Away Market Protected Quotations, which is consistent with both current options and cash equity platform functionality.
- *Day ISO.* Proposed Rule 6.62–O(e)(3)(B) would define a Day ISO as an ISO designated Day to buy (sell) that, if marketable on arrival, would be immediately traded with orders and quotes to sell (buy) in the Consolidated Book up to its full size and limit price and may trade through Away Market Protected Quotations and that any untraded quantity of a Day ISO would be displayed at its limit price and may lock or cross Away Market Protected Quotations at the time the Day ISO is received by the Exchange. As noted above, this proposed functionality (allowing Day designation for ISOs) would be new on the Exchange for options trading and would offer market participants additional control over their trading interest. The proposed rule is substantively identical to the Day ISO functionality available on the Exchange's cash equity market, as described in Rule 7.31–E(e)(3)(C), with a non-substantive difference to use the phrase ''may lock or cross Away Market Protected Quotations at the time the Day ISO is received by the Exchange'' instead of ''may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO.'' These proposed textual differences are designed to promote clarity and transparency without any substantive differences. The availability of the Day time-in-force designation for ISOs would not be new for options trading, however, as such orders are currently available on other options exchanges.[121] The proposed Day ISO is also consistent with current Rule 6.95–O(b)(3), which describes an exception to the prohibition on locking or crossing a Protected Quotation if the Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.[122] Although the Exchange has not previously availed itself of this exception, this exception to locking and crossing Protected Bids and Protected Offers would only be needed if an ISO is designated as Day and therefore would be displayed at a price that would lock or cross a Protected Quotation; an IOC ISO would never be displayed and therefore this existing exception would not be applicable to such orders.
- *Day ISO ALO.* Proposed Rule 6.62P–O(e)(3)(C) would define a Day

[118] *See* discussion, *infra* regarding proposed Rule 6.64P–O(g)(1), which provides that ''all resting Market Maker quotations''—including ALO Orders designated as quotations—will be canceled in the event of a Trading Halt, which functionality is consistent with current Rule 6.37A–O(a)(5), which likewise provides that ''[a]ll resting quotations will be cancelled in the event of a trading halt'').

[119] *See* Rules 6.62–O(t) and 6.37A–O(a)(3)(B), for ALO Orders and MMALOs, respectively.

[120] The terms ''Protected Bid,'' ''Protected Offer,'' and ''Quotation'' are defined in Rule 6.92–O(a)(15) and (16) and the term ''Away Market'' is defined in Rule 1.1. Accordingly, Away Market Protected Quotations refer to Protected Bids and Protected Offers that are disseminated pursuant to the OPRA Plan and are the Best Bid and Best Offer displayed by an Eligible Exchange, as those terms are defined in Rule 6.92–O.

[121] *See* Nasdaq Options 3, Section 7(a)(7) (''ISOs may have any time-in-force designation . . . .'') and Cboe Rules 5.30(a)(2) and (3). *See also* Cboe US Options Fix Specifications, dated June 15, 2021, Section 4.4.7, available here: *http://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf,* which references how a Day ISO would be processed under specified circumstances.

[122] The Commission has previously stated that the requirements in the Options Linkage Plan relating to Locked and Crossed Markets are ''virtually identical to those applicable to market centers for NMS stock under Regulation NMS.'' *See also* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362, 39368 (August 6, 2009) (Order approving Options Linkage Plan). Accordingly, guidance relating to the ISO exception for locked and crossed markets for NMS stocks that specifically contemplate use of Day ISOs is also applicable to options trading. *See* Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, FAQ 5.02 (''The ISO exception to the SRO lock/cross rules, in contrast, requires that ISOs be routed to execute against all protected quotations with a price that is *equal* to the display price (*i.e.,* those protected quotations that would be locked by the displayed quotation), as well as all protected quotations with prices that are better than the display price (*i.e.,* those protected quotations that would be crossed by the displayed quotation).'' Consistent with this guidance, the Exchange implemented Rule 6.95–O(b)(3). *See also* Cboe Rule 5.67(b)(3), *and* Nasdaq Options 5, Section 3(b)(3).

ISO ALO as a Day ISO with an ALO modifier. This proposed order type would be new for options trading and is based on the Day ISO ALO currently available on the Exchange's cash equity market, as described in Rule 7.31–E(e)(3)(D), with differences to reflect how the order type would function on the Exchange's options market. Specifically, similar to the differences between the proposed ALO Order for options trading on Pillar, as compared to the cash equity version of the ALO Order, for options trading, a Day ISO with an ALO designation would not trade as liquidity taker. As proposed, on arrival, a Day ISO ALO to buy (sell) may lock or cross Away Market Protected Quotations, but would not remove liquidity from the Consolidated Book, which is how the Exchange proposes that ALO Orders would function on Pillar and consistent with current options functionality for RALO as described herein.[123] A Day ISO ALO to buy (sell) can be designated to be cancelled if it would be displayed at a price other than its limit price, which is similar to the proposed cancellation instruction for ALO Orders for options trading on Pillar, described above. Proposed Rule 6.62P–O(e)(3)(C)(i) would provide that if not designated to cancel, a Day ISO ALO that would lock or cross orders and quotes on the Consolidated Book would be repriced as specified in proposed Rule 6.62P–O(e)(2)(B). This proposed rule therefore incorporates the proposed repricing functionality for ALO Orders for options trading on Pillar with the proposed Day ISO ALO. Proposed Rule 6.62P–O(e)(3)(C)(ii) would provide that, once resting, a DAY ISO ALO would be processed as an ALO Order as specified in proposed Rule 6.62P–O(e)(2)(C)–(G).

*Complex Orders.* Complex Orders are defined in Rule 6.62–O(e). The Exchange proposes to define Complex Orders for Pillar in proposed Rule 6.62P–O(f) based on Rule 6.62–O(e) and its sub-paragraphs (1) and (2) without any substantive differences. The Exchange proposes to add clarifying text that the different options series in a Complex Order are also referred to as the ''legs'' or ''components'' of the Complex Order. The Exchange also proposes that proposed Rule 6.62P–O(f) would provide that a Complex Order would be any order involving the simultaneous purchase and/or sale of ''two or more options series in the same underlying security,'' and not use the modifier ''different'' before the phrase ''more option series.'' The Exchange believes that the word ''different'' is redundant and unnecessary in this context. In addition, proposed Rule 6.62P–O(f)(1) and (2) would not reference mini-options contracts, which no longer trade on the Exchange.

*Cross Orders.* Currently, the only electronically-entered cross orders available on the Exchange are Qualified Contingent Cross Orders, which are defined in Rule 6.62–O(bb) and Commentary .02 to Rule 6.62–O. In addition, Rule 6.90–O describes how Qualified Contingent Cross Orders are processed. The Exchange proposes to define the term ''Cross Orders'' on Pillar as being a Qualified Contingent Cross (''QCC'') Order in proposed Rule 6.62P–O(g). As proposed, QCC Orders on Pillar would function identically to how Qualified Contingent Cross Orders function on the OX system, and for purposes of the rules governing trading on Pillar, the Exchange proposes to merge language from two rules relating to QCC Orders into a single rule, proposed Rule 6.62P–O(g), using Pillar terminology and functionality as described below. Proposed Rule 6.62P–O(g)(1) would describe rules applicable to electronically-entered QCC Orders and Complex QCC Orders. In addition, the Exchange proposes to adopt new Rule 6.62P–O(g)(1)(D) to provide for the trading of Complex QCC Orders.[124]

Proposed Rule 6.62P–O(g)(1)(A) would provide that a QCC Order must be comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. This proposed rule text is based on Rule 6.62–O(bb) with a non-substantive difference that the Pillar rule would not reference mini-options contracts, which no longer trade on the Exchange. Proposed Rule 6.62P–O(g)(1)(A) would also specify that if a QCC has more than one option leg (a ''Complex QCC Order''), each option leg must have at least 1,000 contracts, which is consistent with existing functionality that is not described in the current rule. Complex QCCs which are described below, are available for options trading on other options exchanges, and therefore are not novel.[125] The proposed rule would further provide that a QCC Order that is not rejected per proposed Rule 6.62P–O(g)(1)(C) or (D) would immediately trade in full at its price, would not route, and may be entered with an MPV of $0.01 regardless of the MPV of the options series[126] and that QCC Orders may be entered by Floor Brokers from the Trading Floor or routed to the Exchange from off-Floor. This proposed rule is consistent with current Rule 6.90–O, which provides that QCC Orders are automatically executed upon entry provided that they meet specified criteria. On Pillar, the Exchange proposes to specify those criteria in proposed Rule 6.62P–O(g)(1)(C), described below. In addition, the proposed Rule would provide that Rule 6.47A–O (related to exposure of orders on the Exchange) does not apply to Cross Orders, which text is substantively identical to Commentary .03 to current Rule 6.90–O.[127]

Proposed Rule 6.62P–O(g)(1)(B) and subparagraphs (i)–(vi) would define a ''qualified contingent trade'' as a transaction consisting of two or more component orders, executed as agent or principal, where specified requirements are also met and uses the same text as currently set forth in Commentary .02 and sub-paragraphs (a)–(f) to Rule 6.62–O without any differences.

Proposed Rule 6.62P–O(g)(1)(C) would describe general rules relating to execution of QCC Orders and would provide that a QCC Order with one option leg would be rejected if received when the NBBO is crossed or if it would be traded at a price that (i) is at the same price as a displayed Customer order on the Consolidated Book and (ii) is not at or between the NBBO and would provide that the QCC Order would never trade at a price worse than the Exchange BBO. This proposed rule is based on Rule 6.90–O without any substantive differences but adds detail about pricing of a QCC Order vis a vis the Exchange BBO. The Exchange believes that specifying that a QCC Order would be rejected when the NBBO is crossed, which is new text, provides greater granularity than current Rule 6.90–O(1), which provides that

[123] By contrast, the Rule 7.31–E(e)(3)(D) description of Day ISO ALO for cash equity trading incorporates cash equity functionality that an order with an ALO would trade if it crosses the working price of any displayed or non-displayed orders.

[124] See *also* Complex Pillar Notice, *supra* note 16, (describing proposed Rule 6.91P–O regarding complex order trading on Pillar).

[125] *See, e.g.,* Cboe Rule 5.6(c) (setting forth operation of Complex QCC Orders) and MIAX Rule 515(h)(4) (same).

[126] Allowing QCC Orders to trade in pennies under Pillar is consistent with current functionality. *See* Rule 6.90–O(2) (providing that QCC Orders may only be entered in the regular trading increments applicable to the options class under Rule 6.72–O(b)). Rule 6.72–O(b) provides that minimum trading increment for option contracts traded on NYSE Arca will be one cent ($0.01) for all series.

[127] Commentary .03 to Rule 6.90–O provides that ''NYSE Arca Rule 6.47A–O does not apply to Qualified Contingent Cross Orders.'' As noted above, at this time, the Exchange would only be offering QCC Cross Orders and therefore the proposed rule is substantively the same as this current Commentary.

''Qualified Contingent Cross Orders will be automatically cancelled if they cannot be executed.'' The other two proposed conditions are identical to the current functionality, as specified in Rule 6.90–O: That Qualified Contingent Cross Orders are automatically executed ''provided that the execution (i) is not at the same price as a Customer Order in the Consolidated Book and (ii) is at or between the NBBO.''

Proposed Rule 6.62P–O(g)(1)(D) would describe how Complex QCC Orders would be executed on the Exchange. As proposed, a Complex QCC Order must include a limit price, no option leg would trade at a price worse than the Exchange BBO, and would be rejected if:

- Any option leg cannot execute in compliance with proposed paragraph (g)(1)(C) of this Rule (described above), which is consistent with Complex QCC handling on other options exchanges; [128]
- the best-priced Complex Order(s) on the Exchange contain(s) displayed Customer interest and the Complex QCC Order price does not improve such displayed Customer interest by $0.01 (proposed Rule 6.62P–O(g)(1)(D)(ii)), which is consistent with Complex QCC handling on other options exchanges; [129]
- the price of the QCC Order is worse than the best-priced Complex Orders in the Consolidated Book or the prices of the best-priced Complex Orders in the Consolidated Book are crossed (proposed Rule 6.62P–O(g)(1)(D)(iii)), which detail provides additional protections against potentially erroneous executions and adds transparency and granularity to the proposed rule; or
- there is no NBO for a given leg (proposed Rule 6.62P–O(g)(1)(D)(iv)), which detail provides additional protections against potentially erroneous executions and adds transparency and granularity to the proposed rule.

This proposed rule text is designed to promote clarity and transparency in Exchange rules regarding the price requirements for a Complex QCC Order, which requirements to protect priority of resting interest are consistent with the rules of other options exchanges, as described above, and to provide additional safeguards against potentially erroneous executions of Complex QCCs.

Proposed Rule 6.62P–O(g)(1)(E) would specify rules governing QCC Orders entered from the Trading Floor, which can be entered only by Floor Brokers,[130] and is based on Commentary .01 to Rule 6.90–O without any substantive differences.[131] The Exchange proposes textual changes as compared to the current Rule that are not designed to change the substance of the Rule, but to instead promote clarity and transparency. The proposed rule would provide that while on the Trading Floor, only Floor Brokers can enter QCC Orders, and that Floor Brokers may not enter QCC Orders for their own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion (each a ''prohibited account''). As further proposed, when executing such orders, Floor Brokers would not be subject to Rule 6.47–O regarding ''Crossing'' orders. Floor Brokers must maintain books and records demonstrating that each QCC Order entered from the Floor was not entered for a prohibited account. Any QCC Order entered from the Floor that does not have a corresponding record required by this paragraph would be deemed to have been entered for a prohibited account in violation of this Rule.

Proposed Rule 6.62P–O(g)(1)(F) would specify rules governing QCC Orders entered off-Floor and that OTP Holders must maintain books and records demonstrating that each such order was so routed. This proposed rule is based on Commentary .02 to Rule 6.90–O without any substantive differences.[132] The Exchange proposes textual differences as compared to the current Rule that are not designed to change the substance of the Rule, but instead promote clarity and transparency.

In connection with adding QCC to proposed Rule 6.62P–O, the Exchange proposes to add the following preamble to Rule 6.90–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.90–O would not be applicable to trading on Pillar.

*Orders Available Only in Open Outcry.* The Exchange proposes to add to Rule 6.62P–O(h) orders that are available only in open outcry, most of which are currently defined in Rule 6.62–O.

First, proposed Rule 6.62P–O(h)(1) would codify an existing order type, the Clear-the-Book (''CTB'') Order, which is currently described only in a Regulatory Bulletin.[133] The proposed definition would describe the CTB Order, which would be an order type available in open outcry that would interface with the Consolidated Book, and therefore with Pillar. As proposed, a CTB Order would be a Limit IOC Order that may be entered only by a Floor Broker, contemporaneous with executing an order in open outcry, that is approved by a Trading Official (the ''TO Approval''). The CTB Order would be eligible to trade only with contra-side orders and quotes that were resting in the Consolidated Book prior to the TO Approval. In addition, proposed Rule 6.62P–O(h)(1)(A)–(C) would provide that:

- A CTB Order to buy (sell) would trade with contra-side orders and quotes with a display price below (above) the limit price of the CTB Order (proposed Rule 6.62P–O(h)(1)(A));

[128] *See, e.g.,* MIAX Rule 515(h)(4) (which provides that each Complex QCC or ''cQCC'' is ''automatically executed upon entry provided that, with respect to each option leg of the cQCC Order, the execution (i) is not at the same price as a Priority Customer Order on the Exchange's Book; and (ii) is at or between the NBBO'').

[129] *See, e.g.,* Cboe Rule 5.6(c)(2)(B)(iii) (requiring that the ''execution price is better than the price of any complex order resting in the [Cboe Complex Order Book], unless the Complex QCC Order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order'').

[130] An options Floor Broker is ''an individual (either an OTP Holder or OTP Firm or a nominee of an OTP Holder or OTP Firm) who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders.'' *See* Rule 6.43–O(a).

[131] Commentary .01 to Rule 6.90–O provides: ''Qualified Contingent Cross Orders can be entered into the NYSE Arca System from on the Floor of the Exchange only by Floor Brokers. Floor Brokers shall not enter such orders for their own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion (each a 'prohibited account'). When executing such orders, Floor Brokers shall not be subject to NYSE Arca Rule 6.47–O. Floor Brokers must maintain books and records demonstrating that each Qualified Contingent Cross Order entered from the Floor was not entered for a prohibited account. Any Qualified Contingent Cross Order entered from the Floor that does not have a corresponding record required by this Commentary .01 shall be deemed to have been entered for a prohibited account in violation of this Rule.''

[132] Commentary .02 to Rule 6.90–O provides: ''With respect to a Qualified Contingent Cross Order that was routed to the NYSE Arca System from off of the Floor, OTP Holders must maintain books and records demonstrating that each such order was routed to the system from off of the Floor. This provision would not apply to a Qualified Contingent Cross Order covered by Commentary .01 to this NYSE Arca Rule 6.90–O (*i.e.,* a Qualified Contingent Cross Order routed to a Floor Broker for entry into the NYSE Arca System).'' The Exchange does not propose to include the last sentence of this Commentary in the proposed Pillar rule because the Exchange does not believe it is necessary to specify that Floor Brokers that enter orders electronically are subject to rules relating to electronic order entry as opposed to rules governing open outcry.

[133] *See* NYSE Arca Options RB–16–04, dated February 19, 2016 (Rules of Priority and Order Protection in Open Outcry), available here: *https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2016/NYSE%20Arca%20Options%20RB%2016-04.pdf.*

• A CTB Order to buy (sell) would trade with contra-side orders and quotes that have a display price and working price equal to the limit price of the CTB Order only if there is displayed Customer sell (buy) interest at that price, in which case, the CTB Order to buy (sell) would trade with the displayed Customer interest to sell (buy) and any non-Customer interest to sell (buy) with a working time earlier than the latest-arriving displayed Customer interest to sell (buy) (proposed Rule 6.62P–O(h)(1)(B)); and

• Any unexecuted portion of the CTB Order would cancel after trading with all better-priced interest and eligible same-priced interest on the Consolidated Book (proposed Rule 6.62P–O(h)(1)(C)).

Currently, CTB Orders only trade with displayed Customer interest and any same-priced displayed non-Customer interest ranked ahead of such interest in time priority, but do not trade with better-priced displayed non-Customer interest. In Pillar, per Rule 6.62P–O(h)(1)(B), CTB Orders would trade with displayed non-Customer interest priced better than the latest-arriving displayed Customer interest (*i.e.,* a CTB order buying with a $1.00 limit would now trade with any displayed interest offered at $0.99). Because Floor Brokers have an obligation to satisfy better-priced interest on the Consolidated Book, the Exchange believes this proposed change to automate such priority would make it easier for Floor Brokers to comply with Exchange priority rules. In addition, the Exchange believes that this proposed change would increase execution opportunities and achieve the goal of a CTB Order, which is to clear priority on the Consolidated Book at the time of the TO Approval.

In addition, proposed Rule 6.62P–O(h)(1)(D) would codify existing regulatory responsibilities of Floor Brokers utilizing CTB Orders to submit such orders in a timely manner after receiving TO Approval and would also provide that because CTB Orders are non-routable (and thus ineligible to clear Protected Quotations), Floor Brokers would still be obligated to route any other eligible orders (*i.e.,* not the CTB Order) to better-priced interest on Away Markets per Rule 6.94–O.[134]

The Exchange also proposes to include in Rule 6.62P–O additional open outcry order types that are currently defined in Rule 6.62–O:

• Proposed Rule 6.62P–O(h)(2) would define ''Facilitation Order'' and is based on the Rule 6.62–O(j) definition of Facilitation Order without any differences.

• Proposed Rule 6.62P–O(h)(3) would define ''Mid-Point Crossing Order'' and is based on the Rule 6.62–O(q) definition of Mid-Point Crossing Order without any differences.

• Proposed Rule 6.62P–O(h)(4) would define ''Not Held Order'' and is based on the Rule 6.62–O(f) definition of Not Held Order without any differences.

• Proposed Rule 6.62P–O(h)(5) would define ''Single Stock Future (''SSF'')/Option Order'' and is based on the Rule 6.62–O(i) definition of Single Stock Future (''SSF'')/Option Order without any differences.

• Proposed Rule 6.62P–O(h)(6)(A) would define a ''Stock/Option Order'' and is based on the Rule 6.62–O(h)(1) definition of Stock/Option Order without any differences.

• Proposed Rule 6.62P–O(h)(6)(B) and subparagraphs (i) and (ii) would define a ''Stock/Complex Order'' and is based on the Rule 6.62–O(h)(2) definition of Stock/Complex Order with its sub-paragraphs without any differences.

The Exchange proposes that after the transition to Pillar, the following open outcry order types, which are currently described in Rule 6.62–O but are not used by Floor Brokers, would not be added to proposed Rule 6.62P–O governing orders and modifiers: One cancels the other (OCO) Order and Stock Contingency Order.

*Additional Order Instructions and Modifiers.* The Exchange proposes to specify the additional order instructions and modifiers that would be available in Pillar in proposed Rule 6.62P–O(i).

*Proactive if Locked/Crossed Modifier.* Proposed Rule 6.62P–O(i)(1) would provide that a Limit Order that is displayed and eligible to route and designated with a Proactive if Locked/Crossed Modifier would route to an Away Market if the Away Market locks or crosses the display price of the order and that if any quantity of the routed order is returned unexecuted, the order would be displayed in the Consolidated Book. This would be new functionality for options trading on the Exchange and is based on the Proactive if Locked/Crossed Modifier available on the Exchange's cash equity platform, as described in Rule 7.31–E(i)(1) without any differences. The Exchange believes that offering this as an optional modifier for Limit Orders would provide OTP Holders and OTP Firms with additional flexibility to designate a resting displayed order to route if it becomes locked or crossed by an Away Market.

*Self-Trade Prevention (''STP'') Modifier.* Self-Trade Prevention (''STP'') Modifiers are currently defined in Commentary .01 to Rule 6.76A–O and are available only for Market Maker orders and quotes. On Pillar, the Exchange proposes to expand the availability of STP to all orders and quotes to offer this protection to trading interest of all OTP Holders and OTP Firms, not just Market Makers. The Exchange believes this expansion is appropriate because it would facilitate market participants' compliance and risk management by assisting them in avoiding unintentional wash-sale trading. Because STP Modifiers are an instruction that can be added to an order or quote, the Exchange proposes that for Pillar, STP Modifiers would be described in proposed Rule 6.62P–O(i)(2). This is based on the structure of the Exchange's cash equity rules, which also describe the STP Modifier in Rule 7.31–E(i), which is available to all market participants.

Proposed Rule 6.62P–O(i)(2) would provide that an Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in proposed Rule 6.62P–O(i)(2) would be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any sub-identifier of that MPID and that the STP modifier on the Aggressing Order or Aggressing Quote would control the interaction between two orders and/or quotes marked with STP modifiers. In addition, STP would not be applicable during an Auction or to Cross Orders or when a Complex Order legs out. This proposed rule text is based on Commentary .01 to Rule 6.76A with non-substantive differences to use Pillar terminology.

Proposed Rule 6.62P–O(i)(2) would further provide that if the condition for a Limit Order designated FOK, an AON Order, or an arriving order with an MTS modifier designated under proposed Rule 6.62P–O(i)(3)(B)(i) (described below) cannot be met because of STP modifiers, such order would either be cancelled or placed on the Consolidated Book, as applicable. This functionality would be new on Pillar and reflects that for order types that must trade a specified quantity (either in full or a specified minimum quantity) and could trade with multiple contra-side orders to meet that size requirement, such order types would not be compatible with applying STP, which examines a one-on-one relationship between two interacting orders. This proposed rule

[134] *See id.* at p. 2–3 (describing regulatory responsibilities related to CTB Orders, including that it is the Floor Broker's responsibility to comply with the terms of the Options Order Protection and Locked/Crossed Market Plan, including by sending ISOs to trade with Protected Quotes).

text provides clarity that if a condition of an order cannot be met because of STP modifiers, the order would either cancel (*i.e.,* a Limit Order designated FOK), or be added to the Consolidated Book (*i.e.,* an AON Order or an order with an MTS modifier), and then such resting orders would function as described in Rule 6.62P–O.

The proposed rule would further provide that Aggressing Orders or Aggressing Quotes would be processed as follows:

- Proposed Rule 6.62P–O(i)(2)(A) would describe STP Cancel Newest (''STPN'') and provide that an Aggressing Order or Aggressing Quote to buy (sell) marked with the STPN modifier would not trade with resting interest to sell (buy) marked with any STP modifier from the same MPID; that the Aggressing Order or Aggressing Quote marked with the STPN modifier would be cancelled; and that the resting order or quote marked with one of the STP modifiers would remain on the Consolidated Book. This proposed rule is based on Commentary .01(a) to Rule 6.76A–O with non-substantive differences to use Pillar terminology.
- Proposed Rule 6.62P–O(i)(2)(B) would describe STP Cancel Oldest (''STPO'') and provide that an Aggressing Order or Aggressing Quote to buy (sell) marked with the STPO modifier would not trade with resting interest to sell (buy) marked with any STP modifier from the same MPID; that the resting order or quote marked with the STP modifier would be cancelled; and that the Aggressing Order or Aggressing Quote marked with the STPO modifier would be placed on the Consolidated Book. This proposed rule is based on Commentary .01(b) to Rule 6.76A–O with non-substantive differences to use Pillar terminology.
- Proposed Rule 6.62P–O(i)(2)(C) would describe STP Cancel Both (''STPC'') and provide that an Aggressing Order or Aggressing Quote to buy (sell) marked with the STPC modifier would not trade with resting interest to sell (buy) marked with any STP modifier from the same MPID and that the entire size of both orders and/or quotes would be cancelled. This proposed rule is based on Commentary .01(c) to Rule 6.76A–O with non-substantive differences to use Pillar terminology.

*Minimum Trade Size Modifier.* The Exchange proposes to add the Minimum Trade Size (''MTS'') Modifier, which would be new functionality for options trading on Pillar that is based on the same functionality currently available for cash equity securities trading on Pillar, as described in Rule 7.31–E(i)(3). The Exchange proposes to provide this modifier for options trading to provide OTP Firms and OTP Holders with more features with respect to order handling. The proposed MTS Modifier is similar in concept to both FOK and AON, which are currently available for options trading. With the MTS Modifier, an OTP Holder or OTP Firm would have greater flexibility to designate a size smaller than the entire quantity (which is current FOK and AON functionality) as a condition for execution. The Exchange notes that the use of an MTS Modifier is not new or novel to options trading.[135]

As with the MTS Modifier for cash equity trading, the proposed MTS Modifier for options traded on Pillar would be available only for non-displayed orders. Accordingly, proposed Rule 6.62P–O(i)(3) would provide that a Limit IOC Order or Non-Displayed Limit Order may be designated with an MTS Modifier.[136]

Proposed Rule 6.62P–O(i)(3)(A) would provide that the quantity of the MTS Modifier may be less than the order quantity; however, an order would be rejected if it has an MTS Modifier quantity that is larger than the size of the order. This proposed rule is based on Rule 7.31–E(i)(3)(A) with differences only to reflect that the concept of a round lot is not applicable for options trading.

Proposed Rule 6.62P–O(i)(3)(B) would provide that one of the following instructions must be specified with respect to whether an order to buy (sell) with an MTS Modifier would trade on arrival with: (i) Orders or quotes to sell (buy) in the Consolidated Book that in the aggregate meet such order's MTS; or (ii) only individual order(s) or quote(s) to sell (buy) in the Consolidated Book that each meets such order's MTS. This proposed rule is based on Rule 7.31–E(i)(3)(B) and sub-paragraphs (i) and (ii) with only non-substantive differences to use options trading terminology (*e.g.,* Consolidated Book instead of NYSE Arca Book and reference to quotes). Otherwise, the functionality would be identical on both the options and cash equity trading platforms.

Proposed Rule 6.62P–O(i)(3)(C) would provide that an order with an MTS Modifier that is designated Day or GTC that cannot be executed immediately on arrival would not trade and would be ranked in the Consolidated Book. In such case, the order to buy (sell) with an MTS Modifier to buy (sell) that is ranked in the Consolidated Book would not be eligible to trade: (i) At a price equal to or above (below) any orders or quotes to sell (buy) that are displayed at a price equal to or below (above) the working price of such order with an MTS Modifier; or (ii) at a price above (below) any orders or quotes to sell (buy) that are not displayed and that have a working price below (above) the working price of such order with an MTS Modifier. This proposed rule is based on Rule 7.31–E(i)(3)(C) and sub-paragraphs (i) and (ii) with only non-substantive differences to use options trading terminology and to reflect the availability of the GTC time-in-force modifier for Non-Displayed Limit Orders. Otherwise, the functionality would be identical on both the options and cash equity trading platforms.

Proposed Rule 6.62P–O(i)(3)(D) would provide that an order with an MTS Modifier that is designated IOC and cannot be immediately executed would be cancelled. This proposed rule is based on Rule 7.31–E(i)(3)(D) without any differences and the functionality would be identical on both the options and cash equity trading platforms.

Proposed Rule 6.62P–O(i)(3)(E) would provide that a resting order to buy (sell) with an MTS Modifier would trade with individual orders and quotes to sell (buy) that each meet the MTS and that (i) if an Aggressing Order or Aggressing Quote to sell (buy) does not meet the MTS of the resting order to buy (sell) with an MTS Modifier, that Aggressing Order or Aggressing Quote would not trade with, and may trade, through such resting order with an MTS Modifier; and (ii) if a resting non-displayed order or quote to sell (buy) did not meet the MTS of a same-priced resting order or quote to buy (sell) with an MTS Modifier, a subsequently arriving order or quote to sell (buy) that meets the MTS would trade before such resting non-displayed order or quote to sell (buy) at that price. This proposed rule is based on Rule 7.31–E(i)(3)(E) and sub-paragraphs (i) and (ii) with only non-substantive differences to use options trading terminology (*i.e.,* refers to an order trading with contra-side quotes). Otherwise, the proposed functionality would be identical on both the options and cash equity trading platforms.

Proposed Rule 6.62P–O(i)(3)(F) would provide that a resting order with an MTS Modifier would be cancelled if it is traded in part or reduced in size and the remaining quantity is less than such

[135] *See, e.g.,* Nasdaq Options 3, Section 7(a)(3)(B) (describing ''Minimum Quantity Order'' as ''an order that requires that a specified minimum quantity of contracts be obtained, or the order is cancelled'').

[136] For cash equity trading, the MTS Modifier is also available for an MPL Order or Tracking Order, which are non-displayed order types available on the Exchange's cash equity trading platform that would not be available for options trading on Pillar. *See* Rule 7.31–E(i)(3).

order's MTS. This proposed rule is based on Rule 7.31–E(i)(3)(F) without any differences and the functionality would be identical on both the options and cash equity trading platforms.

In connection with proposed Rule 6.62P–O, the Exchange proposes to add the following preamble to Rule 6.62–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.62–O would not be applicable to trading on Pillar.

Proposed Rule 6.37AP–O: Market Maker Quotations

Current Rule 6.37A–O describes Market Maker quoting obligations, including defining ''quotations,'' describing the treatment of such quotations, and specifying Market Maker and LMM quoting obligations. Proposed Rule 6.37AP–O would set forth Market Maker quoting obligations under Pillar.

As with current functionality, on Pillar, the Exchange would provide Market Makers with the ability to designate bids and offers as quotations, which is unique to options trading and not applicable to cash equity trading. Currently, the Exchange offers designated ''quotation'' types to Market Makers, which are described in Rule 6.37A–O(a)(3).[137] On Pillar, as described above in connection with proposed Rules 6.62P–O(e)(1) and (2), the Exchange is proposing to offer quotation functionality for Market Makers that would be displayed, traded, repriced, or cancelled in the same manner as Non-Routable Limit Orders and ALO Orders. As such, Market Makers may designate these two ''order'' types as quotations and, if designated as a quotation, such bids and offers would be displayed, traded, repriced, or cancelled as described in proposed Rule 6.62P–O(e)(1) and (2), as discussed in detail above. In addition, such quotations would be ranked and executed as described in proposed Rules 6.76P–O and 6.76AP–O, described above. Moreover, if designated as a quotation, such bids or offers would be identifiable to the Exchange as ''quotations,'' subject to the Market Maker and LMM requirements relating to quotations and the Exchange would be able to monitor a Market Maker's compliance with quoting obligations because its bids or offers would be designated as quotations. If a Market Maker does not choose to designate a bid or offer as a quotation, such bid or offer would be processed as an ''order'' and would not count towards a Market Maker's quoting obligations.[138]

- Rule 6.37AP–O(a) would be based on current Rule 6.37A–O(a) and would provide that a Market Maker may send quotations only in the issues included in its appointment. This functionality would not be new, and the Exchange proposes one terminology difference from the current Rule to use the term ''send'' rather than ''enter,'' which is a stylistic preference that does not alter the functionality.
- Proposed Rule 6.37AP–O(a)(1) would provide that the term ''quote'' or ''quotation'' means ''a bid or offer sent by a Market Maker that is not sent as an order,'' and that ''[a] quotation sent by a Market Maker will replace a previously displayed same-side quotation that was sent from the same order/quote entry port of that Market Maker.'' [139] This proposed Rule is similar to current Rule 6.37A–O(a)(1), which provides that ''[t]he term 'quote' or 'quotation' means a bid or offer entered by a Market Maker that updates the Market Maker's previous bid or offer, if any,'' with two distinctions. First, the Exchange proposes textual differences to use the terms ''sent'' and ''received'' instead of ''entered,'' which is a stylistic preference that does not alter the functionality. Second, the Exchange proposes additional detail (consistent with current functionality) to make clear that quotations sent by a Market Maker would be replaced, *i.e.,* ''updated,'' as the term is used in the current rule, when a new same-side quote is sent via the same order/quote entry port.[140] Because LMMs would be Market Makers on Pillar, this functionality would also be available to LMMs.[141]

The NYSE Arca Fee Schedule makes clear that Market Makers can obtain upwards of forty ports for quote entry. Thus, the Exchange believes that establishing when a Market Maker's previously displayed same-side quotation would be replaced (*i.e.,* when sent via the same order/quote entry port) would add clarity and transparency to Exchange rules. In addition, because the Exchange proposes that a Market Maker may designate Non-Routable Limit Orders or ALO Orders as quotes, the Exchange proposes a difference from the current Rule to provide that a quote is a bid or offer not designated as an order.

- Proposed Rule 6.37AP–O(a)(2) would provide that a Market Maker may designate either a Non-Routable Limit Order or an ALO Order as a quote and such quotes would be processed as described in proposed Rule 6.62P–O(e).[142] The similarities and differences between the proposed Non-Routable Limit Orders and ALO Orders on Pillar compared to the existing quote types (*i.e.,* MMLO, MMALO and MMRP) are described in more detail above.[143] Because proposed Rule 6.62P–O(e)(1) and (2), described above, would set forth the treatment of a Non-Routable Limit Order or an ALO Order designated as a quote, the Exchange is not proposing to include a (duplicative) section in proposed Rule 6.37AP–O regarding the treatment of such quotes.
- Proposed Rule 6.37AP–O(b)–(e) would be substantively identical to current Rule 6.37A–O(b)–(e) with non-substantive differences to change the term ''shall'' to ''will,'' which is a

[137] As described in Rule 6.37A–O(a)(3)(A)–(C), a Market Maker may designate a quote as Market Maker-Light Only Quotation (''MMLO''), Market Maker—Add Liquidity Only Quotation (''MMALO''), and Market Maker—Repricing Quotation (''MMRP'').

[138] For example, a Market Maker could choose to designate a Non-Routable Limit Order as either a quote or as an order, which is consistent with current Rule 6.37B–O, which provides that a Market Maker may enter all order types permitted to be entered by Users under the Rules to buy or sell options in all classes of options listed on the Exchange. Accordingly, the functionality set forth in proposed Rule 6.37AP–O(a)(2) herein is not materially different for Market Makers because, under current functionality, they can choose to send as Market Maker orders any order type described in current Rule 6.62–O, including, for example, RPNP, RALO, PNP-Blind Order, and PNP Light Order.

[139] *See* NYSE Arca Fee Schedule, Port Fees (setting forth fees for order/quote entry ports, which fees are currently $450 per port per month for the first forty such ports and $150 per port per month for each port in excess of forty (*i.e.,* 41 and greater), available here: *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[140] On the OX system, a Market Maker's same-side quote is updated when a Market Maker uses the same OTP for quote entry. Therefore, on the OX system, a Market Maker (not acting as an LMM) that uses multiple OTPs could have more than one same-side quote in a series. As discussed *supra,* because the OX system utilizes a unique identifier for each LMM to send quotes, under current functionality, an LMM cannot have more than one same-side quote in an assigned series. *See supra* note 60.

[141] *See* proposed Rule 1.1 definition of Market Maker, which provides that for purposes of Exchange rules, the term Market Maker includes Lead Market Makers, unless the context otherwise indicates.

[142] *See* discussion *supra* regarding proposed Rule 6.62P–O(e)(1) and (2), Non-Routable Limit Order and ALO Orders, respectively, being available as quote types and how such orders compare to the existing MMLO, MMRP, and MMALO quotation functionality.

[143] The Exchange notes that it is not proposing the functionality set forth in current Rule 6.37A–O(a)(4)(C) that provides for the cancellation of a Market Maker's quote on the opposite side of the market whenever that Market Maker's same-side quotation is cancelled because such quotation would lock or cross another options exchange is not designated to reprice (*i.e.,* as an MMRP). This current functionality is based on a system limitation that would not exist under Pillar.

stylistic preference that would add consistency to Exchange rules. Proposed Commentary .01 to Rule 6.37AP–O would be substantively identical to Commentary .01 to Rule 6.37A–O, with non-substantive differences to streamline the rule text.

The Exchange also proposes a non-substantive change to paragraph (b) of Rule 6.65A–O (Limit-Up and Limit-Down During Extraordinary Market Volatility) to correct a cross reference to Market Maker quoting obligations as set forth in Rule 6.37AP–O(b) and (c). Current Rule 6.65A(b) erroneously cross-references Rule 6.37B–O(b) and (c).

In connection with proposed Rule 6.37AP–O, the Exchange proposes to add the following preamble to Rule 6.37A–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.37A–O would not be applicable to trading on Pillar.

Proposed Rule 6.40P–O: Pre-Trade and Activity-Based Risk Controls

For the OX system, current Rule 6.40–O sets forth the activity-based Risk Limitation Mechanisms for orders and quotes, which are designed to help OTP Holders and OTP Firms effectively manage risk during periods of increased and significant trading activity. With the transition to Pillar, the Exchange proposes to incorporate new risk control functionality that is based on both existing activity-based risk controls for options and pre-trade risk controls that are available on the Exchange's cash equity platform. Proposed Rule 6.40P–O would describe the activity-based controls with updated functionality under Pillar and would also describe new optional pre-trade risk controls that are based on pre-trade risk controls available on the Exchange's cash equity platform, as described in Rule 7.19–E, with proposed differences to reference quotes and proposed new Pillar functionality. The Exchange believes that adding pre-trade risk controls (together with the enhanced activity-based controls) for options trading, as described below, would provide greater flexibility to OTP Holders and OTP Firms in establishing risk controls to align with their risk tolerance for both orders and quotes.

Proposed Rule 6.40P–O(a) would set forth the following definitions that would be used for purposes of the Rule:

- The term ''Entering Firm'' would mean an OTP Holder or OTP Firm (including those acting as Market Makers) (proposed Rule 6.40P–O(a)(1)). This proposed definition is based in part on the definition of ''Entering Firm'' in Rule 7.19–E(a)(1) and the Exchange believes that the addition of this term would add clarity to the proposed rule by using a single, defined term to describe which entities, including Market Makers, could avail themselves of the proposed pre-trade risk controls.
- The term ''Pre-Trade Risk Controls'' would refer to two optional limits that an Entering Firm may utilize with respect to its trading activity on the Exchange (excluding interest represented in open outcry except CTB Orders (proposed Rule 6.40P–O(a)(2)). These controls would be the ''Single Order Maximum Notional Value Risk Limit'' and the ''Single Order Maximum Quantity Risk Limit.'' The proposed Pre-Trade Controls are based on the substantially identical risk controls available on the Exchange's cash equity market, as described in Rules 7.19–E(a)(3) and (4), respectively, but differ in that the proposed rule would also apply to quotes, which are unique to options trading, and specifies the exclusion of interest represented in open outcry, excluding CTB Orders, as well as the treatment of orders designated GTC, which orders are available for options trading but are not offered on the Exchange's cash equity market.
  - The term ''Single Order Maximum Notional Value Risk Limit'' would refer to a pre-established maximum dollar amount for a single order or quote to be applied one time (proposed Rule 6.40P–O(a)(2)(A)). This definition would also provide that orders designated GTC would be subject to this pre-trade risk control only once.
  - The term ''Single Order Maximum Quantity Risk Limit'' would refer to a pre-established maximum number of contracts that may be included in a single order or quote before it can be traded (proposed Rule 6.40P–O(a)(2)(B)). This definition would also provide that orders designated GTC would be subject to this pre-trade risk control only once.
- The term ''Activity-Based Risk Controls'' would refer to three activity-based risk limits that an Entering Firm may apply to its orders and quotes in an options class (excluding those represented in open outcry except CTB Orders) based on specified thresholds measured over the course of an Interval (to be defined below) (proposed Rule 6.40P–O(a)(3)). The proposed Activity-Based Risk Controls are based on the substantially identical risk controls set forth in current Rule 6.40–O(b)–(d), except that on Pillar, a Market Maker's orders and quotes would be aggregated and applied towards each risk limit (as opposed to current functionality, where a Market Maker's orders and quotes are counted separately). The Exchange believes that aggregating a Market Maker's quotes and orders for purposes of calculating activity-based risk controls would better reflect the aggregate risk that a Market Maker has with respect to its quotes and orders. The proposed rule would also add detail to make clear that orders and quotes represented in open outcry, except CTB Orders, would not be subject to these controls, which is consistent with current functionality.
  - The term ''Transaction-Based Risk Limit'' would refer to a pre-established limit on the number of an Entering Firm's orders and quotes executed in a specified class of options per Interval (proposed Rule 6.40P–O(a)(3)(A)). This risk control is based on the substantially identical risk control set forth in current Rule 6.40–O(b), with the difference described above that a Market Maker's orders and quotes would be aggregated.
  - The term ''Volume-Based Risk Limit'' would refer to a pre-established limit on the number of contracts of an Entering Firm's orders and quotes that could be executed in a specified class of options per Interval (proposed Rule 6.40P–O(a)(3)(B)). This risk control is based on the substantially identical risk control set forth in current Rule 6.40–O(c), with the difference described above that a Market Maker's orders and quotes would be aggregated.
  - The term ''Percentage-Based Risk Limit'' would refer to a pre-established limit on the percentage of contracts executed in a specified class of options as measured against the full size of such Entering Firm's orders and quotes executed per Interval (proposed Rule 6.40P–O(a)(3)(C)). The proposed definition would also provide that to determine whether an Entering Firm has breached the specified percentage limit, the Exchange would calculate the percent of each order or quote in a specified class of option that is executed during an Interval (each, a ''percentage''), and sum up those percentages. As further proposed, this definition would state that this risk limit would be breached if the sum of the percentages exceeds the pre-established limit. This risk control is based on the substantially identical risk control set forth in current Rule 6.40–O(d), with the difference described above that a Market Maker's orders and quotes would be aggregated.
- The term ''Global Risk Control'' would refer to a pre-established limit on the number of times an Entering Firm may breach its Activity-Based Risk Controls per Interval (proposed Rule

6.40P–O(a)(4)). This proposed definition is based on the substantially identical functionality set forth in current Rule 6.40–O(f).

• The term ''Interval'' would refer to the configurable time period during which the Exchange would determine if an Activity-Based Risk Control or the Global Risk Control has been breached (proposed Rule 6.40P–O(a)(5)). This proposed definition is consistent with current Rule 6.40–O, which contains references throughout to a ''time period'' during which the Exchange will determine whether a breach has occurred. The Exchange believes this proposed definition would add clarity and transparency to Exchange rules.

Proposed Rule 6.40P–O(b) would set forth how the Pre-Trade, Activity-Based and Global Risk Controls could be set or adjusted. Proposed Rule 6.40P–O(b)(1) would provide that these risk controls may be set before the beginning of a trading day and may be adjusted during the trading day. Proposed Rule 6.40P–O(b)(2) would provide that Entering Firms may set these risk controls at the MPID level or at one or more sub-IDs associated with that MPID, or both. Proposed Rule 6.40P–O(b) is based on Rule 7.19–E(b)(3)(A)–(B) but differs in that the proposed rule would incorporate the existing options-based Activity-Based and Global Risk Controls in addition to the (new for options trading) Pre-Trade Risk Controls currently available on the Exchange's cash equity platform. The Exchange notes that the Activity-Based and Global Risk Controls are unique to the options market and, at this time, the Exchange's cash equities platform does not offer analogous controls.

Proposed Rule 6.40P–O(c) would set forth the Automated Breach Actions that the Exchange would take if a designated risk limit is breached. Proposed Rule 6.40P–O(c)(1)(A)(i)–(ii) would set forth the automated breach actions for the Pre-Trade Risk Controls.

• Proposed Rule 6.40P–O(c)(1)(A)(i) would provide that a Limit Order or quote that breaches the designated limit of either a Single Order Maximum Notional Value Risk Limit or Single Order Maximum Quantity Risk Limit would be rejected.

• Proposed Rule 6.40P–O(c)(1)(A)(ii) would provide that a Market Order that breaches the designated limit of a Single Order Maximum Quantity Risk Limit would be rejected. The proposed rule would also provide that a Market Order that breaches the designated limit of a Single Order Notional Value Risk Limit would be rejected if the order arrived during continuous trading or canceled if the order was received during a pre-open state and the quantity remaining to trade after an Auction concludes breaches the designated limit.[144]

Proposed Rule 6.40P–O(c)(1)(A)(i)–(ii) is based on Rule 7.19–E(c)(2) but differs in that it specifies the treatment of Limit Orders and Market Orders (the latter having different treatment based on when such orders arrive at the Exchange) and expands application of the check to include quotes. The Exchange proposes to process Market Orders differently because, until a series is opened, the Exchange is not able to calculate the Single Order Notional Value Risk Limit for a Market Order. Accordingly, this risk limit would be applied only after a series opens, at which point, a Market Order would be cancelled if it fails the risk limit.

Proposed Rule 6.40P–O(c)(2) would set forth the automated breach actions for the Activity-Based Risk Controls.

• Proposed Rule 6.40P–O(c)(2)(A) would first specify that an Entering Firm acting as a Market Maker would be required to apply one of the Activity-Based Risk Controls to all of its orders and quotes; whereas an Entering Firm that is not acting as a Market Maker would have the option, but would not be required, to apply one of the Activity-Based Risk Controls to its orders. The requirement that Market Makers utilize Activity-Based Risk Controls for all quotes mirrors the requirements set forth in Rule 6.40–O, Commentary .04(a); however, the proposed rule differs in that it likewise requires Market Makers to apply one of the Activity-Based Risk Controls to all of its orders. The Exchange believes that requiring that both Market Maker quotes and Market Maker orders be subject to one of the Activity-Based Controls would enhance Market Makers' ability to assess their total risk exposure on the Exchange. The proposed optionality of the Activity-Based Risk controls for orders sent by an Entering Firm not acting as a Market Maker mirrors current Rule 6.40–O, Commentary .04(b)).

• Proposed Rule 6.40P–O(c)(2)(B) would provide that to determine when an Activity-Based Risk Control has been breached, the Exchange would maintain Trade Counters that would be incremented every time an order or quote trades, including any leg of a Complex Order, and would aggregate the number of contracts traded during each such execution. As further proposed, an Entering Firm may opt to exclude any orders designated IOC or FOK from being considered by a Trade Counter. This is consistent with existing functionality set forth in Rule 6.40–O(a) and Commentary .07, with a proposed difference to allow an Entering Firm to also exclude orders designated FOK, which, like orders designated IOC, cancel if not executed on arrival and is based on current functionality.[145] The Exchange believes that specifying that orders designated FOK could be excluded from being considered for a Trade Counter would add granularity and clarity to Exchange rules. In addition, as noted above, a Market Maker's quotes and orders in a given option class would be aggregated and therefore the Exchange proposes that there would not be separate Trade Counters for a Market Maker's quotes and orders.

• Proposed Rule 6.40P–O(c)(2)(C) would provide that each Entering Firm must select one of three Automated Breach Actions for the Exchange to take should the Entering Firm breach an Activity-Based Risk Control.

○ ''Notification Only.'' As set forth in proposed Rule 6.40P–O(c)(2)(C)(i), if this option is selected, the Exchange would continue to accept new order and quote messages and related instructions and would not cancel any unexecuted orders or quotes in the Consolidated Book. With the ''Notification Only'' action, the Exchange would provide such notifications, but would not take any other automated actions with respect to new or unexecuted orders. This proposed functionality is not currently available for options trading, but is available for breach of the Gross Credit Risk Limit on the Exchange's cash equity platform, as set forth in Rule 7.19–E(c)(3)(A)(i). The Exchange believes that making this Automated Breach Action available to Activity-Based Risk Controls, which are unique to options trading, would provide Entering Firms more control and flexibility over setting risk tolerance and, as such, over how Activity-Based Risk Controls are implemented.

○ ''Block Only.'' As set forth in proposed Rule 6.40P–O(c)(2)(C)(ii), if this option is selected, the Exchange would reject new order and quote messages and related instructions, provided that the Exchange would

[144] The term ''Auction'' is defined in proposed Rule 6.64P–O(a)(1), described below in the discussion of proposed Rule 6.64P–O, to mean the opening or reopening of a series for trading either on a trade or quote.

[145] *See* Securities Exchange Act Release No. 81717 (September 25, 2017), 82 FR 45631 (September 29, 2017) (SR–NYSEArca–2017–96) (immediately effective filing to exclude IOC Orders from risk settings because such exclusion, among other things, would result in risk settings that may be better calibrated to suit the needs of certain market participants (*i.e.,* those that routinely utilize IOC orders to access liquidity on the Exchange)).

continue to process instructions from the Entering Firm to cancel one or more orders or quotes (including Auction-Only Orders) in full. The proposed rule would also provide that the Exchange would follow any instructions specified in paragraph (e) of the proposed Rule (and described below). This proposed functionality is not currently available for options trading under current Rule 6.40–O, but is available for breach of the Gross Credit Risk Limit on the Exchange's cash equity platform, as set forth in Rule 7.19–E(c)(3)(A)(ii). The Exchange believes that making this Automated Breach Action available to Activity-Based Risk Controls, which are unique to options trading, would provide Entering Firms more control and flexibility over setting risk tolerance and, as such, over how Activity-Based Risk Controls are implemented.

○ ''Cancel and Block.'' As set forth in proposed Rule 6.40P–O(c)(2)(C)(iii), if this option is selected, in addition to the Block Only actions described above, the Exchange would also cancel all unexecuted orders and quotes in the Consolidated Book other than Auction-Only Orders and orders designated GTC. This proposed Cancel and Block functionality is substantially similar to the automated breach action taken by the Exchange per current Rule 6.40–O(e) and Commentaries .01 and .02 thereto, except that under the current rules, this is default (not optional) functionality. Additionally, this proposed functionality is substantially identical to the Cancel and Block option set forth in Rule 7.19–E(c)(3)(A)(iii), which is available for breach of the Gross Credit Risk Limit on the Exchange's cash equity platform. The Exchange believes that making this Automated Breach Action available to respond to a breach of Activity-Based Risk Controls, which are unique to options trading, would provide Entering Firms more control and flexibility over setting risk tolerance and, as such, over how Activity-Based Risk Controls are implemented.

• Finally, proposed Rule 6.40P–O(c)(2)(D) would provide that if an Entering Firm breaches an Activity-Based Risk Control, the Automated Breach Action selected would be applied to its orders and quotes in the affected class of options. This proposed action is consistent with current Rule 6.40–O(e) and Commentaries .01 and .02 thereto, which provide that, upon a breach, the Exchange will cancel existing and suspend new orders and quotes trading in the affected class.

Proposed Rule 6.40P–O(c)(2)(E) would provide that the Exchange would specify by Trader Update any applicable minimum, maximum and/or default settings for the Activity-Based Risk Controls, subject to the following:

• For the Transaction-Based Risk Limit, the minimum setting would not be less than one and the maximum setting would not be more than 2,000 (proposed Rule 6.40P–O(c)(2)(E)(i)), which settings are identical to the Exchange-determined settings provided under current Rule 6.40–O, Commentary .03.

• For the Volume-Based Risk Limit, the minimum setting would not be less than one and the maximum setting would not be more than 500,000 (proposed Rule 6.40P–O(c)(2)(E)(ii)), which settings are identical to the Exchange-determined settings provided under current Rule 6.40–O, Commentary .03.

• For the Percentage-Based Risk Limit, the minimum setting would not be less than 50 and the maximum setting would not be more than 200,000 (proposed Rule 6.40P–O(c)(2)(E)(iii)), which maximum setting is the same as the minimum Exchange-determined setting set forth in current Rule 6.40–O, Commentary .03. The Exchange proposes to increase the minimum setting from less than one (in current rule) to not be less than 50 to better reflect actual practice, because under current Rules, there are no OTP Holders or OTP Firms that have set their Percentage-Based Risk Limits below 50.

Proposed Rule 6.40P–O(c)(2)(F) would provide that the Exchange would specify by Trader Update the Interval for the Activity-Based Risk Controls, subject to the following:

• The Interval would not be less than 100 milliseconds and would not be greater than 300,000 milliseconds, inclusive of the duration of any trading halt occurring within that time (proposed Rule 6.40P–O(c)(2)(F)(i)), which minimum setting is identical to the Exchange-determined minimum set forth in current Rule 6.40–O, Commentary .03. Although the current rule does not include a maximum time period, the Exchange proposes to include a maximum allowable Interval to promote clarity in Exchange rules of the longest time an Interval could be.

• For transactions occurring in the Core Open Auction, per Rule 6.64P–O, the applicable time period would be the lesser of (i) the time between the Core Open Auction of a series and the initial transaction or (ii) the Interval (proposed Rule 6.40P–O(c)(2)(F)(ii)), which proposed time period is identical to the timing provided under current Rule 6.40–O, Commentary .03.

Proposed Rule 6.40P–O(c)(3) would set forth the automated breach actions for the Global Risk Controls set by an Entering Firm.

• Proposed Rule 6.40P–O(c)(3)(A) would provide that if the Global Risk Control limit is breached, the Exchange would Cancel and Block, per proposed Rule 6.40P–O(c)(2)(C)(iii), which proposed functionality is substantively the same as the functionality provided under current Rule 6.40–O, Commentaries .01 (regarding cancellation of existing orders) and .02 (regarding block/rejection of new orders).

• Proposed Rule 6.40P–O(c)(3)(B) would provide that if an Entering Firm breaches the Global Risk Control, the Automated Breach Action would be applied to all orders and quotes of the Entering Firm in all classes of options regardless of which class(es) of options caused the underlying breach of Activity-Based Risk Controls, which proposed functionality is substantively the same as the functionality provided (in the last sentence) of current Rule 6.40–O, Commentary .02 in the event of a breach of current Rule 6.40–O(f) (*i.e.,* breach of global risk setting).

• Proposed Rule 6.40P–O(c)(3)(C) would provide that the Exchange would specify by Trader Update any applicable minimum, maximum and/or default settings for the Global Risk Controls, provided that the minimum setting would not be less than 25 and the maximum setting would not be more than 100. These proposed settings are based on the Exchange-determined setting provided under current rule 6.40–O, Commentary .03, except that the current rule allows for a minimum setting of one (1) whereas the proposed rule is increasing that minimum to twenty-five (25), which the Exchange believes would better reflect actual practice, because under current Rules, there are no OTP Holders or OTP Firms that have set their Global Risk Controls below 25.

• Proposed Rule 6.40P–O(c)(3)(D) would provide that the Exchange would specify by Trader Update the Interval for the Global Risk Controls, subject to the following:

○ The Interval would not be less than 100 milliseconds and would not be greater than 300,000 milliseconds, inclusive of the duration of any trading halt occurring within that time, per proposed Rule 6.40P–O(c)(3)(D)(i), which minimum setting is identical to the Exchange-determined minimum set forth in current Rule 6.40–O, Commentary .03. Although the current rule does not include a maximum time period, the Exchange proposes to include a maximum allowable Interval to allow an outside parameter by which

the counters would be reset, which would promote transparency in Exchange rules regarding the maximum allowable Interval.

○ For transactions occurring in the Core Open Auction, per Rule 6.64P–O, the applicable time period is the lesser of (i) the time between the Core Open Auction of a series and the initial transaction or (ii) the Interval, per proposed Rule 6.40P–O(c)(3)(D)(ii), which proposed time period is identical to the timing provided under current Rule 6.40–O, Commentary .03.

Proposed Rule 6.40P–O(d) describes how an Entering Firm's ability to enter orders, quotes, and related instructions would be reinstated after a ''Block Only'' or ''Cancel and Block'' Automated Breach Action has been triggered. In such case, proposed Rule 6.40P–O(d) provides that the Exchange would not reinstate the Entering Firm's ability to enter orders and quotes and related instructions on the Exchange (other than instructions to cancel one or more orders or quotes (including Auction-Only Orders and orders designated GTC) in full) without the consent of the Entering Firm, which may be provided via automated contact if it was a breach of an Activity-Based Risk Control. As further proposed, an Entering Firm that breaches the Global Risk Control would not be reinstated unless the Entering Firm provides consent via non-automated contact with the Exchange. This proposed functionality is consistent with current Rule 6.40–O, Commentary .02 regarding the need for an Entering Firm to make automated or non-automated contact with the Exchange, as applicable, prior to being reinstated. Proposed Rule 6.40P–O(d) is also substantively the same as the more granular level of risk control under Pillar functionality available for cash equity trading per Rule 7.19–E(d), except that the proposed rule does not reference Clearing Firms, which feature would remain specific to cash-equity trading and not be applied to options trading.

Proposed Rule 6.40P–O(e) would set forth new ''Kill Switch Action'' functionality, which would allow an Entering Firm to direct the Exchange to take certain bulk cancel or block actions with respect to orders and quotes. In contrast to the Automated Breach Actions described above, which the Exchange would take automatically after the breach of a risk limit, the Exchange would not take any of the Kill Switch Actions without express direction from an Entering Firm. The Exchange believes that the proposed Kill Switch Action functionality would also provide OTP Holders and OTP Firms with greater flexibility to provide bulk instructions to the Exchange with respect to cancelling existing orders and quotes and blocking new orders and quotes.

Proposed Rule 6.40P–O(e) would specify that an Entering Firm could direct the Exchange to take one or more of the following actions with respect to orders and quotes (excluding those represented in open outcry except CTB Orders), at either an MPID, or if designated, sub-ID Level: (1) Cancel all Auction-Only Orders; (2) Cancel all orders designated GTC; (3) Cancel all unexecuted orders and quotes in the Consolidated Book other than Auction-Only Orders and orders designated GTC; or (4) Block the entry of any new order and quote messages and related instructions, provided that the Exchange would continue to accept instructions from Entering Firms to cancel one or more orders or quotes (including Auction-Only Orders and orders designated GTC) in full, and later, reverse that block. The proposed post-trade Kill Switch Actions are not currently available for options trading per Rule 6.40–O and are substantially identical to the Kill Switch Action available on the Exchange's cash equity platform pursuant to Rule 7.19–E(e), with a difference to address the handling of quotes as well as orders designated GTC, which are not available on the cash equity platform. The Exchange believes that offering this functionality for options trading under Pillar would give Entering Firms more flexibility in setting risk controls for options trading (as noted above) and add consistency with the Exchange's risk control functionality available for cash equity trading. Providing ''Kill Switch Action'' functionality in Exchange rules is consistent with the rules of other options exchanges.[146]

Proposed Commentary .01 to Rule 6.40P–O would provide that the Pre-Trade, Activity-Based, and Global Risk Controls described in the proposed Rule 6.40P–O are meant to supplement, and not replace, the OTP Holder's or OTP Firm's own internal systems, monitoring, and procedures related to risk management and are not designed for compliance with Rule 15c3–5 under the Exchange Act.[147] Responsibility for compliance with all Exchange and SEC rules remains with the OTP Holder or OTP Firm. This proposed language is not included in existing Rule 6.40–O, and is based on Commentary .01 to Rule 7.19–E. The proposed rule makes clear that use of the proposed controls alone does not constitute compliance with Exchange rules or the Exchange Act.

In connection with proposed Rule 6.40P–O, the Exchange proposes to add the following preamble to Rule 6.40–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.40–O would not be applicable to trading on Pillar.

Proposed Rule 6.41P–O: Price Reasonability Checks—Orders and Quotes

The Exchange proposes to describe its Price Reasonability Checks for orders and quotes in proposed Rule 6.41P–O.[148] For the OX system, the concept of ''Price Reasonability Checks'' for Limit Orders are described in Rule 6.60–O(c) and the concept of price protection filters for quotes are described in Rule 6.61–O. The proposed ''Price Reasonability Checks'' on Pillar would be applicable to both orders and quotes and are designed to provide similar price protections as the current price checks for Limit Orders and price protection filters for quotes on the OX system, with differences as described in more detail below. The Exchange believes that applying the same Price Reasonability Checks to both orders and quotes and describing them in a single rule would make the Exchange's rules easier to navigate, while continuing to provide price protection features for both orders and quotes. The Exchange proposes to locate the rule text for the proposed Price Reasonability Checks in Rule 6.41P–O to immediately follow Rule 6.40P–O regarding the Pre-Trade and Activity-Based Controls, as this placement would group the risk controls together and make Exchange rules easier to navigate.

Proposed Rule 6.41P–O(a)(1)–(3) would set forth the circumstances under which the proposed Price Reasonability Checks would apply. Proposed Rule 6.41P–O(a) would provide that the Exchange would apply the Price Reasonability Checks, as defined in proposed paragraphs (b) and (c), to all Limit Orders and quotes (excluding those represented in open outcry except

[146] *See, e.g.,* Cboe Rule 5.34(c)(6) (describing the optional ''Kill Switch'' functionality, which allows a Cboe participant to instruct Cboe to simultaneously cancel or reject all orders or quotes (or a subset thereof) as well as to instruct Cboe to block all orders or quotes (or a subset thereof), which block instructions will remain in effect until such participant contacts Cboe's trade desk to remove the block).

[147] 17 CFR 240.15c3–5.

[148] Current Rule 6.41–O is held as Reserved. The Exchange proposes to renumber the proposed rule with the ''P'' modifier and remove reference to ''Reserved.''

CTB Orders), during continuous trading on each trading day, subject to the following:

• Proposed Rule 6.41P–O(a)(1) would provide that a Limit Order or quote received during a pre-open state would be subject to the proposed Price Reasonability Checks after an Auction concludes; that a Limit Order or quote that was resting on the Consolidated Book before a trading halt would be subject to the proposed Price Reasonability Checks again after the Trading Halt Auction; and that a put option message to buy would be subject to the Arbitrage Check regardless of when it arrives. This proposed rule is based on current Rule 6.60–O(c), which provides that the Price Reasonability Checks (for orders) are applied when a series opens or reopens for trading, and is similar to Rule 6.61–O(a)(1), which provides that Market Maker quote protection will be applied when an NBBO is available. NBBO protection is available when a series is opened for trading. Proposed Rule 6.41P–O(a)(1) includes additional detail and granularity regarding when the proposed Price Reasonability Checks would be applied under Pillar. The proposed Rule also adds new functionality that a put option message to buy would be subject to the Arbitrage Check even if a series is not open for trading. The Exchange believes that it is appropriate to apply this check to put option messages to buy at any time because the check is not dependent on an external reference price.

• Proposed Rule 6.41P–O(a)(2) would provide that if the calculation of the Price Reasonability Check is not consistent with the MPV for the series, it would be rounded down to the nearest price within the applicable MPV, which is consistent with current functionality. The Exchange believes this proposed rule would promote clarity and transparency in Exchange rules regarding how the Price Reasonability Check would be calculated.

• Proposed Rule 6.41P–O(a)(3) would provide that the proposed Price Reasonability Checks would not apply to (i) any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action; (ii) any options series for which the underlying security is identified as over-the-counter (''OTC''); (iii) any option series on an index; and (iv) any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and orderly market, which the Exchange would announce by Trader Update. Proposed Rule 6.41P–O(a)(3) is based on current Commentary .01 to Rule 6.60–O (orders) and 6.61–O (quotes), with a non-substantive difference that the proposed rule no longer references Binary Return Derivatives (''ByRDs'') because ByRDs are no longer traded on the Exchange.

Proposed Rule 6.41P–O(b) would set forth the ''Arbitrage Checks'' for buy orders or quotes, which subset of Price Reasonability Checks are based on the principle that an option order or quote is in error and should be rejected (or canceled) when the same result can be achieved on the market for the underlying equity security at a lesser cost.

• Proposed Rule 6.41P–O(b)(1) relates to ''puts'' and would provide that order or quote messages to buy for put options would be rejected if the price of the order or quote is equal to or greater than the strike price of the option, which is substantively identical to current Rules 6.60–O(c)(1)(A) (for orders) and 6.61–O(a)(3) (for quotes).

• Proposed Rule 6.41P–O(b)(2) relates to ''calls'' and would provide that order or quote messages to buy for call options would be rejected or canceled (if resting) if the price of the order or quote is equal to or greater than the last sale price of the underlying security on the Primary Market, plus a specified threshold to be determined by the Exchange and announced by Trader Update. This proposed rule is substantially similar to current Rules 6.60–O(c)(1)(B) (for orders) and 6.61–O(a)(2)(B) (for quotes), with several differences. First, because the Exchange is monitoring last sales from the Primary Market, the Exchange proposes that the Exchange-specified threshold for the Checks would be based on the last sale on the Primary Market rather than on the Consolidated Last Sale.[149] The Exchange believes that the last sale on the Primary Market would be indicative of the price of the underlying security and that by using the last sale of the Primary Market rather than the Consolidated Last Sale, the Pillar system would need to ingest and process less data, thereby improving efficiency and performance of the system. The Exchange believes this proposed difference would not compromise the price protection feature of the proposed Arbitrage Checks. Second, current Rule 6.61–O(a)(2)(A) and (C) specifies which price would be used for Market Maker bids made before the underlying security is open or during a trading halt, pause, or suspension of the underlying security. Because on Pillar the proposed Arbitrage Checks for calls (for orders and quotes) would be applied only once a series has opened or reopened for trading, the Exchange no longer needs to specify prices other than the last sale on the Primary Market for purposes of calculating the Arbitrage Check for calls. The Exchange proposes to reflect this difference from currently functionality in Rule 6.41P–O(b)(2).

Proposed Rule 6.41P–O(c) would set forth the ''Intrinsic Value Checks'' for orders or quotes to sell, which are designed to protect sellers of calls and puts from presumptively erroneous executions based on the ''Intrinsic Value'' of an option.

• Proposed Rule 6.41P–O(c)(1)–(2) would set forth how the Intrinsic Value of an option would be determined. Proposed Rule 6.41P–O(c)(1) would provide that the Intrinsic Value for a put option is equal to the strike price minus the last sale price of the underlying security on the Primary Market. Proposed Rule 6.41P–O(c)(2) would provide that the Intrinsic Value for a call option is equal to the last sale price of the underlying security on the Primary Market minus the strike price. Proposed Rule 6.41P–O(c)(1)–(2) is based on how the intrinsic value is calculated in current Rule 6.60–O(c)(2) for orders, with two differences. First, the proposed ''Intrinsic Value Checks'' would also apply to quotes, which would be new on Pillar and would provide Market Makers with additional protection for quotes to sell. Second, the Intrinsic Value of an option would be based on the last sale on the Primary Market rather than on the Consolidated Last Sale for the same reasons discussed above, that it would enhance performance without compromising the price protection feature of the Intrinsic Value Checks.

• Proposed Rule 6.41P–O(c)(3) would provide that ISOs to sell would not be subject to the Intrinsic Value Check, which carve out is substantively identical to current Rule 6.60–O(c)(2).

• Proposed Rule 6.41P–O(c)(4) would describe the application of the Intrinsic Value Checks to puts and calls to sell.

○ Proposed Rule 6.41P–O(c)(4)(A) would provide that orders or quotes to sell for both puts and calls would be rejected or canceled (if resting) if the price of the order or quote is equal to or lower than its Intrinsic Value, minus a specified threshold to be determined

[149] Per proposed Rule 1.1., the term ''Primary Market'' with respect to options traded on the Exchange means the principal market in which the underlying security is traded. The Exchange also notes a difference in that the proposed Rule refers to a ''specified threshold,'' whereas current Rule 6.60–O(c)(1)(B) refers to a ''specified dollar amount,'' which difference is designed to give the Exchange more flexibility in applying the Arbitrage Check to use a percentage-based threshold.

by the Exchange and announced by Trader Update.

○ Proposed Rule 6.41P–O(c)(4)(B) would provide that the Exchange-determined threshold percentage (per paragraph (c)(4)(A)) would be based on the NBB, provided that, immediately following an Auction, it would be based on the Auction Price, or, if none, the lower Auction Collar price, or, if none, the NBB.[150] This proposed threshold percentage is similar to how the Reference Price would be determined for Trading Collars, as described above pursuant to proposed Rule 6.64P–O(a)(4). As further proposed, Rule 6.41P–O(c)(4)(B) would provide that for purposes of determining the Intrinsic Value, the Exchange would not use an adjusted NBBO. The Exchange further proposes that the Intrinsic Value Check for sell orders and quotes would not be applied if the Intrinsic Value cannot be calculated.

Proposed Rule 6.41P–O(c)(4)(A)–(B) is substantially similar to current Rule 6.60–O(a)(2)(A), which describes the application of the Intrinsic Value check for orders, with the following differences:

- The proposed rule would extend this price protection to quotes, providing Market Makers with additional protection mechanisms;
- The proposed rule would provide additional detail regarding how the specified threshold percentage would be determined immediately following an Auction;
- The proposed rule would establish that an unadjusted NBBO would not be used to calculate the Intrinsic Value; and
- The proposed rule includes text providing that if the Intrinsic Value cannot be calculated, the Check would not be applied.

The Exchange believes that these additions would both add granularity to the rule and enhance the functionality for calculating and applying the Intrinsic Value. For the same reasons described above in connection with Limit Order Price Protection and Trading Collars, the Exchange believes that using an unadjusted NBBO would serve price protection purposes by using a more conservative view of the NBBO.

Proposed Rule 6.41P–O(d) would provide the Automated Breach Action to be applied when a Market Maker's order or quote fails one of the Price Reasonability Checks. As proposed, if a Market Maker's order or quote message is rejected or cancelled (if resting) pursuant to proposed paragraph (b) (Arbitrage Checks) or (c) (Intrinsic Value Checks) of proposed Rule 6.41P–O, the Exchange would Cancel and Block orders and quotes in the affected class of options as described in Rule 6.40P–O(c)(2)(C)(iii) (as described above in section ''Proposed Rule 6.40P–O'').

Proposed Rule 6.41P–O(d)(1) would provide that a breach of proposed Rule 6.41P–O(d) would count towards a Market Maker's Global Risk Control limit per Rule 6.40P–O(a)(4) (as described above in section ''Proposed Rule 6.40P–O'').

Proposed Rule 6.41P–O(d)(2) concerns how a Market Maker would be reinstated following an automated breach action. As proposed, the Exchange would not reinstate the Market Maker's ability to enter orders and quotes and related instructions on the Exchange in that class of options (other than instructions to cancel one or more orders/quotes (including Auction-Only Orders and orders designated GTC) in full) without the consent of the Market Maker, which may be provided via automated contact.

Rule 6.41P–O(d) is substantially similar to current Rule 6.61–O(b), except that the proposed rule applies to both the orders and quotes of a Market Maker (not just quotes) and provides the additional functionality that a breach of the Price Reasonability Checks would count towards a Market Maker's Global Risk Control limit under proposed Rule 6.40P–O(c)(3), which functionality would be new under Pillar. The Exchange believes that the proposed new functionality would provide OTP Holders and OTP Firms greater control and flexibility over setting risk tolerance and exposure for both orders and quotes. In connection with proposed Rule 6.41P–O, the Exchange proposes to add the following preamble to Rules 6.60–O and 6.61–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rules 6.60–O and 6.61–O would not be applicable to trading on Pillar.

Proposed Rule 6.64P–O: Auction Process

Current Rule 6.64–O, OX Opening Process, sets forth the opening process currently used on the Exchange's OX system for opening trading in a series each day and reopening trading in a series following a trading halt. Current Rule 6.64–O(a) defines the term ''Trading Auction'' as the process by which trading is initiated in a specified options class that may be employed at the opening of the Exchange each business day or to re-open trading after a trading halt, and that Trading Auctions will be conducted automatically by the OX system. Current Rules 6.64–O (b) and (c) describe the manner for the automated Trading Auctions and provide that, once the primary market for the underlying security disseminates a quote and a trade that is at or within the quote, the OX System then conducts an Auction Process (''current Auction Process'') whereby the OX System determines a single price at which a series may be opened by looking to the price at which the greatest number of contracts can trade at or between the NBBO disseminated by OPRA.[151]

As described in Rule 6.64–O(b)(D), the Exchange will not conduct the current Auction Process to open a series if the bid-ask differential for that series is not within an acceptable range, *i.e.,* is not within the bid-ask differential guidelines established in Rule 6.37–O(b)(4).[152] If a series does not open for trading, market and limit orders entered in advance of the current Auction Process remain in the Consolidated Book and will not be routed, even if another exchange opens that series for trading and such resting orders become Marketable against the ABBO.[153]

The Exchange proposes that new Rule 6.64P–O would set forth the automated process for both opening and reopening trading in a series on the Exchange on Pillar. The Exchange proposes to specify that current Rule 6.64–O would not be applicable to trading on Pillar. With the transition to Pillar, the fundamental process of how an option series would be opened (or reopened) on the Exchange would not materially change because the Exchange would continue to assess whether a series can be opened based on whether the bid-ask differential for a series is within a

[150] *See* discussion *infra,* regarding proposed Rule 6.64P–O(a) and proposed definitions for the terms ''Auction,'' ''Auction Price,'' ''Auction Collar,'' ''pre-open state,'' and ''Trading Halt Auction.''

[151] If the same number of contracts can trade at multiple prices, the opening price is the price at which the greatest number of contracts can trade that is at or nearest to the midpoint of the NBBO disseminated by OPRA; unless one such price is equal to the price of any resting Limit Order(s) in which case the opening price is the same price as the Limit Order(s) with the greatest size and, if the same size, the highest price and if there is a tie between price levels and no Limit Orders exist at either of the prices, the Exchange uses the higher price. *See* Rule 6.64–O(c).

[152] Because Rule 6.64–O(b)(D) cross-references the bid-ask differential requirement of Rule 6.37–O (b)(4), which relates to the obligations of Market Makers in appointed classes, the Exchange will not open a series for trading if the NBBO disseminated by OPRA in a series is not within such bid-ask differentials.

[153] The term ''Marketable'' is defined in proposed Rule 1.1 to mean for a Limit Order, an order that can be immediately executed or routed and Market Orders are always considered marketable.''

specified range. However, with the availability of Pillar technology, the Exchange proposes differences to the proposed auction process that are designed to provide additional opportunities for an options series to open or reopen for trading even if the bid-ask differential is wider than the specified guidelines. While this proposed functionality would be new for options trading on the Exchange, it is not novel for an options exchange to provide additional opportunities for a series to open after a specified period of time in a wide market.[154] In addition, the Exchange proposes to specify minimum time periods to allow a Market Maker(s) to quote in an assigned series before the series is opened or reopened. With the proposed Auction Process, described further below, the Exchange endeavors to attract the highest quality quote for each series at the open to attract order flow for the auction. While the Exchange does not require Market Makers assigned to a series to quote before a series can be opened (or reopened), the Exchange believes that providing time for such Market Makers to do so would provide both better and more consistent prices on executions to OTP Holders and OTP Firms in an Auction and a smoother transition to continuous trading. In addition, the Exchange believes that the proposed changes would enhance the opening/reopening process on the Exchange by providing a transparent and deterministic process for the Exchange to open additional series for trading.

Further, the Exchange proposes additional enhancements (and detail them in the rule) that are based on existing Pillar functionality for the Exchange's cash equity platform's electronic auctions relating to how orders and quotes would be processed if they arrive during the period when the Exchange is processing an Auction and how the Exchange would process orders and quotes when it transitions to continuous trading following an Auction. Because the Exchange would be using Pillar terminology, the Exchange proposes to structure proposed Rule 6.64P–O based in part on Rule 7.35–E, which is the Exchange's cash equity rule governing auctions (relating to separate sections describing definitions, order processing during an Auction Processing Period, and transition to continuous trading) and NYSE Rule 7.35, which is NYSE's rule governing auctions (relating to separate sections describing definitions, Auction Ranking, Auction Imbalance Information, order processing during an Auction Processing Period, and transition to continuous trading). In addition, the Exchange proposes to include in Rule 6.64P–O how the Exchange would process orders and quotes during a trading halt, which is structured based in part on Rule 7.18–E(b) and (c), which describe how the Exchange processes new and existing orders during a trading halt on its cash equity market. This text would be new and is designed to provide granularity and transparency in Exchange rules.

*Definitions.* Proposed Rule 6.64P–O(a) would provide that the Rule would be applicable to all series that trade on the Exchange other than Flex Options.[155] Proposed Rule 6.64P–O(a) would set forth the definitions that would be used for purposes of Rule 6–O Options Trading and applicable to trading on Pillar. Certain of the proposed definitions are the same as (or similar to) auction-related definitions used on the Exchange's cash equity platform, per Rule 7.35–E (Auctions), with differences noted herein. To the extent that a definition from Rule 7.35–E is not utilized in proposed Rule 6.64P–O, the Exchange has determined that such definition(s) is either inapplicable to the opening process for options trading or that the relevant, analogous concept(s) is covered elsewhere in the proposed rule.

- Proposed Rule 6.64P–O(a)(1) would define the term ''Auction'' to mean the opening or reopening of a series for trading either with or without a trade. This proposed definition is based in part on current Rule 6.64–O(a), which defines the term ''Trading Auction'' to be a process by which trading is initiated in a specified options class that may be employed at the opening of the Exchange each business day or to re-open trading after a trading halt.[156] On Pillar, the Exchange proposes that the term ''Auction'' would refer to the point in the process where the Exchange determines that a series can be opened or reopened either with or without a trade. After an Auction concludes, the series then transitions to continuous trading.
- Proposed Rule 6.64P–O(a)(1)(A) would provide that a ''Core Open Auction'' means the Auction that opens trading after the beginning of Core Trading Hours and proposed Rule 6.64P–O(a)(1)(B) would provide that a ''Trading Halt Auction'' means the Auction that reopens trading following a trading halt. These are Pillar terms that would be new to options trading and are based on the same terms currently used in Rule 7.35–E(c) and (e) for the same purposes.
- Proposed Rule 6.64P–O(a)(2) would define the term ''Auction Collar'' to mean the price collar thresholds for the Indicative Match Price (defined below) for an Auction. As further proposed, the upper Auction Collar would be the offer of the Legal Width Quote (defined below) and the lower Auction Collar would be the bid of the Legal Width Quote, provided that if the bid of the Legal Width Quote is zero, the lower Auction Collar would be one MPV above zero for the series. The proposed rule would further provide that if there is no Legal Width Quote, the Auction Collars would be published in the Auction Imbalance Information (defined below) as zero.

The proposed terminology of ''Auction Collar'' would be new for options trading and is based on the same term used in Rule 7.35–E(a)(10) for trading cash equity securities. As proposed, the Auction Collars would be set at the Legal Width Quote (described below) and would prevent an Auction trade from occurring at a price outside of the Legal Width Quote. The Exchange believes that the concept of Auction Collars is similar to the current requirement that the Exchange will not open a series if the bid-ask differential is not within the bid-ask differential guidelines established under Rule 6.37–O(b)(4).[157] Thus, the proposed Auction Collars (based on a Legal Width Quote) would use Pillar terminology to prevent an Auction that results in a trade from being priced outside the bid-ask

[154] For example, Cboe recently amended Cboe Rule 5.31 relating to its opening process to provide for a ''forced opening'' process that is used if an option class is unable to open because it does not meet the applicable bid-ask differential. In such case, if the ''Composite Market'' is not crossed and there is no non-zero offer, within a specified time period, Cboe will open the series without a trade. *See* Securities Exchange Act Release No. 90967 (January 22, 2021), 86 FR 7249 (January 28, 2021) (SR–Cboe–2021–005) (Notice of filing and immediate effectiveness of proposed rule change to amend Cboe's opening process for simple orders).

[155] With the transition to Pillar, the Exchange is not making any changes to how Flex Options trade. Rule 5.31–O provides that Flex Options transactions may be effected during normal Exchange options trading hours on any business day and there will be no trading rotations in Flex Options. Rule 5.33–O sets forth the procedures for trading Flex Options. The opening process for Electronic Complex Orders is set forth in Rule 6.91–O.

[156] *See also* Rule 6.64–O(d) (providing that a Trading Auction to reopen an option class after a trading halt is conducted in the same manner as a Trading Auction to open each option class at the start of each trading day, *i.e.,* as described in Rule 6.64–O(a)–(c)).

[157] *See* Rule 6.64–O(b)(D) and (E). The Exchange notes that in common parlance bid-ask differentials are known as ''legal-width quotes.''

differential applicable to Auctions on Pillar.[158]

Proposed Rule 6.64P–O(a)(3) would define the term ''Auction Imbalance Information'' to mean the information that the Exchange disseminates about an Auction via its proprietary data feeds and includes the Auction Collars, Auction Indicator, Book Clearing Price, Far Clearing Price, Indicative Match Price, Matched Volume, Market Imbalance, and Total Imbalance.[159] With Pillar, the Exchange proposes to disseminate Auction Imbalance Information for its options market in the same manner that such information is disseminated for its cash equity market. The Exchange currently makes certain auction imbalance information available on its proprietary data feed and the Exchange believes that enhancing this information by disseminating the proposed Auction Collars, Auction Indicator, Book Clearing Price, and Far Clearing Price, which would be new for options trading on Pillar, would promote transparency. Accordingly, this proposed definition would be new and is based on the same term used in Rule 7.35–E(a)(4), with differences to reflect the options-specific content that would be included in Auction Imbalance Information for options trading. In addition, the Exchange proposes that the Auction Imbalance Information would reflect the orders and quotes eligible to participate in an Auction, which contribute to price discovery. As such, proposed Rule 6.64P–O(a)(3) would further provide that Auction Imbalance Information would be based on all orders and quotes (including the non-displayed quantity of Reserve Orders) eligible to participate in an Auction, excluding IO Orders.[160] The Exchange believes that specifying that non-displayed quantity of Reserve Orders would be included in the Auction Imbalance Information is consistent with current functionality that the full quantity of Reserve Orders are eligible to participate in the current Auction Process.

Proposed Rule 6.64P–O(a)(3)(A) would define the term ''Auction Indicator'' to mean the indicator that provides a status update of whether an Auction cannot be conducted because either (i) there is no Legal Width Quote, or (ii) a Market Maker quote has not been received during the parameters of the Opening MMQ Timer(s) (defined below). The Exchange currently disseminates an Auction Indicator on its cash equity market and proposes similar functionality for options trading on the Exchange.[161] This proposed definition would be new for options trading and uses Pillar terminology based on Rule 7.35–E(a)(13) and would provide transparency of when an Auction could not be conducted.[162] While the Exchange's cash equity rule is written from the standpoint of when an auction *can* be conducted, the proposed rule is written from the standpoint of when an auction *cannot* be conducted. The Exchange believes this difference is appropriate because, for options trading, the proposed Auction (and its Auction Indicator) are impacted by the absence of necessary information (*i.e.,* a Legal Width Quote or a Market Maker quote), rather than an auction in the cash equity market, where the determining factor of whether to conduct an auction is the quality (not the presence of) of information (*i.e.,* the Imbalance).

Proposed Rule 6.64P–O(a)(3)(B) would define the term ''Book Clearing Price'' to mean the price at which all contracts could be traded in an Auction if not subject to the Auction Collar and states that the Book Clearing Price would be zero if a sell (buy) Imbalance cannot be filled by any buy (sell) interest. The Exchange proposes that the manner that the Book Clearing Price would be calculated for options trading would be the same as how it is calculated for cash equity trading. Accordingly, this proposed definition and functionality would be new for options trading and is based on the definition of ''Book Clearing Price'' set forth in Rule 7.35–E(a)(11), with differences to reflect options trading terminology (*i.e.,* reference contracts instead of buy (sell) orders).

Proposed Rule 6.64P–O(a)(3)(C) would define the term ''Far Clearing Price'' to mean the price at which Auction-Only Orders could be traded in an Auction within the Auction Collar. The Exchange proposes that the manner that the Far Clearing Price would be calculated for options trading would be the same as how it is calculated for cash equity trading. Accordingly, this proposed definition and functionality would be new for options trading and is based on the definition of ''Far Clearing Price'' set forth in Rule 7.35–E(a)(12).

Proposed Rule 6.64P–O(a)(3)(D) would define the term ''Imbalance'' to mean the number of buy (sell) contracts that cannot be matched with sell (buy) contracts at the Indicative Match Price at any given time. The Exchange proposes that the manner that the Imbalance would be calculated for options trading would be the same as how it is calculated for cash equity trading, which is consistent with current functionality that calculates the imbalance based on all interest eligible to participate in an auction. Accordingly, this proposed definition would be new rule text for options trading and is based on the definition of ''Imbalance'' set forth in Rule 7.35–E(a)(7), except that, unlike for cash equities, the proposed definition would not reference the non-displayed quantity of Reserve Orders. As discussed above, the Exchange believes that providing an overarching description of how the non-displayed quantity of Reserve Orders would be included in Auction Imbalance Information is more appropriately included in the proposed (more expansive) definition of Auction Imbalance Information (per proposed Rule 6.64P–O(a)(3)) to reflect the Auction-eligible interest that contribute to price discovery.[163] In addition, the proposed rule differs from Rule 7.35–E(a)(7) to reflect options trading terminology (*i.e.,* contracts instead of shares).

Proposed Rule 6.64P–O(a)(3)(D)(i) would define the term ''Total Imbalance'' to mean the Imbalance of all buy (sell) contracts at the Indicative Match Price for all orders and quotes eligible to trade in an Auction. The Exchange proposes that the manner that the Total Imbalance would be calculated for options trading would be the same as how it is calculated for cash equity trading and is consistent with current functionality. Accordingly, this proposed definition would be new and is based on the definition of ''Total Imbalance'' set forth in Rule 7.35–E(a)(7)(A), except that the proposed definition does not include the

[158] *See also* Cboe Rule 5.31(a) (defining the ''Opening Collar'' as the price range that establishes limits at or inside of which Cboe determines the opening trade price for a series).

[159] On the Exchange's cash equity market, Auctions have an ''Auction Imbalance Freeze,'' which is a period in advance of the scheduled Auction. The Exchange does not currently provide for an analogous period to open or reopen options trading and does not propose to include such a period for options trading on Pillar. Accordingly, the Exchange does not propose terms based on ''Auction Imbalance Freeze,'' as described in Rule 7.35–E(a)(3), for options trading on Pillar.

[160] This is consistent with the order information included in Auction Imbalance Information for cash equity trading. *See* Rule 7.35–E(a)(7) and 7.35–E(a)(8). The Exchange proposes to exclude IO Orders because they are conditional offsetting orders that would not contribute to price discovery in the Auction Process.

[161] *See* Rule 7.35–E(a)(13).

[162] Consistent with the proposed rule, Rule 6.64–O(b)(D) provides that the Exchange will not conduct the current Auction Process if the bid-ask differential for a series is not within an acceptable range.

[163] *See supra* note 150 (regarding consistency of proposed Rule 6.64P–O(a)(3) regarding Auction Imbalance Information with Rule 7.35–E(a)(7) and 7.35–E(a)(8)).

superfluous modifier ''net'' in reference to Total Imbalance and includes options trading terminology (*i.e.,* contracts instead of shares).

Proposed Rule 6.64P–O(a)(3)(D)(ii) would define the term ''Market Imbalance'' to mean the Imbalance of any remaining buy (sell) Market Orders and MOO Orders that are not matched for trading in the Auction. The Exchange proposes that the manner that the Market Imbalance would be calculated for options trading would be the same as how it is calculated for cash equity trading, which differs from current options functionality.[164] Accordingly, this proposed definition and functionality would be new and is based on the definition of ''Market Imbalance'' set forth in Rule 7.35–E(a)(7)(B), with a difference to add reference to MOO Orders (as defined in proposed Rule 6.62P–O(c)(2)).[165]

• Proposed Rule 6.64P–O(a)(4) would define the term ''Auction Price'' to mean the price at which an Auction that results in a trade is conducted. The Exchange proposes that this term would have the same meaning as the same term as used on NYSE, as described in NYSE Rule 7.35(a)(6), with a difference to add the phrase ''that results in a trade'' to be clear that an Auction Price is for an Auction that results in a trade. This would be a new term for options trading and is designed to add clarity and transparency to Exchange rules as this term would be used as a reference price in proposed Rules 6.62P–O(a)(3)(B) and 6.41P–O(c)(4)(B).[166]

• Proposed Rule 6.64P–O(a)(5) would define the term ''Auction Process'' to mean the process that begins when the Exchange receives an Auction Trigger (defined below) for a series and ends when the Auction is conducted. This would be a new term for options trading and is designed to add clarity and transparency to Exchange rules and address all steps in the process that culminates in an Auction, as described in proposed Rule 6.64P–O(d).

• Proposed Rule 6.64P–O(a)(6) would define the term ''Auction Processing Period'' to mean the period during which the Auction is being processed. The Exchange proposes that this new term would have the same meaning as the same term on its cash equity market. The Auction Processing Period is at the end of the Auction Process and is the period when the actual Auction is conducted and the Exchange transitions from a pre-open state (described below) to continuous trading. The end of the Auction Processing Period is the end of the Auction and, depending on the orders and quotes in the Consolidated Book, it concludes either with or without a trade. Accordingly, this proposed definition is substantively identical to the definition of ''Auction Processing Period'' set forth in Rule 7.35–E(a)(2).

• Proposed Rule 6.64P–O(a)(7) would define the term ''Auction Trigger'' to mean the information disseminated by the Primary Market in the underlying security that triggers the Auction Process for a series to begin. For a Core Open Auction, the proposed Auction Trigger would be when the Primary Market first disseminates at or after 9:30 a.m. Eastern Time both a two-sided quote and a trade of any size that is at or within the quote per proposed Rule 6.64P–O(a)(7)(A). For a Trading Halt Auction, the proposed Auction Trigger would be when the Primary Market disseminates at the end of a trading halt or pause a resume message, a two-sided quote, and a trade of any size that is at or within the quote, per proposed Rule 6.64P–O(a)(7)(B). This proposed term is new and is not used on the cash equity platform. This proposed functionality, however, is not new and is based on how the Exchange currently opens or reopens a series for trading, as set forth in the last sentence of current Rule 6.64–O(b).[167] The proposed rule adds detail not found in the current rule by referring to a ''two-sided quote'' rather than a ''quote,'' without any changes to functionality. The Exchange also proposes a difference that an opening trade on the Primary Market may be ''of any size,'' which would make clear that an odd-lot transaction on the Primary Market could be used as an Auction Trigger, which would be new on Pillar. The Exchange believes that because it requires both a quote and a trade from the Primary Market before it can open/reopen trading in the overlying option, and because a Primary Market that has disseminated a quote for an underlying security is open for trading, allowing odd-lot sized trades to be included in the trigger would increase the opportunities to open/reopen trading options that overlay low-volume securities that have opened for trading on the Primary Market and would reduce the circumstances needed to manually trigger an Auction for a series.

• Proposed Rule 6.64P–O(a)(8) would define the term ''Calculated NBBO'' to mean the highest bid and lowest offer among all Market Maker quotes and the ABBO during the Auction Process. The Exchange proposes to use the term ''Calculated NBBO'' to specify which bids and offers the Exchange would consider for purposes of determining whether to proceed with an Auction on Pillar, as described in greater detail below. The Exchange believes the proposed term provides more clarity than referencing an ''NBBO disseminated by OPRA'' and is consistent with the proposed definition of ABBO, which by its terms is disseminated by OPRA.[168]

• Proposed Rule 6.64P–O(a)(9) would define the term ''Indicative Match Price'' to mean the price at which the maximum number of contracts can be traded in an Auction, including the non-displayed quantity of Reserve Orders, and excluding IO Orders, subject to the Auction Collars. This functionality is consistent with the current process for establishing a single opening price, as described in Rule 6.64–O(b)(A), but the proposed rule adds more granularity and uses Pillar terminology.[169] In addition, the term ''Indicative Match Price'' refers to the same functionality as the OX system's reference to the term ''reference price'' in its imbalance information. This proposed definition is based on the Pillar definition of ''Indicative Match Price'' set forth in Rule 7.35–E(a)(8), with differences to refer solely to ''price'' as opposed to ''best price'' because proposed Rule 6.64P–O(a)(9)(A), described below, would provide specificity of how such price would be determined, and to reflect options trading terminology (*i.e.,* contracts instead of shares). Proposed Rule 6.64P–O(a)(9) would further

[164] On the OX system, the market imbalance is the difference between quantities of buy and sell market orders.

[165] Rule 7.35–E(a)(7)(B) does not separately reference MOO Orders because Rule 7.35–E(a) provides that, unless otherwise specified, the term ''Market Orders'' in Rule 7.35–E includes MOO Orders (for the Core Open Auction and Trading Halt Auction). The Exchange proposes that for options trading, the terms Market Order and MOO Order both be referenced in proposed Rule 6.64P–O.

[166] *See also* Cboe Rule 5.31(a) (defining the ''Opening Trade Price'' as the price at which Cboe executes opening trades in a series). The Exchange notes that the term ''Auction Price'' is distinguished from the proposed term of ''Indicative Match Price,'' as the latter term is the content included in the Auction Imbalance Information in advance of an Auction, and the Auction Price is the price of an Auction that results in a trade.

[167] Rule 6.64–O(b) provides, in relevant part, that the related option series will be opened automatically ''once the primary market for the underlying security disseminates a quote and a trade that is at or within the quote.''

[168] The Exchange notes that the information used to calculate the proposed Calculated NBBO is consistent with the information that the Exchange receives from OPRA in advance of the Exchange opening or reopening trading (*i.e.,* Market Maker rotational quotes from the Exchange and ABBO) and is similar to Cboe's definition of ''Composite Market,'' as described in Cboe Rule 5.31(a), which includes Cboe Market Maker quotes and BBOs of other options exchanges.

[169] *See* Rule 6.64–O(b)(A), (c) (describing process for determining single opening price).

provide that if there is no Legal Width Quote, the Indicative Match Price included in the Auction Imbalance Information would be calculated without Auction Collars. This would be a new feature applicable only to options trading and an Indicative Match Price without Auction Collars would be accompanied with an Auction Indicator that the Auction cannot be conducted because there is no Legal Width Quote.[170]

Proposed Rule 6.64P–O(a)(9)(A) would provide that if there is more than one price level at which the maximum number of contracts can be traded within the Auction Collars, the Indicative Match Price would be the price closest to the midpoint of the Legal Width Quote, rounded to the nearest MPV for the series, provided that the Indicative Match Price would not be lower (higher) than the highest (lowest) price of a Limit Order to buy (sell) ranked Priority 2—Display Orders that is eligible to participate in the Auction. This functionality is similar to the current process for establishing a single opening price, as described in Rule 6.64–O(c), which provides that when the same number of contracts can trade at multiple prices, the opening price is the price at which the greatest number of contracts can trade that is at or nearest to the midpoint of the NBBO disseminated by OPRA. The proposed rule text uses Pillar terminology based on Rule 7.35–E(a)(8)(A) and adds more granularity, such as describing that the Exchange would round to the nearest MPV in the series, which is consistent with current functionality. The Exchange also proposes a difference compared to the cash equity rules to reflect that when there is more than one price level at which the maximum number of contracts can trade, the Indicative Match Price for options trading would be the price closest to the midpoint of the Legal Width Quote rather than (for cash equities) the price closest to an auction reference price. The Exchange believes that reference to the term Legal Width Quote reflects the proposed use of this term in the Auction Process rather than referring to the NBBO disseminated by OPRA.

Proposed Rule 6.64P–O(a)(9)(B) would provide that an Indicative Match Price that is higher (lower) than the upper (lower) Auction Collar would be adjusted to the upper (lower) Auction Collar and orders eligible to participate in the Auction would trade at the collared Indicative Match Price. Proposed Rule 6.64P–O(a)(9)(B)(i) would provide that Limit Orders to buy (sell) with a limit price above (below) the upper (lower) Auction Collar would be included in the Auction Imbalance Information at the collared Indicative Match Price and would be eligible to trade at the Indicative Match Price. This proposed rule text provides granularity that, consistent with current functionality, orders willing to buy (sell) at a higher (lower) price than the Auction Price would participate in an Auction trade, which, by definition, would be required to be at or between the Auction Collars. Proposed Rule 6.64P–O(a)(9)(B)(ii) would provide that Limit Orders and quotes to buy (sell) with a limit price below (above) the lower (upper) Auction Collar would not be included in the Auction Imbalance Information and would not participate in an Auction. The Exchange proposes that the manner that orders and quotes priced outside of the Auction Collar would be included (or not) in the Indicative Match Price would be the same as how it is determined for cash equity trading. Accordingly, this proposed rule text is new for options trading (but the functionality is consistent with current functionality) and uses Pillar terminology based on Rules 7.35–E(a)(10)(A), (B), and (C) that is designed to add granularity to the proposed rule, and with a difference to reflect when the proposed rule would be applicable to quotes.

Proposed Rule 6.64P–O(a)(9)(C) would provide that if the Matched Volume (defined below) for an Auction consists of only buy and sell Market Orders, the Indicative Match Price would be the midpoint of the Legal Width Quote, rounded to the MPV for the series, or, if, the Legal Width Quote is locked, then the locked price. This proposed rule text is new and uses Pillar terminology based on Rule 7.35–E(a)(8)(C), with differences to reflect that options trading on Pillar would be based on a Legal Width Quote (as defined herein) to determine the Indicative Match Price when there are only Market Orders eligible to trade in an Auction. This proposed rule is designed to provide granularity of how the Indicative Match Price would be calculated if there are only Market Orders.

Proposed Rule 6.64P–O(a)(9)(D) would provide that if there is no Matched Volume, including if there are Market Orders on only one side of the Market, the Indicative Match Price and Total Imbalance for the Auction Imbalance Information would be zero. This proposed rule text is new and uses Pillar terminology based on Rule 7.35–E(a)(8)(D) and (E) with differences to reflect that on options, the Indicative Match Price would be zero in both circumstances. This proposed Rule is designed to provide granularity regarding how the Indicative Match Price and Total Imbalance for the Auction Imbalance Information would be calculated if there is no Matched Volume.

- Proposed Rule 6.64P–O(a)(10) would define a ''Legal Width Quote'' as a Calculated NBBO that: (A) May be locked, but not crossed; (B) does not contain a zero offer; and (C) has a spread between the Calculated NBBO for each option contract that does not exceed a maximum differential that is determined by the Exchange on a class by class basis and announced by Trader Update (as discussed further below, provided that a Trading Official may establish differences other than the above for one or more series or classes of options.[171]

Requiring that the Legal Width Quote not be crossed is consistent with current Rule 6.64–O(b)(E), which requires an uncrossed NBBO disseminated by OPRA before a series can be opened (or reopened).[172] The Exchange believes that the additional detail in proposed Rules 6.64P–O(a)(10)(A) and (B) regarding how to determine a Legal Width Quote provides clarity and granularity as to when a Calculated NBBO would be eligible to be considered a Legal Width Quote. In addition, requiring that the Calculated NBBO must not exceed a maximum differential before an Auction can proceed is based on the current OX Opening Process, which requires the bid-ask differential for a series to be in an acceptable range.[173] However, rather than specify maximum bid-ask differentials in proposed Rule 6.64P–O, the Exchange believes it is appropriate to instead retain flexibility to set the

[170] This would be new functionality because currently, if there is no legal width NBBO, the Exchange does not disseminate imbalance information and does not calculate an indicative match price.

[171] *See* Rule 6.37–O(c) (Unusual Conditions—Opening Auction) (providing that ''[i]f the interest of maintaining a fair and orderly market so requires, a Trading Official may declare that unusual market conditions exist in a particular issue and allow Market Makers in that issue to make auction bids and offers with spread differentials of up to two times, or in exceptional circumstances, up to three times, the legal limits permitted under Rule 6.37–O'').

[172] The proposed calculation of a Legal Width Quote is also similar to how Cboe determines whether to perform a ''Forced Opening,'' because Cboe requires a Composite Market that is not crossed with a non-zero offer. *See* Cboe Rule 5.31(e)(4).

[173] *See* Rule 6.64–O(b)(D) (providing that ''[t]he OX System will not conduct an Auction Process if the bid-ask differential for that series is not within an acceptable range,'' which ''acceptable range shall mean within the bid-ask differential guidelines established pursuant to Rule 6.37–O(b)(4)'').

maximum differentials so that the Exchange may consider the different market models and characteristics of different classes, as well as modify amounts in response to then-current market conditions.[174] The proposed Rule would allow the Exchange to modify these bid-ask differentials at any time as it deems necessary and appropriate, which discretion the Exchange has today on the OX system.[175] In addition, allowing the Exchange to announce the maximum differentials by Trader Update (as opposed to by Rule) is consistent with the rules of several options exchanges that are able to change the amounts of valid opening widths by notice or circular and not by rule change.[176]

The Exchange believes that the proposed definition relating to ''Legal Width Quote'' would promote clarity and transparency in Exchange rules regarding which quotes—both Market Maker quotes on the Exchange and the ABBO, *i.e.,* the Calculated NBBO—that the Exchange would use to determine if there is a Legal Width Quote and provide direction that to be a Legal Quote Width, a Calculated NBBO may not exceed a maximum differential.

The Exchange also proposes to make a conforming change to Rule 6.37–O(c) to update the title from ''Unusual Conditions—Opening Auction'' to be ''Unusual Conditions—Auctions,'' which would align with the proposed definition of ''Auctions'' in proposed Rule 6.64P–O(a), which includes both opening and reopening auctions. This proposed change also promotes clarity, consistent with current functionality that Rule 6.37–O(c) is also applicable to reopenings. In addition, the Exchange proposes to amend Rule 6.37–O(c), which authorizes a Trading Official to widen the bid-ask differentials in the event of unusual conditions, to add a cross-reference to extend such authority to proposed Rule 6.64P–O(a)(9) (regarding the Legal Width Quote spreads). This proposed amendment would ensure that the existing procedures for auctions in the event of unusual conditions, as specified in Rule 6.37–O(c), would continue to be available for option symbols that have transitioned to Pillar (and subject to new Rule 6.64P–O(a)(10)).

- Proposed Rule 6.64P–O(a)(11) would define the term ''Matched Volume'' to mean the number of buy and sell contracts that can be matched at the Indicative Match Price, excluding IO Orders. The concept of Matched Volume on Pillar is consistent with the OX system's concept of ''paired quantity'' in its imbalance information. This proposed rule text uses Pillar terminology based on the definition of ''Matched Volume'' set forth in Rule 7.35–E(a)(9), with a non-substantive difference to reference (option) contracts instead of shares and to be clear that the Matched Volume would not include IO Orders. The Exchange believes this proposed definition promotes granularity in Exchange rules.
- Proposed Rule 6.64P–O(a)(12) would define the term ''pre-open state'' to mean the period before a series is opened or reopened for trading and would provide that during the pre-open state, the Exchange would accept Auction-Only Orders, quotes, and orders designated Day or GTC, including orders ranked under the proposed category of ''Priority 3—Non-Display Orders'' that are not eligible to participate in an Auction.[177] This proposed text is consistent with current Rule 6.64–O(b), which provides that the Exchange will accept market and limit orders for inclusion in the opening auction process and would add further granularity regarding which interest would be accepted by the Exchange (even if not eligible for an Auction) prior to the opening or reopening of each option series and during which time period. The proposed rule would further provide that the pre-open state for the Core Open Auction would begin at 6:00 a.m. Eastern Time and would end when the Auction Processing Period begins, which is similar to current functionality, which allows order and quote entry to begin at 5:30 a.m. Eastern Time. The Exchange believes that moving the start time to 6:00 a.m. Eastern Time would not materially impact the ability of OTP Holders to enter orders or quotes during the pre-open state. As further proposed, at the beginning of the pre-open state before the Core Open Auction, orders designated GTC that remain from the prior trading day will be included in the Consolidated Book, which is consistent with current functionality. The proposed rule would also provide that the pre-open state for a Trading Halt Auction would begin at the beginning of the trading halt and would end when the Auction Processing Period begins. This proposed definition of a pre-open state would be new for Pillar and is designed to distinguish the pre-open state (for a Core Open Auction or a Trading Halt Auction) from both the Auction Processing Period and the period when a given series opens for trading, which would add granularity to Exchange rules. As noted above, this proposed definition of pre-open state would also be used in proposed Rules 6.40P–O, 6.41P–O, and 6.62P–O.
- Proposed Rule 6.64P–O(a)(13) would define the term ''Rotational Quote'' to mean the highest Market Maker bid and lowest Market Maker offer on the Exchange when the Auction Process begins and would provide that during the Auction Process, the Exchange would update the price and size of the Rotational Quote and that such Rotational Quote can be locked or crossed. The Exchange further proposes that, if there are no Market Maker quotes, the Rotational Quote would be published with a zero price and size. The Exchange notes that, although not specified in the current rule, it currently disseminates a ''rotational quote'' to OPRA when it is in the process of opening or reopening a series, *i.e.,* a quote that is comprised only of Market Maker quotes and does not include orders. The Exchange proposes a

[174] For example, Cboe recently amended Cboe Rule 5.31 relating to its opening process to amend the definition of ''Maximum Composite Width'' (*i.e.,* the amount that the ''Composite Width'' of a series may generally not be greater than for the series to open), which term is used similarly to how the Exchange proposes to use the term ''Legal Width Quote,'' to delete the specified amounts for the Maximum Composite Width and to instead provide that Cboe may determine such amounts ''on a class and Composite bid basis, which amount [Cboe] may modify during the opening auction process'' and disseminate ''to all subscribers of [Cboe's] data feeds that delivery opening auction updates''). *See* Securities Exchange Act Release No. 90967 (January 22, 2021), 86 FR 7249 (January 28, 2021) (SR–Cboe–2021–005) (Notice of filing and immediate effectiveness of proposed rule change to remove specified spread differentials from Rule 5.31).

[175] *See supra* note 171 (regarding authority conferred on Trading Officials, per Rule 6.37–O(c), to make auction bids and offers with spread differentials of up to two times, or in exceptional circumstances, up to three times, the legal limits, ''[i[f the interest of maintaining a fair and orderly market so requires'').

[176] *See, e.g.,* Cboe Rule 5.31(a) (definition of Maximum Composite Width); Cboe EDGX Options Exchange, Inc. (''EDGX'') Rule 21.7(a) (same); BZX Rule 21.7(a) (same)); Cboe C2 Exchange Inc. (''C2'') Rule 6.11(a) (same); *see also* Nasdaq Options Market (''NOM'') Options 3, Section 8(a)(6) (defining ''Valid Width NBBO'' as ''the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange'' and allowing the Valid Width NBBO to be ''configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website'') and MIAX Rule 503(f)(2) (which permits MIAX to determine by circular an acceptable range in which openings are permissible if there is no valid width national best bid or offer (''NBBO'')).

[177] The Exchange notes that Cboe refers to a similar period as the ''Queuing Period.'' *See* Cboe Rule 5.31(b). Similar to Cboe's Queuing Period, the proposed term of ''pre-open state'' means the period when the Exchange accepts orders and quotes but has not yet opened/reopened a series for continuous trading. The proposed ''Auction Process,'' defined above, is part of the pre-open state, but does not begin until the Exchange receives an Auction Trigger, as defined above.

difference on Pillar because currently, if the Market Maker Quotes are crossed, the Exchange flips the bid and offer prices. In Pillar, the Exchange would publish a Rotational Quote with the actual bid and offer prices, even if crossed, which would provide OTP Firms and OTP Holders with a more accurate view of whether a Rotational Quote is crossed. This proposed definition is new, uses Pillar terminology, and adds granularity to Exchange rules by codifying existing (albeit slightly modified) functionality.

*Auction Ranking.* Proposed Rule 6.64P–O(b) would describe the ranking for Auctions and would provide that orders and quotes on the side of the Imbalance are not guaranteed to participate in the Auction and would be ranked in price-time priority under proposed Rule 6.76P–O, consistent with the priority ranking associated with each order or quote, provided that: (1) Limit Orders, quotes, and LOO Orders would be ranked based on their limit price and not the price at which they would participate in the Auction; (2) MOO Orders would be ranked under the proposed category of ''Priority 1—Market Orders''; (3) LOO Orders would be ranked under the proposed category of ''Priority 2—Display Orders''; and (4) IO Orders would be ranked based on time among IO Orders, subject to eligibility to participate at the Indicative Match Price based on their limit price.[178]

This proposed rule is based in part on current Rule 6.64–O(b)(B), which provides that ''[o]rders and quotes in the system will be matched up with one another based on price-time priority, provided, however, that orders will have priority over Market Maker quotes at the same price.'' The Exchange proposes a difference in Pillar that orders in the same priority category as quotes would not have priority over Market Maker quotes at the same price, which distinction is an artifact of the Exchange's existing system limitation. Instead, the Exchange proposes that orders and Market Maker quotes in the same priority category would be ranked based on time, as proposed in Rule 6.76P–O. This equal ranking of orders and quotes is consistent with how other options markets handle orders and quotes during the opening process.[179] Because the Exchange proposes that orders and quotes in an options Auction would be processed in the same manner as on its cash equity platform, including that orders on the side of the Imbalance would not be guaranteed to participate in an Auction, the proposed rule text in this regard is based in part on Rule 7.35–E(a)(6)(A)—(D), with differences to reflect that options trading includes quotes and to be clear that IO Orders would be ranked based on working time among IO Orders, subject to such orders' eligibility to participate at the Indicative Match Price based on their limit price.[180]

*Auction Imbalance Information.* Proposed Rule 6.64P–O(c) would provide that Auction Imbalance Information would be updated at least every second until the Auction is conducted, unless there is no change to the information and would further provide that the Exchange would begin disseminating Auction Imbalance Information at the following times: (1) Core Open Auction Imbalance Information would begin at 8:00 a.m. Eastern Time; and (2) Trading Halt Auction Imbalance Information would begin at the beginning of the trading halt. Because the Exchange proposes to disseminate Auction Imbalance Information for its options market in the same manner that such information is disseminated for its cash equity market, this proposed rule text, which is new, is based in part on Rule 7.35–E(a)(4)(A) and (C).

*Auction Process.* Proposed Rule 6.64P–O(d) would set forth the Exchange's proposed Auction Process on Pillar. Similar to current OX system functionality, which requires that the bid-ask differential for a given series be within an acceptable range before conducting an auction, under Pillar, a series would not be opened or reopened on a trade if there is no Legal Width Quote, which concept, as described above, incorporates (almost identical) bid-ask differentials.[181] As described further below, the Exchange proposes that for Pillar, a series should (ideally) also have Market Maker quotes and, as such, proposes to provide time for Market Makers assigned to a series to quote within the specified bid-ask differentials, and if Market Makers do not quote within those time frames, determine whether to open or reopen a series based on the ABBO. The Exchange notes that this proposed process is consistent with that used on other options exchanges.[182]

Proposed Rule 6.64P–O(d)(1) describes the process for disseminating the Rotational Quote and would provide that when the Exchange receives the Auction Trigger for a series, the Exchange would send a Rotational Quote to both OPRA and proprietary data feeds indicating that the Exchange is in the process of transitioning from a pre-open state to continuous trading for that series. This proposed rule is consistent with current functionality and is designed to promote granularity.

Proposed Rule 6.64P–O(d)(2) would provide that once a Rotational Quote has been sent, the Exchange would conduct an Auction provided there is both a Legal Width Quote and, if applicable, a Market Maker quote with a non-zero offer in the series (which would be subject to the proposed requirements relating to Market Maker quotes, including the proposed new Opening MMQ Timer(s), as discussed further below per proposed Rule 6.64P–O(d)(3)). The proposed rule would further provide that the Exchange would wait a minimum of two milliseconds after disseminating the Rotational Quote before an Auction could be conducted, which delay would be new and is designed to enhance market quality by promoting price-forming displayed liquidity to the benefit of all market participants. Because the Rotational Quote is intended to provide notice that the Exchange will begin transitioning from a pre-open state, the Exchange believes this short delay will provide market participants with an opportunity to participate in the Auction Process. This proposed rule text is designed to provide transparency and determinism in Exchange rules regarding the earliest potential time that a series could be opened (after the Exchange receives an Auction Trigger), and subject to the

[178] Unlike the Exchange's cash equity rules, the Exchange proposes to describe Auction Ranking in a separate section of proposed Rule 6.64P–O, which is a stylistic choice similar to NYSE Rule 7.35(b), which also separates the concept of Auction Ranking from definitions.

[179] *See* Cboe Rule 5.31(e)(3)(i) (providing that Cboe ''prioritizes orders and quotes in the following order: market orders, limit orders and quotes with prices better than the Opening Trade Price, and orders and quotes at the Opening Trade Price'').

[180] *See* discussion *supra,* regarding proposed Rule 6.62P–O(c)(3) and how IO Orders would function. The Exchange notes that, unlike on the cash equity platform, IO Orders would not be limited to participating solely in Trading Halt Auctions and may likewise participate in Core Open Auctions as well.

[181] *See supra* note 152 (describing Rule 6.64–O(b)(D), which provides that the Exchange will not conduct its current Auction Process if the bid-ask differential for a series is not ''within an acceptable range'').

[182] *See, e.g.,* Nasdaq PHLX (''PHLX'') Section 8(d), Options Opening Process (providing that the Opening Process begins when (a) a ''valid width'' (*i.e.,* a bid/ask differential that is compliant with PHLX Rule 1014(c)(i)(A)(1)(a)) specialist quote is submitted, (b) valid width quotes from at least two PHLX market participants have been submitted within 30 seconds of the opening trade or quote in the underlying security from the primary exchange, or (c) after 30 seconds of the opening trade or quote in the underlying security from the primary exchange, one PHLX market participant has submitted a valid width quote).

series meeting all other requirements for opening or reopening discussed herein.

Subject to the requirements specified in proposed Rule 6.64P–O(d)(2), proposed Rule 6.64P–O(d)(2)(A) would provide that if there is Matched Volume that can trade at or within the Auction Collars, the Auction would result in a trade at the Indicative Match Price. Proposed Rule 6.64P–O(d)(2)(B) would provide that if there is no Matched Volume that can trade at or within the Auction Collars, the Auction would not result in a trade and the Exchange would transition to continuous trading as described in proposed Rule 6.64P–O(f) below. This proposed rule text is new, uses Pillar terminology, and is designed to provide transparency of when an Auction would result in a trade.

Proposed Rule 6.64P–O(d)(3) would specify the parameters of the Opening MMQ Timers, which are designed to encourage (but would not require) Market Makers to submit Legal-Width Quotes in connection with the automated opening or reopening of a series. On the OX system, the Exchange does not impose on Market Makers assigned to a series any special obligations in connection with the opening process. On Pillar, the Exchange will likewise not impose on such Market Makers any additional obligations at the open.[183] The Exchange believes that, rather than layer additional requirements on the Market Making community, it would be more beneficial to all market participants to employ alternative methods to help ensure an orderly transition to continuous trading. As such, the Exchange believes that the proposed so-called ''waterfall'' approach to opening, would offer a number of checks that are intended to provide adequate opportunity for a greater number of Market Makers to provide their liquidity interest and help ensure increased liquidity at a level commensurate with which the market is accustomed during continuous trading on the Exchange. In short, although the Exchange does not require a Market Maker assigned to a series to quote on the Exchange in order to open or reopen a series for trading, the Exchange believes that providing Market Makers assigned to a series the opportunity to do so would promote a fair and orderly Auction process and facilitate a fair and orderly transition to continuous trading.[184] Accordingly, the Exchange proposes a new process for Auctions on Pillar that would provide time for Market Makers assigned to a series to quote within the specified bid-ask differentials before a series would be opened or reopened for trading.

Overall, the Exchange believes that the proposed waterfall approach of setting minimum time periods for a Market Maker assigned to a series to quote within the specified bid-ask differential before opening a series, even if there is a Legal Width Quote, would appropriately balance the benefits of increasing the opportunities for Market Makers assigned to a series to enter quotations within the specified bid-ask differential, with a timely series opening or reopening when there is a Legal Width Quote even when it does not include Market Makers assigned to the series.

In addition, the Exchange proposes to expand opportunities for its designated liquidity providers—*i.e.,* Market Makers—to enter the market. As described in more detail below, the Exchange proposes different time lengths depending on the number of Market Makers assigned to a series. For example, if there are no Market Makers assigned to a series, there is no need to wait to open or reopen a series if there is a Legal Width Quote based upon the disseminated ABBO. If there is one Market Maker assigned to the series, the Exchange will delay opening (even if there is a Legal Width Quote based upon the ABBO) to give the Market Maker additional opportunity to provide liquidity. Furthermore, if there is more than one Market Maker assigned to a series, the Exchange designates longer periods to provide time for multiple Market Makers assigned to the series the chance to quote within the specified bid-ask differentials. The Exchange believes that providing additional opportunity for its liquidity providers to enter the market would result in deeper liquidity—which market participants have come to expect in options with multiple assigned Market Makers, and a more stable trading environment.

The Exchange does not believe that the proposed waterfall approach would result in an undue burden on competition. Market Makers are encouraged but not required to quote in their assigned series at the open, thus they are not subject to additional obligations. The Exchange believes that encouraging, rather than requiring, participation of such Market Makers at the open, may increase the availability of Legal Width Quotes in more series, thereby allowing more series to open. Improving the validity of the opening price benefits all market participants and also benefits the reputation of the Exchange as being a venue that provides accurate price discovery.

As part of the Auction Process the Exchange proposes to utilize ''Opening MMQ Timers,'' which will be 30 seconds unless otherwise specified by Trader Update. As proposed, once the Auction Process begins, the Exchange would begin one or more Opening MMQ Timer for the Market Maker(s) assigned to a series to (opt to) submit a quote with a non-zero offer.[185] The Opening MMQ Timers are designed to provide transparency in Exchange rules of the circumstances of when the Exchange would wait to open or reopen a series for trading if the assigned Market Maker(s) has not submitted a quote within the specified time periods, as follows:

- Proposed Rule 6.64P–O(d)(3)(A) would provide that if there are no Market Makers assigned to a series, the Exchange would conduct an Auction in that series based solely on a Legal Width Quote, without waiting for the Opening MMQ Timer to end. As set forth in proposed Rule 6.64P–O(d)(2)(A) and (B), if there is Matched Volume, this Auction would result in a trade, otherwise, the series would transition to continuous trading as described in proposed Rule 6.64P–O(f) below.
- Proposed Rule 6.64P–O(d)(3)(B) would provide that if there is only one Market Maker assigned to a series:
  - The Exchange would conduct the Auction, without waiting for the Opening MMQ Timer to end, as soon as there is both a Legal Width Quote and the assigned Market Maker has submitted a quote with a non-zero offer (proposed Rule 6.64P–O(d)(3)(B)(i)). As set forth in proposed Rule 6.64P–O(d)(2)(A) and (B), if there is Matched Volume, this Auction would result in a trade, otherwise, the series would transition to continuous trading as described in proposed Rule 6.64P–O(f) below.
  - If the Market Maker assigned to the series has not submitted a quote with a non-zero offer by the end of the Opening

[183] Although the Exchange does not require that Market Makers assigned to a series quote at the open, once a series is opened for trading, Market Makers are nonetheless required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

[184] Currently, neither Market Makers nor LMMs are obligated to provide a quote before a series is opened or reopened, which is why the proposed Pillar options Auction rule is designed to provide Market Makers with time to submit their quotes so a series can be opened.

[185] A Market Maker may send quotations only in the issues included in its appointment, *i.e.,* in series to which such Market Maker is assigned. See proposed Rule 6.37AP–O(a). *See also* proposed Rule 6.37AP–O(b) and (c) (setting forth continuous quoting obligations of LMMs and Market Makers, respectively, which obligations are identical to those set forth in Rule 6.37A–O(b) and (c)).

MMQ Timer and there is a Legal Width Quote, the Exchange would conduct the Auction (proposed Rule 6.64P–O(d)(3)(B)(ii)). As set forth in proposed Rule 6.64P–O(d)(2)(A) and (B), if there is Matched Volume, this Auction would result in a trade, otherwise, the series would transition to continuous trading as described in proposed Rule 6.64P–O(f) below.

• Proposed Rule 6.64P–O(d)(3)(C) would provide that if there are two or more Market Makers assigned to a series:

○ The Exchange would conduct the Auction, without waiting for the Opening MMQ Timer to end, as soon as there is both a Legal Width Quote and at least two assigned Market Makers have submitted a quote with a non-zero offer (proposed Rule 6.64P–O(d)(3)(C)(i)). As set forth in proposed Rule 6.64P–O(d)(2)(A) and (B), if there is Matched Volume, this Auction would result in a trade, otherwise, the series would transition to continuous trading as described in proposed Rule 6.64P–O(f) below.

○ If at least two Market Makers assigned to a series have not submitted a quote with a non-zero offer by the end of the Opening MMQ Timer, the Exchange would begin a second Opening MMQ Timer (of the same length) and during the second Opening MMQ Timer, the Exchange would conduct the Auction, if there is both a Legal Width Quote and at least one Market Maker assigned to the series has submitted a quote with a non-zero offer (proposed Rule 6.64P–O(d)(3)(C)(ii)). In such case, the Exchange would not wait for the second Opening MMQ Timer to end. Because the Exchange does not require a Market Maker assigned to a series to quote before conducting an Auction, to reduce the potential delay in opening or reopening a series, the Exchange believes that during the second Opening MMQ Timer, it is appropriate to wait for only one Market Maker, instead of two, to quote. As set forth in proposed Rule 6.64P–O(d)(2)(A) and (B), if there is Matched Volume, this Auction would result in a trade, otherwise, the series would transition to continuous trading as described in proposed Rule 6.64P–O(f) below.

○ If no Market Maker assigned to a series has submitted a quote with a non-zero offer by the end of the second Opening MMQ Timer and there is a Legal Width Quote, the Exchange would conduct the Auction (proposed Rule 6.64P–O(d)(3)(C)(iii). As set forth in proposed Rule 6.64P–O(d)(2)(A) and (B), if there is Matched Volume, this Auction would result in a trade, otherwise, the series would transition to continuous trading as described in proposed Rule 6.64P–O(f) below.

As noted above, the proposed Auction Process is designed to attract the highest quality quote for each series at the open to attract order flow from any resting interest best quality quotes at the open of each series. As such, the Exchange believes it is reasonable to require more than one Opening MMQ Timer (with a maximum run time of one minute—30 seconds × 2) to run when there are at least two Market Markers because it allows the Exchange time to attract the best quote from these market participants, which in turn should attract order flow to the Exchange at the open (*i.e.,* the Exchange can leverage the highest bid and lowest offer from the various Marker Makers that submit quotes). The Exchange believes that if a Legal Width Quote is not obtained in the first 30-second Opening MMQ Timer, it is to the benefit of all market participants to begin a second Opening MMQ Timer to allow the bid-ask differential to tighten before a series is opened.

Proposed Rule 6.64P–O(d)(4) would provide that, unless otherwise specified by Trader Update, that for the first ninety seconds of the Auction Process (inclusive of the 30-second Opening MMQ Timer(s)), if there is no Legal Width Quote, the Exchange would not conduct an Auction, even if there is Matched Volume, *i.e.,* the series would not transition to continuous trading. This proposed rule text provides transparency that, in the absence of a Legal Width Quote, the Exchange would not conduct an Auction that results in a trade even if there is Matched Volume. In such case, because there is Matched Volume, the Exchange could not open that series and would wait for a Legal Width Quote before conducting the Auction. Consistent with proposed Rule 6.64P–O(d)(3)(A), if at any time during this ninety-second period there is a Legal Width Quote, the Exchange would proceed immediately with an Auction and would not wait for the ninety-second period to end (subject to any applicable Opening MMQ Timer(s)). In other words, if there is a Legal Width Quote available 20 seconds after the Auction Trigger (for example), the requirements specified in proposed Rule 6.64P–O(d)(3) would need to be met before the series could be opened or reopened.

The Exchange proposes new functionality for Pillar to allow the Exchange to open a series without a trade after ninety seconds have elapsed without a Legal Width Quote, *i.e.,* transition to continuous trading as described in proposed Rule 6.64P–O(f), when there is a Calculated NBBO that is wider than the Legal Width Quote. This option to open or reopen a series would not be available if there is Matched Volume. As proposed, ninety seconds after the Auction Process begins:

• Proposed Rule 6.64P–O(d)(4)(A) would provide that if there is no Matched Volume and the Calculated NBBO is wider than the Legal Width Quote, is not crossed, and does not contain a zero offer, the Exchange would transition to continuous trading as described below in paragraph (f) of this Rule (as described below, a trade could occur during the transition to continuous trading, but there would not be a trade resulting from Matched Volume in the Auction). As further proposed, in such case, the Auction would not be intended to end with a trade, but it may result in a trade (even if there is no Legal Width Quote) if orders or quotes arrive when the Exchange is evaluating the status of orders and quotes, but before the Auction Processing Period begins.[186] The Exchange believes this proposed rule would facilitate the opening or reopening of a series so that it can begin continuous trading when there is a Calculated NBBO in a series that is wider than the Legal Width Quote and is not crossed and does not contain a zero offer.[187]

• Proposed Rule 6.64P–O(d)(4)(A)(i) would provide that any time a series is opened or reopened when there is no Legal Width Quote, *i.e.,* the Auction would end without a trade, Market Orders and MOO Orders would not participate in the Auction and would be cancelled before the Exchange transitions to continuous trading, which would protect such orders from trading at unintended prices.

• Proposed Rule 6.64P–O(d)(4)(B) would provide that if the Exchange still cannot conduct an Auction as provided under paragraph (A) (above), the Exchange would continue to evaluate

[186] The Exchange expects this to be a rare race condition that would result when the Exchange receives orders and quotes at virtually the same time that it is evaluating whether it can open a series on a quote based on a wide Calculated NBBO (and before the Auction Processing Period begins) and that, as a result of that race condition, those new orders or quotes are marketable against contra-side interest, *i.e.,* results in Matched Volume for the Auction, at the same time that the Exchange concludes, based on interest that had previously been received, that it can proceed with an Auction in the absence of a Legal Width Quote. In such case, the Auction could result in a trade.

[187] Such opening is similar to Cboe's ''Forced Opening'' process because it allows a series to open without a trade after a specified time period when the market is wider than the specified bid-ask differentials. *See* Cboe Rule 5.31(e)(4).

both the Calculated NBBO and interest on the Consolidated Book until the earlier of: (i) A Legal Width Quote is established and an Auction can be conducted; (ii) the series can be opened as provided for in proposed Rule 6.64P–O(d)(4)(A); (iii) the series is halted; or (iv) the end of Core Trading Hours. The proposed rule provides transparency that the Exchange would continue to look for an opportunity to open or reopen a series based on changes to the Calculated NBBO or orders and quotes on the Consolidated Book.

Proposed Rule 6.64P–O(d)(5) would provide that the Exchange may deviate from the standard manner of the Auction Process, including adjusting the timing of the Auction Process in any option series or opening or reopening a series when there is no Legal Width Quote, when it believes it is necessary in the interests of a fair and orderly market. This proposed rule is based on Rule 6.64–O(b)(F) and, consistent with current functionality, is designed to provide the Exchange with flexibility to open a series even if there is no Legal Width Quote.[188] For example, a Floor Broker may have a two-sided open outcry order. If the series is not opened, that trade could not be consummated. Accordingly, this proposed rule would allow the Exchange to open a series for trading to facilitate open outcry trading.

*Order Processing during an Auction Processing Period.* As described above, the Auction Processing Period is the abbreviated time period (*i.e.,* generally measured in less than a second) when the Exchange conducts the Auction and therefore transitions a series from a pre-open state to continuous trading. For example, if there is a Legal Width Quote, Market Maker quotes, and Matched Volume, the Auction Processing Period is when that Matched Volume will trade at the Indicative Match Price. New orders and quotes received during the Auction Processing Period would not be eligible to participate in that Auction trade. Because the Exchange would be using the same Pillar auction functionality for options trading that is used for its cash equity market, the Exchange proposes that proposed Rule 6.64P–O(e) would be based on Rule 7.35–E(g) and sub-paragraphs (1) and (2), with differences only to reference quotes in addition to orders. The proposed rule promotes granularity and transparency of how orders and quotes that arrive during the Auction Processing Period would be processed.

Accordingly, as proposed, new order and quote messages received during the Auction Processing Period would be accepted but would not be processed until after such Auction Processing Period. As with Rule 7.35–E(g), for purposes of proposed Rule 6.64P–O(e) and (f), an ''order instruction'' would likewise refer to a request to cancel, cancel and replace, or modify an order or quote.

As further proposed, during the Auction Processing Period, order instructions would be processed as follows:

- An order instruction that arrives during the Auction Processing Period would not be processed until after the Auction Processing Period if it relates to an order or quote that was received before the Auction Processing Period. Any subsequent order instructions relating to such order would be rejected (proposed Rule 6.64P–O(e)(1)).
- An order instruction that arrives during the Auction Processing Period would be processed on arrival if it relates to an order that was received during the Auction Processing Period (proposed Rule 6.64P–O(e)(2)).

*Transition to Continuous Trading.* After the Auction Processing Period concludes, *i.e.,* once the Auction concludes either with or without a trade, the Exchange transitions to continuous trading. During this transition, the way in which orders, quotes, and order instructions are processed would differ depending on when such messages arrived at the Exchange. Proposed Rule 6.64P–O(f) would describe how the Exchange would transition to continuous trading after the Auction Processing Period concludes, which would detail new functionality for options trading under Pillar, and is based on how the Exchange transitions to continuous trading on its cash equity market following an Auction, as described in Rule 7.35–E(h). The Exchange believes that the proposed rule provides granularity regarding how orders and quotes would be processed in connection with the transition to continuous trading for options trading.[189] As proposed, the transition to continuous trading would proceed as follows.

Proposed Rule 6.64P–O(f)(1) would provide that orders that are no longer eligible to trade would be cancelled. This proposed rule text is based on Pillar terminology used in Rule 7.35–E(h)(1). For options trading, the only orders that would no longer be eligible to trade after the Auction Processing Period concludes would be Auction-Only Orders and such orders would cancel (rather than ''expire'').

Proposed Rule 6.64P–O(f)(2) would provide that order instructions would be processed as follows:

- An order instruction that relates to an order or quote that was received before the Auction Processing Period or that has already transitioned to continuous trading and that arrives during either the transition to continuous trading or the Auction Processing Period under paragraph (e)(1) of this Rule would be processed in time sequence with the processing of orders and quotes as specified in paragraphs (f)(3)(A) or (B) of this Rule. In addition, any subsequent order instructions relating to such order or quote would be rejected (proposed Rule 6.64P–O(f)(2)(A)). This proposed rule text is based on Rule 7.35–E(h)(2)(A), except that it does not include reference to order instructions received during an Auction Imbalance Freeze, which, as discussed above, is a concept on the cash equity platform that is not applicable to options trading. This proposed rule text provides transparency regarding how order instructions that arrived during the Auction Processing Period would be processed if they relate to orders or quotes that were received before the Auction Processing Period.[190]
- An order instruction that arrives during the transition to continuous trading would be processed on arrival if it relates to an order or quote that was entered during either the Auction Processing Period or the transition to continuous trading and such order or quote has not yet transitioned to continuous trading (proposed Rule 6.64P–O(f)(2)(B)). This proposed rule text is based on Rule 7.35–E(h)(2)(B) without any substantive differences.

Proposed Rule 6.64P–O(f)(3) would set forth how orders and quotes would be processed during the transition to continuous trading following an Auction. The proposed process for transitioning to continuous trading is consistent with current functionality (with differences described below) relating to draining the queue of unexecuted orders and quotes following the current Auction Process. The Exchange believes that the proposed rule provides granularity of this process as compared to the current Rule.

[188] *See* Rule 6.64–O(b)(F) (providing that ''[t]he Exchange may deviate from the standard manner of the Auction Process, including adjusting the timing of the Auction Process in any option class, when it believes it is necessary in the interests of a fair and orderly market'').

[189] *See, e.g.,* Cboe Rule 5.31(f) (describing Cboe's process for orders and quotes not executed in its opening process).

[190] *See id.* (unexecuted orders and quotes will be entered into the Cboe book in time sequence).

Specifically, the Exchange proposes that it would process Auction-eligible orders and quotes that were received before the Auction Processing Period and orders ranked under the proposed category of ''Priority 3—Non-Display Orders'' (which interest was not eligible to participate in an Auction) received before a trading halt as follows:

• Proposed Rule 6.64P–O(f)(3)(A)(i) would provide that Limit Orders and quotes would be subject to the Limit Order Price Check, Arbitrage Check, and Intrinsic Value Check, as applicable. This proposed rule differs from current functionality, whereby risk checks are applied before an Auction. This proposed rule text is consistent with the proposed rule changes, described above, regarding when the Limit Order Price Check, Arbitrage Check, and Intrinsic Value Check (per proposed Rules 6.62P–O(a)(3) and 6.41P–O, respectively) would be applied to orders and quotes that were received during a pre-open state. The Exchange proposes to apply these checks to orders and quotes before they become eligible for trading or routing during continuous trading.

• Proposed Rule 6.64P–O(f)(3)(A)(ii) would provide that Limit Orders and Market Orders would be assigned a Trading Collar. This proposed rule is consistent with the proposed changes to Trading Collars on Pillar, described above (per Rule 6.62P–O(a)(4)), that an order received during a pre-open state would be assigned a Trading Collar after an Auction concludes, or that an order would be reassigned a Trading Collar after a halt.

• Proposed Rule 6.64P–O(f)(3)(A)(iii) would provide that orders eligible to route that are marketable against Away Market Protected Quotations would route based on the ranking of such orders as set forth in Rule 6.76P–O(c). This proposed rule is consistent with current functionality and uses Pillar terminology based on Rule 7.35–E(h)(3)(A)(ii)(a), with differences to use the term ''Away Market Protected Quotations'' instead of ''protected quotations on Away Markets'' and to cross reference proposed Rule 6.76P–O(c).[191] As with current functionality, routable orders would be routed to Away Markets to avoid either trading through or locking or crossing an Away Market Protected Quotation.

• Proposed Rule 6.64P–O(f)(3)(A)(iv) would provide that after routing eligible orders, orders and quotes not eligible to route that are marketable against Away Market Protected Quotations would cancel. This functionality would be new for options trading (such orders and quotes would currently reprice) and this proposed rule is based on Rule 7.35–E(h)(3)(A)(ii)(b), with differences to use the term ''Away Market Protected Quotations'' instead of ''protected quotations on Away Markets.'' By cancelling non-routable orders and quotes marketable against Away Market Protected Quotations, the Exchange would avoid locking or crossing such Away Market Protected Quotations.

• Proposed Rule 6.64P–O(f)(3)(A)(v) would provide that once there are no more unexecuted orders marketable against Away Market Protected Quotations, orders and quotes that are marketable against other orders and quotes in the Consolidated Book would trade or be repriced. This proposed rule is based on Rule 7.35–E(h)(3)(A)(ii)(c), with a difference that an order could be repriced based on this assessment, which would be unique to options trading because as described above, an ALO Order that would be marketable against a contra-side order or quote on the Consolidated Book cannot take liquidity and in such case, the Exchange would reprice an ALO Order that is marketable as provided for in proposed Rule 6.62P–O(e)(2).[192] The Exchange further notes that, similar to the Exchange's cash equity market, the Exchange could transition to continuous trading without the Auction resulting in a trade, but that a trade(s) may occur during the transition to continuous trading, which trade(s) would be published to OPRA before the Exchange publishes a quote to OPRA.[193] The Exchange would not consider a trade that occurs during the transition to continuous trading to be an Auction that results in a trade.[194]

• Proposed Rule 6.64P–O(f)(3)(A)(vi) would provide that Market Orders received during a pre-open state would be subject to the validation specified in proposed Rule 6.62P–O(a)(1)(C). The Exchange notes that because such Market Orders would already have been received by the Exchange, if such orders fail one of those validations, they would be cancelled instead of rejected. This would be new rule text as compared to the Exchange's cash equity rules to reflect the validations that would be applicable to Market Orders for options trading on Pillar and would add transparency and granularity to Exchange rules.

• Proposed Rule 6.64P–O(f)(3)(A)(vii) would provide that the display quantity of Reserve Orders would be replenished. This proposed rule is based on Rule 7.35–E(h)(3)(A)(ii)(d), without any substantive differences. This proposed rule is based on current functionality and provides granularity in Exchange rules.

• Proposed Rule 6.64P–O(f)(3)(A)(viii) would describe the last step in this process regarding Auction-eligible interest received before the Auction Processing Period and orders ranked under the proposed category of ''Priority 3—Non-Display Orders'' received before a trading halt. Specifically, the Exchange would send a quote to OPRA and proprietary data feeds representing the highest-priced bid and lowest-priced offer of any remaining, unexecuted Auction-eligible orders and quotes that were received before the Auction Processing Period. This proposed rule is consistent with current options functionality and is also based on current cash equity functionality, as set forth in Rule 7.35–E(h)(3)(A)(ii). Although the functionality would be the same for both markets, for options traded on the Exchange, the Exchange proposes to describe this aspect of the process in sequence, and reference both orders and quotes. The Exchange notes that this quote sent to OPRA would be different than the Rotational Quote sent at the beginning of the Auction Process because it could be comprised of both orders and quotes. At a high level, this represents current functionality because after a series opens, the Exchange disseminates its best bid and offer of its quotes and orders to OPRA.

Proposed Rule 6.64P–O(f)(3)(B) would provide that next, orders ranked under the proposed category of ''Priority 3—Non-Display Orders'' that were received during a pre-open state would be assigned a new working time, in time sequence relative to one another based on original entry time, and would be

[191] *See supra* note 112 (citing definitions of ''Protected Bid,'' ''Protected Offer,'' and ''Quotation'' set forth in Rule 6.92–O(a)(15) and (16) and of ''Away Market'' as set forth in proposed Rule 1.1).

[192] As described above, the Exchange proposes a difference on Pillar because ALO Orders would be eligible to participate in an Auction. Currently, ALOs will be rejected if entered outside of Core Trading Hours or during a trading halt or, if resting, will be cancelled in the event of a trading halt. *See* discussion *supra* regarding Rule 6.62–O(t).

[193] For example, the Exchange may determine that, as described in proposed Rule 6.64P–O(d)(4)(A), if there is no Matched Volume but there is a Calculated NBBO that meets the requirements specified in that Rule, it can conduct an Auction without a trade and transition to continuous trading pursuant to proposed Rule 6.64P–O(f). In such case, there would not be an Auction that results in a trade, but a trade(s) could occur among orders and quotes that trade during the transition to continuous trading.

[194] OPRA does not distinguish between a trade that results from an opening auction and a trade that occurs during the transition to continuous trading. By contrast, the Exchange's proprietary data feed would distinguish a trade that resulted from an Auction from a trade that occurred during the transition to continuous trading.

subject to the Limit Order Price Check, Arbitrage Check, and Intrinsic Value Check, as applicable, and if not cancelled, would be traded or repriced. This proposed functionality would be new for Pillar and applicable only for options traded on the Exchange. Even though orders ranked Priority 3—Non-Display Orders would not be eligible to trade in an Auction (other than the reserve interest of Reserve Orders), the Exchange proposes to accept such orders during a pre-open state. These orders would transition to continuous trading after any unexecuted Auction-eligible interest transitions to continuous trading, as described above in proposed Rule 6.64P–O(f)(3)(A)(i)–(viii). The Exchange believes that waiting to process non-displayed orders in this sequence would ensure that there is an NBBO against which such orders could be priced, as described in proposed Rule 6.62P–O(d) (regarding Orders with a Conditional or Undisplayed Price and/or Size) above.

Proposed Rule 6.64P–O(f)(3)(C) would provide that next, orders and quotes that were received during the Auction Processing Period would be assigned a new working time in time sequence relative to one another, based on original entry time and would be subject to the Limit Order Price Check, Pre-Trade Risk Controls, Arbitrage Check, Intrinsic Value Check, and validations specified in proposed Rule 6.62P–O(a)(1)(A), as applicable to certain Market Orders, and if not cancelled would be processed consistent with the terms of the order or quote. This proposed rule text is designed to reflect that orders and quotes received during the Auction Processing Period would not be subjected to these price/risk validations until after the Exchange has transitioned to continuous trading, and that if such interest fails these validations, those orders or quotes would be cancelled instead of rejected. This proposed rule text is based on Rule 7.35–E(h)(3)(B), with differences to reflect the price/risk validations that would be applicable to orders and quotes for options trading.

Proposed Rule 6.64P–O(f)(3)(D) would further provide that when transitioning to continuous trading:

- The display price and working price of orders and quotes would be adjusted based on the contra-side interest in the Consolidated Book or ABBO, as provided for in Rule 6.62P–O (proposed Rule 6.64P–O(f)(3)(D)(i)). This proposed rule is based on Rule 7.35–E(h)(3)(C), with differences to reflect that, for options trading, the display price or working price of an order may be adjusted based either on contra-side interest on the Consolidated Book (*e.g.,* for ALO Orders) or the ABBO (as opposed to the PBBO or NBBO for cash equities trading).
- The display price and working price of a Day ISO would be adjusted in the same manner as a Non-Routable Limit Order until the Day ISO is either traded in full or displayed at its limit price and the display price and working price of a Day ISO ALO would be adjusted in the same manner as an ALO Order until the Day ISO ALO is either traded in full or displayed at its limit price (proposed Rule 6.64P–O(f)(3)(D)(ii)). This proposed rule is new for options trading because, as described above, the Exchange would be offering Day ISO and Day ISO ALO for options trading for the first time with the transition to Pillar. The rule text is based in part on Rule 7.35–E(h)(3)(D), with differences to reflect how a Day ISO ALO would be processed on options as compared to how similarly-named orders trade on the Exchange's cash equity market, as described in more detail above in connection with proposed Rule 6.62P–O(e)(3).

Proposed Rule 6.64P–O(g) would describe order processing during a trading halt. The proposed rule is based in part on Rule 7.18–E(c), with differences to reflect how options would trade on Pillar as described below. The proposed Rule is designed to provide granularity in Exchange rules about how new and existing orders, quotes, and order instructions would be processed during a trading halt. As proposed, the Exchange would process new and existing orders and quotes in a series during a trading halt as follows:

- Cancel any unexecuted quantity of orders for which the 500-millisecond Trading Collar timer has started and all resting Market Maker quotes (proposed Rule 6.64P–O(g)(1)). This proposed rule would be unique for options traded on the Exchange. The Exchange proposes to cancel resting Market Maker quotes when a trading halt is triggered, which represents current functionality, and as noted below, would accept new Market Maker quotes during a trading halt, which would be the basis for the Rotational Quote that would be published for a Trading Halt Auction. The Exchange also proposes to cancel any unexecuted quantity of orders for which the 500-millisecond Trading Collar has started because such timer would have ended during a trading halt, and therefore such orders were subject to cancellation already. This would be new functionality on Pillar and reflects the proposed new Trading Collar behavior that orders would be priced at their collar for only 500 milliseconds and then would cancel.
- Re-price all other resting orders on the Consolidated Book to their limit price. This would be new functionality on Pillar for options trading; currently, during a halt, resting orders do not reprice to their limit price.[195] The repricing of a Non-Routable Limit Order, ALO Order, or Day ISO ALO to its limit price during a trading halt would not be counted toward the (limited) number of times such order may be repriced, and any subsequent repricing of such order during the transition to continuous trading would be permitted as the additional (uncounted) repricing event as provided for in proposed Rules 6.62P–O(e)(1)(B) and (e)(2)(C) (proposed Rule 6.64P–O(g)(2)). As described above, once resting, a Non-Routable Limit Order, ALO Order, or Day ISO ALO that was repriced on arrival is eligible to be repriced only one additional time. This proposed rule provides transparency that the repricing of such orders to their limit price during a trading halt would not count towards that ''one'' additional repricing, but that any subsequent repricing after the Auction concludes would count.
- Accept and process all cancellations (proposed Rule 6.64P–O(g)(3)). This proposed rule is based on Rule 7.18–E(c)(4), without any differences, and is consistent with current functionality.
- Reject incoming Limit Orders designated IOC or FOK (proposed Rule 6.64P–O(g)(4)). This proposed rule is based on Rule 7.18–E(c)(5), with a difference to add orders designated FOK and not include non-displayed orders and is consistent with current functionality.
- Accept all other incoming order and quote messages and instructions until the Auction Processing Period for the Trading Halt Auction ends, at which point, paragraph (e) of proposed Rule 6.64P–O would govern the entry of incoming orders, quotes, and order instructions (proposed Rule 6.64P–O(g)(5)). This proposed rule is based on Rule 7.18–E(c)(6), with differences to cross reference the options rule relating to the transition to continuous trading and is consistent with current functionality.
- Disseminate a zero bid and zero offer quote to OPRA and proprietary data feeds (proposed Rule 6.64P–O(g)(6)). This proposed rule is based on

[195] On its cash equities market, for trading halts in Exchange-listed securities, the Exchange reprices resting orders to their limit price. *See* Rule 7.18–E(c)(3).

current functionality and is designed to promote clarity and transparency in Exchange rules that when a trading halt begins, the Exchange will ''zero'' out the Exchange's BBO.

Finally, proposed Rule 6.64P–O(h) would provide that whenever, in the judgment of the Exchange, the interests of a fair and orderly market so require, the Exchange may adjust the timing of or suspend the Auctions set forth in this Rule with prior notice to OTP Holders and OTP Firms. This proposed rule is based on Rule 7.35–E(i), with a difference to reference OTP Holders instead of ETP Holders and also reference OTP Holders and OTP Firms.

In connection with proposed Rule 6.64P–O, the Exchange proposes to add the following preamble to Rule 6.64–O: ''This Rule is not applicable to trading on Pillar.'' This proposed preamble is designed to promote clarity and transparency in Exchange rules that Rule 6.64–O would not be applicable to trading on Pillar.

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As discussed above, because of the technology changes associated with the migration to the Pillar trading platform, subject to approval of this proposed rule change, the Exchange will announce by Trader Update when rules with a ''P'' modifier will become operative and for which symbols. The Exchange believes that keeping existing rules on the rulebook pending the full migration of Pillar will reduce confusion because it will ensure that the rules governing trading on the OX system will continue to be available pending the full migration to Pillar.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[196] in general, and furthers the objectives of Section 6(b)(5),[197] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules to support Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rules would promote transparency in Exchange rules by using consistent terminology governing trading on both the Exchange's cash equity and options trading platforms, thereby ensuring that members, regulators, and the public can more easily navigate the Exchange's rulebook and better understand how options trading is conducted on the Exchange.

Generally, the Exchange believes that adding new rules with the modifier ''P'' to denote those rules that would be operative for the Pillar trading platform would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing transparency of which rules would govern trading once a symbol has been migrated to the Pillar platform. The Exchange similarly believes that adding a preamble to those current rules that would not be applicable to trading on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency regarding which rules would govern trading on the Exchange during and after the transition to Pillar.

In addition, the Exchange believes that incorporating functionality currently available on the Exchange's cash equity market for options trading would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange would be able to offer consistent functionality across both its options and cash equity trading platforms, adapted as applicable for options trading. Accordingly, with the transition to Pillar, the Exchange will be able to offer additional features to its OTP Holders and OTP Firms that are currently available only on the Exchange's cash equity platform. For similar reasons, the Exchange believes that using Pillar terminology for the proposed new rules would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote consistency in the Exchange's rules across both its options and cash equity platforms.

Definitions and Applicability

The Exchange believes that the proposed amendments to Rule 1.1, including copying certain definitions from Rule 6.1–O and Rule 6.1A–O to Rule 1.1, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to promote clarity and transparency in Exchange rules by consolidating into Rule 1.1 definitions relating to both cash equity and options trading and specifying, where applicable, the differences in definitions for each trading platform. The Exchange believes that the proposed changes to eliminate definitions no longer applicable to options trading and to modify the text of certain existing definitions relating to options trading that are being copied to Rule 1.1, would further remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure that the definitions used in Exchange rules are updated to accurately reflect functionality and are internally consistent. In particular, the Exchange believes that the proposed updates to definitions being copied to proposed Rule 1.1. from Rules 6.1–O(b) and 6.1A–O would add further granularity, clarity and transparency to Exchange rules making them easier for the investing public to navigate. The Exchange believes that new terms it proposes to include in Rule 1.1 for options trading (*i.e.,* MPID, ABBO) would promote clarity and transparency in Exchange rules.[198] Finally, the Exchange believes that organizing Rule 1.1 alphabetically and eliminating sub-paragraph numbering would make the proposed rules easier to navigate.

The Exchange further believes that proposed new Rule 6.1P–O relating to applicability would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would include those elements of current Rule 6.1–O that would remain applicable to options trading and eliminates duplicative text that would no longer be necessary after the transition to Pillar. The Exchange further notes that proposed Rule 6.1P–O is similar to NYSE American Rule 900.1NY.

Order Ranking and Display

The Exchange believes that proposed new Rule 6.76P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange is not proposing substantive changes to how the Exchange would rank and display orders and quotes on Pillar as compared to the OX system. Rather, the proposed revisions to the Exchange's options trading rules would remove impediments to and perfect the mechanism of a free and open market

[196] 15 U.S.C. 78f(b).

[197] 15 U.S.C. 78f(b)(5).

[198] *See supra* note 27 (regarding Cboe Rule 1.1. defined term ''ABBO'').

and a national market system because the proposed changes are designed to simplify the structure of the Exchange's options rules and use consistent Pillar terminology for both cash equity and options trading, without changing the underlying functionality for options trading. For example, the Exchange believes the proposed definitions set forth in Rule 6.76P–O, *i.e.,* display price, limit price, working price, working time, and Aggressing Order/Aggressing Quote, would promote transparency in Exchange rules and make them easier to navigate because these proposed definitions would be used in other proposed Pillar options trading rules. The Exchange notes that these proposed definitions are consistent with the definitions set forth in Rule 7.36–E for cash equity trading with terminology differences only as necessary to address functionality associated with options trading that are not applicable to cash equity trading, *e.g.,* reference to quotes.

The Exchange further believes that copying descriptions of order type behavior, which are currently set forth in Rule 6.76–O, to proposed Rule 6.62P–O, and therefore not include such detail in proposed Rule 6.76P–O, would make Exchange rules easier to navigate because information regarding how a specific order type would operate would be in a single location in the Exchange's rulebook. The Exchange notes that this proposed structure is consistent with the Exchange's cash equity rules, which similarly set forth information relating to an order type's ranking in Rule 7.31–E.

Moreover, the Exchange is not proposing any functional changes to how it would rank and display orders and quotes on Pillar as compared to the OX system, except (as noted herein) with regard to the treatment of reduced quote sizes which would be handled the same as orders with reduced size under Pillar, which would add consistency and transparency to Exchange rules.[199] The Exchange believes that using new terminology to describe ranking and display, including the proposed priority categories of Priority 1—Market Orders, Priority 2—Display Orders, and Priority 3—Non-Display Orders, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would provide more granularity and use Pillar terminology to describe functionality that is consistent with the OX system functionality currently referred to as the ''Display Order Process'' and the ''Working Order Process'' in Rule 6.76–O.

Order Execution and Routing

The Exchange believes that proposed new Rule 6.76AP–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would set forth a price-time priority model for Pillar that is substantively the same as the Exchange's current price-time priority model as set forth in Rule 6.76A–O. The proposed differences as compared to Rule 6.76A–O are designed to use Pillar terminology that is based in part on Rule 7.37–E, if applicable, without changing the functionality that is currently available for options trading.

The Exchange believes that the proposed modifications to the LMM Guarantee would remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides clarity of how multiple quotes from an LMM would be allocated (*i.e.,* only the first quote in time priority would be eligible for the LMM Guarantee and trade at an execution price equal to the NBBO). The Exchange similarly believes that eliminating Directed Order Market Makers and Directed Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because these features are not currently used on the Exchange, and therefore eliminating Directed Orders and Directed Order Market Makers would streamline the Exchange's rules. The Exchange notes that the remaining differences in proposed Rule 6.76AP–O relating to the LMM Guarantee are designed to promote clarity and transparency in Exchange rules and would not introduce new functionality.

The Exchange believes that the structure and content of the rule text in proposed Rule 6.76AP–O promotes transparency by using consistent Pillar terminology. The Exchange also believes that adding more detail regarding current functionality in new Rule 6.76AP–O, as described above, would promote transparency by providing notice of when orders would be executed or routed by the Exchange.

Orders and Modifiers

The Exchange believes that proposed new Rule 6.62P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would use existing Pillar terminology to describe the order types and modifiers that would be available on the Exchange's options Pillar trading system. As noted above, the Exchange proposes to offer order types and modifiers that are either based on existing order types available on the OX system as described in Rule 6.62–O, or orders and modifiers available on the Exchange's cash equity trading platform, as described in Rule 7.31–E, with differences as applicable to reflect differences in options trading from cash equity trading. The Exchange believes that structuring proposed Rule 6.62P–O based on the structure of Rule 7.31–E would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency and consistency in the Exchange's rulebook.

In addition to the terminology changes to describe the order types and modifiers that are currently available on the Exchange, the Exchange further believes that the order types and modifiers proposed for options trading on Pillar that either differ from order types and modifiers available on the OX system or that would be new would remove impediments to and perfect the mechanism of a free and open market and national market system because:

- Market Orders on Pillar would function similarly to how Market Orders function under current options trading rules, including being subject to Trading Collars. However, the proposed functionality would expand the circumstances under which Market Orders may be rejected, which functionality is designed to ensure that Market Orders do not execute either when there is no prevailing market in a series, which can occur if there is no NBO, no NBB and an NBO higher than $0.50, or an absence of contra-side Market Maker quotations or the ABBO. In addition, the proposed functionality would provide that if the displayed prices are too wide to assure a fair and orderly execution of a Market Order, such Market Order would be rejected. The Exchange believes that the proposed ''wide-spread'' check for Market Orders is consistent with similar price protections on other options exchanges and is designed to prevent a Market Order trading at a price that could be considered a Catastrophic Error.[200] The Exchange believes that the proposed rule describing Market Orders would promote transparency by providing notice of when a Market

[199] *See supra* note 54 (regarding existing handling of quotes with reduced size).

[200] *See supra* note 69 (citing Cboe's Market Order NBBO Width Protection, which similarly looks to the midpoint of the NBBO in applying this protection).

Order would be subject to such validations.

• The Exchange is not proposing any new or different behavior for Limit Orders than is currently available for options trading on the Exchange, other than the application of Limit Order Price Protection and Trading Collars, which would differ on Pillar. The Exchange believes using Pillar terminology based on Rule 7.31–E(a)(2) to describe Limit Orders would promote consistency and clarity in Exchange rules.

• The proposed Limit Order Price Protection functionality is based in part on the existing ''Limit Order Filter'' for orders and price protection filters for quotes because an order or quote would be rejected if it is priced a specified percentage away from the contra-side NBB or NBO. The proposed Limit Order Price Protection functionality is also based in part on the functionality available on the Exchange's cash equity trading platform, and therefore is not novel. The Exchange believes that using the same mechanism for both orders and quotes would simplify the operation of the Exchange and achieve similar results as the current rules, which is to reject an order or quote that is priced too far away from the prevailing market. The Exchange believes that re-applying Limit Order Price Protection after an Auction concludes would ensure that Limit Orders and quotes continue to be priced consistent with the prevailing market, and that using an Auction Price (if available, and if not available, Auction Collars, and if not available, the NBBO) to assess Limit Orders and quotes after an Auction concludes would ensure that the Exchange would be applying the most recent price in a series in assessing whether such orders or quotes should be cancelled. The Exchange further believes that the proposed Specified Thresholds for determining whether to reject a Limit Order or quote would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to be tailored to the applicable Reference Price, and thus more granular than the current thresholds.

The proposed Trading Collar functionality is based in part on how trading collars currently function on the Exchange because the proposed functionality would create a ceiling or floor price at which an order could be traded or routed. The Exchange believes that the proposed differences for Trading Collars on Pillar, including applying the same Trading Collar logic to both Limit Orders and Market Orders, applying them once per trading day (unless there is a trading halt), tailoring the specified thresholds to be within the current parameters for determining whether a trade would be an Obvious Error or Catastrophic Error, and canceling orders that have been displayed at their Trading Collar for 500 milliseconds, would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to provide a deterministic price protection mechanism for orders. In addition, the proposed Pillar Trading Collar functionality is designed to simplify the process by applying a static ceiling price (for buy orders) or floor price (for sell orders) at which such order could be traded or routed that would be applicable to the order until it is traded or cancelled. The Exchange believes that the proposal to explicitly add reference to Cross Orders being excluded from Trading Collars would add granularity to the proposed rule functionality. The Exchange believes that the proposed functionality would provide greater determinism to an OTP Holder or OTP Firm of the Trading Collar that would be applicable to its orders and when such orders may be cancelled if it reaches its Trading Collar.

• The Exchange is not proposing any new or different Time-in-Force modifiers than are currently available for options trading on the Exchange. The Exchange believes using Pillar terminology based on Rule 7.31–E(b) to describe the time-in-force modifiers would promote consistency and clarity in Exchange rules.

• Auction-Only Orders, and specifically, the proposed MOO and LOO Orders, would operate no differently than how ''Opening-Only Orders'' currently function on the OX system. However, rather than refer to Opening-Only Orders, the Exchange proposes to use Pillar terminology that is based on Rule 7.31–E(c) terminology. The Exchange further believes that offering its IO Order type for Auctions on the options trading platform—both for Core Open Auctions and Trading Halt Auctions—would provide OTP Holders and OTP Firms with new, optional functionality to offset an Imbalance in an Auction. The proposed availability of the IO Order on the options platform would be more expansive than is currently available on the Exchange's cash equity platform, which (unlike options) does not account for quotes in determining an Imbalance and which limits the use of IO Orders solely to Trading Halt Auctions. The Exchange believes this proposed functionality would afford OTP Holders and OTP Firms with greater flexibility for all Auctions on Pillar.

• The Exchange would continue to offer Reserve Orders, AON Orders, Stop Orders, and Stop Limit Orders, which are currently available on the OX system. The proposed differences to Reserve Orders for options trading would harmonize with how Reserve Orders function on the Exchange's cash equity market, with changes as applicable to address options trading (*e.g.,* no round lot/odd lot concept for options trading). The proposal that the reserve interest of a Reserve Order could never have a working price that is more aggressive than the working price of the display quantity of the Reserve Order would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to ensure that the reserve interest of a Reserve Order to buy (sell) would never trade at a price higher (lower) than the working price of the display quantity of the Reserve Order. The proposed changes to AON Orders would provide greater execution opportunities for such orders by allowing them to be integrated in the Consolidated Book and once resting, trade with incoming orders and quotes. The changes are also based on how orders with an MTS Modifier, which are also conditional orders, function on the Exchange's cash equity market. The Exchange believes it is appropriate to opt not to support Market Orders designated as AON on Pillar because such functionality was not used often on the OX system, indicating a lack of market participant interest in this functionality. The proposed differences for Stop Orders and Stop Limit Orders are designed to promote transparency by providing clarity of circumstances when either order may be rejected on arrival (in the case of Stop Limit Orders) or elected and make clear that, once elected, such orders are subject to the price protection and risk checks applicable to Market Orders and Limit Orders, respectively. Finally, the Exchange believes that offering Non-Displayed Limit Orders for options trading on Pillar, which are available on the Exchange's cash equity platform, would provide additional, optional trading functionality for OTP Holders and OTP Firms. The Exchange notes that the proposed Non-Displayed Limit Order would function similarly to how a PNP Blind Order that locks or crosses the contra-side NBBO would be processed because in such circumstances, a PNP Blind Order is not displayed. A Non-Displayed Limit

Order would differ from a PNP Blind Order only because it would never be displayed, even if its limit price doesn't lock or cross the contra-side NBBO.

• The Exchange believes that the proposed orders (and quotes) with instructions not to route (*i.e.,* Non-Routable Limit Order, ALO Order, and ISOs) would streamline the offerings available for options trading on the Exchange by making the functionality the same for both orders and quotes and consolidating the description of non-routable orders and quotes in proposed Rule 6.62P–O(e), thereby adding clarity and transparency. The Exchange believes that using Pillar terminology, including order type names (for orders and quotes), based on the terminology used for cash equity trading would promote clarity and consistency across the Exchange's cash equity and options trading platforms.

• The Exchange believes that the proposed Non-Routable Limit Order is not novel because it is based on how the PNP, RPNP, and MMRP orders and quotes currently function on the OX system, including the continued availability of the option to designate a non-routable order either to cancel or reprice if it is marketable against an ABBO.[201] As such, the Exchange believes that the proposed non-routable order/quote types would continue to provide OTP Holders and OTP Firms with the core functionality associated with existing non-routable order/quote types, including that the proposed rules would provide for the ability to either reprice or cancel such orders/quotes. The Exchange believes that providing additional options to cancel a resting Non-Routable Limit Order or ALO Order rather than reprice an additional time would provide additional choice to market participants. And the Exchange believes that not offering this second cancellation designation to Market Makers would assist Market Makers in maintaining quotes in their assigned series by reducing the potential to interfere with a Market Maker's ability to maintain their continuous quoting obligations.

Similarly, the proposed ALO Order is not novel because it is based in part on how the RALO and MMALO orders and quotes currently function on the OX system, including the continued availability of the option to cancel an ALO Order if it would lock or cross the ABBO.[202] As such, the Exchange believes that the proposed non-routable order/quote types would continue to provide OTP Holders and OTP Firms with the core functionality associated with existing non-routable order/quote types that would not be offered under Pillar, including that the proposed rules would provide for non-routable functionality and the ability to either reprice or cancel such orders/quotes. The Exchange believes the proposed functionality to allow an ALO Order (which can never be a liquidity taker) to lock non-displayed interest (which is consistent with the treatment of ALO Orders on the Exchange's cash equity platform) or to reprice if such order crosses non-displayed interest, would reduce potential repricing or cancellation events for an incoming ALO Order and would likewise reduce potential information leakage about non-displayed interest in the Consolidated Book. Further, the Exchange believes the proposed functionality to reprice an ALO Order when its limit price crosses non-displayed interest on the Consolidated Book, to have a working price and display price equal to the best-priced non-displayed interest on the Exchange, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure that an ALO Order never trades as a liquidity-taker, thereby eliminating the potential for an ALO Order to cross non-displayed interest on the Consolidated Book. And the Exchange believes that not offering the second cancellation designation to Market Makers that designated an ALO Order as a quote would assist Market Makers in maintaining quotes in their assigned series by reducing the potential to interfere with a Market Maker's ability to maintain their continuous quoting obligations.

Finally, the proposed IOC ISO is not novel for options trading on the Exchange and the Exchange believes that the proposed Pillar terminology to describe the same functionality would promote transparency. The proposed Day ISO and Day ISO ALO functionality would be new for options trading and are based in part on how such order types function in the Exchange's cash equity market. In addition, the proposed Day ISO functionality is consistent with existing Rule 6.95–O(b)(3), which currently provides an exception to locking or crossing an Away Market Protected Quotation if the OTP Holder or OTP Firm simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer. The Exchange notes that this exception is not necessary for IOC ISOs because such orders would never be displayed at a price that would lock or cross a Protected Quotation; they cancel if they cannot trade. Accordingly, this existing exception in the Exchange's rules contemplates an ISO that would be displayed, which would mean it would need a time-in-force modifier of ''Day.'' In addition, Day ISOs are available for options trading on other options exchanges, and therefore are not novel.[203]

• The Exchange believes that the proposed additional detail defining Complex Orders to define the ''legs'' and ''components'' of such orders would promote transparency in Exchange rules.

• On Pillar, the only electronically-entered crossing orders would be QCC Orders, which is consistent with current functionality. The Exchange believes that the proposed differences to how QCC Orders would function, including using Pillar terminology and consolidating rule text relating to QCC Orders in proposed Rule 6.62P–O, would promote transparency and clarity in Exchange rules. The proposed description of Complex QCC Orders is designed to distinguish such orders from single-leg QCC Orders and to promote clarity and transparency in Exchange rules regarding the price requirements for a Complex QCC Order. Further, Complex QCC are available for trading on other options exchanges, and therefore are not novel.[204]

• The Exchange believes that moving the descriptions of orders available only in open outcry from Rule 6.62–O to proposed Rule 6.62P–O(h) would ensure that these order types remain in the rulebook after the transition to Pillar is complete. For CTB Orders, the Exchange believes that, because Floor Brokers have an existing obligation to satisfy better-priced interest on the Consolidated Book, the proposed change to automate such priority on Pillar (*i.e.,* to allow CTB Orders to satisfy any displayed interest (including non-Customer interest) at better prices than the latest-arriving displayed

[201] As discussed *supra,* the proposed Non-Routable Limit Order functionality is also consistent with the treatment of Market Makers quotes not designated as MMRP (*i.e.,* such quotes cancel if locking or crosses the NBBO). *See supra* note 9899.

[202] As discussed *supra,* the proposed ALO Order functionality is also consistent with the treatment of Market Makers quotes not designated as MMALO (*i.e.,* such quotes cancel if locking or crosses the NBBO). *See supra* note 98.

[203] *See supra* notes 121, 122 (citing to availability of Day ISO orders on Nasdaq and Cboe).

[204] *See supra* notes 124, 127, and 128 (citing Complex QCC Order type, as offered on MIAX and Cboe).

Customer interest) would not only make it easier for Floor Brokers to comply with Exchange priority rules, but would also increase execution opportunities and achieve the goal of a CTB Order. The Exchange also believes that codifying this order type and the associated regulatory obligations would add clarity and transparency in Exchange rules.

• The proposed Proactive if Locked/Crossed Modifier, STP Modifier, and MTS Modifier are not novel and are based on the Exchange's current cash equity modifiers of the same name. The Exchange believes that extending the availability of these existing modifiers to options trading would provide OTP Holders and OTP Firms with additional, optional functionality that is not novel and is based on existing Exchange rules. Further, such proposed optional functionality would afford OTP Holders and OTP Firms with greater flexibility in specifying how their trading interest should be handled. For example, the proposed MTS Modifier works similarly to the existing (and proposed) AON functionality, but provides the OTP Holder or OTP Firm with the alternative to designate a portion smaller than the full quantity as the minimum trade size. The Exchange further believes that extending the availability of STP Modifiers to all orders and quotes, and not just those of Market Makers, would provide additional protections for OTP Holders and OTP Firms and facilitate their compliance and risk management by assisting them in avoiding unintentional wash-sale trading.

Market Maker Quotations

The Exchange believes that proposed Rule 6.37AP–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is based on current Rule 6.37A–O, with such changes as necessary to clarify functionality and to use Pillar terminology. The Exchange believes that the proposed detail (consistent with current functionality) to make clear that same-side quotations sent by a Market Maker over the same order/quote entry port would be replaced would add clarity and transparency to Exchange rules.[205] The Exchange believes that consolidating into one rule functionality for orders and quotes, such that Non-Routable Limit Orders and ALO Orders may be designated as quotes per proposed Rule 6.37AP–O, would obviate the need to separately describe the same functionality in two rules and therefore streamline the Exchange's rules and promote transparency and consistency. As noted above, the Exchange believes that the quoting functionality available in the proposed Non-Routable Limit Order and ALO Order would continue to provide Market Makers with the core functionality associated with existing quote types, including that the proposed rules would provide for the ability to either reprice or cancel such quotes.

Pre-Trade and Activity-Based Risk Controls

The Exchange believes that the proposed Rule 6.40P–O, setting forth pre-trade and activity-based risk controls, would remove impediments to and perfect the mechanism of a free and open market and a national market system and promote just and equitable principles of trade because the proposed functionality would incorporate existing activity-based risk controls, without any substantive differences, and augment them with additional pre-trade risk controls and related functionality that are based on the pre-trade risk controls currently available on the Exchange's cash equity trading platform. The Exchange believes that the proposed differences are designed to provide greater flexibility to OTP Holders and OTP Firms in how to set risk controls for both orders and quotes. The Exchange believes that using Pillar terminology based on the cash equity rules, including using the term ''Entering Firm'' to mean OTP Holders and OTP Firms, including Market Makers, would promote transparency in Exchange rules. In addition, the proposed Single Order Maximum Notional Value Risk Limit and Single Order Maximum Quantity Risk Limit checks would provide Entering Firms with additional risk protection mechanisms on an individual order or quote basis. Moreover, the Exchange believes that aggregating a Market Maker's quotes and orders for purposes of calculating activity-based risk controls would better reflect the aggregate risk that a Market Maker has with respect to its quotes and orders. The Exchange further believes that the proposed Automated Breach Actions would provide Entering Firms with additional flexibility in how they could set their risk mechanisms and the automated responses if a risk mechanism is breached. The proposed Kill Switch Action functionality would also provide OTP Holders and OTP Firms with greater flexibility to provide bulk instructions to the Exchange with respect to cancelling existing orders and quotes and blocking new orders and quotes. Further, as noted herein, providing ''Kill Switch Action'' functionality in Exchange rules is consistent with the rules of other options exchanges.[206]

Price Reasonability Checks—Orders and Quotes

The Exchange believes that the proposed Rule 6.41P–O, setting forth Price Reasonability Checks, would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are based on existing functionality, with differences designed to use Pillar terminology and promote consistency and transparency in Exchange rules. Specifically, on Pillar, the Exchange proposes to apply the same types of Price Reasonability Checks to both orders and quotes, and therefore proposes to describe those checks in a single rule—proposed Rule 6.41P–O. The proposed rule would add an Intrinsic Value Check for quotes under Pillar (in addition to orders) and this check would enhance existing price protection features for quotes and provide Market Makers greater control and flexibility over setting risk tolerance and exposure for their quotes. The proposed rule also provides specificity regarding when the Price Reasonability Checks would be applied to an order or quote, which would promote transparency and clarity in Exchange rules. In addition, the Exchange believes that by utilizing the last sale on the Primary Market (rather than the Consolidated Last Sale) for the Price Reasonability Checks, the Pillar system would need to ingest and process less data, thereby improving efficiency and performance of the system without compromising the price protection features.

Auction Process

With the proposed Auction Process, the Exchange endeavors to attract the highest quality quote for each series at the open to attract order flow for the auction. While the Exchange does not require Market Makers assigned to a series to quote before a series can be opened (or reopened)—which is consistent with the current rule—the Exchange believes that providing time for such Market Makers to do so would promote a fair and orderly market by providing both better and more consistent prices on executions to OTP Holders and OTP Firms in an Auction

[205] *See supra* note 139 (citing NYSE Arca Fee Schedule, Port Fees, and the ability for Market Makers to pay for upwards of forty order/quote entry ports per month).

[206] *See supra* note 146 (citing optional ''Kill Switch'' functionality available on Cboe).

and facilitate a fair and orderly transition to continuous trading.

The Exchange believes that proposed Rule 6.64P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule maintains the fundamentals of an auction process that is tailored for options trading while at the same time enhancing the process by incorporating certain Pillar auction functionality that is currently available on the Exchange's cash equity platform, as described in Rule 7.35–E. For example, the Exchange proposes to augment the imbalance information that would be disseminated in advance of an Auction to include fields available on the Exchange's cash equity market (*e.g.,* Book Clearing Price, Far Clearing Price, Auction Collars, and Auction Indicators), yet tailor such information to be specific to options trading (*e.g.,* Auction Collars based on a Legal Width Quote and how the Auction Indicator would be determined). The Exchange believes that the proposed additional Auction Imbalance Information would promote transparency to market participants in advance of an Auction. The Exchange also proposes to transition to continuous trading following an Auction in a manner similar to how the Exchange's cash equity market transitions to continuous trading following a cash equity Trading Halt Auction, including how orders and quotes that are received during an Auction Processing Period would be processed, which the Exchange believes would promote consistency across the Exchange's options and cash equity trading platforms. The proposed rule describing how orders and quotes that are received during the Auction Processing Period would be handled, and how unexecuted quotes and orders would be transitioned to continuous trading would provide granularity regarding the process, thereby providing transparency in Exchange rules. Because the Exchange would be harnessing Pillar technology to support Auctions for options trading, the Exchange believes that structuring proposed Rule 6.64P–O based on Rule 7.35–E (and NYSE Rule 7.35, in part, as well) would promote transparency in the Exchange's trading rules.

The Exchange further believes that the proposed Auction Process for options trading on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed process maintains the core functionality of the current options auction process, including that orders are matched based on price-time priority and that an Auction would not be conducted if the bid-ask differential is not within an acceptable range. As proposed, the Auction Process on Pillar would begin with the proposed Rotational Quote, which would provide notice not only of when the process would begin, but also whether Market Makers on the Exchange have quoted in a series. Similar to the current rule, the Exchange would require a ''Calculated NBBO,'' which is calculated using information consistent with the information the Exchange receives from OPRA before the Exchange opens a series, to meet specified requirements, including that it not be crossed, not have a zero offer, and that it not exceed a maximum differential that is determined by the Exchange on a class by class basis and announced by Trader Update, *i.e.,* be a ''Legal Width Quote'' before a series can be opened with a trade.[207] Allowing the Exchange the flexibility to determine the maximum differential for the Calculated NBBO for a Legal Width Quote is consistent with functionality and accompanying discretion available on other options exchanges and allows the Exchange to consider the different market models and characteristics of different classes, as well as modify amounts in response to then-current market conditions.[208] In addition, the proposed discretion to modify acceptable bid-ask differential is also consistent with discretion Exchange has today on the OX system.[209] In addition, the Exchange believes that the proposed Auction Trigger, which would begin the Auction Process, is consistent with the current trigger for starting an auction. The Exchange believes that the proposed difference to allow the trade on the Primary Market to be odd-lot sized (in addition to having a quote from the Primary Market, which means that the underlying security would be open on the Primary Market), would allow for series overlaying low-volume securities to open automatically and reduce the need to manually trigger an Auction in a series.

As with the current rule, on Pillar, Market Makers are not obligated to quote in their assigned series for an Auction. However, the Exchange believes that providing Market Maker(s) assigned to a series the opportunity to quote within the bid-ask differential before opening a series for trading would promote fair and orderly Auctions and facilitate a fair and orderly transition to continuous trading. In particular, rather than layer additional quoting requirements on the Market Making community, the Exchange believes it would be more beneficial to all market participants to employ alternative methods to help ensure an orderly transition to continuous trading. As such, the Exchange believes that the proposed so-called ''waterfall'' approach to opening, would offer a number of checks that are intended to provide adequate opportunity for a greater number of Market Makers to provide their liquidity interest and help ensure increased liquidity at a level commensurate with which the market is accustomed during continuous trading on the Exchange. In short, although the Exchange does not require a Market Maker assigned to a series to quote on the Exchange in order to open or reopen a series for trading, the Exchange believes that providing Market Makers assigned to a series the opportunity to do so would promote a fair and orderly Auction process and facilitate a fair and orderly transition to continuous trading.[210]

Accordingly, the Exchange proposes a difference on Pillar to provide time for Market Maker(s) assigned to a series to enter quotes within the specified bid-ask differentials before a series could be opened or reopened for trading. The proposed Opening MMQ Timer(s) would each be 30 seconds. The proposed rule provides transparency of how many Market Makers assigned to a series would be required to quote in a series and in what time periods. As noted above, the proposed Auction Process is designed to attract the highest quality quote for each series at the open to attract order flow from any resting interest best quality quotes at the open of each series. As such, the Exchange believes it is reasonable to require more than one Opening MMQ Timer (with a maximum run time of one minute—30 seconds × 2) to run when there are at least two Market Markers because it allows the Exchange time to attract the best quote from these market participants, which in turn should attract order flow to the Exchange at the open (*i.e.,* the Exchange can leverage the highest bid and lowest offer from the

[207] As noted herein, the concept of a Calculated NBBO is consistent with similar concepts utilized on other options exchanges and is therefore not new or novel. *See, e.g.,* Cboe Rule 5.31(a) (regarding used of ''Composite Market'' concept).

[208] *See supra* notes 174, 176.

[209] *See supra* note 171.

[210] As noted, *infra,* although the Exchange does not require that Market Makers assigned to a series quote at the open, once a series is opened for trading, Market Makers are nonetheless required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

various Marker Makers that submit quotes). The Exchange believes that if a Legal Width Quote is not obtained in the first 30-second Opening MMQ Timer, it is to the benefit of all market participants to begin a second Opening MMQ Timer to allow the bid-ask differential to tighten before a series is opened. If Market Makers do not quote within those specified time periods, but at the end of the Opening MMQ Timer(s) there is a Legal Width Quote based on the ABBO, the Exchange would open or reopen that series for trading. The Exchange believes that the proposed waterfall approach (*i.e.,* setting minimum time periods for a Market Maker assigned to a series to quote within the specified bid-ask differential before opening a series, even if there is a Legal Width Quote) would appropriately balance the benefits of increasing the opportunities for Market Makers assigned to a series to enter quotations within the specified bid-ask differential, with a timely series opening or reopening when there is a Legal Width Quote even when it does not include quotes of Market Makers assigned to the series. In addition, the Exchange believes that expanding the opportunities for Market Makers to enter the market would result in deeper liquidity—which market participants have come to expect in options with multiple assigned Market Makers, and a more stable trading environment.

The Exchange believes that the proposed rule would promote transparency in Exchange rules of when the Exchange could open or reopen a series, including circumstances of when the Exchange would wait to provide Market Makers time to submit a two-sided quotation in a series and when the Exchange would proceed with opening or reopening a series based on a Legal Width Quote even if there are no Market Maker quotes in that series.

The proposed rule would also provide transparency of when the Exchange would open or reopen a series for trading when the Calculated NBBO is wider than the Legal Width Quote for the series. The Exchange believes that the proposed process is designed to provide additional opportunities for a series to open or reopen not currently available on the OX system, while at the same time preserving the existing requirement that a series would not open on a trade if there is no Legal Width Quote. The proposed functionality to provide additional opportunities to open or reopen a series when the market is wider than the specified bid-ask differentials is not novel, and the Exchange believes that this proposed rule would allow for more automated Auctions on the Exchange for series that may already be opened on another exchange.[211]

Finally, the proposed rule describing how existing and new orders would be processed during a trading halt is designed to provide additional granularity in Exchange rules. Certain of the proposed functionality is based on current processes. The Exchange believes that the proposed differences in order/quote handling would remove impediments to and perfect the mechanism of a free and open market because they align with the proposed differences in behavior for specified orders and quotes on Pillar. For example, the Exchange believes that repricing resting non-routable orders and quotes during a trading halt to their limit price would be consistent with how such orders would be processed in an Auction if they arrived during a pre-open state. The proposed differences also reflect that on Pillar, ALO Orders would be eligible to participate in an Auction. In addition, the Exchange believes that canceling orders that are subject to the Trading Collar 500 millisecond timer would be consistent with the intent of such functionality, which is to cancel such collared orders after a specified time period.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a competitive market and regularly competes with other options exchanges for order flow. The Exchange believes that the transition to Pillar would promote competition among options exchanges by offering a low-latency, deterministic trading platform. The proposed rule changes would support that inter-market competition by allowing the Exchange to offer additional functionality to its OTP Holders and OTP Firms, thereby potentially attracting additional order flow to the Exchange. Otherwise, the proposed changes are not designed to address any competitive issues, but rather to amend the Exchange's rules relating to options trading to support the transition to Pillar. As discussed in detail above, with this rule filing, the Exchange is not proposing to change its core functionality regarding its price-time priority model, and in particular, how it would rank, display, execute or route orders and quotes. Rather, the Exchange believes that the proposed rule changes would promote consistent use of terminology to support both options and cash equity trading on the Exchange, making the Exchange's rules easier to navigate. The Exchange does not believe that the proposed rule changes would raise any intra-market competition as the proposed rule changes would be applicable to all OTP Holders and OTP Firms, and reflects the Exchange's existing price-time priority model, including existing LMM Guarantee.

The Exchange does not believe that the proposed waterfall approach would result in an undue burden on intra-market competition. It would apply equally to all similarly-situated Market Makers regarding their assigned series. Market Makers are encouraged but not required to quote in their assigned series at the open, thus they are not subject to additional obligations. The Exchange believes that encouraging, rather than requiring, participation of such Market Makers at the open, may increase the availability of Legal Width Quotes in more series, thereby allowing more series to open. Improving the validity of the opening price benefits all market participants and also benefits the reputation of the Exchange as being a venue that provides accurate price discovery. With respect to inter-market competition, the Exchange notes that most options markets do not require Market Makers to quote during the opening.[212]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Discussion and Commission Findings**

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[213] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 4, is consistent with Section 6(b)(5) of the Act,[214] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and

[211] *See, e.g.,* Cboe Rule 5.31.

[212] *See, e.g.,* Cboe and its affiliated exchanges.

[213] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[214] 15 U.S.C. 78f(b)(5).

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, and that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

To enable the transition of its options trading platform to its Pillar technology platform, the Exchange proposes several changes to relevant Exchange rules. The Exchange states its equity markets, as well as those of its national securities exchange affiliates' cash equity markets are currently operating on Pillar, and that, for the transition of its options trading platform, the Exchange proposes to use the same Pillar technology already in operation for its cash equity market. The Exchange represents that by migrating its options trading to the Pillar trading platform, it will be able to offer not only common specifications for connecting to both of its cash equity and equity options markets, but also common trading functions.

Definitions and Applicability

The Exchange states that the proposed amendments to Rule 1.1, including copying certain definitions from Rule 6.1–O and Rule 6.1A–O to Rule 1.1, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to promote clarity and transparency in Exchange rules by consolidating into Rule 1.1 definitions relating to both cash equity and options trading and specifying, where applicable, the differences in definitions for each trading platform. The Exchange further represents that the proposed changes to eliminate definitions no longer applicable to options trading and to modify the text of certain existing definitions relating to options trading that are being copied to Rule 1.1 would further remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure that the definitions used in Exchange rules are updated to accurately reflect functionality and would also ensure an internally consistent rulebook. In particular, the Exchange states that the proposed updates to definitions being copied to proposed Rule 1.1 from Rules 6.1–O(b) and 6.1A–O would add further granularity, clarity and transparency to Exchange rules, which the Exchange believes would make them easier to navigate. The Exchange further states that the new terms it proposes to include in Rule 1.1 for options trading (*e.g.,* MPID, ABBO) would promote clarity and transparency in Exchange rules.[215] Finally, the Exchange believes that organizing Rule 1.1 alphabetically and eliminating sub-paragraph numbering would make the proposed rules easier to navigate. Based on the Exchange's representations, the Commission believes that the proposed changes to the Exchange's definitions are consistent with Act because they are designed to add clarity, transparency and consistency to the Exchange's Rules. For these reasons, the Commission believes that the proposed changes to the Exchange's definitions should remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.

The Exchange further represents that proposed new Rule 6.1P–O relating to applicability would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would include those elements of current Rule 6.1–O that would remain applicable to options trading and eliminate duplicative text that would no longer be necessary after the transition to Pillar. The Exchange further notes that proposed Rule 6.1P–O is similar to NYSE American Rule 900.1NY. For these reasons, the Commission believes that the adoption of proposed Rule 6.1P–O relating to the continued applicability of certain rules after the transition to the Pillar trading platform should remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest because it would streamline rule text and clarify the application of certain existing rules once options trading is transitioned to the Pillar trading platform.

Order Ranking and Display

The Exchange represents that changes proposed in Rule 6.76P–O are designed to simplify the structure of the Exchange's options rules and use consistent Pillar terminology for both cash equity and options trading without substantively changing the underlying functionality for options trading, and that they therefore do not represent a substantive change from how the Exchange would rank and display orders and quotes on Pillar as compared to the OX system today. The Exchange represents that these proposed definitions are consistent with the definitions set forth in Rule 7.36–E for cash equity trading with terminology differences only as necessary to address functionality associated with options trading that are not applicable to cash equity trading, *e.g.,* reference to quotes.

Moreover, the Exchange represents that it is not proposing any functional changes to how it would rank and display orders and quotes on Pillar as compared to the OX system, except with regard to the treatment of reduced quote sizes which would be handled the same as orders with reduced size under Pillar, which the Exchange states would add consistency and transparency to Exchange rules. The Exchange states it believes that using new terminology to describe ranking and display, including the proposed priority categories of Priority 1—Market Orders, Priority 2—Display Orders, and Priority 3—Non-Display Orders, would provide more granularity and use Pillar terminology to describe functionality that is consistent with the OX system functionality currently referred to as the ''Display Order Process'' and the ''Working Order Process'' in Rule 6.76–O. The Commission believes that proposed new Rule 6.76P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would not introduce substantive changes to how the Exchange would rank and display orders and quotes on Pillar as compared to the OX system; rather, the proposed revisions would simplify the structure of the Exchange's options rules and use consistent Pillar terminology for both cash equity and options trading, without changing the underlying functionality for options trading.

Order Execution and Routing

The Exchange represents that proposed new Rule 6.76AP–O would set forth a price-time priority model for Pillar that is substantively the same as the Exchange's current price-time priority model as set forth in Rule 6.76A–O, and that proposed differences as compared to Rule 6.76A–O are (1) designed to use Pillar terminology that is based in part on Rule 7.37–E, if applicable, without changing the functionality that is currently available for options trading, (2) eliminate features not currently used on the Exchange, and (3) promote clarity and transparency without introducing new functionality. The Exchange states it is

[215] *See supra* note 27 (regarding Cboe Rule 1.1. defined term ''ABBO'').

eliminating Directed Order Market Makers and Directed Orders because these features are not currently used on the Exchange, and therefore eliminating Directed Orders and Directed Order Market Makers would streamline the Exchange's rules. The Exchange represents that the remaining differences in proposed Rule 6.76AP–O relating to the LMM Guarantee are designed to promote clarity and transparency in Exchange rules and would not introduce new functionality. The Commission believes that proposed new Rule 6.76AP–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange represents the proposed rule would set forth a price-time priority model for Pillar that is substantively the same as the Exchange's current price-time priority model as set forth in Rule 6.76A–O, with proposed differences to use Pillar terminology that is based in part on Rule 7.37–E, if applicable, without changing the functionality that is currently available for options trading.

Orders and Modifiers

The Exchange proposes new Rule 6.62P–O to set forth the order types and modifiers that would be available for options trading both on Pillar and in open outcry trading. The Exchange represents that proposed Rule 6.62P–O is based on existing order types available on the OX system as described in Rule 6.62–O, and the orders and modifiers on the Exchange's cash equity trading platform, as described in Rule 7.31–E, with differences as applicable to reflect differences in options trading from cash equity trading. The Commission believes that proposed Rule 6.62P–O removes impediments to and perfect the mechanism of a free and open market and a national market system because it promotes transparency by using consistent terminology in the Exchange's rulebook.

In addition to the terminology changes to describe the order types and modifiers, proposed Rule 6.62P–O proposes changes that differ from order types and modifiers available on the OX system. The Exchange proposes changes discussed above to its rules regarding Market Orders, Limit Order Price Protection and Trading Collars, Auction-Only Orders, orders with instructions not to route, IOC ISOs, AON Orders, Stop Orders, Stop Limit Orders, and crossing orders that are designed to streamline, and promote transparency in, the Exchange's rules, provide additional clarity, and provide greater flexibility and execution opportunities to market participants. The Commission believes that the proposed changes remove impediments to and perfect the mechanism of a free and open market and national market system by simplifying and promoting transparency and granularity in the Exchange's rules, and by providing opportunities for execution to market participants that are consistent with the Act. In addition, the Commission believes that the proposal promotes clarity and transparency by codifying the functioning of Complex QCC in the Exchange's rules.

Market Maker Quotations

Proposed Rule 6.37AP–O would set forth Market Makers' quoting obligations on the Pillar trading platform. As discussed above, the Exchange proposes to consolidate into one rule functionality for orders and quotes such that Non-Routable Limit Orders and ALO Orders may be designated as quotes. The Exchange represents that the quoting functionality available in the proposed Non-Routable Limit Order and ALO Order would continue to provide Market Makers with the core functionality associated with its existing quote types, including that the proposed rules would provide for the ability to either reprice or cancel such quotes. In addition, the Exchange states that the ranking and priority of quotes on the Pillar trading platform is consistent with handling of such quotes on the current OX system, unless otherwise noted and as described above. Further, the Exchange states that proposed Rule 6.37AP–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is based on current Rule 6.37A–O, with such changes as necessary to clarify functionality and to use Pillar terminology. The Exchange further represents that the proposed rule provides an added level of granularity and therefore would add clarity and transparency to its rules by specifying that same-side quotations sent by a Market Maker over the same order/quote entry port would be replaced. For these reasons, the Commission believes the proposal would remove impediments to and perfect the mechanism of a free and open market and national market system by promoting transparency and granularity in the Exchange's rules and is therefore consistent with the Act.

Pre-Trade and Activity-Based Risk Controls

The Exchange represents that proposed Rule 6.40P–O would set forth pre-trade and activity-based risk controls and incorporates existing activity-based risk controls, without any substantive differences, and augments them with additional pre-trade risk controls and related functionality that are based on the pre-trade risk controls currently available on the Exchange's cash equity trading platform. Specifically, the proposed rule would: (i) Provide Single Order Maximum Notional Value Risk Limit and Single Order Maximum Quantity Risk Limit; (ii) aggregate a Market Maker's quotes and orders for purposes of calculating activity-based risk controls; and (iii) provide a proposed Kill Switch Functionality. The Commission believes that the proposed rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and promote just and equitable principles of trade by providing greater flexibility to firms in setting risk controls for orders and quotes and would better reflect the aggregate risk that a Market Maker has with respect to its quotes and orders. The Commission also believes that the proposed Kill Switch Action functionality would provide OTP Holders and OTP Firms with greater flexibility to provide bulk instructions to the Exchange with respect to cancelling existing orders and quotes and blocking new orders and quotes.

Price Reasonability Checks

The Exchange represents that proposed Rule 6.41P–O would set forth Price Reasonability Checks for limit orders and quotes and is based on existing functionality, with differences designed to use Pillar terminology and promote consistency and transparency in Exchange rules, and to expand the functionality to include quotes. The Commission notes that proposed rule would add an Intrinsic Value Check for quotes under Pillar (in addition to orders), provides greater specificity regarding when the Price Reasonability Checks would be applied to an order or quote, and would utilize the last sale on the Primary Market (rather than the Consolidated Last Sale) for the Price Reasonability Checks. The Exchange represents that the proposal to utilize the last sale on the Primary Market would improve efficiency and performance of the system without compromising the price protection features because the Pillar system would need to ingest and process less data. The Commission believes that proposed Rule 6.41P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing specificity regarding when

the Price Reasonability Checks would be applied to an order or quote, and providing Market Makers greater control and flexibility over setting risk tolerance and exposure for their quotes.

Auction Process

The Exchange represents that proposed Rule 6.64P–O maintains the fundamentals of an auction process that is tailored for options trading while at the same time enhancing the process by incorporating certain Pillar auction functionality that is currently available on the Exchange's cash equity platform, as described in Rule 7.35–E. The Exchange represents that the proposed Auction Process for options trading on Pillar would not materially change how an option series would be opened (or reopened) on the Exchange today because the Exchange would continue to assess whether a series can be opened based on whether the bid-ask differential for a series is within a specified range and orders would continue to be matched based on price-time priority. The Exchange represents that many of its proposed changes are intended to provide greater detail about the Auction Process. In addition, the Exchange proposes certain changes to the existing Auction Process. The Exchange proposes providing additional opportunities for an options series to open or reopen for trading even if the bid-ask differential is wider than the specified guidelines. The Exchange represents it is not novel for an options exchange to provide additional opportunities for a series to open after a specified period of time in a wide market so as to promote fair and orderly Auctions and facilitate a fair and orderly transition to continuous trading. In addition, the Exchange proposes to augment the imbalance information currently disseminated in advance of an Auction to provider greater Auction transparency. The Exchange also proposes specifying minimum time periods to allow a Market Maker(s) to quote in an assigned series before the series is opened or reopened. The Exchange represents this offers checks that are intended to provide adequate opportunity for a greater number of Market Makers to provide their liquidity interest and help ensure increased liquidity on the Exchange thereby promoting a fair and orderly auction process and facilitating a fair and orderly transition to continuous trading. The Exchange also proposes introducing additional enhancements that are based on existing Pillar functionality for the Exchange's cash equity platform's electronic auctions relating to how orders and quotes would be processed if they arrive during the period when the Exchange is processing an Auction and how the Exchange would process orders and quotes when it transitions to continuous trading following an Auction. The Exchange represents these are structured based in part on Rule 7.35–E, the Exchange's cash equity rule governing auctions, and would promote consistency across exchange rules as well as provide greater granularity regarding the process, thereby providing transparency in Exchange rules. The Exchange also proposes including in Rule 6.64P–O how the Exchange would process orders and quotes during a trading halt, which the Exchange represents is structured based in part on Rule 7.18–E(b) and (c), with proposed differences in order/quote handling to align with the proposed differences in behavior for specified orders and quotes on Pillar, such as repricing resting non-routable orders and quotes during a trading halt to their limit price. The proposed rule also would reflect that ALO Orders would be eligible to participate in an Auction and that orders subject to the Trading Collar would be canceled. The Exchange states this would provide granularity and transparency with respect to how the Exchange processes new and existing options orders during a trading halt on its cash equity market. The Exchange states that, because the Exchange would be harnessing Pillar technology to support Auctions for options trading, the Exchange believes that proposed Rule 6.64P–O would promote transparency in the Exchange's trading rules.

The Commission believes that proposed Rule 6.64P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because, as the Exchange represents, the proposed rule maintains the fundamentals of an auction process that is tailored for options trading while at the same time enhancing the process by incorporating certain Pillar auction functionality that is currently available on the Exchange's cash equity platform, as described in Rule 7.35–E, with certain differences which the Exchange represents are designed to enhance liquidity, promote transparency, as well as provide greater granularity in and consistency among Exchange rules, which should facilitate a fair and orderly auction process and transition to continuous trading.

Based on the Exchange's representations, the Commission believes that the proposed rule change does not raise any novel regulatory considerations, as they are either based on existing options functionality, equities markets functionality, other options market rules, or otherwise enhance transparency and provide greater specificity and determinism with respect to the functionality available on the Exchange, which should promote a fair and orderly auction process and transition to continuous trading. For these reasons, the Commission believes that the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

## IV. Solicitation of Comments on Amendment No. 4 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 4 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2021–47 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–47 and should be submitted on or before February 22, 2022.

## V. Accelerated Approval of Amendment No. 4

As noted above,[216] in Amendment No. 4, which supersedes and replaces each of Amendment Nos. 1, 2, and 3 in their entirety, as compared to the original proposal,[217] the Exchange provides more background information regarding the proposed rule changes, makes clarifying changes to certain proposed rules without any substantive differences as compared to the original filing, and makes the following substantive changes from the original filing: (1) Adds a definition of Away Market BBO (ABBO) to replace the term Away Market NBBO; (2) revises the description of a Market Marker quotation, as described in proposed Rule 6.37A–O(a)(1); (3) revises how the Specified Threshold would be calculated for Limit Order Price Protection in proposed Rule 6.62P–O(a)(3)(A) to include prices equal to the Reference Price; (4) revises how a Trading Collar would be assigned, as described in proposed Rule 6.62P–O(4)(A) and (B), to provide that a Trading Collar would be reassigned to an order after a trading halt, and makes related changes to proposed Rule 6.64P–O(f)(3)(A)(ii); (5) revises proposed Rule 6.62P–O(g) to reorganize and streamline the proposed rule to specify that a Cross Order is a Qualified Contingent Cross Order and to describe the order type in paragraph (g)(1)(A) and to add proposed Complex QCC Orders; (6) revises proposed Rule 6.62P–O(h)(1) to specify that a Clear-the-Book Order would be entered contemporaneous with executing an order in open outcry; (7) revises proposed Rule 6.62P–O(i)(2) to specify which order with a Minimum Trade Size modifier would not be subject to self-trade prevention modifiers; (8) revises proposed Rule 6.62P–O to remove the proposed Non-Display Remove Modifier; (9) revises proposed Rule 6.64P–O(a) to add a definition for the term ''Auction Price'' and to modify the definition of ''Legal Quote Width''; (10) revises proposed Rule 6.64P–O(g)(2) to provide that during a trading halt, any unexecuted quantity of an order for which the 500-millisecond Trading Collar timer has started would be cancelled; (11) revises proposed Rule 6.64P–O(d)(3) and (4) to reduce the length of the proposed Opening MMQ Timers (from one minute to 30 seconds) and reduce the time before commencing opening of a series when there is a Calculated NBBO that is wider than the Legal Width Quote in a series (from five minutes to 90 seconds), both of which measures would shorten the time the Exchange would wait before automatically opening a series in the specified circumstances; and (12) revises proposed Rule 6.76AP–O(a)(1)(A) to provide that only the first LMM quote in time priority would be eligible for the LMM Guarantee.

The Exchange states that the non-substantive changes set forth in Amendment No. 4, as enumerated above, are intended provide greater clarity, granularity, and specificity to the proposed rule text as well as additional information on the basis for and background of the proposal. The Exchange represents that these proposed changes are non-substantive in that they do not alter the functionality of the proposed rule changes yet would add granularity to the proposal.

Similarly, with respect to the substantive changes in Amendment No. 4, also as enumerated above, the Exchange states that such proposed changes would improve the original filing by including additional details about, or modifications to, functionality already described in the original filing (*e.g.,* adding a definition of ''ABBO'' and ''Auction Price''); revising the description of a Market Marker quotation; describing proposed Complex QCC Orders; specifying the treatment of unexecuted orders at the open during a trading halt; clarifying the procedures for entering CTB Orders; and specifying and clarifying the operation of: The Limit Order Protection Filter, Trading Collars, the LMM Guarantee, orders with the an MTS modifier vis a vis and the self-trade prevention modifier, and single-leg QCC Orders). The Exchange states it believes that the proposal to modify Rule 6.64P–O(d)(3) and (4) to reduce the length of both the MMQ Timers and the time before commencing opening of a series would promote a fair and orderly market as it would reduce the time the Exchange would wait before opening a series, but would also allow the Exchange time to attract the best quote from Market Makers assigned in the series, which in turn should attract orders to the Exchange at the open (*i.e.,* the Exchange can leverage the highest bid and lowest offer from the various Marker Makers that submit quotes). The Exchange represented that the changes proposed in Amendment No. 4 would make it easier for market participants to navigate and comprehend the proposed rule changes for options trading under Pillar. Based on the representations of the Exchange, the Commission believes the changes proposed in Amendment No. 4 would make it easier for market participants to navigate and comprehend the proposed rule changes for options trading under Pillar.

In addition, the Exchange states it believes that Amendment No. 4 is non-controversial, does not pose an undue burden on competition, and does not raise any novel issues because the proposed changes (other than the added description of Complex QCC Orders) would add clarity and provide additional explanations related to the proposed rule changes. The Exchange believes that the proposed description of Complex QCC Orders, which orders it represents is not new or novel, is necessary to permit fair competition among the options exchanges and to establish more uniform auction rules on the various options exchanges.[218]

Based on the representations of the Exchange, the Commission believes that the changes proposed in Amendment No. 4 would not significantly affect the protection of investors or the public interest, but instead would provide greater clarity to the original filing and provide greater transparency about the application of the rule changes being adopted for options trading under Pillar.

[216] *See supra* note 11.

[217] *See* Notice, *supra* note 3.

[218] *See, e.g.,* Cboe Rule 5.6(c) (setting forth operation of Complex QCC Orders) and MIAX Rule 515(h)(4) (same).

Therefore, the Commission finds that Amendment No. 4 to the proposal raises no novel regulatory issues, that it is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[219] to approve the proposed rule change, as modified by Amendment No. 4, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[220] that the proposed rule change (SR–NYSEArca–2021–47), as modified by Amendment No. 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[221]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–01970 Filed 1–31–22; 8:45 am]

**BILLING CODE 8011–01–P**

[219] 15 U.S.C. 78s(b)(2).

[220] 15 U.S.C. 78s(b)(2).

[221] 17 CFR 200.30–3(a)(12).

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| Date of FR publication | 15 days after publication | 21 days after publication | 30 days after publication | 35 days after publication | 45 days after publication | 60 days after publication | 90 days after publication |
|---|---|---|---|---|---|---|---|
| February 1 | Feb 16 | Feb 22 | Mar 3 | Mar 8 | Mar 18 | Apr 4 | May 2 |
| February 2 | Feb 17 | Feb 23 | Mar 4 | Mar 9 | Mar 21 | Apr 4 | May 3 |
| February 3 | Feb 18 | Feb 24 | Mar 7 | Mar 10 | Mar 21 | Apr 4 | May 4 |
| February 4 | Feb 22 | Feb 25 | Mar 7 | Mar 11 | Mar 21 | Apr 5 | May 5 |
| February 7 | Feb 22 | Feb 28 | Mar 9 | Mar 14 | Mar 24 | Apr 8 | May 9 |
| February 8 | Feb 23 | Mar 1 | Mar 10 | Mar 15 | Mar 25 | Apr 11 | May 9 |
| February 9 | Feb 24 | Mar 2 | Mar 11 | Mar 16 | Mar 28 | Apr 11 | May 10 |
| February 10 | Feb 25 | Mar 3 | Mar 14 | Mar 17 | Mar 28 | Apr 11 | May 11 |
| February 11 | Feb 28 | Mar 4 | Mar 14 | Mar 18 | Mar 28 | Apr 12 | May 12 |
| February 14 | Mar 1 | Mar 7 | Mar 16 | Mar 21 | Mar 31 | Apr 15 | May 16 |
| February 15 | Mar 2 | Mar 8 | Mar 17 | Mar 22 | Apr 1 | Apr 18 | May 16 |
| February 16 | Mar 3 | Mar 9 | Mar 18 | Mar 23 | Apr 4 | Apr 18 | May 17 |
| February 17 | Mar 4 | Mar 10 | Mar 21 | Mar 24 | Apr 4 | Apr 18 | May 18 |
| February 18 | Mar 7 | Mar 11 | Mar 21 | Mar 25 | Apr 4 | Apr 19 | May 19 |
| February 22 | Mar 9 | Mar 15 | Mar 24 | Mar 29 | Apr 8 | Apr 25 | May 23 |
| February 23 | Mar 10 | Mar 16 | Mar 25 | Mar 30 | Apr 11 | Apr 25 | May 24 |
| February 24 | Mar 11 | Mar 17 | Mar 28 | Mar 31 | Apr 11 | Apr 25 | May 25 |
| February 25 | Mar 14 | Mar 18 | Mar 28 | Apr 1 | Apr 11 | Apr 26 | May 26 |
| February 28 | Mar 15 | Mar 21 | Mar 30 | Apr 4 | Apr 14 | Apr 29 | May 31 |