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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AO18

Access to Federal Employees Health Benefits (FEHB) for Employees of Certain Tribally Controlled Schools

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rule which expanded access to enrollment in the Federal Employees Health Benefits (FEHB) Program to additional tribal employees. The Consolidated Appropriations Act, 2021 (FY21 CAA) amended section 409 of the Indian Health Care Improvement Act and expanded entitlement to Indian tribes or tribal organizations carrying out programs under the Tribally Controlled Schools Act of 1988 (TCSA) to purchase coverage, rights, and benefits under the FEHB Program for their employees. This final rule adopts the interim final rule with minor clarifications.

DATES: Effective on April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Julia Elam, Senior Policy Analyst, at *julia.elam@opm.gov* or (202) 606–2128.

SUPPLEMENTARY INFORMATION: On September 3, 2021, OPM issued an interim final rule (86 FR 49461) amending 5 CFR part 890, to expand access to enrollment in the FEHB Program to Indian tribes or tribal organizations carrying out programs under the Tribally Controlled Schools Act of 1988 (TCSA) for their employees. OPM provided 60 days for the public to comment on the interim final rule. The comment period expired on November 2, 2021. However, comments were not accepted on regulations.gov during the first 18 days of the comment period due to a technical error. Therefore, OPM published an extension (86 FR 60357) of the period for public comment on the interim final rule from November 2, 2021 to November 20, 2021.

OPM notes the following clarifications to the preamble of the interim final rule, 86 FR 49461. In the section on ''Need for Regulatory Action,'' footnotes 4 and 5 in the interim final rule should have been reversed. In the section on ''Effects on Tribal Employees,'' footnote 10 is listed twice. A new footnote 6 should be inserted after the sentence, stating ''Another urgent concern is that American Indian/Alaska Natives (AI/AN) experience health disparities, and, according to the Centers for Disease Control and Prevention (CDC), AI/AN have experienced disproportionate rates of infection and mortality during the COVID–19 pandemic.'' This footnote 6 should have included a citation to a report located at *https://www.cdc.gov/mmwr/volumes/69/wr/mm6949a3.htm.* The current Footnotes 6 should be renumbered as footnote 7, and current footnotes 7–10 should be renumbered as 8–11. In the section on ''Effects on Other Parties,'' a footnote was made to the medical loss regulations without any text in accompanying footnote 13. The footnote should have included a citation to 77 FR 28790 and should be renumbered as footnote 12.

Authority for This Rulemaking

Section 1114 of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) amended Section 409 of the Indian Health Care Improvement Act (25 U.S.C. 1647b) to extend entitlement to Indian tribes or tribal organizations carrying out programs under the TCSA (25 U.S.C. 2501 *et seq.*) to purchase coverage, rights and benefits under the FEHB Program for their employees.

The FEHB Program is administered by OPM in accordance with Title 5, Chapter 89, United States Code and implementing regulations (Title 5, parts 890, 892 and Title 48, Chapter 16).

The Patient Protection and Affordable Care Act (ACA) (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended extended entitlement to Indian tribes and tribal organizations carrying out programs under the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638), and urban Indian organizations carrying out programs under Title V of the Indian Health Care Improvement Act (IHCIA) to purchase coverage, rights, and benefits under the FEHB Program for their employees, defined in the FEHB regulations as ''tribal employees.'' As the administrator of the FEHB Program, OPM extended eligibility to tribal employees of entitled tribal employers within the meaning of section 409 of the IHCIA. Tribal employers began purchasing FEHB for their employees on March 22, 2012 with coverage effective on May 1, 2012. As of January 2022, 138 tribal employers participate in the FEHB Program, and 1l of those are tribally controlled schools. As of January 2022, the total tribal enrollment in the FEHB Program is 34,333 with an estimated 63,000 covered lives.

Responses to Comments on the Interim Final Rule

OPM received 2 comments from the members of the public. One commenter noted all school employees should have the opportunity to be protected during the pandemic and expanding enrollment in the Federal Employees Health Benefits Program will expand access. Another commenter also expressed support for the rule. OPM appreciates the commenters' support for the regulation and notes that this rule applies only to TCSA grant schools; schools operating under the ISDEAA (Pub. L. 93–638) were already entitled to purchase FEHB for tribal employees. As noted earlier in the rule, OPM is providing a cite the medical loss regulations which is a clarification. No other changes are made.

Expected Impact of the Final Rule

While this rule identifies TCSA grant schools as tribal employers entitled to purchase FEHB coverage for their tribal employees, pursuant to Public Law 116–260, OPM does not believe this regulation will have a large impact on the broader health insurance markets. Currently, there are an estimated 4,533 eligible tribal employees of tribally controlled schools, including TCSA grant schools and ''638 contract schools.'' Eligible tribal employees are full-time common law employees as determined by a tribal employer. There are an estimated 4,328 newly eligible tribal employees at TCSA grant schools. The impact on carriers is relatively small, as tribal enrollments make up 0.78 percent of enrollments in the FEHB

Program. As of January 2022, 138 tribal employers participate in the FEHB Program, and 11 of those are tribally controlled schools. As of January 2022, the total tribal enrollment in the FEHB Program is 34,333 with an estimated 63,000 covered lives. Overall, as of March 2021 there are over 4.1 million separate enrollments in the FEHB Program, providing health insurance to about 8.2 million Federal employees, annuitants, certain tribal employees, and their family members covered by the FEHB Program.

For states with larger American Indian/Alaska Native (AI/AN) populations, OPM does not expect an outsized impact on local carriers as local carriers plans generally reflect the cost of their area. OPM does not anticipate that the newly eligible tribal employees will be significantly more expensive than other current FEHB enrollees in the same geographic region. For example, OPM estimates, for tribally controlled schools in which data is available, that in states with large AI/AN populations, such as New Mexico, Arizona, and South Dakota, only about 1,899 tribal employees are eligible at TCSA grant schools. Therefore, OPM does not anticipate a material impact if these tribal enrollees were to enroll in FEHB coverage. For FEHB nationwide fee-for-service (FFS) plans, there will not be enough new enrollees in this group to have a material impact.

Effects on Other Parties

As described above, one expected impact of this rule is that affected tribal employees will gain access to health insurance plans with lower health insurance premiums. A reduction in those premiums reflects transfers between various parties involved in these transactions. The clearest effect is a transfer toward parties paying for health benefits absent the expansion of FEHB benefits, which largely include tribal employers and employees. This transfer is most likely to come initially from reductions in payments to health insurance providers or from offsetting increases in FEHB health insurance premiums. We expect that, due to medical loss ratio [1] regulations, premiums largely reflect medical costs experienced by those insured by the plan. As a result, we expect that the rule will largely initially result in a transfer from those paying FEHB premiums (including enrollees and the Federal Government) in the baseline to entities who experience premium reductions under this rule. As described above, we expect these effects to be quite small.

[1] 77 FR 28790.

Alternative Regulatory Approaches

OPM is unaware of feasible alternatives to this rule, as this regulation aligns FEHB eligibility with the FY21 CAA, which amended section 409 of the IHCIA. Currently, OPM regulations do not include FEHB eligibility for Indian tribes or tribal organizations carrying out programs under the TCSA, and this rule expands eligibility along these lines.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). This final rule is not a significant regulatory action under E.O. 12866 and was not reviewed by OMB.

Regulatory Flexibility Act

OPM certifies this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or Tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local or Tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. OMB's Office of Information and Regulatory Affairs has determined that this is not a ''major rule'' as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves an OMB approved collection of information subject to the PRA for the FEHB Program, OMB Control Number 3206–0160, Health Benefits Election Form. The public reporting burden for this collection is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The systems of record notice for this collection is: OPM/Central–23, ''FEHB Program Enrollment Records,'' available at *https://www.federalregister.gov/d/* 2021–01259.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Indians, Military personnel, Reporting and recordkeeping requirements, Retirement.

Accordingly, OPM adopts the interim rule published September 3, 2021, at 86 FR 49461, as final without change.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2022–07802 Filed 4–12–22; 8:45 am]

BILLING CODE 6325–64–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–SC–21–0066; SC21–922–1 FR]

Washington Apricots; Suspension of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends the reporting and assessment requirements prescribed under the marketing order regulating apricots grown in designated counties in Washington (Marketing Order No. 922). In a separate meeting, the State of Washington Apricot Marketing Committee also unanimously recommended terminating Marketing Order No. 922. This rule indefinitely suspends the assessment and associated reporting requirements of the marketing order during the period that the AMS is processing the termination request.

DATES: Effective May 13, 2022, § 922.235 is stayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724 or Email: *Joshua.R.Wilde@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491 or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The State of Washington Apricot Marketing Committee (Committee) locally administers the Order and is comprised of producers and handlers operating within the production area.

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

In addition, this final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. USDA has determined this final rule is unlikely to 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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. Agricultural Marketing Service (AMS) reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination would tend to effectuate the declared policy of the Act.

On May 11, 2021, the Committee met and deliberated over the continuance of the Order. Following this meeting, the Committee unanimously recommended that AMS terminate the Order and suspend the collection of assessments. This final rule indefinitely suspends handler assessments as well as any remaining reporting requirements of the Order while AMS is processing the termination. The termination will be conducted in a separate rulemaking action.

Section 922.41 provides authority for the Committee to assess handlers for their pro rata share of the Committee expenses authorized each fiscal period. Section 922.60 authorizes the Committee to collect reports and other information necessary for the Committee to perform its duties under the Order. This final rule suspends § 922.235, which established a continuing assessment rate of $2.86 per ton, effective for the 2019–2020 and subsequent fiscal periods. Any reports that are currently being collected are no longer required.

The Order has been in effect since 1957 and has provided the apricot industry in Washington with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory product inspection.

Handling regulations requiring apricots to be inspected and meet mandatory pack and container requirements were in effect until 2007 and minimum grade, size, maturity, and quality requirements until 2014. Following a recommendation from the Committee, AMS suspended the container regulations for apricots for one-year, effective April 6, 2006 (71 FR 16982), and subsequently extended that suspension indefinitely effective August 1, 2007 (72 FR 16265). The Committee believed that with changing market dynamics container regulations were no longer necessary to ensure orderly marketing and that suspension would provide greater flexibility to handlers for packing and shipping apricots.

In 2013, based on the Committee's recommendation, AMS issued an interim rule suspending the handling regulations for apricots effective October 24, 2013 (78 FR 62936). A final rule

affirming the indefinite suspension published in the **Federal Register** March 20, 2014 (79 FR 15539). Again, the Committee believed the cost of complying with the Order's handling and inspection requirements outweighed the benefits to both producers and handlers of apricots. Both actions were unanimously recommended by the Committee.

Following these regulatory suspensions, the Committee continued to levy assessments to maintain its functionality. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event market conditions warranted regulation.

The Committee met on May 11, 2021, to discuss market dynamics and the Committee's budget and assessments. A significant decrease in the 2020–2021 crop production and increased Committee expenses would require the Committee to increase the assessment rate by 365 percent, from $2.86 to $13.30 per ton, to maintain its functionality. During those discussions, the Committee determined that the suspension of handling and container requirements had not adversely affected the marketing of Washington apricots rendering the Order no longer necessary to the industry. The Committee concluded that termination of the Order would have no adverse effect on industry. In preparing to terminate the Order, the Committee recommended a budget of expenditures of $5,508 for the period beginning April 1, 2021, and ending with the termination.

Following the May 11, 2021, meeting, the Committee conducted a vote among all its members to terminate the Order. Termination of the Order was unanimously supported by the Committee. This final rule indefinitely suspends the handler assessments and any reports being collected, in preparation for the termination of the Order.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers of Washington apricots and approximately 8 apricot handlers in the production area subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts of less than $1,000,000 (13 CFR 121.201).

Based on USDA's National Agricultural Statistics Service (NASS) data, and given the number of Washington apricot growers, average grower revenue is below $1,000,000. NASS's 2020 Washington apricot price per ton of $2,040 yields annual grower estimated revenue of $3,321,120 which equals approximately $10,543 average annual receipts per grower ($2,040 price per ton multiplied by 1,628 tons divided by 315 growers). Thus, most Washington apricot growers would be considered small businesses under the SBA definition.

In addition, according to data from USDA's Market News Service, an estimated Washington apricot 2020 season average Free on Board (f.o.b.) shipper (handler) price per carton was approximately $31.59 (for Washington apricots, 2-layer tray pack carton, all sizes, June–July 2020, midpoint of the ''mostly low'' and ''mostly high'' prices). With a standard Market News weight of 18 pounds per tray pack carton of apricots, the f.o.b. price is approximately $1.755 per pound, or $3,510 per ton ($31.59 divided by 18 pounds). The Committee reported that the industry shipped 1,628 tons for the 2020 season. Total 2020 estimated handler receipts are $5.714 million (1,628 tons times $3,510 per ton). Average annual receipts per handler are approximately $714,000 ($5.714 million divided by 8 handlers). Thus, most Washington apricot handlers would be considered small businesses under the SBA definition.

This final rule suspends the assessment requirements of the Order and any reports currently being collected. The assessment rate that suspended is the $2.86 per ton rate in effect for the 2019–2020 fiscal period and continuing to the present day. The Committee also recommended a budget of expenditures of $5,508 for the period beginning April 1, 2021, and ending with the termination of the Order. The budget was based on the Committee's estimated financial resources on March 31, 2021. Budgeted expenditures include administrative expenses and any expenses necessary to finalize the termination of the Order.

On July 7, 2021, the Committee made the recommendation to suspend the remaining reporting and handler assessments as an adjunct to the recommendation to terminate the Order. As such, the alternative discussed by the Committee was to maintain the status quo and continue to collect handler assessments. The Committee determined that the decrease in the 2020–2021 crop production and the increases in Committee expenses would require the Committee to increase the assessment rate by 365 percent, from $2.86 to $13.30 per ton. Further, the 2020–2021 crop production was the smallest crop on record, and evidence suggests that this decline is a continuation of an industry trend.

In addition, the suspension of the handling and packing regulations has not adversely affected the marketing of Washington apricots. Evidence from the past 7 years showed that apricots can be marketed from the production area in the absence of the Order's requirements without a negative economic impact on the industry.

After considering the alternative, the Committee concluded that the cost to maintain the Order outweighed its benefit to producers and handlers and, therefore, unanimously voted to suspend the reporting requirements and collection of assessments beginning with 2021 fiscal period, and to terminate the Order.

This action suspends the reporting and assessment obligations imposed on handlers. When in effect, assessments are applied uniformly on all handlers, and some of those costs may be passed on to producers. The suspension of the reporting and assessment requirements reduces the regulatory burden on handlers and would be expected to reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 Fruit Crops. This final rule suspends those information collection requirements, and any reporting requirements under the Order.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, AMS has not identified any relevant Federal rules

that duplicate, overlap or conflict with this final rule.

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

The Committee's meetings were widely publicized throughout the Washington apricot industry, and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Meetings are held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually.

A proposed rule concerning this action was published in the **Federal Register** on November 23, 2021 (86 FR 66462). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by AMS and the Office of the Federal Register. A 60-day comment period ending January 24, 2022, was provided to allow interested persons to respond to the proposal. During the comment period, one comment was received in response to the proposal. The comment received did not address the merits of this rule. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, AMS finds that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 922 as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 922.235 [Stayed]

■ 2. Section 922.235 is stayed indefinitely.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–07830 Filed 4–12–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9959]

RIN 1545–BP70

Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income

Correction

In Rule document 2021–27887, appearing on pages 276–376, in the issue of Tuesday, January 4, 2022, make the following corrections:

§ 1.861–20 [Corrected]

■ 1. On page 327, in the first column, in amendatory instruction Par. 22, the table is corrected to read as set forth below:

Old paragraph	New paragraph
(b)(17)	(b)(18)
(b)(18)	(b)(19)
(b)(19)	(b)(20)
(b)(20)	(b)(21)
(b)(21)	(b)(23)
(b)(22)	(b)(24)
(b)(23)	(b)(25)
(b)(24)	(b)(26)

§ 1.905–3 [Corrected]

■ 2. On page 373, in the first column, amendatory instruction Par. 29, is corrected to read as set forth below:

■ **Par.** 29. Section 1.905–3 is amended:

■ 1. In paragraph (a), by revising the first two sentences.

■ 2. In paragraph (b)(1)(ii)(B)(*1*), by removing the language ''USC Effective'' and adding the language ''USC. Effective'' in its place.

■ 3. By adding paragraph (b)(4).

■ 4. By revising paragraph (d).

[FR Doc. C1–2021–27887 Filed 4–8–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1210, 1218, and 1243

[Docket No. ONRR–2011–0023; DS63644000 DRT000000.CH7000 223D1113RT]

RIN 1012–AA28

Mailing and Email Address Amendments

AGENCY: Office of Natural Resources Revenue (''ONRR''), Interior.

ACTION: Final rule.

SUMMARY: ONRR is publishing this final rule to update room number, mailstop, and other information for filing certain forms by mail, courier, or overnight delivery. It also provides email addresses for filing certain forms electronically.

DATES: This rule is effective May 13, 2022.

FOR FURTHER INFORMATION CONTACT: For questions on procedural and technical issues, contact Ginger J. Hensley, Regulatory Specialist, by telephone at (303) 231–3171 or email at *ONRR_RegulationsMailbox@onrr.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Amendments
II. Procedural Matters

I. Explanation of Amendments

ONRR regulations at 30 CFR parts 1210, 1218, and 1243 authorize various forms to be filed with ONRR related to Federal and Indian royalty reporting and payment and appeal bonding by mail, courier, or overnight delivery. As further described in the amendatory instructions, this final rule amends these parts to update room number, mailstop, or other information for these delivery methods.

Title 30 CFR 1210.151 authorizes form ONRR–4393, Request to Exceed Regulatory Allowance Limitation, to be filed with ONRR by mail, courier, overnight delivery, or email, but it does not provide an email address for doing so. This final rule amends this section to specify *royaltyvaluation@onrr.gov* as the email address for filing form ONRR–4393 with ONRR by email.

Title 30 CFR 1210.151, 1210.152, and 1210.153 authorize various forms to be filed with ONRR related to royalty reporting for Indian leases by mail, courier, or overnight delivery. This final rule amends these sections to also authorize the filing of these forms with ONRR electronically by email to *onrrindianforms@onrr.gov.*

This is a final rulemaking with no request for public comment. This

rulemaking is exempt from the notice and comment requirements of 5 U.S.C. 553(b) because it relates to a rule ''of agency organization, procedure, or practice'' under 5 U.S.C. 553(b)(A). Furthermore, 5 U.S.C. 553(b)(B) provides an exception to the public comment requirement when an agency for good cause finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' ONRR finds that public comment is not necessary because this is a technical rule to amend ONRR's mailing and email addresses.

II. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (''OIRA'') will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability and reduce uncertainty, and to use the most innovative and least burdensome tools for achieving regulatory ends. Furthermore, E.O. 13563 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. E.O. 13563 also emphasizes 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. ONRR developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis for rules that are subject to the notice-and-comment rulemaking requirements under the APA if the rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 601–612. The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities. This final rule will impact large and small entities but will not have a significant economic effect on either because it is a technical rule to update addresses and to provide email addresses that a person may elect to use to submit certain documents electronically.

C. Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This final rule:

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

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

(3) 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.

D. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. This final rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. Therefore, ONRR is not required to provide a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

E. Takings (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have any significant takings implications. This final rule applies to Outer Continental Shelf and Federal and Indian onshore leases. It does not apply to private property. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications that warrant the preparation of a federalism summary impact statement. This is a technical rule to amend ONRR's mailing and email addresses. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of E.O. 12988. Specifically, this rule:

1. 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

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

H. Consultation With Indian Tribes (E.O. 13175)

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. ONRR has evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and has determined that it has no substantial direct effect on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This final rule does not contain information collection requirements. A submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

J. 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 this rule is categorically excluded under: ''Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' *See* 43 CFR 46.210(i) and DOI Departmental Manual, part 516, section 15.4.D. ONRR has determined that this rule is not involved in any of the extraordinary circumstances under 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. This rule will not alter in any material way natural resource exploration, production, or transportation.

K. Effects on the Energy Supply (E.O. 13211)

This final rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

ONRR is required by E.O.s 12866 (section 1 (b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule ONRR publishes must use:

(1) Logical organization.

(2) Active voice to address readers directly.

(3) Clear language rather than jargon.

(4) Short sections and sentences.

(5) Lists and tables wherever possible.

If you feel that ONRR has not met these requirements, send your remarks to *ONRR_RegulationsMailbox@onrr.gov.* To better help ONRR revise the rule, your remarks should be as specific as possible. For example, you should tell ONRR the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 1210

Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulfur.

30 CFR Part 1218

Continental shelf, Electronic funds transfers, Indian lands, Mineral royalties, Oil and gas exploration, Public lands mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1243

Administrative practice and procedure, Government contracts, Mineral royalties, Public lands—minerals resources.

Kimbra G. Davis,

Director for the Office of Natural Resources Revenue.

Authority and Issuance

For the reasons discussed in the preamble, under the authority provided by Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and Secretarial Order No. 3299, ONRR amends parts 1210, 1218, and 1243 of title 30 CFR, chapter XII as follows:

PART 1210—FORMS AND REPORTS

■ 1. The authority citation for 30 CFR part 1210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

§§ 1210.55, 1210.105, 1210.151, 1210.152, 1210.153, 1210.154, 1210.155, 1210.156, 1210.157, 1210.158, 1210.201, 1210.205 [Amended]

■ 2. In the following table, amend the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column:

Amend	By removing the reference to:	And adding in its place:
§ 1210.55(b)(2)	Room A–614	Room A322.
§ 1210.105(b)(2)	Room A–614	Room A322.
§ 1210.151(c)(2)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 643000B, Denver, CO 80225–0165.
§ 1210.151(c)(3)	Room A–614	Room A322.
§ 1210.152(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 634000B, Denver, CO 80225–0165.
§ 1210.152(c)(2)	Room A–614	Room A322.
§ 1210.153(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 634000B, Denver, CO 80225–0165.
§ 1210.153(c)(2)	Room A–614	Room A322.
§ 1210.154(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 63240B, Denver, CO 80225–0165.
§ 1210.154(c)(2)	Room A–614, MS 392B2	Room A322.
§ 1210.156(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 633000B, Denver, CO 80225–0165.
§ 1210.156(c)(2)	Room A–614, MS 382B2	Room A322.
§ 1210.157(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 63230B, Denver, CO 80225–0165.
§ 1210.157(c)(2)	Room A–614, MS 64220	Room A322.
§ 1210.158(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 633000B, Denver, CO 80225–0165.
§ 1210.158(c)(2)	Room A–614	Room A322.
§ 1210.201(c)(3)(i)	P.O. Box 25627, Denver, CO 80225–0627	P.O. Box 25165, MS 633000B, Denver, CO 80225–0165.
§ 1210.201(c)(3)(ii)	Room A–614	Room A322.
§ 1210.202(c)(2)(i)	Solid Minerals and Geothermal (A&C), MS 62530B., Denver, Colorado 80225–0165.	P.O. Box 25165, MS 633000B, Denver, CO 80225–0165.
§ 1210.202(c)(2)(ii)	Solid Minerals and Geothermal (A&C), MS 62530B, Room A–614, Bldg 85, DFC, Denver Colorado 80225.	MS 633000B, Room A322, Bldg. 85, DFC, Denver, Colorado 80225–0165.
§ 1210.205(c)(1)	P.O. Box 25165, Denver, CO 80225–0165	P.O. Box 25165, MS 633000B, Denver, CO 80225–0165.
§ 1210.205(c)(2)	Room A–614	Room A322.

■ 3. Amend § 1210.151 by revising paragraph (c)(1) to read as follows:

§ 1210.151 What reports must I submit to claim an excess allowance?

* * * * *

(c) * * *

(1) Complete and submit the form electronically as an email attachment to *royaltyvaluation@onrr.gov*;

* * * * *

■ 4. Amend § 1210.152 by:

■ a. Removing ''or'' at the end of paragraph (c)(1);

■ b. Removing the period at the end of paragraph (c)(2) and adding ''; or'' in its place; and

■ c. Adding paragraph (c)(3).

The addition reads as follows:

§ 1210.152 What reports must I submit to claim allowances on an Indian lease?

* * * * *

(c) * * *

(3) Complete and submit the form electronically as an email attachment to *onrrindianforms@onrr.gov.*

■ 5. Amend § 1210.153 by:

■ a. Removing ''or'' at the end of paragraph (c)(1);

■ b. Removing the period at the end of paragraph (c)(2) and adding ''; or'' in its place; and

■ c. Adding paragraph (c)(3).

The addition reads as follows:

§ 1210.153 What reports must I submit for Indian gas valuation purposes?

* * * * *

(c) * * *

(3) Complete and submit the form electronically as an email attachment to *onrrindianforms@onrr.gov.*

■ 6. Amend § 1210.205 by:

■ a. Removing the ''or'' at the end of paragraph (c)(1);

■ b. Removing the period at the end of paragraph (c)(2) and adding ''; or'' in its place; and

■ c. Adding paragraph (c)(3).

The addition reads as follows:

§ 1210.205 What reports must I submit to claim allowances on Indian coal leases?

* * * * *

(c) * * *

(3) Complete and submit the form electronically as an email attachment to *onrrindianforms@onrr.gov.*

PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONEYS DUE THE FEDERAL GOVERNMENT

■ 7. The authority citation for 30 CFR part 1218 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335, 3711, 3716–18, 3720A, 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

§ 1218.51 [Amended]

■ 8. Amend § 1218.51 in paragraph (e) by removing ''Room A–614'' and adding ''Room A322'' in its place.

PART 1243—SUSPENSIONS, PENDING APPEAL AND BONDING—OFFICE OF NATURAL RESOURCES REVENUE

■ 9. The authority citation for 30 CFR part 1243 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

§ 1243.200 [Amended]

■ 10. Amend § 1243.200 by:

■ a. In paragraph (a)(1), removing ''MS 64200B'' and adding ''MS 642000B'' in its place; and

■ b. In paragraph (a)(2), removing ''MS 64200B, Document Processing Team, Room A–614'' and adding ''MS 642000B, Room A322'' in its place.

[FR Doc. 2022–06639 Filed 4–12–22; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0250]

RIN 1625–AA00

Safety Zone; Tennessee River, Chattanooga, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Tennessee River from mile marker (MM) 464.0 to 464.5. The temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by Chattanooga Presents—TN Aquarium 30th Anniversary Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 9 p.m. through 10 p.m. on April 30, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0250 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Third Class Benjamin Gardner, Marine Safety Detatchment Nashville, U.S. Coast Guard; telephone 615–736–5421, email *Benjamin.T.Gardner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

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

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public safety due to the danges associated with fireworks.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Chattanooga Presents—TN Aquarium 30th Anniversary Fireworks starting April 30, 2022, will be a safety concern for anyone within mile marker (MM) 464.0 to 464.5 on the Tennessee River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the firework display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9 p.m. through 10 p.m. on April 30, 2022. The safety zone will cover all navigable waters between MM464.0 to 464.5 on the Tennessee River, extending the entire width of the river. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks display is occuring. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16.

Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

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

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone restricts transit on a point five segment of the Tennessee River for 1 hour on one day. Moreover, the Coast Guard will issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone so that waterway users may plan accordingly for this short restriction on transit, and the rule allows vessels to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 1 hour that will prohibit entry between MM 464.0 to 464.5 on the Tennessee River for the fireworks display. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Due to the emergency nature of this rulemaking, a Record of Environmental Consideration is not required.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1., Revision No. 01.2.Inserting required closing tag for E.

■ 2. Add § 165.T08–0250 to read as follows:

§ 165.T08–0250 Safety Zone; Tennessee River, Chattanooga, TN.

(a) Location. The following area is a safety zone: all navigable waters of the Tennessee River, Mile Markers 464.0 to 464.5, extending the entire width of the river.

(b) Periods of enforcement. This section will be enforced from 9 p.m. through 10 p.m. on April 30, 2022.

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

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16.

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

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

Dated: April 6, 2022.

A.M. Beach,

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

[FR Doc. 2022–07819 Filed 4–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0751]

RIN 1625–AA00

Safety Zone; Chincoteague Bay, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters within a 500-yard radius from centerpoint of a downed aircraft reported within Chincoteague Bay just north of Wildcat Point. This action is necessary to provide for the safety of persons and the marine environment from the potential safety hazards associated with the damage assessment and salvage of the grounded aircraft, through May 6, 2022. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Virginia or designated representative.

DATES: This rule is effective without actual notice from April 13, 2022 through May 6, 2022. For the purposes of enforcement, actual notice will be used from April 7, 2022, until April 13, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0751 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: 757–668–5580, email: *virginiawaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On March 31, 2022, the Coast Guard issued notification of a rulemaking creating a temporary safety zone on the navigable waters of Chincoteague Bay to protect persons and vessels during damage assessment and salvage operations at the aircraft wreck site. The original safety zone was effective through April 7, 2022. A copy of the rulemaking that ended on April 7, 2022 is available in the Docket USCG–2022–0751, which can be found using instructions in the **ADDRESSES** section. However, additional time is needed to conduct the damage assessment and salvage operations, and, as a result, the Coast Guard is establishing through temporary regulations a safety zone that will be in effect through May 6, 2022. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this extension because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the continuing damage assessment and salvage operations and required publication of this extension.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic within the aircraft wreckage site is needed to protect life, property and the environment, therefore a 30-day notice period is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of providing immediate protection to on-scene emergency personal, creating a working buffer necessary to mitigate any safety and potential pollution threats caused by the wreckage and establishing immediate maritime safety in the vicinity of on-scene salvage and damage assessments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Virginia (COTP) has determined that potential hazards exist within the aircraft

wreckage site and it is necessary to keep the area clear while assessments and salvage operations are being conducted. This rule is needed to protect persons who may transit in the vicinity of the wreckage site which involves on-going damage assessments, the potential for floating wreckage debris, potential pollution, and salvage operations.

IV. Discussion of the Rule

This rule establishes a temporary safety zone through May 6, 2022. The safety zone includes all navigable waters within 500 yards of the wreckage site at approximate position 37°59.27′ N, 075°18.75′ W just north of Wildcat Point. The extended duration of the zone is intended to protect personnel, vessels, and the maritime environment in these navigable waters while damage assessment and salvage operations are conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and limited duration of the safety zone. This zone impacts a small designated area of the Chincoteague Bay for a total of no more than 30 days and operations may suspend early at the discretion of the Captain of the Port, Sector Virginia.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for 30 days that will prohibit entry within certain navigable waters of the Chincoteague Bay. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0751 to read as follows:

§ 165.T05–0751 Safety Zone; Chincoteague Bay, Chincoteague, VA

(a) *Location.* The following area is a safety zone: All waters of the Chincoteague Bay extending 500 yards from centerpoint of the wreckage site at approximate position 37° 59.27′ N, 075° 18.75″ W just north of Wildcat Point.

(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 Virginia (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF/FM Chanel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule will be enforced April 7, 2022, through May 6, 2022, unless an earlier end is announced by broadcast notice to mariners.

Dated: April 5, 2022.

Samson C. Stevens,

Captain, U.S. Coast Guard, Captain of the Port Sector Virginia.

[FR Doc. 2022–07656 Filed 4–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0223]

RIN 1625–AA00

Safety Zone; Tennessee River, Tuscumbia, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Tennessee River from mile marker (MM) 244.0 to MM 246.0. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by TVA imploding the Colbert Fossil Plant. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated represenative.

DATES: This rule is effective from 6 a.m. through 8 a.m. on April 14, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0223 in the search box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Third Class Benjamin Gardner, Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615–736–5421, email *Benjamin.T.Gardner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the TVA Colbert Fossil Plant Implosion will be a safety concern for anyone within 2 miles of the Colbert Plant implosion, and is establishing a safety zone from mile marker (MM) 244.0 to 246.0 on the Tennessee River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters for the duration of the fiber line installation.

IV. Discussion of the Rule

This rule establishes an emergency safety zone from 6 a.m. until 8 a.m. on April 14, 2022. The safety zone will cover all navigable waters between Mile Marker (MM) 244.0 to 246.0 on the Tennessee River, extending the entire width of the river. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while TVA is imploding the Colbert Fossil Plant. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

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

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone restricts transit on a two mile segment of the Tennessee River for 2 hours on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone so that waterway users may plan accordingly for this short restriction on transit, and the rule allows vessels to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry between MM 244.0 to 246.0 on the Tennessee River to implode the Colbert Fossil Plant. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Due to the emergency nature of this rulemaking, a Record of Environmental Consideration is not required. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0223 to read as follows:

§ 165.T08–0223 Safety Zone; Tennessee River, Tuscumbia, AL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Tennessee River, Mile Markers 244.0 to 246.0, extending the entire width of the river.

(b) *Periods of enforcement.* This section will be enforced from 6 a.m. through 8 a.m. on April 14, 2022. and

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this

section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16.

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

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

Dated: April 4, 2022.

A.M. Beach,

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

[FR Doc. 2022–07818 Filed 4–12–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0727; FRL–9552–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving state implementation plan (SIP) revisions submitted by the District of Columbia (DC), State of Maryland (MD), and Commonwealth of Virginia (VA) (collectively, the States). The revisions consist of the base year inventory for the Washington, DC-MD-VA nonattainment area (the DC Area) for the 2015 ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective May 13, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0727. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Michael O'Shea, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2064. Dr. O'Shea can also be reached via electronic mail at *OShea.Michael@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 7, 2020, the Maryland Department of the Environment (MDE) submitted a revision to the Maryland SIP entitled, ''SIP–20–04 2017 Base Year Inventory for the Washington, DC–MD–VA 2015 Ozone NAAQS Nonattainment Area.'' This revision is referred to as the ''MD submittal'' in this rule. On November 4, 2020, the District of Columbia Department of Energy and Environment (DOEE), submitted a revision to the DC SIP entitled, ''DC 2015 Ozone NAAQS Attainment Plan Base Year Inventory.'' This revision is referred to as the ''DC submittal'' in this rule. On December 11, 2020, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to the Virginia SIP entitled, ''8-Hour Ozone (2015 Standard)—Washington Attainment Plan ' VA_2017O3BYEI_12112020.' '' This revision is referred to as the ''VA submittal'' in this rule. The individual state SIP revisions, referred to collectively in this rule action as the ''DC Area base year inventory SIPs,'' address the base year inventory requirement for the DC Area for the 2015 ozone NAAQS.

I. Background

On February 24, 2022 (87 FR 10318), EPA published a notice of proposed rulemaking (NPRM) for the States. In the NPRM, EPA proposed approval of the DC Area base year inventory SIPs. The formal SIP revisions were submitted by MD on October 7, 2020, DC on November 4, 2020, and VA on December 11, 2020.

On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 ppm parts per million (ppm) to 0.070 ppm. 80 FR 65292 (October 26, 2015). Effective August 3, 2018, EPA designated the following jurisdictions in the DC Area as marginal nonattainment for the 2015 ozone NAAQS: District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in MD; and Arlington, Fairfax, Loudoun, and Prince William Counties and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park Cities in VA. 83 FR 25776 (June 4, 2018). CAA section 182(a)(1) requires ozone nonattainment areas classified as marginal or above to submit a comprehensive, accurate, current inventory of actual emissions from all emissions sources in the nonattainment area, known as a ''base year inventory.'' The DC Area base year inventory SIPs address a base year inventory requirement for the DC Area.

II. Summary of SIP Revision and EPA Analysis

A. EPA's Evaluation of the DC Area Base Year Inventory SIPs

EPA's review of the DC Area base year inventory SIPs indicate that they meet the base year inventory requirements for the 2015 ozone NAAQS.

EPA prepared a technical support document (TSD) for each state's submittal in support of this rule. In those TSDs, EPA reviewed the results, procedures, and methodologies for the SIP base year, and found them to be acceptable and developed in accordance with EPA's technical guidance. EPA's TSDs for the individual state SIPs are available online at *http://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2021–0727.

B. Base Year Inventory Requirements

In EPA's December 6, 2018 rule, ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,'' known as the ''SIP Requirements Rule,'' EPA set out nonattainment area requirements for the 2015 ozone NAAQS. (83 FR 62998). The SIP

Requirements Rule established base year inventory requirements, which were codified at 40 Code of Federal Regulations (CFR) 51.1315. As required by 40 CFR 51.1315(a), each 2015 ozone nonattainment area must submit a base year inventory within 2 years of designation.

Also, 40 CFR 51.1315(a) requires that the inventory year be selected consistent with the baseline year for the reasonable further progress (RFP) plan as required by 40 CFR 51.1310(b), which states that the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of 40 CFR part 51, Air Emissions Reporting Requirements, 40 CFR 51.1 through 50. The most recent triennial inventory year conducted for the National Emissions Inventory (NEI) pursuant to the Air Emissions Reporting Requirements (AERR) rule is 2017. 73 FR 76539 (December 17, 2008). The States selected 2017 as their baseline emissions inventory year for RFP. This selection comports with EPA's implementation regulations for the 2015 ozone NAAQS because 2017 is the inventory year. 40 CFR 51.1310(b).[1]

Further, 40 CFR 51.1315(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1300(q), which states: Ozone season day emissions means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity. The States included actual ozone season day emissions, pursuant to 40 CFR 51.1315(c).

C. DC Area Base Year Inventory SIPs

The DC Area base year inventory SIPs, contain an explanation of each State's 2017 base year emissions inventory for stationary, non-point, non-road, and on-road anthropogenic sources, as well as biogenic sources, in the DC Area. The States estimated anthropogenic emissions for volatile organic compound (VOC), nitrogen oxide (NOx), and carbon monoxide (CO) for a typical ozone season work weekday. The DC Area base year inventory SIPs were developed collaboratively. As such, their 2017 base year emissions inventory (BYEI) are almost identical and, therefore, will be referred to collectively as the ''2017 DC Area BYEI'' in the remainder of this rule, unless otherwise noted because individual distinctions are necessary.[2]

The States developed the 2017 DC Area BYEI with the following source categories of anthropogenic emissions sources: Point, quasi-point, non-point, non-road model, on-road, and commercial marine vessels, airport, and railroad (MAR) emissions sources, in addition to biogenic total sources. The 2017 DC Area BYEI sets out the methodologies the States used to develop their base year inventory for each source listed. Those methodologies are explained in further depth within appendices A–D of each state's submission. Data justifying the inventories are also provided within appendices A–D of each state's submission. Note, however, that Virginia only included appendix items relevant to their own state but uploaded files jointly with DC for the full inventory development. Furthermore, the MD submittal was earliest and, as such, contains data, development, and guidance that precedes the widespread adoption of the 2017 NEI. This timing differential accounts for the differences in the MD submittal as compared to the DC and VA submittals.

EPA's review of the DC Area base year inventory SIPs indicates that they meet the base year inventory requirements for the 2015 ozone NAAQS. Other specific requirements of MDE's October 7, 2020 submittal, DOEE's November 4, 2020 submittal and VADEQ's December 11, 2020 submittal and the rationale for EPA's proposed action, including further information on each source category, are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA's review of this material indicates the DC area base year inventory SIPs meet the base year inventory requirement for the 2015 ozone NAAQS for the DC Area. Therefore, EPA is approving the DC Area base year inventory SIPs, which were submitted on October 7, 2020 (MD), November 4, 2020 (DC), and December 11, 2020 (VA).

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

[1] On January 29, 2021, the Court of Appeals for the D.C. Circuit issued its decision regarding multiple challenges to EPA's implementation rule for the 2015 ozone NAAQS which included, among other things, upholding this provision allowing states to use an alternative baseline year for RFP. *Sierra Club* v. *EPA,* No. 15–1465 (D.C. Cir.). The other provisions of EPA's ozone implantation rule at issue in the case are not relevant for this rule.

[2] The 2017 DC Area BYEI submitted by each individual state is found as follows: DC submittal—Appendix BY2017 _EI_Document_October_30_2020_FINAL; MD submittal—Appendix 2. Wash Region 2015 NAAQS BY Inventory SIP; and VA submittal—Appendix NVA–INV–SIP–1.

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This final rule approving the DC Area base year inventory SIPs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 6, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding an entry for ''2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	* *	*	*	*
2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard.	The District of Columbia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (*i.e.,* the District of Columbia).	11/4/2020	4/13/2022, [INSERT **Federal Register** CITATION].	Docket 2022–03863.

Subpart V—Maryland

■ 3. In § 52.1070, the table in paragraph (e) is amended by adding an entry for ''2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard.	Maryland portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS.	10/7/2020	4/13/2022, [INSERT **Federal Register** CITATION].	The Maryland portion consists of Calvert, Charles, Frederick, Montgomery, and Prince George's counties.

Subpart VV—Virginia

■ 4. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for ''2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard.	The Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (*i.e.,* the District of Columbia).	12/11/2020	4/13/2022, [insert **Federal Register** citation].	The Virginia portion consists of Arlington, Fairfax, Loudoun, and Prince William counties and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park cities.

* * * * *

[FR Doc. 2022–07816 Filed 4–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[AU Docket No. 20–429; FCC 22–24; FR ID 81075]

Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 108; Bidding Scheduled To Begin July 29, 2022

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes the procedures, deadlines, and upfront payment and minimum opening bid amounts for the upcoming auction of approximately 8,000 new flexible-use geographic overlay licenses in the 2.5 GHz band (Auction 108). The *Auction 108 Procedures Public Notice* summarized here provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 108 bidding, as well as overview of the post-auction application and payment process. The *Auction 108 Procedures Public Notice* released on March 21, 2022, was corrected by an erratum released on April 1, 2022. The changes made by the erratum are included in this document.

DATES: Applications to participate in Auction 108 must be submitted before 6 p.m. Eastern Time (ET) on May 10, 2022. Upfront payments for Auction 108 must be received by 6 p.m. ET on June 23, 2022. Bidding in Auction 108 is scheduled to start on July 29, 2022.

FOR FURTHER INFORMATION CONTACT:

General Auction 108 Information: FCC Auctions Hotline at 888–225–5322, option two; or 717–338–2868.

Auction 108 Legal Information: Lyndsey Grunewald, Daniel Habif or Scott Mackoul at (202) 418–0660.

2.5 GHz Band Licensing Information: Madelaine Maior or Nadja Sodos-Wallace at (202) 418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's

document, *Auction 108 Procedures Public Notice,* in AU Docket No. 20–429, FCC 22–24, released on March 21, 2022. The complete text of this document, including attachments and any related document, is available on the Commission's website at *http://www.fcc.gov/auction/108* or by using the search function for on the Commission's Electronic Comment Filing System (ECFS) web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. General Information

A. Introduction

1. By the *Auction 108 Procedures Public Notice,* the Commission establishes the procedures to be used for Auction 108, the auction of approximately 8,000 new flexible-use geographic overlay licenses in the 2.5 GHz band. Auction 108 will offer the single largest contiguous portion of available mid-band spectrum below 3 GHz, and the licenses made available in this auction will help extend 5G service beyond the most populated areas.

2. Bidding in Auction 108 is scheduled to commence on July 29, 2022. Auction 108 will be conducted using an ascending clock auction with a supply of one in each category of frequency-specific channel blocks, referred to as the clock-1 auction format. The *Auction 108 Procedures Public Notice* provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 108 bidding, as well as an overview of the post-auction application and payment processes.

B. Background and Relevant Authority

3. In the *2.5 GHz Report and Order,* 84 FR 57343, July 11, 2019, the Commission made available 117.5 megahertz of spectrum in the 2.5 GHz band for new licensed use. In that Order, the Commission established a Rural Tribal Priority Window to enable federally-recognized Tribal Nations an opportunity to obtain 2.5 GHz licenses to provide service using unassigned spectrum in the former Educational Broadband Service (EBS) band on rural Tribal lands before the remaining unassigned spectrum is made generally available through competitive bidding. Among other things, the Commission authorized both fixed and mobile operations in the 2.5 GHz band using geographic area licensing, replaced the regulatory regime of the EBS with new flexible-use licensing and operating rules, and decided to use its competitive bidding rules to assign remaining overlay licenses following the close of the Rural Tribal Priority Window.

4. On January 13, 2021, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (Communications Act), the Commission released the *Auction 108 Comment Public Notice,* 86 FR 12146, March 2, 2021, seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 108. Interested parties filed 16 comments and 26 reply comments in response to the *Auction 108 Comment Public Notice.* On February 9, 2022, the Commission's Office of Economics and Analytics (OEA) and Wireless Telecommunications Bureau (WTB) released the *Auction 108 Further Comment Public Notice,* 87 FR 8764, February 16, 2022, seeking further comment on multiple-round auction procedures for Auction 108. Specifically, OEA and WTB sought comment on whether a clock auction would address commenters' concerns and suggestions regarding the simultaneous multiple-round (SMR) and single-round, sealed bid auction formats proposed in the *Auction 108 Comment Public Notice.* Interested parties filed 13 comments in response to the *Auction 108 Further Comment Public Notice.* On February 18, 2022, OEA and WTB released the *Auction 108 Inventory Comment Public Notice,* 87 FR 11379, March 1, 2022, that announced an updated auction inventory and sought comment whether any procedures need to be adjusted for all the licenses available in Auction 108 in light of additions to the initial license inventory. Interested parties filed eight comments in response to the *Auction 108 Inventory Comment Public Notice.* In the *Auction 108 Procedures Public Notice,* the Commission resolves all open issues raised in the *Auction 108 Comment Public Notice,* the *Auction 108 Further Comment Public Notice,* and the *Auction 108 Inventory Comment Public Notice* and address the comments received.

5. Other Commission rules and decisions provide the underlying authority for the procedures the Commission adopts for Auction 108. Among other things, prospective applicants should familiarize themselves with the Commission's general competitive bidding rules, including amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective applicants also should familiarize themselves with the Commission's rules regarding the 2.5 GHz band, as well as the licensing and operating rules that are applicable to all Part 27 services. In addition, applicants must be thoroughly familiar with the procedures, terms, and conditions contained in the *Auction 108 Procedures Public Notice* and any future public notices that may be released in this proceeding.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental generally applicable information to applicants. Pursuant to the Commission's rules, OEA and WTB also retain the authority to implement further procedures during the course of Auction 108. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 108.

C. Description of Licenses To Be Offered in Auction 108

7. Consistent with the Commission's determination, any remaining unassigned EBS spectrum will be made available in Auction 108. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band. The Commission will offer up to three blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 17.5 megahertz blocks, respectively—licensed on a county basis. Specifically, the first channel block will include channels A1–A3, B1–B3, C1–C3 (49.5 megahertz); the second channel block will include channels D1–D3, the J channels, and channels A4, B4, C4, D4, and G4 (50.5 megahertz); and the third channel block will include channels G1–G3 and the relevant K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channels associated with the G channel group, for a total of 17.5 megahertz). New overlay licenses in the EBS portion of the 2.5 GHz band will be issued for 10-year, renewable license terms. A licensee in this band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in 47 CFR 2.106.

8. Concurrent with the release of the *Auction 108 Comment Public Notice,* OEA and WTB made available a file listing all county and channel block

combinations potentially available for Auction 108. Several commenters, including some incumbent licensees, noted potential discrepancies between the Commission's initial list of potentially available licenses and commenters' own analyses of available white space in the band. These commenters and others urged the Commission to audit the preliminary list of licenses available in Auction 108 to ensure that the final list of available licenses is complete and accurate. In light of these comments, WTB staff performed additional geographic information systems (GIS) analysis of existing 2.5 GHz licenses and prepared a new list of potentially available licenses based on license service area data extracted from the Universal Licensing System (ULS) on February 2, 2022. The revised list also took into account licenses issued pursuant to Rural Tribal Priority Window applications and information provided by commenters. OEA and WTB released that updated list of potentially available licenses, which added 189 licenses to the list and removed 370, on February 18, 2022, and requested comment on whether any of the procedures proposed in the *Auction 108 Comment Public Notice* or the *Auction 108 Further Comment Public Notice* needed to be adjusted in light of licenses added to the initial license inventory.

9. Many of the issues raised by commenters in response to the *Auction 108 Comment Public Notice* were addressed in the revised inventory released with the *Auction 108 Inventory Comment Public Notice.* The revised list of licenses also excluded county/channel block combinations where the only areas with unassigned spectrum were over large bodies of water such as the Atlantic Ocean or the Great Lakes. Since a licensee may only place base stations within their geographic service area (GSA) and limit the power flux density of their signal within their GSA, there would be no prospect for a licensee to deploy service to land-based populations in that scenario.

10. The revised license inventory released in conjunction with the *Auction 108 Procedures Public Notice* incorporates WTB's comprehensive review of the inventory in response to additional GIS analyses and feedback from interested parties including incumbent licensees and lessees. The Commission declines a request by certain parties to implement a more formal process by which interested parties may submit data to challenge the revised license inventory. Interested parties had multiple opportunities to provide input on the development of the license inventory, as WTB has continued to refine and revise the inventory in response to feedback from interested parties. Most recently, several parties submitted additional information in response to the *Auction 108 Inventory Comment Public Notice,* and WTB has taken that information into account in developing the most recent inventory listing reflected in the updated Attachment A that is being released in conjunction with the *Auction 108 Procedures Public Notice.* Second, a new, formal process at this time would significantly delay the auction of critical mid-band spectrum.

11. On March 15, 2022, WTB granted seven additional Rural Tribal Priority Window applications in Alaska. As a result of those grants, all 2.5 GHz spectrum in Bristol Bay and Lake and Peninsula Boroughs in Alaska was assigned on all three channel blocks. Accordingly, the three licenses for those boroughs have been removed from the list of available licenses.

12. In light of comments, the Commission has also excluded from its analysis of active licensees' geographic service areas the potential effect of licenses that expired before January 10, 2005, and were not reinstated prior to March 10, 2008. As a result, the Commission removed 80 licenses in 57 counties from the auction inventory.

13. Concurrent with the release of the *Auction 108 Procedures Public Notice,* the Commission makes available an updated file listing all county and channel block combinations potentially available for Auction 108. This file is listed as an Attachment A file on the Auction 108 website at *www.fcc.gov/auction/108.* This inventory of overlay licenses available in Auction 108 released concurrently with the *Auction 108 Procedures Public Notice* removes 87 licenses from the revised inventory released on February 18, 2022, based on OEA and WTB review of comments and the results of the Rural Tribal Priority Window. If additional licenses are removed from inventory because of future Rural Tribal Priority Window grants, those actions will be announced by subsequent public notice(s).

14. The Commission has also made available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the band. These resources include a new mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications. The new mapping tool is being made available to all potential bidders in Auction 108, and the public generally, concurrently with the release of the *Auction 108 Procedures Public Notice.* It can be found under the Education tab on the Auction 108 website at *www.fcc.gov/auction/108.* Potential applicants are reminded, however, that this mapping tool is merely a graphical aid for potential applicants and does not represent official licensing information; all information should be confirmed in the Universal Licensing System (ULS) for any specific license or area.

15. The Commission will not adopt an expansion of existing requirements on incumbent licensees and lessors in this band that would mandate disclosure of additional details of spectrum lease agreements to potential bidders. The Commission finds that adoption of proponents' expanded disclosure requirement is beyond the bounds of the existing spectrum leasing rules and the Commission's prior determinations supporting those disclosure requirements. The Commission's spectrum leasing rules already provide that each licensee that enters into a leasing agreement must disclose to the Commission a significant amount of information pertaining to the agreement, including the identity of the lessee, the term, and the spectrum and geographic area covered, and that such information is publicly available through ULS. Given the spectrum lease information already available, the Commission finds that proponents of disclosure have not supported their assertion that additional information is necessary in making decisions about whether or how to participate in this auction. Finally, even if additional information may be helpful or material to one or more bidders—and the Commission makes no such finding—the Commission is not convinced that the benefits to potential bidders of obtaining such information would outweigh the potential competitive harm to the leaseholders from disclosure.

16. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 108, including the availability of unassigned white space in any particular license area. In addition to the typical due diligence considerations encouraged of bidders in all auctions, the Commission calls particular attention in Auction 108 to potential encumbrances due to existing licenses and pending applications. In particular there will be a substantial number of licenses in the inventory where the amount of unassigned area or unassigned spectrum is very small. For example, there could be licenses in Channel Block 2 where as little as .333 megahertz of spectrum is unassigned.

There are also a substantial number of licenses where the area with unassigned spectrum is smaller than one square mile. Each applicant should carefully consider these issues and the technical and economic implications for commercial use of the 2.5 GHz band.

D. Auctions Specifics

1. Auction Title and Start Date

17. The auction of licenses in the 2.5 GHz band will be referred to as Auction 108. Bidding in Auction 108 will begin on Friday, July 29, 2022. Pre-bidding dates and deadlines are listed below. The initial schedule for bidding rounds in Auction 108 will be announced by public notice at least one week before bidding begins.

18. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Dates and Deadlines

19. The following dates and deadlines apply to Auction 108:

Auction Application Tutorial Available (via internet)	No later than April 5, 2022.
Short-Form Application (FCC Form 175) Filing Window Opens	April 27, 2022, 12 p.m. Eastern Time (ET).
Short-Form Application (FCC Form 175) Filing Window Deadline	May 10, 2022, 6 p.m. ET.
Upfront Payments (via wire transfer)	June 23, 2022, 6 p.m. ET.
Bidding Tutorial Available (via internet)	No later than July 13, 2022.
Mock Auction	July 26–27, 2022.
Bidding Begins in Auction 108	July 29, 2022.

3. Requirements for Participation

20. Those wishing to participate in Auction 108 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET on May 10, 2022, following the electronic filing procedures and other instructions set forth in the *Auction 108 Procedures Public Notice* and in the FCC Form 175 Instructions.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET on June 23, 2022, following the procedures and instructions set forth in the *Auction 108 Procedures Public Notice.*
- Comply with all provisions outlined in the *Auction 108 Procedures Public Notice* and applicable Commission rules.

II. Applying To Participate in Auction 108

A. Certification of Notice of Auction 108 Requirements and Procedures

21. For the reasons set forth in the *Auction 108 Comment Public Notice,* the Commission adopts the proposal to require any applicant seeking to participate in Auction 108 to certify in its short-form application, under penalty of perjury, that it has read the *Auction 108 Procedures Public Notice* adopting procedures for Auction 108 and that it has familiarized itself with these procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band. No commenter opposed the proposed certification, and one commenter, T-Mobile, supports it.

22. This certification is designed to bolster applicants' efforts to educate themselves about the procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understand their obligation to stay abreast of relevant, forthcoming information. Familiarity with the Commission's rules and procedures governing Auction 108 may also help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process and reducing the likelihood that the license will be assigned to the bidder that values it the most. This certification, along with the other certifications required pursuant to 47 CFR 1.2105(a), will promote submission of applications that meet the Commission's requirements, thereby leading to a more efficient application process.

23. A substantively similar requirement was recently instituted for Auction 110, a Commission auction of flexible-use licenses in the 3.45–3.55 GHz band. That requirement furthered a long-standing policy under which the Commission expressly places a burden upon each applicant to be thoroughly familiar with the procedures, terms, and conditions contained in the relevant Procedures Public Notice and any future public notices that may be released in the auction proceeding. While the certification the Commission adds refers to information regarding auction procedures and licensing that is available at the time of certification, potential auction applicants are on notice that their educational efforts must continue even after their short-form applications are filed. Commission staff routinely makes available detailed educational materials, such as interactive, online tutorials and technical guides, to enhance interested parties' comprehension of the pre-bidding and bidding processes and to help minimize the need for applicants to engage outside engineers, legal counsel, or other auction experts.

24. For these reasons, the Commission will require each Auction 108 applicant to certify as follows in its short-form application: That the applicant has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band.

25. An applicant must provide this certification under penalty of perjury, consistent with 47 CFR 1.2105(a). This certification is in addition to the certifications already required under 47 CFR 1.2105. Consistent with the other certifications required in the short-form application, an applicant's failure to make this certification in its FCC Form 175 by the May 10, 2022 filing deadline will render its application unacceptable for filing, and its application will be dismissed with prejudice.

B. General Information Regarding Short-Form Applications

26. An application to participate in Auction 108, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and/or financial qualifications to participate in a Commission auction for spectrum licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 108 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate. Eligibility to participate in Auction 108 is determined based on an applicant's short-form application and certifications and on the applicant's upfront payment. After bidding closes, in the second phase of the process, each winning bidder in Auction 108 must file a more comprehensive post-auction long-form application (FCC Form 601) for the licenses it wins in the auction,

and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

27. A party seeking to participate in Auction 108 must file an FCC Form 175 electronically via the Auction Application System prior to 6 p.m. ET on May 10, 2022, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 will be used to determine whether the applicant appears to be eligible for the claimed bidding credit, with the final determination of bidding credit eligibility to occur based on a winning bidder's post-auction long-form application. Below the Commission describes more fully the information disclosures and certifications required in the short-form application. Each Auction 108 applicant will be subject to the Commission's rule prohibiting certain communications. An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6 p.m. ET on May 10, 2022.

28. An Auction 108 applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Pursuant to the Commission's competitive bidding rules, an applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and an applicant must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. As noted above, each participant in Auction 108 must also certify that it has read the *Auction 108 Procedures Public Notice* and familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band. If an Auction 108 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

29. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

30. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information. In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.

31. An applicant must designate between one and three individuals as authorized bidders in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.

32. In order to access the auction bidding system, each authorized bidder will be required to have a unique email address associated with an FCC Username Account that is linked to the applicant's FCC Registration Number (FRN) in the Commission Registration System (CORES). This added security measure is newly implemented for bidding in Commission auctions. If an authorized bidder does not provide an FCC Username Account linked to the applicant's FRN in the applicant's FCC Form 175, that bidder will be unable to place or submit bids. For further details, applicants should refer to the FCC Form 175 Instructions for Auction 108.

33. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. If a party submits multiple short-form applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.

34. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications in Auction 108 by multiple entities controlled by the same individual or set of individuals generally will not be permitted. As noted by the Commission in adopting the prohibition on applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of the Commission's auctions.

35. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 108 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning its qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. That public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.,* have timely filed an application that is deemed complete after the deadline for correcting any identified deficiencies), and must make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

36. The Commission discusses below additional details regarding certain information required to be submitted in the FCC Form 175. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in the *Auction 108 Procedures Public Notice* does not address an applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the described disclosure requirements, the applicant should review the educational materials for Auction 108 (see the Education section of the Auction 108 website at *www.fcc.gov/auction/108*) and use the contact information provided in the *Auction 108 Procedures Public Notice* to consult with Commission staff to better understand the information that it must submit in its short-form application.

C. License Area Selection

37. An applicant must select all of the license areas on which it may want to bid from the list of available counties on its FCC Form 175. An applicant must carefully review and verify its license area (*i.e.,* county) selections before the

FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline. An applicant is not required to place bids on licenses in any or all of the license areas selected, but the FCC Auction Bidding System (bidding system) will not accept bids for licenses in license areas (*i.e.,* counties) that the applicant did not select in its FCC Form 175.

38. When two or more short-form applications (FCC Form 175) are submitted selecting the same licenses in Auction 108, mutual exclusivity exists for auction purposes as to those licenses, and the licenses must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular license, that applicant is required to submit a bid in order to obtain the license. An applicant may select licenses on its Form 175 by using the select all licenses checkbox or by selecting any particular county. Selection of a county will allow the applicant to bid on any available license within that county, provided that it otherwise becomes a qualified bidder and has sufficient bidding eligibility.

D. Disclosure of Agreements and Bidding Arrangements

39. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party. Moreover, since each applicant must maintain the accuracy and completeness of the information in its pending auction application, if it enters into any agreement relating to the licenses being auctioned after the FCC Form 175 filing deadline, then that agreement is subject to these same disclosure requirements.

40. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.

41. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants). For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the licenses being auctioned that addresses or communicates, directly or indirectly, bidding in the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangement relating to the post-auction market structure.

42. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers, where at least one party to the arrangement is an applicant for the auction. In the *Updating Part 1 Report and Order,* 80 FR 56763, Sep. 18, 2015, the Commission stated that entities that qualify as nationwide providers generally would be identified in procedures public notices released before each auction. To that end, and consistent with the Commission's decisions in recent spectrum auctions and in *the 2020 Communications Marketplace Report,* the Commission considers AT&T, T-Mobile, and Verizon to be nationwide providers for the purpose of implementing the competitive bidding rules in Auction 108.

43. Under certain circumstances, a non-nationwide provider may enter into an agreement to form a consortium or a joint venture (as applicable) that results in a single party applying to participate in an auction. Specifically, a designated entity can participate in one consortium or joint venture in an auction, and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture. A non-nationwide provider may enter into only one agreement to form a consortium or joint venture (as applicable), and such consortium or joint venture shall be the exclusive bidding vehicle for its members in the auction. The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature, as defined in 47 CFR 1.2105(a)(2)(ix)(A)–(C).

44. To implement the prohibition on joint bidding arrangements, the Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.

45. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

46. Applicants should bear in mind that a winning bidder will be required to disclose, in its post-auction long-form application, the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

E. Ownership Disclosure Requirements

47. Each applicant must comply with the applicable part 1 ownership disclosure requirements and provide information required by 47 CFR 1.2105 and 1.2112, and, where applicable, 47 CFR 1.2110. Specifically, in completing FCC Form 175, an applicant must fully

disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in 47 CFR 1.2105 and 1.2112 and, where applicable, 47 CFR 1.2110. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

48. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. If the applicant used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175, the most current ownership information contained in any such filing will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

F. Foreign Ownership Disclosure Requirements

49. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. Section 310 applies to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in 47 U.S.C. 310(b), then it may seek to participate in Auction 108 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of 47 U.S.C. 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in 47 U.S.C. 310(b) that is pending before, or has been granted by, the Commission.

G. Information Procedures During the Auction Process

50. Consistent with past practice in many prior spectrum license auctions, the Commission adopts the proposal to limit information available in Auction 108 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. Specifically, the Commission will not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

51. Once bidding begins in Auction 108, under the limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding will include, for each license, the aggregate demand, the posted price of the completed round, and the clock price for the next round. The identities of bidders placing specific bids will *not* be disclosed until after the close of bidding.

52. Throughout the auction, bidders will have access to additional information related to their own bidding and bidding eligibility through the Commission's bidding system. Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of its processed demand, whether the bidder has a proxy instruction in place for each license, and its eligibility for the next round.

53. After the close of bidding, bidders' license area selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available. Bids placed according to a bidder's proxy instructions will be available, but a bidder's proxy instructions will not be disclosed.

54. The Commission warns applicants that direct or indirect communication to other applicants or the public disclosure of non-public information (*e.g.,* reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications. Therefore, to the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the U.S. Securities and Exchange Commission (SEC), the Commission strongly urges that the applicant consult with Commission staff in the Auctions Division before making such disclosure.

H. Prohibited Communications and Compliance With Antitrust Laws

55. The rules prohibiting certain communications set forth in 47 CFR1.2105(c) apply to each applicant in Auction 108. Section 1.2105(c)(1) provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

1. Entities Subject to Section 1.2105(c)

56. An applicant for purposes of this rule includes all controlling interests in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10% or more of the entity (including institutional investors and asset management companies), and all officers and directors of that entity. Under 47 CFR 1.2105(c), a party that submits an application becomes an applicant under the rule, which goes into effect at the application deadline, and that status does not change based on later developments.

57. As proposed in the *Auction 108 Comment Public Notice,* the Commission considers AT&T, T-Mobile, and Verizon to be nationwide providers for the purposes of the prohibited communications rule for Auction 108.

2. Prohibition Applies Until Down Payment Deadline

58. The prohibition in 47 CFR 1.2105(c) on certain communications begins at an auction's short-form application filing deadline and ends at the auction's down payment deadline after the auction closes, which will be announced in a future public notice.

3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements

59. Section 1.2105(c) prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits or licenses in the same geographic area or market. The rule also applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant, non-nationwide providers. The rule further prohibits joint bidding arrangements, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

60. In addition to express statements of bids and bidding strategies, the prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

61. Parties subject to 47 CFR 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

62. Subject to the limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, 47 CFR 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. The *Prohibited Communications Guidance Public Notice,* 80 FR 63215, October 19, 2015, released in advance of the broadcast incentive auction (Auction 1000) reviewed the scope of the prohibition generally, as well as in that specific auction's forward auction of spectrum licenses and reverse auction to relinquish broadcast licenses. As the Commission explained therein, a communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) The licenses being auctioned and (2) bids or bidding strategies or post-auction market structure.

63. Accordingly, business discussions and negotiations that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 108 will not violate the rule. In contrast, communicating, among other things, how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.

64. While 47 CFR 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are unrelated to the auction, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

65. The Commission cautions applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and it has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

66. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 108. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its license area selections, such as referring to counties or other geographic areas in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant's license area selections, or using applicant names that refer to licenses being offered.

67. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate 47 CFR 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

4. Communicating With Third Parties

68. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. An applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

69. As the Commission has noted in other spectrum auctions, in the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. The Commission will take the same approach to interpreting the prohibited communications rule in Auction 108. The Commission emphasizes that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

70. The Commission reminds potential applicants that they may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including license areas, or counties, selected on the short-form application, is conveyed to that individual.

71. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a 47 CFR 1.2105 violation. Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 108 could also violate the rule.

5. Section 1.2105(c) Certifications

72. By electronically submitting its FCC Form 175, each applicant for Auction 108 certifies its compliance with 47 CFR 1.2105(c). The mere filing of a certifying statement as part of an application, however, will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

6. Duty To Report Prohibited Communications

73. 47 CFR 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

7. Procedures for Reporting Prohibited Communications

74. A party reporting any information or communication pursuant to 47 CFR 1.65(a), 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

75. An applicant must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 108 Procedures Public Notice.* For Auction 108, such reports must be filed with the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief and sent to *auction108@fcc.gov.* If you choose instead to submit a report in hard copy, contact Auctions Division staff at *auction108@fcc.gov* or (202) 418–0660 for guidance.

76. Given the potential competitive sensitivity of public disclosure of information in such a report, a party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. The Commission encourages such parties to coordinate with the Auctions Division staff about the procedures for submitting such reports.

8. Winning Bidders Must Disclose Terms of Agreements

77. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

9. Additional Information Concerning Prohibition on Certain Communications in Commission Auctions

78. A summary listing of documents issued by the Commission and OEA/WTB addressing the application of 47 CFR 1.2105(c) is available on the Commission's auction web page at *www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications.*

10. Antitrust Laws

79. Regardless of compliance with the Commission's rules, applicants remain

subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

80. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, they may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, then it may be subject to a forfeiture and may be prohibited from participating further in Auction 108 and in future auctions, among other sanctions.

I. Provisions for Small Businesses and Rural Service Providers

81. A bidding credit represents an amount by which a bidder's overall payment across all of the licenses won will be discounted, subject to the caps discussed below. As set forth in 47 CFR 1.2110, and as described below, the designated entity rules include, but are not limited to: (1) A two-pronged standard for evaluating eligibility for small business benefits, (2) an attribution rule for certain disclosable interest holders of applicants claiming designated entity benefits, (3) updated gross revenue amounts defining eligibility for small business benefits, (4) a bidding credit for eligible rural service providers, and (5) caps on the total amount of designated entity benefits any eligible winning bidder may receive.

82. In Auction 108, designated entity bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. In addition to the information provided below, each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the part 1 rules.

83. In particular, the Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding *de jure* and *de facto* control of such applicants. These rules include a prohibition, which applies to all applicants (whether they seek bidding credits or not), against changes in ownership of the applicant that would constitute an assignment or transfer of control after the initial filing deadline for FCC Form 175. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help to ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the conduct of the auction, which will involve competing bids from those that do and do not seek bidding credits, and thus preserves the integrity of the auction process. The Commission also believes that this will meet the Commission's objectives in awarding licenses through the competitive bidding process.

1. Small Business Bidding Credit

84. For Auction 108, bidding credits will be available to eligible small businesses and consortia thereof, subject to the caps discussed below. Under the service rules applicable to the 2.5 GHz band licenses to be offered in Auction 108, the level of bidding credit available is determined as follows:

- A bidder that qualifies as a small business—*i.e.,* one with attributed average annual gross revenues that do not exceed $55 million for the preceding five years—is eligible to receive a 15% discount on its overall payment.
- A bidder that qualifies as a very small business—*i.e.,* one with attributed average annual gross revenues that do not exceed $20 million for the preceding five years—is eligible to receive a 25% discount on its overall payment.

85. In adopting this two-tiered approach in the *2.5 GHz Report and Order,* the Commission observed that this approach would provide consistency and predictability for small businesses.

86. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15% or the 25% bidding credit on its overall payment, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for at least the same level of small business bidding credit.

87. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding five years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 108. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 108, the applicant must disclose the identity and the attributable gross revenues of any such disclosable interest holder. This attribution rule will be applied on a license-by-license basis. As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 108. If an applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.

2. Rural Service Provider Bidding Credit

88. An eligible applicant may request a 15% discount on its overall payment using a rural service provider bidding credit, subject to the cap discussed below. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas. Rural areas are defined as counties with a population density of 100 or fewer persons per square mile. An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form

application deadline. An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service.

89. Each applicant seeking a rural service provider bidding credit must disclose the number of its subscribers, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 108. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 108, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Like applicants seeking eligibility for small business bidding credits, eligible rural service providers may also form a consortium. If an applicant is applying as a consortium of rural service providers, then the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

3. Caps on Bidding Credits

90. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to specified caps on the total bidding credit discount that they may receive. The Commission adopts the bidding credit caps for Auction 108 at the amounts proposed for the reasons discussed by the Commission in the *Auction 108 Comment Public Notice.* Specifically, the Commission adopts a $25 million cap on the total bidding credit discount that may be awarded to an eligible small business, and a $10 million cap on the total bidding credit discount that may be awarded to an eligible rural service provider. Additionally, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, no winning designated entity bidder may receive more than $10 million in bidding credit discounts in total for licenses won in counties located within any partial economic area (PEA) with a population of 500,000 or less.

4. Attributable Interests

a. Controlling Interests and Affiliates

91. Pursuant to 47 CFR 1.2110, an applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50% of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis based on the totality of the circumstances. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50% of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and
- the entity plays an integral role in management decisions.

92. Additionally, for attribution purposes, officers and directors of an applicant seeking a bidding credit are considered to have a controlling interest in the applicant. Applicants should refer to 47 CFR 1.2110(c)(2) and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues.

93. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information on the application requirements regarding controlling interests and affiliates, applicants should refer to 47 CFR 1.2110(c)(2) and (5) respectively, as well as the FCC Form 175 Instructions.

94. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules discussed above; and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits. For purposes of the first prong of the standard, applicants should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. In addition, once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under 47 CFR 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer either *de jure* or *de facto* control of any license it seeks to acquire with bidding credits.

95. Applicants should note that, under this standard for evaluating eligibility for small business bidding credits, if an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of *de facto* control, then it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of 47 U.S.C. 310(d) and related regulations, which require Commission approval of transfers of control. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules described above) goes so far as to confer control of the applicant's overall business, then the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses.

b. Limitation on Spectrum Use

96. Under 47 CFR 1.2110(c)(2)(ii)(J), the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25% of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. For purposes of this requirement, a disclosable interest holder of an applicant seeking designated entity benefits is defined as

any individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee. Any applicant seeking a bidding credit for licenses won in Auction 108 will be subject to this attribution rule and must make the requisite disclosures.

97. Certain disclosable interest holders may be excluded from this attribution rule. Specifically, an applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the disclosable interest holder's spectrum use and any spectrum use agreements are otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. Consistent with the Commission's limited information procedures, the Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 108.

c. Exceptions From Attribution Rules for Small Businesses and Rural Service Providers

98. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, in calculating an applicant's gross revenues under the controlling interest standard, the Commission will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, then the gross revenues derived from that business would be attributed to the applicant.

99. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(4)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

100. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. Because each member of the rural partnership must individually qualify for the bidding credit, by definition, a partnership that includes a nationwide provider as a member will not be eligible for the benefit.

101. Finally, a consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. Under the Commission's rules, a consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided, however, to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

J. Tribal Lands Bidding Credit

102. A winning bidder that intends to use its license(s) to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85% is eligible to receive a Tribal lands bidding credit. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify. Unlike other bidding credits that are requested prior to an auction, a winning bidder applies for a Tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application.

K. Provisions Regarding Former and Current Defaulters

103. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 108, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below. For purposes of making these certifications, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

104. Under the Commission's rule regarding applications by former defaulters, an applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 filing deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than $100,000, (3) the default or delinquency was paid within two quarters (*i.e.,* six months) after receiving the notice of the final payment deadline or delinquency, or (4) the

default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding. With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.

105. In addition to the *Auction 108 Procedures Public Notice,* applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

106. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has previously adopted rules, including a provision referred to as the red light rule, that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

107. The Commission reminds each applicant, however, that any indication in the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). Moreover, a prospective applicant in Auction 108 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. The Commission encourages each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

L. Optional Applicant Status Identification

108. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

M. Modifications to FCC Form 175

1. Only Minor Modifications Allowed

109. After the initial FCC Form 175 filing deadline, an Auction 108 applicant will be permitted to make only minor amendments to its application consistent with the Commission's rules. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major amendments to an FCC Form 175 (*e.g.,* change of license area selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an amendment reporting changes is a major amendment, as described in 47 CFR 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.

2. Duty To Maintain Accuracy and Completeness of FCC Form 175

110. Pursuant to 47 CFR 1.65, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 108. Consistent with the requirements for prior spectrum auctions, an applicant for Auction 108 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

3. Modifying and FCC Form 175

111. As noted above, a party seeking to participate in Auction 108 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

112. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

113. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing

window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (*e.g.,* name, address, telephone number) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), then the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to *auction108@fcc.gov.* The email summarizing the changes must include a subject line referring to Auction 108 and the name of the applicant, for example, Re: Changes to Auction 108 Auction Application of XYZ Corp. Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

114. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via *auction108@fcc.gov* requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

115. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

116. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 108. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's county selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications pursuant to 47 CFR 1.2105(c).

117. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418–0660.

III. Preparing for Bidding in Auction 108

A. Due Diligence

118. The Commission reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 108 and that it is required to certify, under penalty of perjury, that it has read the *Auction 108 Procedures Public Notice* and has familiarized itself with the auction procedures and the service rules for the 2.5 GHz band. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

119. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Commission encourages each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 108 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Commission urges each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and any other environmental statutes that may apply.

120. As noted above, applicants must carefully consider potential encumbrances on existing licenses. The Commission notes in particular that there will be a substantial number of licenses in inventory where the amount of unassigned area or unassigned spectrum is very small. For example, there could be licenses in Channel Block 2 where as little as .333 megahertz of spectrum is unassigned. There are also a substantial number of licenses where the area with unassigned spectrum is smaller than one square mile. Each applicant should carefully research the existence of incumbent licenses and the technical and economic implications for commercial use of the 2.5 GHz band.

121. The Commission also encourages each applicant in Auction 108 to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in the *Auction 108 Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 108. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests. For example, applicants should pay particular attention to the

results applications filed in the Rural Tribal Priority Window, which will determine the final inventory of licenses available for bidding in Auction 108. The Commission emphasizes again that licenses granted through applications received during the Rural Tribal Priority Window have incumbent status *vis-à-vis* licenses awarded in Auction 108. In other words, any winning bidder awarded a license in Auction 108 will not be allowed to operate within the license area of a successful Rural Tribal Priority Window applicant, even if that application remains pending today or at the time of issuance of the overlay license. In addition, the Commission reminds applicants that the tools made available to assess the available licenses in Auction 108, including the mapping tool described above, may not represent official licensing information and all information should be confirmed in ULS for any specific license or area.

122. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 108. Each potential bidder is responsible for undertaking research to ensure that any licenses won in the auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

123. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third-party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

B. Licensing Considerations

1. Incumbency Issues

124. Potential applicants in Auction 108 should carefully review the new rules applicable to the 2.5 GHz band as well as the results of applications filed in the Rural Tribal Priority Window, which will determine the final license inventory for Auction 108, when developing business plans, assessing market conditions, and evaluating the availability of equipment for 2.5 GHz operations. Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 2.5 GHz band.

2. International Coordination

125. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican borders should be aware that the use of the 2.5 GHz frequencies they acquire in Auction 108 are subject to current and future agreements with the governments of Canada and Mexico.

126. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico, and/or Canada can be agreed to, operations in the 2.5 GHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

3. Environmental Review Requirements

127. Licensees must comply with the Commission's rules for environmental review under the NEPA, the NHPA, and any other environmental statutes that may apply. Licensees and other applicants that propose to build certain types of communications facilities for licensed service must follow Commission procedures implementing obligations under NEPA and NHPA prior to constructing the facilities. Under NEPA, a licensee or applicant must assess if certain environmentally sensitive conditions specified in the Commission's rules are relevant to the proposed facilities, and prepare an environmental assessment when applicable. If an environmental assessment is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must follow the procedures in 47 CFR 1.1320, the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas* and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.* Compliance with section 106 of the NHPA requires Tribal consultation, and if construction of the communications facilities would have adverse effects on historic or Tribally significant properties, an environmental assessment must be prepared.

4. Mobile Spectrum Holdings Policies

128. The Commission reminds bidders of the Commission's mobile spectrum holdings policies applicable to the 2.5 GHz band. Specifically, the Commission did not impose a pre-auction bright-line limit on acquisitions of the 2.5 GHz band. The Commission determined that ''EBS white space spectrum should be considered available for purposes of the spectrum screen.'' In addition, the Commission eliminated the EBS white space discounts and ended the 5% exclusion of spectrum from the screen. The Commission also concluded that it would perform case-by-case review of secondary market transactions to assess the effect of educational use restrictions in existing spectrum leases in particular local markets.

C. Bidder Education

129. Before the opening of the short-form filing window for Auction 108, detailed educational information will be provided in various formats to would-be participants on the Auction 108 web page. Specifically, the Commission directs OEA to provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA will make available in the Education section of the Auction 108 website at *www.fcc.gov/auction/108.* In addition, OEA will provide an online application procedures tutorial for the auction, covering information on pre-bidding preparation, completing short-form applications, and the application review process.

130. In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 108, including a user guide for the bidding system, bidding system file formats, and an online bidding procedures tutorial. These materials will provide detailed information on bidding features specific to the ascending clock auction format, including intra-round bidding and proxy bids. The Commission recognizes the importance of these materials to applicants' and bidders' comprehension of the bidding procedures adopted in the *Auction 108 Procedures Public Notice.* Accordingly, the educational materials shall be released as soon as reasonably possible to provide potential applicants and bidders with time to

understand them and ask questions before bidding begins.

131. The Commission believes that parties interested in participating in Auction 108 will find the interactive, online tutorials an efficient and effective way to further their understanding of the application and bidding processes. The online tutorials will allow viewers to navigate the presentation outline, review written notes, and listen to audio of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 108 website at *www.fcc.gov/auction/108.* Once posted, the tutorials will remain continuously accessible.

D. Short-Form Applications: Due Before 6 p.m. ET on May 10, 2022

132. In order to be eligible to bid in Auction 108, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted prior to 6 p.m. ET on May 10, 2022. Late applications will not be accepted. No application fee is required for short-form applications.

133. Applications may be filed at any time beginning at noon ET on April 27, 2022, until the filing window closes at 6 p.m. ET on May 10, 2022. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on May 10, 2022.

134. An applicant must always click on the CERTIFY & SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support using the contact information provided in Section VI.D. (Contact Information), below. In order to provide better service to the public, all calls to Technical Support are recorded.

E. Application Processing and Minor Modifications

1. Public Notice of Applicants' Initial Application Status and Opportunity for Minor Modifications

135. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. OEA will issue a public notice with applicants' initial application status, identifying: (1) Those that are complete; and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and an electronic copy will be sent by email to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and contact information of a Commission staff member who can answer questions specific to the application.

136. After the initial application filing deadline on May 10 2022, applicants can make only minor modifications to their applications. Major modifications (*e.g.,* change of license area selection, change in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 108.

137. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to *auction108@fcc.gov.*

2. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline

138. After Commission staff reviews resubmitted applications and upfront payments, OEA will release a public notice identifying applicants that have become qualified bidders for the auction. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete and that have made a sufficient upfront payment.

F. Upfront Payments

139. In order to be eligible to bid in Auction 108, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6 p.m. ET on June 23, 2022. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Instructions for completing FCC Form 159 for Auction 108 are provided below.

1. Making Upfront Payments by Wire Transfer for Auction 108

140. Upfront payments for Auction 108 must be wired to, and will be deposited in, the U.S. Treasury.

141. Wire transfer payments for Auction 108 must be received before 6 p.m. ET on June 23, 2022. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 021030004.

Receiving Bank: TREAS NYC, 33 Liberty Street, New York, NY 10045.

Beneficiary: FCC, 45 L Street NE, 3rd Floor, Washington, DC 20554.

Account Number: 827000001002.

Originating Bank Information (OBI Field): (Skip one space between each information item).

''AUCTIONPAY''

Applicant FCC Registration Number (FRN): (use the same FRN as used on the applicant's FCC Form 159, block 21).

Payment Type Code: (same as FCC Form 159, block 24A: ''U108'').

Note: The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 108. Do not use a BNF Account Number from a previous auction.

142. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418–2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to *RROGWireFaxes@fcc.gov.* On the fax cover sheet or in the email subject header, write ''Wire Transfer—Auction Payment for Auction 108''. To meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 108 before the deadline.

143. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. As a regulatory requirement, the U.S. Treasury screens all payments from all financial institutions before deposits are made available to specified accounts. If wires are suspended, the U.S. Treasury may direct questions regarding any transfer to the financial institution initiating the wire. Each applicant must take care to assure that any questions directed to its financial institution(s) are addressed promptly. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418–7518 or Theresa Meeks at (202) 418–2945.

144. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 108 go to an account number different from the accounts used in previous FCC auctions.

145. Failure to deliver a sufficient upfront payment as instructed in the *Auction 108 Procedures Public Notice* by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. Completing and Submitting FCC Form 159

146. The following information supplements the standard instructions for FCC Form 159 (Revised 2/03) and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 108. Applicants need to complete FCC Form 159 carefully, because:

- Mistakes may affect bidding eligibility; and
- Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application (FCC Form 601), and correspondence about an application may cause processing delays.

147. Therefore, appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below.

Block No.	Required information
1	LOCKBOX #—Leave Blank.
2	Payer Name—Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same name as in FCC Form 175.
3	Total Amount Paid—Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4–8	Street Address, City, State, ZIP Code—Enter the street mailing address (not post office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number—Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code—For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN—Enter the payer's 10-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer)—Enter the applicant's 10-digit FRN registered in CORES.
24A	Payment Type Code—Enter ''U108''.
25A	Quantity—Enter the number ''1''.
26A	Fee Due—Amount of Upfront Payment
27A	Total Fee—Will be the same amount as 26A.
28A	FCC Code 1—Enter the number ''108'' (indicating Auction 108).

Notes:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159–C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- No signature is required on FCC Form 159 for auction payments
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

3. Upfront Payments and Bidding Eligibility

148. The Commission has authority to determine appropriate upfront payments for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on licenses. Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or

insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.

149. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters. For purposes of classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.

150. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the licenses on which it will bid. The Commission adopts the proposals to set upfront payments based on the total potential MHz-pops of each license offered in the auction and to determine an applicant's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round, based on the amount of the upfront payment. In order to bid for a license, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one license in one of the license areas selected on its FCC Form 175 for Auction 108, or else the applicant will not become qualified to participate in the auction. The total upfront payment does not affect the total dollar amount the bidder may bid.

151. In the *Auction 108 Comment Public Notice,* the Commission proposed to require applicants to submit upfront payments based on $0.003 per MHz-pop with a minimum of $500 per license. Because upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding, the Commission adopts the proposal. For the 49.5-megahertz and 50.5-megahertz channel blocks, the calculation will be based on 50 megahertz, which is beneficial for the purpose of allowing switch bids because it will result in the same number of bidding units, as described below, for each of those channel blocks within a county. For the 17.5-megahertz channel block, the calculation will be based on the 16.5 megahertz of contiguous spectrum not including the 1-megahertz guard band. The Commission uses the 16.5 megahertz of contiguous spectrum and excludes the 1-megahertz guard band for comparability with the larger blocks that consist of contiguous spectrum only. The upfront payment amount per license potentially available in Auction 108 is set forth in the Attachment A file on the Auction 108 website at *www.fcc.gov/auction/108.*

152. For the reasons set forth in the *Auction 108 Comment Public Notice,* the Commission also adopts the proposal to assign each license a specific number of bidding units, equal to one bidding unit per $100 of the upfront payment, which is necessary for implementing the activity requirement described in Section IV.F. (Activity Rule) below, and facilitates the efficient conduct of the auction. The number of bidding units for a given license is fixed and does not change during the auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to bid in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for the licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING ELIGIBILITY

County	State	Channel block	Bandwidth (MHz)	Bidding units	Upfront payment
Lake	IN	2	50.5	700	$70,000
Porter	IN	2	50.5	200	20,000

Under the clock-1 format, if a bidder wishes to bid on the 50.5-megahertz license in both of the above counties in a round, it must have selected both counties on its FCC Form 175 and purchased at least 900 bidding units (700 + 200) of bidding eligibility. If a bidder only wishes to bid on one, but not both, purchasing 700 bidding units would meet the eligibility requirement for the 50.5-megahertz license in either county. The bidder would be able to bid on the license in either county, but not both at the same time. If the bidder purchased only 200 bidding units, the bidder would have enough eligibility to bid for the license in Porter County but not for the one in Lake County.

153. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum number of licenses on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will calculate the number of bidding units a non-former defaulter would get for the upfront payment received, divide that number by 1.5, and round the result up to the nearest bidding unit.

G. Auction Registration

154. All qualified bidders for Auction 108 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids.

155. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 108 that has not received this mailing by noon on July 20, 2022, should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

156. In the event that a SecurID® token is lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338–2868.

H. Remote Electronic Bidding via the FCC Auction Bidding System

157. Bidders will be able to participate in Auction 108 over the internet using the FCC Auction Bidding System (bidding system). Only qualified bidders are permitted to bid.

158. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant will be issued three SecurID® tokens. A bidder cannot bid without his or her SecurID® token.

In order to access the bidding function of the bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 108. Please note that the SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

159. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.

160. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

I. Mock Auction

161. All qualified bidders will be eligible to participate in a mock auction. The mock auction, which will begin on July 26, 2022, will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. The Commission recommends that all qualified bidders, including all their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 108.

J. Auction Delay, Suspension, or Cancellation

162. At any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 108 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. This approach has proven effective in resolving exigent circumstances in previous auctions, and the Commission finds no reason to depart from it for Auction 108. OEA will notify participants of any such delay, suspension, or cancellation by public notice and/or through the bidding system's announcement function. If the bidding is delayed or suspended, then OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Commission emphasizes that OEA will exercise this authority at its discretion.

K. Fraud Alert

163. As is the case with many business investment opportunities, some unscrupulous parties may attempt to use Auction 108 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a cold call from a telemarketer or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

164. Information about deceptive telemarketing investment schemes is available from the FCC, as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- The FCC's Consumer Call Center at (888) 225–5322 or by visiting *www.fcc.gov/general/frauds-scams-and-alerts-guides.*
- The FTC at (877) FTC–HELP ((877) 382–4357) or by visiting *consumer.ftc.gov.*
- The SEC at (202) 942–7040 or by visiting *www.sec.gov/investor.*

165. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Consumer League's Fraud Center at *fraud.org* or (202) 835–3323, Ext. 815.

IV. Bidding Procedures

166. The *Auction 108 Comment Public Notice* and the *Auction 108 Further Comment Public Notice* sought comment on three different auction formats for Auction 108: A single-round auction format with user-defined package bidding, a simultaneous multiple-round (SMR) auction format, and an ascending clock auction format. The *Auction 108 Inventory Comment Public Notice* also sought comment on the previously-detailed auction procedures in light of additions to the initial license inventory. As discussed below, there are arguments for and against each auction format. After consideration of the record, the Commission finds on balance the record supports using an ascending clock auction format for Auction 108 by which bidding will be conducted simultaneously for all licenses available in the auction and bidders will be able to bid for specific licenses. Accordingly, the Commission selects the clock-1 auction format for Auction 108. This

format will be similar to the clock phase of past Commission ascending clock auctions, but rather than offering multiple generic spectrum blocks in a category in a geographic area, it will offer only a single frequency-specific license in a category in a county. Thus, by using a supply of 1 in each category, a clock-1 auction format allows bidders to bid on frequency-specific licenses and negates the need for an assignment phase, which have been typical of past Commission ascending clock auctions.

167. In response to the *Auction 108 Comment Public Notice,* interested parties filed numerous comments that were split fairly evenly between parties that favored the single-round auction format and those that favored an SMR auction. OEA and WTB subsequently released the *Auction 108 Further Comment Public Notice,* suggesting an alternative clock auction format that would address two frequently-cited commenter concerns. Specifically, the clock-1 format would be familiar to bidders that have participated in FCC auctions previously (addressing concerns about the unfamiliarity of the single-round format) and would incorporate elements to help mitigate a drawback of an SMR auction—its likely long duration—by both potentially shortening the length of the auction and making it easier for bidders to participate in a longer auction. In response to the *Auction 108 Further Comment Public Notice,* interested parties filed comments in favor of the single-round auction format and others in favor of the multiple-round clock-1 auction. Many commenters that originally supported an SMR auction format in response to the *Auction 108 Comment Public Notice* support use of the clock-1 format as proposed in the *Auction 108 Further Comment Public Notice.* Recognizing that there are advantages and disadvantages to each auction format for each individual bidder, on the whole, the Commission finds that for Auction 108 the clock-1 format balances these competing interests.

168. The Commission directs OEA, in conjunction with WTB, to prepare and release, concurrently with this Public Notice, an updated technical guide (Auction 108 Technical Guide) that provides the mathematical details of the adopted auction design and algorithms for the clock phase of Auction 108. The information in the Auction 108 Technical Guide, which is available in the Education section of the Auction 108 website (*www.fcc.gov/auction/108*), supplements the decisions in the *Auction 108 Procedures Public Notice.*

A. Clock-1 Auction Design

169. Under the clock-1 format that the Commission adopts, each bidder will be able to bid for licenses in the license areas selected on its short-form application, where a specific license will be identified by a category and a county. The auction will proceed in a series of rounds, with bidding conducted simultaneously for all licenses available in the auction. Consistent with prior FCC clock auctions, for each bidding round, the bidding system will announce a clock price for each license, and a bidder will indicate its demand for licenses at the prices associated with the current round. The prices associated with the round are prices between the start-of-round price and the clock price, inclusive.

170. The clock price for a license will increase from round to round if more than one bidder indicates demand for that license. The bidding rounds will continue until, for all licenses—that is, all categories in all counties—the number of bidders demanding each license does not exceed one. Once bidding rounds stop, the bidder with demand for a license becomes the winning bidder.

B. Single Licenses in Three Bidding Categories

171. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band offered in up to three channel blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 17.5 megahertz blocks—licensed on a county basis. For bidding in this clock auction, in the counties where available, the Commission adopts bidding categories as follows: The 49.5 megahertz channel block is bidding category 1 (C1); the 50.5 megahertz channel block is bidding category 2 (C2); and the 17.5 megahertz channel block is bidding category 3 (C3). Therefore, the combination of a bidding category and a county would define a single specific license, and bidding for a category and a county under the clock-1 auction format would constitute license-by-license bidding.

C. Bidding Rounds

172. Auction 108 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct bidding simultaneously for all licenses—all categories in all counties available in the auction. In the first bidding round of Auction 108, a bidder will indicate, for each category and county, whether it demands the license at the minimum opening bid price. Before each subsequent bidding round, the bidding system will announce a start-of-round price and a clock price for each license, and during the round, qualified bidders will indicate the licenses for which they wish to bid at the prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

173. For each category and county—that is, each license—the clock price will increase from round to round if more than one bidder indicates demand for that license. The bidding rounds will continue until, for every license, demand does not exceed one. At that point, the bidder still indicating demand for a license will be the winning bidder.

174. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable results files for each round, will be released concurrent with or prior to that public notice.

175. The Commission will conduct Auction 108 over the internet. A bidder will be able to submit its bids using the bidding system's *upload* function, which allows bid files in a comma-separated values (CSV) text format to be uploaded.

176. The bidding system will allow a bidder to submit bids only for licenses in license areas (*i.e.,* counties) the bidder selected on its FCC Form 175 and for which the bidder has sufficient bidding eligibility.

177. During each round of the bidding, a bidder will be able to modify its bids placed in the current bidding round. It can do so by uploading a new file of all its bids, including the modifications, which would replace bids previously submitted in the round. The system will take the last bid file submission as that bidder's bids for the round. The Commission urges bidders to verify their bids in each round. Information on how to do so will be made available in educational materials that OEA will provide, including a bidding system user guide and an online bidding procedures tutorial.

178. The Commission adopts the proposal that OEA retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. This will allow OEA to change the amount of time for bidding rounds, the amount of time

between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

D. Stopping Rule

179. For Auction 108, the Commission will employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. Specifically, bidding will close for all licenses after the first round in which demand does not exceed one for any license. Consequently, under this approach, it is not possible to determine in advance how long Auction 108 will last.

E. Availability of Bidding Information

180. The Commission adopts the proposal to make public after each clock phase bidding round, for each license, the aggregate demand, the posted price of the last completed round, and the clock price for the next round. The identities of bidders making specific bids will not be disclosed until after the close of bidding in the auction.

181. Each bidder will have access to additional information related to its own bidding and bid eligibility. Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of the licenses it currently demands (its processed demand), whether it has proxy instructions for those licenses, and its eligibility for the next round.

F. Activity Rule

182. *Activity Requirement.* For the reasons set forth in the *Auction 108 Comment Public Notice,* the Commission adopts the proposal to employ an activity rule that requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's demands as applied by the auction system during bid processing. Bidders are required to be active on a specific percentage (the *activity requirement percentage*) of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in subsequent rounds of the auction.

183. The Commission adopts the proposal to require that bidders maintain a fixed, high level of activity in each round of Auction 108 in order to maintain bidding eligibility. The clock auction requires a high level of certainty about bidder demand in order to set accurate prices and provide reliable information to bidders. Consistent with past practice, bidders must be active on between 90% and 100% of their bidding eligibility in all clock rounds, with the specific percentage within this range to be set for each round by OEA. Thus, the activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total 90% to 100% of its current eligibility in the round. OEA The Commission will set the activity requirement percentage initially at 95%. If the activity rule is met, then the bidder's eligibility will not change for the next round. If the activity rule is not met in a round, then the bidder's eligibility will be reduced to an amount that brings the bidder into compliance with the rule. Bidding activity will be based on the bids that are applied by the FCC auction bidding system. That is, if a bidder bids to reduce its demand for a license, but the FCC auction bidding system cannot apply the request because demand for that license would fall below one, then the bidder's activity would reflect its unreduced demand.

184. OEA retains the discretion to change the activity requirement percentage during the auction. The bidding system will announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

185. *Contingent Bidding Limit.* Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids with activity that exceeds the required activity for the round. To help a bidder avoid potentially having its eligibility reduced as a result of submitted bids that could not be applied during bid processing, the Commission adopts procedures to allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility. However, the Commission emphasizes that even under these additional procedures, the bidder's activity as applied by the auction system during bid processing will not exceed the bidder's current bidding eligibility. That is, even if a bidder submits bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity cannot exceed its eligibility.

186. Under these procedures, after Round 1, a bidder may submit bids with bidding units totaling up to a *contingent bidding limit* greater than or equal to the bidder's current bidding eligibility for the round times a *contingent bidding percentage* equal to or greater than 100%. The Commission adopts an initial contingent bidding percentage of 120%, which will apply starting in Round 2. The Commission finds that 120% provides a useful amount of flexibility to a bidder trying to guard against loss of eligibility when requesting a reduction in its demand. This limit will be subject to change in subsequent rounds within a range of 100% to 140%. If it appears that the contingent bidding limit is being misused, OEA may use its discretion to change the contingent bidding limit percentage. In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its contingent bidding limit. The Auction 108 Technical Guide provides examples of use of the contingent bidding limit, and bidders are encouraged to review them.

187. As with the activity requirement percentage, OEA will retain the discretion to change the contingent bidding percentage during the auction and will announce any such changes in advance of the round in which they would take effect.

188. For Auction 108, the Commission will not provide for activity rule waivers to preserve a bidder's eligibility. The Commission notes that the contingent bidding limit, which permits a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, and allowing bidders to submit proxy instructions will address some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver, while minimizing any potential adverse impacts on bidder incentives to bid sincerely and on the price setting mechanism of the clock auction. This approach not to allow waivers is consistent with the ascending clock auction procedures used in other FCC clock auctions. The clock auction relies on precisely identifying the point at which demand decreases to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand and would interfere with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the bidding system, as addressed below.

G. Acceptable Bids

1. Minimum Opening Bids

189. As is typical for each auction, the Commission sought comment on the use of a minimum opening bid amount and/or reserve price, as mandated by 47 U.S.C. 309(j). The Commission will establish minimum opening bid amounts for Auction 108. The bidding system will not accept bids lower than the minimum opening bids for each license. Based on the Commission's experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process.

190. The Commission establishes the minimum bid amounts in Auction 108 using the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. The Commission bases these calculations on $0.006 per MHz-pop, with a minimum of $500 per license. Consistent with the calculations for upfront payments and bidding units adopted in the *Auction 108 Procedures Public Notice,* for the 49.5-megahertz and 50.5-megahertz blocks, the Commission bases the calculation on 50 megahertz. For the 17.5-megahertz channel block, the calculation will be based on the 16.5 megahertz of contiguous spectrum not including the 1-megahertz guard band. Additionally, when calculating minimum bid amounts, the Commission rounds the results of calculations as follows: Results below $1,000 will be rounded down to the nearest $100; results between $1,000 and $10,000 will be rounded down to the nearest $1,000; results between $10,000 and $100,000 will be rounded down to the nearest $10,000; and results above $100,000 will be rounded down to the nearest $100,000. The rounding procedures will lessen the differences between minimum bid amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space.

191. The minimum opening bid amounts for each license offered in Auction 108 are set forth in the Attachment A file on the Auction 108 website at *www.fcc.gov/auction/108.*

2. Clock Price Increments

192. The Commission adopts the procedures regarding clock price increments described in the *Auction 108 Further Comment Public Notice.* Therefore, after bidding in the first round and before each subsequent round, for each license, the FCC auction bidding system will announce the start-of-round price and the clock price for the upcoming round—that is, the lowest price and the highest price at which bidders can indicate their demand for the license during the round. As long as aggregate demand for the license exceeds one, the start-of-round price will be equal to the clock price from the prior round. If aggregate demand equaled one at a price in a previous round, then the start-of-round price for the next round will be equal to the price at which aggregate demand equaled one. If aggregate demand was zero in the previous round, then the start-of-round price for the next round will not increase.

193. The Commission will set the clock price for a license for a round by adding a percentage increment to the start-of-round price. The Commission will set the initial increment percentage at 10% and OEA may adjust within a range of 5% to 30% inclusive as rounds continue. The Commission recognizes that an increment larger than the initial 10% may be useful in managing the length of the auction, and OEA may increase the percentage increment during the auction, but OEA will take bidding activity into account before deciding to do so and will announce any change in advance. To ensure that an increase in the percentage increment does not result in an unduly large increase for a license, the total dollar amount of the increment (the difference between the clock price and the start-of-round price) will be capped at a certain amount. The Commission will set this cap on the increment initially at $10 million and OEA may adjust the cap as rounds continue. The 5% to 30% increment range and cap will allow us to set a percentage that manages the auction pace and takes into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly.

3. Intra-Round Bids

194. As described in the *Auction 108 Further Comment Public Notice,* in any round after the first round, the Commission will permit a bidder to make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for a license changes. In placing an intra-round bid for a license, a bidder will indicate a specific price and the changed quantity it demands (either zero or one) if the price for the license should increase beyond that price. For example, if a bidder has processed demand for a license at the start-of-round price of $200, but no longer wants the license if the price increases by more than $10, the bidder would indicate a bid quantity of zero at a price of $210. Similarly, if the bidder wishes to reduce its demand to zero if the price increases at all above $200, the bidder would indicate a bid quantity of zero at the start-of-round price of $200.

195. Intra-round bids are optional; a bidder may choose to express its demands only at the start-of-round price or the clock price. Using intra-round bidding will allow the auction system to use relatively large percentage increments, thereby speeding up the auction, without running the risk that a jump in the clock price will overshoot the market clearing price—the point at which only one bidder demands the license—because bidders can specify a price lower than the clock price.

196. Intra-round bid amounts will be limited to multiples of $10 for prices below $10,000; to multiples of $100 for prices between $10,000 and $100,000, inclusive; and to multiples of $1,000 for prices above $100,000.

4. Proxy Bids

197. The Commission adopts the proposal to provide each bidder with the option to use proxy bidding under the clock-1 format. Accordingly, a bidder will be allowed to submit a proxy instruction to the bidding system to *reduce* its demand for a license to zero at a price higher than the current round's clock price. Proxy instructions to *increase* a bidder's demand for a license at a given price will not be permitted.

198. Under these procedures, if a proxy instruction has been submitted, the bidding system will automatically submit a proxy bid to maintain the bidder's demand for the license in every subsequent round as long as the clock price for the round is less than the proxy instruction price. In the first round in which the clock price is greater than or equal to the proxy instruction price, the bidding system will submit a proxy bid on behalf of the bidder to reduce the bidder's demand for that license to zero at the proxy instruction price. For example, if a bidder has processed demand for a license with a clock price of $1,000, but the bidder is willing to purchase the license for a price up to $1,800, the bidder could submit a proxy instruction to reduce its demand for the license to 0 at $1,800. In that case, the bidding system will submit proxy bids to maintain the bidder's demand for the license in each subsequent round as long as the clock price is less than $1,800.

199. In the case that a bid to reduce demand, placed according to proxy

instructions or submitted by the bidder in the round, is not applied during bid processing, the bidding system will automatically generate a proxy instruction at the bid price and, in the following rounds, submit proxy bids on behalf of the bidder according to that proxy instruction. For example, suppose that the start-of-round price for a license is $10,000, the clock price is $12,000, and a bidder with processed demand for the license submits a bid to reduce its demand to 0 at price $11,500. If the bid is not applied during bid processing (*e.g.,* because there were no other bids for the license in the round), in the following round the bidding system will submit a proxy bid on behalf of the bidder to reduce demand for the license to 0 at price $11,500. The proxy instruction preserves in the bidding system the bidder's interest in retaining demand for the license at a price no higher than $11,500, which may help avoid having the license sold later in the auction to another bidder at a price less than what the initial bidder is willing to pay.

200. In any round, a bidder can remove or modify any existing proxy instructions or proxy bids for the round by uploading a new bid file, including the modifications, which would replace any bids and proxy instructions previously submitted. The system will take the last bid file submission as that bidder's bids and proxy instructions.

201. As is the case for intra-round bid amounts, proxy instruction prices will be limited to multiples of $10 for prices below $10,000; to multiples of $100 for prices between $10,000 and $100,000, inclusive; and to multiples of $1,000 for prices above $100,000. Proxy instructions will not be publicly released either during or after the auction.

5. Bid Types

202. Under the clock-1 auction format adopted for Auction 108, as in other FCC spectrum clock auctions, a bidder will indicate in each round the licenses it demands at the prices associated with the round. Bidders will be permitted to make two types of bids: Simple bids and switch bids.

203. A simple bid indicates a desired quantity (in this auction, one or zero) at a price. A bidder that is willing to maintain its demand for a license at the new clock price would bid for the license at the clock price, indicating that it is willing to pay up to that price, if need be, for the license. A bidder that wishes to change the quantity it demands for a license (relative to its processed demand from the previous round) would express the price (either the clock price or an intra-round price) at which it wishes to change its demand.

204. A switch bid allows the bidder to request to move its demand for a license from C1 to C2, or vice versa, within the same county at a price for the from category (either the clock price or an intra-round price). Switch bids are allowed only in counties with both an available category 1 license and an available category 2 license.

205. Bids to maintain demand will always be applied by the auction bidding system during bid processing. Simple bids to change demand and switch bids will not necessarily be applied during bid processing.

6. Missing Bids

206. Under the clock-1 auction format, a bidder is required to indicate its demands in every round or have a proxy instruction in place, even if its demands at the new round's prices are unchanged from the previous round. If a bidder does not submit a new bid for a license for which it had processed demand from the previous round and does not have a proxy instruction in place, the system will consider that a missing bid.

207. Missing bids are treated by the auction bidding system as requests to reduce demand to a quantity of zero for the license. If these requests are applied, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced. Unlike in previous FCC clock auctions for spectrum licenses, under the clock1 format for Auction 108, a bidder is permitted to enter proxy instructions. Thus, a bidder that is unable to indicate its demands in every round can avoid having missing bids by entering appropriate proxy instructions.

H. Bid Processing

208. The Commission adopts bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to change demand to determine the *processed demand* of each bidder for each license and a *posted price* for each license that will serve as the start-of-round price for the next round.

1. No Excess Supply Rule for Bids To Reduce Demand

209. Under the clock-1 auction format, the FCC auction bidding system will not allow a bidder to reduce its demand for a license if the reduction would cause aggregate demand to fall below one. Therefore, if a bidder has been bidding for a specific license but submits a simple bid to reduce its demand to zero for the license if the price should increase above the price in its bid, the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the no excess supply rule would be satisfied. Similarly, if a bidder submits a switch bid to move its demand from the C1 license to the C2 license in the same county, the FCC auction bidding system will treat the bid as a request that will be applied only if the no excess supply rule would be satisfied for C1 in the county, and vice versa.

2. Eligibility Rule for Bids To Increase Demand

210. The bidding system will not allow a bidder to increase its demands for licenses if the total number of bidding units associated with the bidder's demands exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder submits a simple bid to add a license for which it did not have processed demand in the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's processed activity to exceed its eligibility.

3. Processed Demand

211. The Commission adopts the procedures described in the *Auction 108 Further Comment Public Notice* to determine the order in which the bidding system will process bids after a round ends. After a round ends, the bidding system will first consider and apply all bids to maintain demand, and then it will process bids to change demand in order of price point, where the price point represents the percentage of the bidding interval for the round. The bidding system will process bids to change demand in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system will consider bids at the lowest price point across all licenses, then look at bids at the next price point across all licenses, and so on. As it considers each submitted bid during bid processing, the FCC auction bidding system will determine whether there is excess demand for a license at that point in the processing in order to determine whether a bidder's request to reduce demand for that license can be applied. Likewise, the auction bidding system will evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

212. Because in any given round some bidders may request to increase demand

for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition, bids that were not applied because demand would fall below one or because the bidder's activity (as applied by the auction system) would exceed its eligibility will be held in a queue and considered, again in price point order, if there should be excess demand or if the bidder's activity (as applied by the auction system) is reduced sufficiently later in the processing after other bids are processed.

213. Therefore, once a round closes, the auction system will process bids to change demand by first considering the bid submitted at the lowest price point and determining whether that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied, the licenses that the bidder holds at that point in the processing will be adjusted, and aggregate demand for the license will be recalculated accordingly. If the bid cannot be applied, the unfulfilled bid will be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system will then consider the bid submitted at the next lowest price point, applying it or not given the most recently determined demands of bidders. Any unfulfilled requests will again be held in the queue, and aggregate demand will again be recalculated. Every time a bid is applied, the unfulfilled bids held in the queue will be reconsidered, in the order of the original price points of the bids (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

4. Price Determination

214. As described in the *Auction 108 Further Comment Public Notice,* the FCC auction bidding system further will determine, based on aggregate demand, the posted price for each license for the round that will serve as the start-of-round price for the next round. The price for a license will increase from round to round as long as there is excess demand for the license but will not increase if only a single bidder demands the license.

215. If, at the end of a round, the aggregate demand for a license exceeds the supply of one, the posted price will equal the clock price for the round. If a reduction in demand was applied during the round and caused demand to fall to one, the posted price will be the price at which the reduction was applied. If aggregate demand is zero, or aggregate demand is one and no bid to reduce demand was applied for the license, then the posted price will equal the start-of-round price for the round. The range of acceptable bid amounts for the next round will be set by adding the percentage increment to the posted price.

216. Under the clock-1 auction format, if a bid to reduce demand is not applied, it is because there is not excess demand for the license and, therefore, the posted price will not increase. Hence, a bidder that makes a bid to reduce demand that cannot be applied will not face a price for the license that is higher than its bid price.

217. After the bids of the round have been processed, if the stopping rule has not been met, the FCC auction bidding system will announce clock prices to indicate a range of acceptable bids for the next round. Each bidder will be informed of the licenses for which it has processed demand and of the aggregate demand for each license.

I. Winning Bids

218. Under the clock-1 auction format, a bidder with processed demand for a license at the time the stopping rule is met will become the winning bidder for the license. The final price for a license will be the posted price for the final round.

V. Post-Auction Procedures

219. The public notice announcing the close of the bidding and auction results will be released within several days after bidding has ended in Auction 108. The *Auction 108 Procedures Public Notice* will also establish the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

A. Down Payments

220. The Commission's rules provide that, unless otherwise specified by public notice, within 10 business days after the release of the auction closing public notice for Auction 108, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (less any bidding credits, if applicable).

B. Final Payments

221. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

222. The Commission's rules provide that, within 10 business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed post-auction application (FCC Form 601), including the applicable filing fee, for the license(s) they won through the auction.

223. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility for the bidding credit sought in its FCC Form 601 post-auction application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 108

224. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in 47 CFR 1.2107(g). Specifically, license(s) won by a consortium must be applied for as follows: (a) An individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a designated entity credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.

D. Ownership Disclosure Information Report (FCC Form 602)

225. Within 10 business days after release of the auction closing public notice for Auction 108, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

226. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), then it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if the form on file is not complete and accurate, then the winning bidder must submit a new one.

227. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. This record is not an FCC Form 602, but it may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

228. As noted above, a winning bidder that intends to use its license(s) to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85 percent is eligible to receive a Tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A Tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

229. Unlike other bidding credits that are requested prior to an auction, a winning bidder applies for a Tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to advise the Commission whether it intends to seek a Tribal lands bidding credit, for each license won in a particular auction, by checking the designated box(es). After stating its intent to seek a Tribal lands bidding credit, the winning bidder will have 180 days from the close of the applicable post-auction application filing window to amend its application to select the specific qualifying Tribal lands to be served and provide the required Tribal government certifications. Licensees receiving a Tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii). For additional information on the Tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding Tribal lands bidding credits and related public notices.

F. Default and Disqualification

230. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in 47 CFR 1.2104(g)(2). A default payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

231. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. For the reasons set forth in the *Auction 108 Comment Public Notice,* the Commission adopts the proposal to set the additional default payment for Auction 108 at 15% of the applicable bid for winning bids.

232. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then the Commission may declare the applicant and its principals ineligible to bid in future auctions and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

G. Refund of Remaining Upfront Payment Balance

233. If a refund is due, the Bidder must request a refund in writing with the information listed below and to the email listed below. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159, or on the wire transfer, unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed below.

234. If you have elected not to access the Refund Form through the *Auction Application Manager* page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank
ABA Number (capable to accept ACH payments)
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418–2843, by email to *RROGWireFaxes@fcc.gov*.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Scott Radcliffe at (202) 418–7518 or Theresa Meeks at (202) 418–2945.

VI. Procedural Matters

A. Paperwork Reduction Act Analysis

235. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175. The *Auction 108 Procedures Public Notice* does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. The Commission will be submitting a non-substantive change request to OMB concerning OMB 3060–0600 related to the certification requirement for Auction 108 applicants adopted in the *Auction 108 Procedures Public Notice,* and the Commission will not require Auction 108 applicants to make this certification on FCC Form 175 until OMB has approved the non-substantive change request.

B. Congressional Review Act

236. The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major

under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Auction 108 Procedures Public Notice* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

237. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 108 Comment Public Notice* released in January 2021. In February 2022, a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) was incorporated in the *Auction 108 Further Comment Public Notice,* and a Third Supplemental Initial Regulatory Flexibility Analysis (Third Supplemental IRFA) was incorporated in the *Auction 108 Revised Inventory Public Notice.* The Commission sought public comment on the proposals in all three public notices, including comments on the three supplemental IRFAs. No comments were filed addressing the Supplemental IRFA, Second Supplemental IRFA, or Third Supplemental IRFA. The *Auction 108 Procedures Public Notice* establishes the procedures to be used for Auction 108. The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in the *Auction 108 Procedures Public Notice,* and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *2.5 GHz Report and Order* and other Commission orders pursuant to which Auction 108 will be conducted. The present FRFA conforms to the RFA.

238. *Need for, and Objectives of, the Rules.* The *Auction 108 Procedures Public Notice* resolves all open issues, and addresses comments filed in response to the *Auction 108 Comment Public Notice,* the *Auction 108 Further Comment Public Notice,* and the *Auction 108 Revised Inventory Public Notice.* The *Auction 108 Procedures Public Notice* implements auction procedures for those entities that seek to bid in Auction 108 to acquire new flexible-use geographic overlay licenses in the 2.5 GHz band. Auction 108 will offer the single largest contiguous portion of available mid-band spectrum below 3 GHz, and the licenses made available in Auction 108 will help extend 5G service beyond the most populated areas. The *Auction 108 Procedures Public Notice* adopts procedural rules and terms and conditions governing Auction 108, and the post-auction application and payment processes, as well as sets the minimum opening bid amounts for new flexible-use overlay licenses in the 2.5 GHz band that will be offered in Auction 108.

239. To promote the efficient and fair administration of the competitive bidding process for all Auction 108 participants, the Commission adopts the following procedures for Auction 108:

- A requirement that any applicant seeking to participate in Auction 108 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 and that it has familiarized itself with those procedures and the requirements for a license and operating facilities in the 2.5 GHz band;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 108 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- establishment of bidding credit caps for eligible small businesses, very small businesses, and rural service providers in Auction 108;
- designation of AT&T, T-Mobile, and Verizon Wireless as nationwide providers for purposes of the prohibition of certain communications;
- use of anonymous bidding/limited information procedures which will not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application (FCC Form 175), (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- establishment of an additional default payment of 15% under 47 CFR 1.2104(g)(2)in the event that a winning bidder defaults or is disqualified after the auction;
- a specific upfront payment amount for each license available in Auction 108;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each license;
- establishment of minimum opening bid amounts based on $0.006 per MHz-pop, with a minimum of $500 per license;
- use of an ascending clock auction format for Auction 108 under which each qualified bidder will indicate in successive clock bidding rounds its demand for the single frequency-specific license in each category in each county. Categories are determined based on the framework set forth in the *2.5 GHz Report and Order,* in which the 49.5 megahertz block is bidding category 1 (C1); the 50.5 megahertz block is bidding category 2 (C2); and the 17.5 megahertz block is bidding category 3 (C3);
- use of a simultaneous stopping rule for Auction 108, under which all licenses remain available for bidding until bidding stops on every license;
- retention by OEA of discretion to adjust the bidding schedule as necessary in order to manage the pace of Auction 108;
- permission for bidders to make two types of bids: Simple bids and switch bids. A simple bid indicates a desired quantity (one or zero) at a price (either the clock price or an intra-round price). A switch bid allows the bidder to request to move its demand for a license from C1 to C2, or vice versa, within the same county at a price for the from category (either the clock price or an intra-round price);
- use of information procedures which would make public after each round of Auction 108, for each category in each county, the aggregate demand, the posted price of the last completed round, and the clock price for the next round;
- use of an activity rule that would require bidders to be active on between 90% and 100% of their bidding eligibility in all clock rounds with the activity requirement percentage initially set at 95%;
- use of a contingent bidding limit that would allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility, and establishment of an initial contingent bidding percentage at 120%, which would be subject to change in subsequent rounds within a range of 100% to 140%;
- a specific minimum opening bid amount for licenses available in Auction 108;
- an option to permit a bidder to submit a proxy instruction to reduce its demand for a license to zero at a price higher than the current round's clock price and a requirement that bidders indicate their demands in every round or submit appropriate proxy instructions;
- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a methodology for calculating such amounts; and
- establishment of a methodology for processing bids and requests to reduce and increase demand subject to the no

excess supply rule for bids to reduce demand and the eligibility rule for bids to increase demand.

240. The procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules and the underlying rulemaking orders, including the *2.5 GHz Report and Order,* and relevant competitive bidding orders, and are fully consistent therewith.

241. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically address the information in the Supplemental IRFA, Second Supplemental IRFA, or Third Supplemental IRFA. One commenter, Mile One styled a proposal for the Commission to facilitate ''pairing infrastructure providers and small innovators in commercial market trial programs'' as a comment to the *Auction 108 Comment Public Notice* Supplemental IRFA. The substance of this proposal, however, does not specifically address the information in the Supplemental IRFA or the procedures and policies proposed in the *Auction 108 Comment Public Notice* and is outside of the scope of the procedures established in the *Auction 108 Further Comment Public Notice* and the *Auction 108 Revised Inventory Public Notice.*

242. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any changes made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 108 Comment Public Notice, Auction 108 Further Comment Public Notice,* or *Auction 108 Revised Inventory Public Notice.*

243. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted in the *Auction 108 Procedures Public Notice.* The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.

244. As noted above, a regulatory flexibility analysis was incorporated into the *2.5 GHz Report and Order.* That order provides the underlying authority for the procedures proposed in the *Auction 108 Comment Public Notice, Auction 108 Further Comment Public Notice,* and *Auction 108 Revised Inventory Public Notice,* and that are adopted in the *Auction 108 Procedures Public Notice* for Auction 108. In the *2.5 GHz Report and Order* Regulatory Flexibility Analysis, the Commission described in detail the small entities that might be significantly affected. In the *Auction 108 Procedures Public Notice,* in the Supplemental FRFA, the Commission incorporates by reference the descriptions and estimates of the number of small entities from the regulatory flexibility analysis in the *2.5 GHz Report and Order.*

245. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process to minimize reporting and compliance requirements for small businesses and other applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications, and to having reviewed the *Auction 108 Procedures Public Notice.* Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant that fails to become a winning bidder does not need to file a long-form application or provide the additional showings and more detailed demonstrations required of a winning bidder.

246. Applicants that wish to participate in Auction 108 are required to certify that they have read the *Auction 108 Procedures Public Notice* and the procedures adopted in the *Auction 108 Procedures Public Notice* for Auction 108, and are familiar with the procedures and requirements for obtaining a license and operating facilities in the 2.5 GHz band. The certification requirement allows applicants to educate themselves about the procedures for participation in Auction 108, and their obligation to stay abreast of relevant information before bidding in Auction 108 begins, and throughout the entire Auction 108 process. Adoption of this requirement may help small entities and other applicants avoid, among other things, rule violations or technical error that could prevent them from becoming a qualified bidder or obtaining a license after placing a winning bid. Moreover, the requirement will ensure that small entity applicants are aware of the detailed educational materials, such as interactive, online tutorials and technical guides, made available by the Commission to enhance the understanding of the pre-bidding and bidding processes, and should minimize the need for small entity applicants to hire outside engineers, legal counsel, or other auction experts.

247. Some of the resources that the Commission makes available to small entities and other applicants are discussed above. In light of all of the information, resources, and guidance made available to potential and actual participants at no cost, the Commission does not expect that the processes and procedures adopted in the *Auction 108 Procedures Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 108 and comply with the procedures they adopt. Although, the Commission cannot quantify the cost of compliance with the procedures adopted for Auction 108, they do not believe that the cost of compliance will unduly burden small entities that choose to participate in the auction. The Commission notes that the processes and procedures are consistent with existing Commission policies and procedures used in prior auctions. Thus, some small entities may already be familiar with such procedures and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that will be made available, including, but not limited to, the mock auction, remote electronic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation without the need to hire professionals. These resources are in addition to the resources discussed above that small entities and other applicants will be able to access. By providing these resources as well as the resources

discussed below, the Commission expects small entities that use the available resources to experience lower participation and compliance costs.

248. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

249. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many free resources the Commission provides to potential auction participants. As mentioned above, consistent with the past practices in prior auctions, small entities that are potential participants will have access to detailed educational information and Commission personnel to help guide their participation in Auction 108, which should alleviate any need to hire professionals. For example, small entities and other would-be participants will also be provided with various materials on the pre-bidding process in advance of the short-form application filing window, which includes step-by-step instructions on how to complete FCC Form 175. The Commission has taken steps to ensure that the application system is simple to use, and that FCC Form 175 is easy to complete. For example, the application will pre-fill ownership information that an applicant has previously provided in an FCC Form 175 for prior auctions or in an FCC Form 602 filing.

250. In addition, small entities will have access to the web-based, interactive online tutorials produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction. The Commission has also made available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the 2.5 GHz band, including a mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications in the Commission's Universal Licensing System (ULS) database.

251. After the initial application stage, auction participants whose applications have been deemed incomplete have the opportunity to correct certain errors. An applicant whose application is deemed incomplete will receive a letter from the Commission identifying the specific errors in their application and providing contact information for a specific FCC staff member who has been assigned to provide assistance. Additionally, after the application process is complete and the Commission has identified the applicants who will be qualified to bid in Auction 108, all qualified bidders for Auction 108 will automatically be registered for the auction, and registration materials will be distributed prior to the auction by overnight delivery. Applicants are not required to take any further steps until bidding commences.

252. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Eligible bidders will have access to a user guide for the bidding system, bidding file formats, and an online bidding procedures tutorial in advance of the mock auction. Further, the Commission will conduct Auction 108 electronically over the internet using a web-based auction system that eliminates the need for small entities and other bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 108 by all eligible bidders and may result in significant cost savings for small entities that use them. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

253. Small entities and other auction participants may seek clarification of, or guidance on, complying with competitive bidding rules and procedures, reporting requirements, and using the bidding system at any stage of the auction process. Additionally, an FCC Auctions Hotline will provide small entities one-on-one access to Commission staff for information about the auction process and procedures. Further, the FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the bidding system.

254. The Commission also makes various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to the start of bidding, and at the close of Auction 108, OEA and WTB will post public notices on the Auctions website that articulate the procedures and deadlines for the auction. The Commission makes this information easily accessible and without charge to benefit all Auction 108 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

255. Another step taken to minimize the economic impact for small entities participating in Auction 108 is the Commission's adoption of bidding credits for small businesses and rural service providers. In accordance with the service rules applicable to the 2.5 GHz band licenses to be offered in Auction 108, bidding credit discounts will be available to eligible small businesses and small business consortia on the following basis: (1) A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding five years is eligible to receive a 15% discount on its overall payment; or (2) a bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding five years is eligible to receive a 25% discount on its overall payment. Eligible applicants can receive only one of the available small business bidding credits—not both.

256. An eligible rural service provider may request a 15% discount on its overall payment using a rural service provider bidding credit. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas. Rural areas are defined as counties with a population density of 100 or fewer persons per square mile. Eligible applicants can request either a small business bidding credit or a rural service provider bidding credit, but not both.

257. The total bidding credit discount that may be awarded to an eligible small business is capped at $25 million and there is a $10 million cap on the total bidding credit discount that may be awarded to an eligible rural service provider. In addition, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, the Commission adopts a $10 million cap on the overall amount of bidding credits that any winning designated entity may apply to winning licenses in markets with a population of 500,000 or less. Based on the technical characteristics of the 2.5 GHz band and their analysis of past auction data, the Commission anticipates that the caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses. While eligible entities will have the opportunity to compete at auction without being unduly constrained, the caps are reasonable enough to ensure that ineligible entities are not encouraged to undercut the Commission's rules, thereby achieving the Commission's dual statutory goals of benefitting designated entities and at the same time preventing unjust enrichment.

258. A Tribal lands bidding credit will also be available to winning bidders that intend to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85 percent. The Tribal lands bidding credit is in addition to, and separate from, any other bidding credit winning bidders may qualify to claim. Therefore, small entities that are eligible for the small or rural bidding credit can also claim the Tribal lands bidding credit, provided they meet the requirements of 47 CFR 1.2107 and 1.2110(f).

259. These procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules and the underlying rulemaking orders, including the *2.5 GHz Report and Order* and relevant competitive bidding orders, and are fully consistent therewith.

260. *Report to Congress.* The Commission will send a copy of the *Auction 108 Procedures Public Notice,* in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auction 108 Procedures Public Notice,* including the Supplemental FRFA to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–07602 Filed 4–12–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0153; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE76

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Streaked Horned Lark With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), affirm the listing of the streaked horned lark (*Eremophila alpestris strigata*), a bird subspecies from Washington and Oregon, as a threatened species under the Endangered Species Act of 1973, as amended (Act). We also revise the rule issued under section 4(d) of the Act (''4(d) rule'') for this bird. This final rule maintains this species as a threatened species on the List of Endangered and Threatened Wildlife and continues to extend the protections of the Act to the species.

DATES: This rule is effective May 13, 2022.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0153 and at *https://www.fws.gov/oregonfwo/*. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0153.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone 503–231–6179. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. On February 28, 2018, the Center for Biological Diversity filed suit against the Department of the Interior and the Service on the 2013 listing and 4(d) rules for the streaked horned lark (78 FR 61452; October 3, 2013). The plaintiff challenged the adequacy of our significant portion of the range analysis, and the 4(d) rule's exception to the take prohibition for agricultural activities in the Willamette Valley. The court did not vacate the rules but remanded them to us for reconsideration. On April 13, 2021, we published a proposed rule (86 FR 19186) that reflected an updated assessment of the status of the subspecies and proposed revisions to the current 4(d) rule. Under the Act, we are required to make a final determination on our proposal within 1 year.

What this document does. With this final rule, we affirm the listing of the streaked horned lark as a threatened species, and we revise the 4(d) rule for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the streaked horned lark faces threats from the ongoing loss and degradation of suitable habitat (Factor A), as well as land management activities and related effects, and recreation (Factor E), combined with the synergistic effects of small population size and climate change (Factor E), such that it is likely to become an endangered species within the foreseeable future.

Peer review and public comment. The purpose of peer review is to ensure that our listing determinations and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The Service prepared the Species Status Assessment for the Streaked Horned Lark (SSA report) (U.S. Fish and Wildlife Service 2021a, entire) and sought peer review on the report in accordance with our joint policy on peer review published in

the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act. We solicited expert opinions of five appropriate specialists with expertise in ornithology and streaked horned lark biology and habitat, and we received three responses. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA report. Additionally, we sent the SSA report to six agency partners for review and received responses from three partners. We also considered all comments and information we received from the public during the comment period for the April 13, 2021, proposed rule (86 FR 19186).

Previous Federal Actions

On October 3, 2013, we published in the **Federal Register** (78 FR 61452) a final rule listing the streaked horned lark as a threatened species under the Act; that rule was accompanied by a 4(d) rule to except certain activities from the take prohibitions of the Act and our regulations in order to provide for the conservation of the streaked horned lark.

In addition, on October 3, 2013, we published in the **Federal Register** (78 FR 61506) a final rule designating critical habitat for the streaked horned lark in Washington and Oregon.

On February 28, 2018, the Center for Biological Diversity filed suit against the Department of the Interior and the Service on the listing and 4(d) rules for the streaked horned lark. The court did not vacate the rules but remanded the rules to us for reconsideration and ordered us to submit a revised proposed listing determination to the **Federal Register** no later than March 31, 2021. To facilitate consideration of new information, the Service conducted a new species status assessment (SSA) analysis informed by our SSA framework (Service 2016a, entire).

On April 13, 2021, we published a proposed rule (86 FR 19186) that reflected an updated assessment of the status of the subspecies (including an updated analysis of any significant portions of the range) based on the SSA report, and proposed revisions to the current 4(d) rule.

Supporting Documents

A team of Service biologists, in consultation with other species experts, prepared the SSA report for the streaked horned lark (U.S. Fish and Wildlife Service 2021a, entire). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. This final rule is based on the scientific information compiled in the SSA report.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the public on the April 13, 2021, proposed rule (86 FR 19186). We made many small, nonsubstantive clarifications and corrections throughout the SSA report and this rule, including under Summary of Biological Status and Threats, below, in order to ensure better consistency, clarify some information, and update or add new references. We considered whether this additional information altered our analysis of the magnitude or severity of threats facing the species.

We updated the SSA report (to version 2.0) and the final rule based on comments and additional information provided as follows:

(a) We include updated survey information provided to the Service and other reports of additional occurrences we received.

(b) We use an updated definition of suitable habitat throughout the final rule; wherein suitable habitat is defined as early seral stage communities with low-statured vegetation and substantive amounts of bare ground or sparsely vegetated conditions.

(c) We update Table 3 in the SSA and present an updated Table 1 in this final rule.

(d) We omit the proposed rule's Figure 1 from this final rule and instead present a new Table 3 where mean number of pairs are detected across all sites per region. Subsequent tables are renumbered to remain in sequence.

(e) We add text to the exception of take in the 4(d) rule for habitat restoration activities (§ 17.41(a)(2)(iv)(E)) to clarify that the Service will determine whether these activities are consistent with this final rule on a case-by-case basis.

(f) We update the numbers reporting acreage of agriculture in the Willamette Valley, and specifically the amount of land used in production of grass seed.

We conclude that the information we received during the comment period for the proposed rule did not change our previous analysis of the magnitude or severity of threats facing the species or our determination that streaked horned lark is a threatened species.

Summary of Comments and Recommendations

In our April 13, 2021, proposed rule (86 FR 19186), we requested that all interested parties submit written comments on the proposal by June 14, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule. Newspaper notices inviting general public comment were published in The Oregonian on April 18, 2021, The News Tribune on April 19, 2021, and The Olympian on April 19, 2021. We did not receive any requests for a public hearing. All substantive information provided during the comment period either has been incorporated directly into the final rule or is addressed below.

Peer Reviewer Comments

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the 2021 SSA report. The peer reviewers have expertise that includes familiarity with streaked horned lark and its habitat, biological needs, and threats. We received responses from three specialists, which informed the SSA report and our April 13, 2021, proposed rule. The purpose of peer review is to ensure that our listing determinations and 4(d) rules are based on scientifically sound data, conclusions, and analyses. We reviewed all peer review comments we received from the specialists for substantive issues and new information regarding streaked horned lark and incorporated into the final SSA report (Service 2021a) as appropriate.

Public Comments

We received seven submissions during the comment period for the proposed rule. We reviewed all submissions for substantive comments and new information regarding the proposed rule. Four submissions included substantive comments or new information concerning the April 13, 2021, proposed rule and the SSA report (Service 2021a). Updated information received was incorporated into the final SSA report and our final rule as appropriate. Below, we provide a summary of the substantive comments raised in the public submissions we received; however, comments outside the scope of the proposed rule, and those without supporting information,

did not warrant an explicit response and, thus, are not presented here. Identical or similar comments have been consolidated.

(1) Comment: Several commenters argued that the subspecies should be listed as endangered in all or a significant portion of the range due to small population sizes, ongoing loss of habitat, and lack of protection across most of its range.

Response: The streaked horned lark has been listed since 2013 and since that time the Service has been coordinating with partners to implement recovery actions throughout the range. The subspecies continues to be affected by a variety of stressors including agriculture, airport management, military operations, dredged material placement, and recreation. Despite the ongoing influence of stressors, the subspecies is not currently in danger of extinction, because the species retains multiple populations in high and moderate condition across all representative regions and those populations occur in a variety of habitat types. While the subspecies has shown variable abundance across the range, both from location-to-location and year-to-year, each representative region has at least 8 redundant populations. Negative influence factors on the subspecies have not fluctuated much for the last 20 years and are not of a scope or magnitude such that the subspecies is currently in danger of extinction.

As noted in the Background and Summary of Biological Status and Threats sections, abundance of larks across the Willamette Valley appears relatively high, but many of these local populations cannot be surveyed due to lack of access. Although the current abundance of local populations along the Pacific Coast is lower than other areas, it has been low for many years, and we see no apparent declining trend in this regional population based on survey data from 2013 to 2019. Recent detections of birds at Clatsop Spit, as well as sites with restored habitat on private lands in the Willamette Valley, indicate that individuals can move between sites, and there are a few instances of detections at previously unoccupied locations, but recolonization appears low and difficult to predict.

(2) Comment: One commenter stated we should have coordinated with outside entities to quantify our assessment of streaked horned larks and evaluate specific threats or issues.

Response: The streaked horned lark has been listed since 2013, with recovery actions coordinated by the Streaked Horned Lark Recovery Working Group (Working Group). The Streaked Horned Lark Recovery Working Group consists of several entities outside of the Service, including state biologists from both Oregon and Washington as well as species experts from American Bird Conservancy, Oregon State University, Center for Natural Lands, and other private individuals. Species status assessments (SSAs) are typically led by Service biologists and can include biologists from other agencies (state, Tribes and Federal). However, regardless of membership on an SSA core team, we call upon species experts and technical experts from other agencies to help us fill information gaps or check our analytical approach and did so with the streaked horned lark SSA. We drafted the SSA internally in response to the litigation remand and provided the draft SSA report for peer and partner review to a variety of people for external coordination, including the members of the Working Group. We took their comments into consideration when finalizing the SSA report and drafting the April 13, 2021, proposed rule. We also sent notice of the availability of the proposed rule to the members of the Working Group and took their comments into consideration when finalizing the rule. The 60-day public comment period on the April 13, 2021, proposed rule (86 FR 19186) provided interested parties an opportunity to comment and provide information on the proposed rule.

(3) Comment: We received comments stating the analysis of the current resiliency, redundancy, and representation of streaked horned lark in the SSA report, which provided the basis for the reaffirmed status determination for the subspecies, is not in alignment with population targets in the draft recovery plan.

Response: Recovery plans provide important guidance to the Service, States, Tribes, and other partners on methods of enhancing conservation and minimizing threats to listed species, as well as criteria against which to measure progress towards recovery, but they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. For this status determination, we analyzed the best available scientific and commercial data through the SSA framework to inform current and projected future resiliency of regional populations, and redundancy and representation of the subspecies. The SSA framework is currently the standard approach the Service is using for status assessments, and it may not always be in perfect alignment with a previously developed recovery plan.

Recovery plans identify metrics that describe what recovery of the species may look like; the SSA is used to analyze the current status of the species and project future conditions under a suite of plausible scenarios to support management decisions. The streaked horned lark draft recovery plan is supported by two supplementary documents: A Species Biological Report, which served as the basis for the SSA; and a Recovery Implementation Strategy, which details specific near-term activities identified in the draft recovery plan (U.S. Fish and Wildlife Service. 2019b, entire). For the streaked horned lark SSA, we incorporated information from the draft recovery plan into our analysis when appropriate and consistent with the SSA framework and, in response to peer review on the SSA, we revised our demographic metrics for current condition to be more in line with population targets in the draft recovery plan. As described under Determination of Streaked Horned Lark's Status, below, our review of the best available scientific and commercial information (which we analyzed in the SSA process) indicates that the streaked horned lark meets the Act's definition of a threatened species.

(4) Comment: We received several comments stating the methods of analysis used for interpreting changes in local and regional populations were flawed due to variability in survey efforts (both between years and between regions) and noting a lack of statistical analysis incorporated into our SSA and proposed rule. One commenter recommended we account for this variability in assessing population status and reference results presented in Keren and Pearson (2019). Another commenter stated that trends were based on data where conservation actions are implemented or land management activities are regulated through the section 7 consultation process and that this basis skews any apparent increase in population status over time toward the positive (which is not representative of the majority of the population that occurs on lands in the Willamette Valley, where no regulations protect the species from potential threats).

Response: We incorporated information from Keren and Pearson (2019) where appropriate in the SSA report and in this final rule, and in our discussion of variability in survey efforts (both between years and between regions) in both documents. In this rule, to incorporate the best available science,

we update Table 1 to show corrected population estimates, add Tables 2 and 3 to show mean number of pairs detected across all sites per region, and include additional information on our characterization of trends to reflect the variability in survey effort between regions and the uncertainty regarding trends (see additional explanation as population estimates as a function of survey effort in Tables 1–3). If information relating to the status of the species on private lands in the Willamette Valley becomes available after publication of this final rule, we will take that information into consideration and can reassess status at that time.

(5) Comment: One commenter stated that the process for evaluating connectivity between local populations and habitat conditions needs to be better described in the SSA report to account for how these metrics were evaluated with regards to the current condition.

Response: In the SSA report and this final rule, we revised our description of the metrics used to evaluate current condition, including connectivity of local populations during the breeding season and between years based on evidence from color-banded individuals, as well as general habitat conditions at sites in the Willamette Valley where lark populations are monitored regularly and where land management activities maintain suitable habitat.

Our assessment and conclusions regarding connectivity were based on seasonal and intra-annual observations of larks moving between sites (within a breeding season, based on color-banded or tagged birds, and observations of birds returning to alternate breeding sites relative to where they were banded) (see Figure 1 for additional information).

(6) Comment: We received comments stating that the availability of suitable habitat in the Willamette Valley may not be the primary driver of the subspecies' status and distribution, as evidenced by the abundance of suitable habitat where larks are not detected.

Response: In response to this comment, we clarified our definition of suitable habitat throughout this final rule as early seral stage communities with low-statured vegetation and substantive amounts of bare ground or sparsely vegetated conditions. This definition is consistent with that of suitable habitat in the draft recovery plan, the SSA, and scientific literature describing preferred habitats used by larks. We further acknowledge that there are other factors (in addition to the availability of suitable habitat) that drive the status of larks in the Willamette Valley. These include vegetation succession, land usage, crop conversion, the timing and method of equipment operation, the loss of natural disturbance processes, and any other habitat perturbations during the breeding season. We updated the SSA to clarify that the primary driver of the subspecies' status and distribution is a combination of habitat availability and disturbance activities during the breeding season.

(7) Comment: One commenter stated we need to better describe how the benefits of land management activities used to replicate or mimic suitable habitat conditions in the Willamette Valley outweigh the potential risks to breeding streaked horned larks.

Response: Early spring conditions in recently established grass seed fields in the Willamette Valley attract streaked horned lark by providing suitable habitat (*i.e.,* the areas between rows of grass that contain very little or no vegetation) for breeding. Streaked horned lark adults, nestling, and eggs can be negatively affected by mowing of these fields. Although streaked horned lark breeding can extend until late summer, that time period covers additional nest attempts, and the peak of breeding (first nest attempts) occurs in late May to mid-June before peak mowing (which typically occurs from mid-June to mid-July) in the Willamette Valley. Additional nesting attempts can occur from late June into August and may occur whether the first nest attempt failed or was successful (Pearson and Hopey 2004, p. 11). See also this discussion in the Summary of Biological Status and Threats section below.

(8) Comment: One commenter stated that although agricultural practices maintain habitat for larks, the industry is declining, and replacement crops are not suitable for larks. They note that if suitable crop types are declining, it would be logically consistent that lark populations would decline based on loss of habitat, but the proposed rule describes the current condition for the Willamette Valley population as increasing.

Response: As noted in our response to *Comment (6),* above, we acknowledge that there are drivers of population status other than grass seed production. In this rule, we present updated population survey numbers for the Willamette Valley population; however, there was variability in survey efforts and corresponding variability in mean number of birds detected during surveys across all regions. The increases at some local sites are balanced by fluctuations in lark detections during surveys and variability in survey effort across all years.

(9) Comment: One commenter stated that the timing of agricultural activities in the Willamette Valley is mischaracterized in the SSA report and the potential effects to nesting larks are greater than portrayed in the SSA report.

Response: Larks arrive on breeding sites in February (Pearson *et al.* 2016, p. 5), and the occupancy survey window extends from mid-April to mid-July. The nesting season (*i.e.* clutch initiation to fledging) for streaked horned larks begins in mid-April and ends in late August, with peaks in May and June (Pearson and Hopey 2004, p. 11; Moore 2011, p. 32; Wolf 2011, p. 5; Wolf and Anderson, 2014, p. 19). Harvest of grass seed usually commences in late June after the typical first nest attempt. While peak breeding occurs early in the summer, streaked horned larks can nest until August, and can re-nest throughout the summer, so they have multiple chances to breed even if a first nest attempt fails. Second and third breeding attempts typically occur during or after harvest practices have occurred. Nest success in general is highly variable. While there is potential for streaked horned lark nesting success to be impacted by grass seed harvest activities, the best available information does not indicate that those harvest activities are negatively affecting the current resiliency of streaked horned lark populations.

(10) Comment: One commenter stated that prairie restoration in the Willamette Valley does not substantially contribute to long-term conservation of streaked horned larks in the Willamette Valley. The commenter stated that because birds that breed in these locations are displaced from nearby sites and nests, they are at risk of lethal effects from land management activities, such as mowing or pesticide application, that are used to maintain vegetation at the restoration site. Another commenter said restoration success is likely based on soil structure (in general, glacial outwash in Puget Lowlands compared to fertile organic soil in Willamette Valley) and the likelihood of plant growth occurring following restoration.

Response: Larks at restoration sites throughout the subspecies' range are potentially affected by mowing and other land management activities similar to excepted activities at airports and in agricultural fields, but the results of prairie restoration in Willamette Valley indicate that restoration sites may provide short-term benefits to larks. Activities associated with streaked horned lark habitat restoration (*e.g.,*

removing nonnative plants and planting native plants, creating open areas, and maintaining sparse vegetation through vegetation removal or suppression via controlled burns) would be very beneficial to the subspecies; any adverse effects to the subspecies from these activities would likely be only short-term or temporary, especially with respect to harassment or disturbance of individual larks. In the long term, the risk of adverse effects to both individuals and populations is expected to be mitigated, as these types of land management activities will likely benefit the subspecies by helping to preserve and enhance the habitat of existing local populations over time.

(11) Comment: We received several comments stating that the success of most existing conservation efforts results from section 7 consultation with Federal agencies, leaving streaked horned lark on private lands mostly unprotected. We received other comments stating that private landowners should receive protection via safe harbor agreements or other programs to incentivize them to promote conservation for the species.

Response: It is well documented that listed species benefit from a higher level of protection on Federal lands when compared to privately owned lands, due in part to the requirement for section 7 consultation under the Act and other Federal programs. In contrast, protections for listed species on non-Federal lands rely more on section 9 take prohibitions and voluntary or discretionary conservation measures. Since we listed the streaked horned lark as threatened under the Act in 2013, numerous conservation measures resulting from section 7 consultation under the Act in the range of the streaked horned lark have helped reduce the effects of threats on the subspecies.

Conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities, including the voluntary cooperation of non-Federal landowners. Building partnerships and promoting cooperation of landowners are essential to understanding the status of species on non-Federal lands and may be necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection. We encourage any landowners with a listed species such as streaked horned lark present on their property and who want to help conserve the species or think they carry out activities that may negatively impact that listed species to work with the Service to promote conservation. We promote these private sector efforts through the Department of the Interior's cooperative conservation philosophy (see *https://www.fws.gov/services* for more information). Once a species is listed, for private or other non-Federal property owners we offer voluntary safe harbor agreements that can contribute to the recovery of species, habitat conservation plans that allow activities (*e.g.,* grazing) to proceed while minimizing effects to species, funding through the Partners for Fish and Wildlife Program to help promote conservation actions, and grants to the States under section 6 of the Act. We recently completed a Safe Harbor Agreement with a private landowner in the Willamette Valley to create and maintain habitat conditions that support larks and increase the distribution and abundance of larks in this region (U.S. Fish and Wildlife Service 2021b, entire).

(12) Comment: We received several comments stating that despite the joint effort to evaluate voluntary lark conservation in the Willamette Valley (funded by the USDA's Natural Resources Conservation Service, the Service, the American Bird Conservancy, and other partners), there was no incentive for agricultural producers (who are excepted under the 4(d) rule) to engage with the Federal government for conservation, even when financial incentives were available. One commenter stated that the assumption that the proposed 4(d) rule provides an incentive to landowners that results in creation or maintenance of habitat is erroneous and suggests producers do not make decisions based on market economics.

Response: We determined that the specific provisions in the 4(d) rule adequately protect streaked horned lark while facilitating the conservation and management of the species where individuals currently occur and may occur in the future. There are a variety of factors that understandably drive the type of crop that agricultural producers choose to grow and why they might change to a different crop over time. On farms where larks utilize crops such as perennial rye grass seed after the first few years of planting, the 4(d) is intended to remove possible disincentive to farmers to continue growing this crop—and not change the crop to something that will exclude use by larks or to keep it longer in non-suitable habitat status. Section 4(d) of the Act states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for conservation of species listed as threatened. Section 4(d) of the Act provides the Secretary with broad discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. As described below under II. Final Rule Issued Under Section 4(d) of the Act, the provisions of our 4(d) rule will promote conservation of the streaked horned lark by encouraging management of the landscape in ways that can meet both land management considerations and the conservation needs of the streaked horned lark. The prohibitions identified in the 4(d) rule, however, are considered necessary and advisable for the conservation of the streaked horned lark (see next comment and response).

(13) Comment: Several commenters stated that the proposed 4(d) rule leaves the streaked horned lark unprotected, and that existing regulations are insufficient to protect extant populations. One commenter stated that our rationale assumes that regulating agricultural practices would result in producers changing their practices or crops to avoid said regulations, but that the rise of the grass seed industry occurred in the same timeframe that larks began to decline. The commenter described the Willamette Valley as an ecological sink, where birds are attracted to habitat conditions, but management activities compromise reproductive success and survival. Commenters also note that the 4(d) rule excepts the agricultural industry as a whole, in spite of known effects on mortality, disturbance, and habitat alteration (shift in crop types based on market demands), for reasons other than conservation of the species, leaving the majority of the population in unregulated land use circumstances.

Response: With the loss of historical habitats during the last century, alternative breeding and wintering sites, including active agricultural lands, have become critical for the continued survival and recovery of the streaked horned lark. The largest area of potential habitat for streaked horned larks is the agricultural land base in the Willamette Valley. Larks are attracted to the wide, open landscape context and low vegetation structure in agricultural fields, especially in grass seed fields, probably because those working landscapes resemble the historical habitats formerly used by the subspecies when the historical disturbances associated with floods and fires maintained a mosaic of suitable habitats. In any year, some portion of the 920,000 ac (372,311 ha) of agricultural lands in the Willamette Valley will contain patches of suitable streaked horned lark habitat, but the geographic location of those areas may

not be consistent from year to year, nor can we predict their occurrence due to variable agricultural practices (crop rotation, fallow fields, etc.), and we cannot predict the changing and dynamic locations of those areas.

While agricultural activities also have the potential to harm or kill individual streaked horned larks or destroy their nests, maintenance of extensive agricultural lands (primarily grass seed farms) in the Willamette Valley is crucial to maintaining the population of streaked horned larks in the valley and aiding in the recovery of the subspecies in Oregon, and our revised 4(d) rule provides landowners some incentive to continue operating and maintaining their lands in a manner that is consistent with current operations which provide habitats that the birds currently rely on. As discussed in the response to Comment 12, we acknowledge that there are a number of reasons why a landowner may change their practices or convert their crop to a different commodity, however, and our revised 4(d) rule will promote conservation of the streaked horned lark in that it recognizes and supports management of the landscape in ways that meet both land management considerations and the conservation needs of the streaked horned lark.

Currently in the Willamette Valley, there are approximately 360,000 ac (145,000 ha) of grass seed fields in production. In any year, some portion of these lands will have suitable streaked horned lark habitat, but the geographic location of those areas may not be consistent from year to year, nor can we predict their occurrence due to variable agricultural practices (crop rotation, fallow fields, etc.), and we cannot predict the changing and dynamic locations of those areas. Maintenance of extensive agricultural lands (primarily grass seed farms) is crucial to maintaining the population of streaked horned larks. The beneficial effects to the subspecies from maintaining these agricultural activities outweighs the negative effects from injuries to particular individual larks from these same activities. The exception for incidental take for certain agricultural activities on non-Federal lands in the revised 4(d) rule applies to the entire range of the subspecies, to encourage management actions that would facilitate the use of areas other than civilian and military airports by streaked horned larks within the range of the subspecies in Oregon and Washington.

Because landowners are free to allow vegetation growth that results in the conversion of lands into habitats unsuitable for the streaked horned lark, conservation of the species will benefit from the support of agricultural practices that result in the creation and maintenance of habitat that is suitable for the subspecies. Excepting routine agricultural activities on non-Federal lands throughout the range of the streaked horned lark from the prohibition on take will provide an overall benefit to the subspecies by maintaining suitable habitat.

(14) Comment: One commenter disagreed with our rationale for including restoration in the proposed 4(d) exceptions, stating the potentially lethal effects to larks resulting from restoration activities such as mowing, spraying pesticides, and tilling compromise the overall justification for excepting these activities. They also state that inclusion of prairie restoration in the proposed 4(d) rule eliminates opportunities for partnerships to address impacts with successful tools (nest protection).

Response: We acknowledge that the effects from habitat restoration activities (mowing, spraying, tilling, etc.) on larks are similar to the effects of disturbance mechanisms that occur at airports (mowing) and on agricultural fields (mowing, tilling, harvesting, etc.), which maintain habitat for larks through semi-regular disturbance. However, we continue to support restoration of native habitats throughout the subspecies' range because these sites may provide additional temporary habitat for larks. Furthermore, while there are potential effects to larks from habitat management activities on restoration sites, if these activities were discontinued, plant growth and vegetation succession would occur, which would result in habitats no longer supporting the low-stature vegetation with areas of bare ground or sparsely vegetated ground that larks prefer. In parallel to our excepting of routine agricultural activities, excepting habitat restoration actions (that may include adverse effects to lark in the short-term), will provide an overall benefit by maintaining and/or adding to suitable habitat for the subspecies. While the loss of individuals is never welcome, the continuation of land management activities that create replacement habitat is very important for conservation of the subspecies, and the benefits to the subspecies as a whole appear to outweigh the associated cost of the loss of individuals.

(15) Comment: Two commenters expressed concern that the 4(d) rule precludes actions necessary for the lark's survival and recovery, namely nest protection for the brief incubation period for larks nesting on privately owned agricultural land. The commenters did not provide suggestions for how such a nest protection program may be designed or administered on those private lands other than referencing application of section 9 take prohibitions. They did reference positive nest conservation efforts for the lark at Joint Base Lewis McChord (JBLM) in Washington, and for the western snowy plover (*Charadrius alexandrinus nivosus*) as examples of what they believe should be implemented in Oregon's private agricultural lands.

Response: Some amount of nest mortality may occur as a consequence of excepted agricultural activities. The Service is sensitive to this concern and has taken reasonable steps to minimize the risk to nesting streaked horned larks while also supporting these same activities that maintain habitat the subspecies depends on for nesting.

The commenters cite to lark nest protection on Federal lands at JBLM and to nest protection buffers applied for western snowy plover on Federal and state lands in Oregon, calling for similar protections for lark nests on private agricultural lands in Oregon. However, there are significant problems with this recommendation that serve to underscore and highlight the reasonable justifications for the 4(d) exceptions.

First, the examples cited by the commenters involve conservation occurring completely on public lands: U.S. Department of Defense lands at JBLM for lark conservation and, for the snowy plover, lands owned by the U.S. Forest Service, Bureau of Land Management, and the Oregon Parks and Recreation Department. The requirements and opportunities for conservation on these Federal and state lands are significantly different than those for privately owned lands. Under the Act, the Federal agencies have a section 7 obligation to provide for the conservation of the streaked horned lark and western snowy plover. Likewise, on State Park lands, conservation of listed species is an explicit component of the State's land management goals, and the State voluntarily sought and received a section 10 permit from the Service for western snowy plover conservation on their park lands. These examples stand in sharp contrast to the conservation measures that are legally required of private landowners under the Act. The commenters' use of these examples does not recognize the important distinction between landownership and associated conservation obligations.

Secondly, the commenters' recommendation that we locate, identify, buffer, and protect streaked

horned lark nests on private agricultural lands presents several problems. The recommendation presupposes that we know where nests are across this vast landscape, or that we have a reliable mechanism for locating and accessing them. Unfortunately, we have very little detailed information about where streaked horned larks are nesting within this expansive agricultural private landscape of grass seed farms in the Willamette Valley (approximately 360,000 ac (145,000 ha)). As explained earlier, nesting sites shift over time and space, and larks are likely only using a very small subset of these areas in any given year, making nest site prediction and detection difficult. In addition, we do not have legal access to the majority of this privately owned landscape to survey and locate nests; this greatly limits our ability to identify and determine if and where any lark nests may be impacted. In the Willamette Valley, other than surveying for larks along the gravel margins of public roads or other public access points, we are reliant on private landowners to voluntarily share information about the presence of larks on their land as it becomes available to them. It is well documented in the scientific literature that most private landowners will not voluntarily share such information if they are concerned about adverse regulatory impacts to their economic livelihood, cultural practices, and private property rights (Raymond and Olive 2008, p. 485; Brook et al. 2003, pp. 1644–47; Mir and Dick 2012, entire). This dynamic makes conserving species on private lands one of the most difficult challenges of implementing the Act, both in Oregon and across the country (see, *e.g.,* Epanchin-Niell and Boyd 2020, p. 410). Therefore, under this very specific set of circumstances regarding private agricultural lands (and in contrast to the commenters' examples regarding western snowy plovers and streaked horned larks on public lands), the tradeoffs contained in this section 4(d) rule represent the best conservation approach to a very difficult situation.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the streaked horned lark is presented in the SSA report (U.S. Fish and Wildlife Service 2021a, pp. 4–19).

The streaked horned lark, a small songbird endemic to the Pacific Northwest, is one of 42 subspecies of horned lark worldwide and one of five breeding subspecies of horned larks in Washington and Oregon (Beason 1995, p. 2). Adults are pale brown, but shades of brown vary geographically among the subspecies. The male's face has a yellow wash in most subspecies. Adults have a black bib, black whisker marks, black ''horns'' (feather tufts that can be raised or lowered), and black tail feathers with white margins (Beason 1995, p. 2). Adults feed mainly on grass and forb seeds, but feed insects to their young (Beason 1995, p. 6). At coastal sites, streaked horned larks forage in the wrack line (the area where kelp, seagrass, shells, etc. are deposited at high tide) and in intertidal habitats (Pearson and Altman 2005, p. 8), and streaked horned larks in the Willamette Valley eat seeds of introduced weedy grasses and forbs, focusing on the seed source that is most abundant (Moore 2008a, p. 9).

Streaked horned larks historically selected habitat in relatively flat, open areas that were maintained by flooding, fire, and sediment transport dynamics. The interruption of these historical processes due to flood control dams, fire suppression, and reduction of sediment transport by dams resulted in a steep decline in the extent of historical habitat available for the lark. Currently, streaked horned larks are found in open areas free from visual obstructions like grasslands, prairies, wetlands, beaches, dunes, and modified or temporarily disturbed habitats such as agricultural or grass seed fields, airports, dredged material placement sites, and gravel roads. Streaked horned larks need relatively flat landscapes with sparse vegetation, preferring habitats with an average of 17 percent bare ground for foraging and 31 percent of bare ground for nesting (Altman 1999, p. 18). Typically, preferred habitats contain short vegetation, contain forbs and grasses that are less than 13 inches (in) (33 centimeters (cm)) in height, and have few or no trees or shrubs (Altman 1999, p. 18; Pearson and Hopey 2005, p. 27). The large, open areas used by populations of larks are regularly disturbed via burning, mowing, herbicide application, crop rotation, dredging material placement, and/or other anthropogenic regimes.

Habitat characteristics of agricultural lands used by streaked horned larks include: (1) Bare or sparsely vegetated areas within or adjacent to grass seed fields, pastures, or fallow fields; (2) recently planted (0 to 3 years) conifer farms with extensive bare ground; and (3) wetland mudflats or ''drown outs'' (*i.e.,* washed out and poorly performing areas within grass seed or row crop fields). Currently, there are approximately 420,000 acres (ac) (169,968 hectares (ha)) of grass seed fields and 500,000 ac (202,343 ha) of other agriculture in Oregon. Of the 420,000 ac, approximately 360,000 ac (145,000 ha) are located in the Willamette Valley (Oregon Seed Council 2018, p. 1). In any year, some portion of these areas will have suitable streaked horned lark habitat, but the geographic location of those areas may not be consistent from year to year due to variable agricultural practices (fallow fields, crop rotation, etc.), and we cannot predict the changing and dynamic locations of those areas.

Horned larks form breeding pairs in the spring (Beason 1995, p. 11), and territory size is variable. Territory size can range from 1.5 to 2.5 ac (0.61 to 1.0 ha) (Altman 1999, p. 11), and varies widely between sites and across years. For example, for 16 pairs of larks, territories ranged in size from 4.0 to 20.6 ac (1.6 to 8.3 ha) (Wolf *et al.* 2017, p. 12). Territories overlap substantially, and represent the semi-colonial breeding behavior of the species, where breeding territories are adjacent to other pairs at the same site but nests are not in extremely close proximity (Wolf *et al.* 2017, p. 12). The nesting season (*i.e.,* clutch initiation to fledging) for streaked horned larks begins in mid-April and ends in late August, with peaks in May and early June (Pearson and Hopey 2004, p. 11; Moore 2011, p. 32; Wolf 2011, p. 5; Wolf and Anderson, 2014, p. 19). After the first nesting attempt in April, streaked horned larks will often re-nest in late June or early July (Pearson and Hopey 2004, p. 11). Nests are positioned adjacent to vegetation or other structural elements and are lined with soft vegetation (Pearson and Hopey 2005, p. 23; Moore and Kotaich 2010, p. 18). Streaked horned lark nesting success (*i.e.,* the proportion of nests that result in at least one fledged chick) is highly variable, which is consistent with other ground-nesting passerines (Best 1978, pp. 16–20; Johnson and Temple 1990, p. 6).

The average minimum viable population (MVP) for the groups Aves and Passerines has been identified as 5,269 and 6,415 individuals, respectively. This number was determined using methodology described in a meta-analysis of multiple taxa (birds, fish, mammals, reptiles and amphibians, plants, insects, and marine invertebrates) (Anderson 2015, p. 2). Although we do not know what the historical abundance was for streaked horned lark rangewide (historical abundance estimates throughout the lark's range are largely anecdotal in nature), based on the MVPs for similar species, it was most likely larger than the current abundance. The draft

recovery plan for streaked horned lark (U.S. Fish and Wildlife Service 2019, entire) has a rangewide population goal of 5,725 individuals. The most recent rangewide population estimate for streaked horned larks is 1,170 to 1,610 individuals. This estimate is based on data compiled from multiple survey efforts, plus extrapolation to areas of potential suitable habitat not surveyed (*e.g.,* inaccessible private lands), particularly in the Willamette Valley (Altman 2011, p. 213).

The streaked horned lark currently occurs in local populations (defined here as scattered breeding sites or areas of habitat to which individuals return each year) in three regions across the range: The South Puget Lowlands in Washington, the Pacific Coast and Lower Columbia River in Washington and Oregon, and the Willamette Valley in Oregon.

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(see Figure 1).

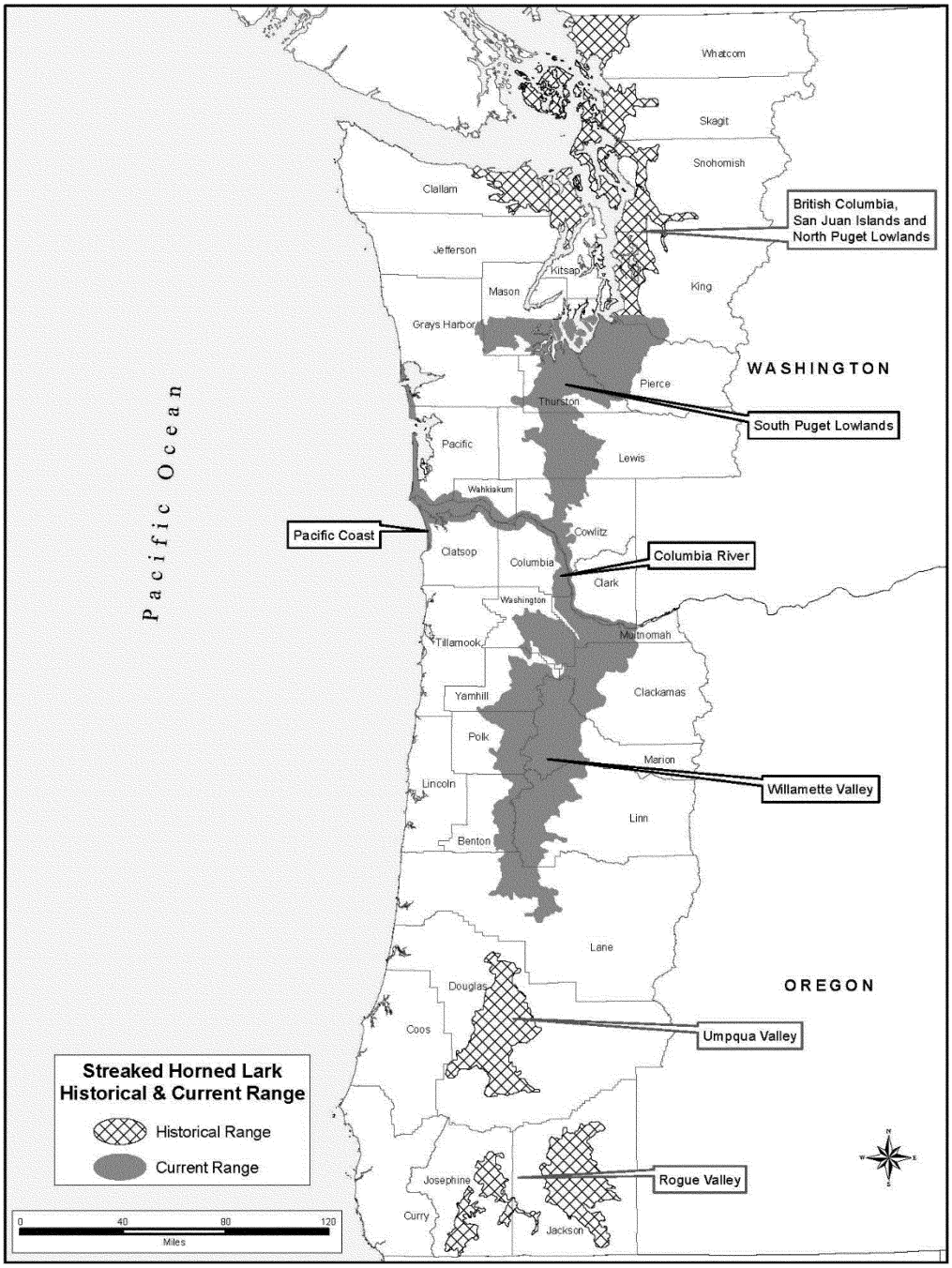

Figure 1. Historical distribution of streaked horned larks and current range map.

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Regional abundance estimates based on survey data from local populations between 2013 and 2019 are provided in Table 1. Based on 2013 to 2019 survey data from regularly monitored sites across the range of the subspecies, the number, distribution, and size of streaked horned lark local populations appear to have increased since our publication of the final rule in 2013.

TABLE 1—REGIONAL SUMMARIES OF BREEDING PAIRS, WITH NUMBER OF LOCAL POPULATIONS, BASED ON RECORDS FROM 2013 TO 2019

Regional population (with number of local populations)	2013	2014	2015	2016	2017	2018	2019
South Puget Lowlands (8)	75–76	97–101	119	129	139	130	121–127
Pacific Coast and Lower Columbia River (24)	81	89	77	85	77	86	97
Pacific Coast (5)	*10*	*12*	*11*	*9*	*13*	*13*	*10*
Lower Columbia River (19)	*71*	*77*	*66*	*76*	*64*	*73*	*87*
Willamette Valley (10)	96	23	109	127	92	133	165
Rangewide total	252–253	* 209–213	305	341	308	349	383–389

* Several of the locations were not surveyed in 2014; other sites have no data available.

We acknowledge there is a high degree of variability in annual survey efforts in the three regions and the resulting number of birds detected at each local population in any given year. Some local populations are regularly monitored and abundance estimates are regularly provided; other populations are irregularly monitored and survey efforts are infrequent. To account for this variability, we calculated the number of sites surveyed for each year per region (see Table 2).

TABLE 2—ANNUAL SURVEY EFFORT FOR REGIONAL POPULATIONS BETWEEN 2013 AND 2019

Regional population	Number of sites surveyed per year						
	2013	2014	2015	2016	2017	2018	2019
South Puget Lowlands	6	8	8	7	7	8	7
Pacific Coast and Lower Columbia River	16	23	24	20	20	22	21
Willamette Valley	2	1	9	7	9	11	9

As shown in Table 2, there is annual variability in the level of effort in which surveys are conducted in a region each year. For example, survey efforts in the Willamette Valley ranged between 1 survey at the Corvallis Airport in 2014 to 11 surveys at 5 airports, 3 refuges, and 3 private sites in 2018. In addition, there is a high degree of annual variability in survey effort that occurs among the regional populations relative to the number of local populations in each region. Of particular interest is the survey effort that occurs in the Willamette Valley compared to the other two regions. The Willamette Valley is believed to support the majority of the rangewide population, and yet there are relatively few surveys conducted, and we believe the number of birds detected are a fraction of the number residing in this region. Conversely, in the South Puget Lowlands and Pacific Coast and Lower Columbia River regions, we believe the number of local populations surveyed detect the majority of the birds occupying these regions.

To assess for relative change in regional populations over time, we calculated the mean number of pairs that were detected across all local sites in a region per year relative to survey effort (see Table 3). Similar to the variability in survey effort, there is variability in the mean number of birds detected in each region, as well as between regions in all years. For example, 96 pairs were detected at two local sites in the Willamette Valley in 2013, resulting in a mean estimate of 48 pairs per site (see Tables 1 and 3). Comparatively, 92 pairs were detected at 9 local sites in the Willamette Valley in 2017 (see Tables 1 and 2). These results show a high degree of annual variability within a region due to level of survey effort and between regions due to number of sites surveyed.

TABLE 3—MEAN NUMBER OF PAIRS DETECTED ACROSS ALL SITES PER REGION

Regional population	Year and mean number of pairs detected						
	2013	2014	2015	2016	2017	2018	2019
South Puget Lowlands	12.5	12.1	14.5	17.7	20.3	15.1	17.3
Pacific Coast and Lower Columbia River	4.4	3.4	2.8	3.8	3.2	3.3	4.1
Willamette Valley	48.0	26.0	12.1	18.1	10.2	12.1	18.3

There is also high variability in the mean number of birds detected between regions and years. For example, more surveys were conducted in the Pacific Coast and Lower Columbia River region than the South Puget Lowlands and Willamette Valley combined, but the total number of pairs detected in the Pacific Coast and Lower Columbia River region was much lower in all years. The consistent and high degree of survey effort in this region is due, in part, to

regular monitoring by the U.S. Army Corps of Engineers (Corps) at all sites used for dredged material placement along the Columbia River. The coastal sites are not regularly monitored and surveys frequently result in no detections. The majority of the birds detected in the Pacific Coast and Lower Columbia River region are found on only a few sites along the Columbia River. Many of remaining sites in the Pacific Coast and Lower Columbia River region support less than 5 pairs. As a result, the high level of survey effort in this region has not corresponded with an increased number of birds detected.

In reviewing the annual variability in survey efforts for each region across all years and the high degree of variability in mean abundance estimates within and between regions, we acknowledge there are no clear trends to indicate if the current regional and rangewide population is increasing or decreasing.

The South Puget Lowlands region consists of eight local populations at three municipal airports and five sites at Joint Base Lewis McChord (JBLM). Since the streaked horned lark was listed in 2013, the five local populations at JBLM have increased in size and two of the municipal airport populations have experienced declining trends (Keren and Pearson 2019, p. 4). Recent analysis indicates a declining female population at the Olympia and Shelton airports, resulting in declining abundance trends at these local populations (Keren and Pearson 2019, p. 3). Despite these declines, the overall regional population has stabilized to some degree based on increases of the local populations at JBLM which are likely the result of conservation measures implemented as part of section 7 consultations.

The Pacific Coast and Lower Columbia River region currently consists of 24 local populations, including the new population recently detected at Clatsop Spit in Oregon. The region currently appears stable (Keren and Pearson 2019, p. 3), although local population surveys are inconsistent and do not occur at each site every year. Two of the sites on the coast of Washington (Oyhut Spit and Johns River) have no positive records since the 2013 listing and appear to be extirpated. There are few historical records of lark detections on the Washington and Oregon coast and those records indicate larks were only considered uncommon summer residents and never reported to occur in large numbers (Altman 2011, p. 200–202). Although the current abundance of local populations on the Pacific Coast is low compared to other areas, it has been low for many years. The physical size of the coastal sites is relatively small compared to the sites for other local populations (and therefore naturally limits the number of breeding pairs), and there is no consistent trend in this area based on survey data between 2013 and 2019. Despite recent observations of individual larks at Clatsop Spit (*i.e.,* not breeding pairs), the number, distribution, and size of local breeding populations along the Pacific Coast appears to have remained relatively constant.

The Willamette Valley regional population was previously estimated at 900 to 1,300 individuals, based on data compiled and extrapolated from multiple survey efforts between 2008 and 2010 (Altman 2011, p. 213), including estimates from the many known occupied but inaccessible sites on private lands in the region. The data used for the 2011 analysis is based on detections during roadside point counts in 2008 which detected 168 individuals, and surveys are occupied sites in 2009 and 2010 which detected approximately 250 breeding pairs at seven sites (Altman 2011, p. 213). Surveys from the 10 regularly monitored, accessible, occupied sites in the Willamette Valley counted 165 breeding pairs in 2019. These monitored sites include four municipal airports, three National Wildlife Refuges, two natural areas, and one survey on private land. One historical site for a local population in this region (Salem Municipal Airport) has had no positive records since 2013, and appears to be extirpated. As discussed above, there is a high degree of variability in abundance estimates based on total survey effort in a given year, which is inconsistent from year to year and site to site (see Table 2). The Willamette Valley regional population appears to be well distributed and stable, but the limited surveys of accessible sites may not accurately reflect the trend in the whole region. Streaked horned larks appear to be more abundant in the southern end of the valley where there is more suitable habitat.

Across the range of the subspecies, the number and distribution of local populations throughout the range have increased since 2013. The number of breeding pairs detected at regularly monitored sites increased from 252–253 in 2013, to 383–389 in 2019, including increases at JBLM and at two additional sites in the Lower Columbia River area (Clatsop Spit and Howard Island) and two additional sites in the Willamette Valley (Herbert Farms and Coyote Creek). As discussed above, there is variability in survey efforts and corresponding variability in mean number of birds detected during surveys across all regions between 2013 and 2019. In addition, we have evidence of local population variability with some local populations increasing and others decreasing, as well as regional analysis that shows some declines in the Puget Lowlands and the Willamette Valley. Due to this variability and because a rangewide population estimate has not been reanalyzed since 2011, we are unable to state conclusively that the rangewide population has increased. However, we have regularly monitored several sites throughout the range since 2013 and while there is variability in the abundance of local populations, we believe that is no evidence to support that there are precipitous declines across any of the regions or across the range as a whole.

The North American Breeding Bird Survey (BBS) analyzes regional data to provide a trend for rangewide breeding populations. In contrast to the data from site-specific surveys for the streaked horned lark from 2013–2019, the most recent BBS analysis for the region encompassing streaked horned larks indicates a 6.52 percent decline for the subspecies between 2005 and 2015 (95 percent confidence interval: −12.66 to −2.26 percent) (Sauer *et al.* 2017, p. 3). The streaked horned lark was listed as a threatened species under the Act in 2013, only 2 years before the last data set that was included in the most recent BBS analysis. When a species is listed and recovery actions begin, it may still be many years before the abundance recovers to the point where the species demonstrates a rangewide increasing population trend. Recovery actions require funding, staff, and time to implement. Documenting the subsequent species response to those actions takes additional time.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened

species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effects of all of the threats on the species as a whole. We also consider the cumulative effects of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R1–ES–2020–0153 on *https://www.regulations.gov.*

To assess streaked horned lark viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences in the future. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Factors Influencing the Species

In our October 3, 2013, listing rule (78 FR 61452), we found that the streaked horned lark was a threatened species due to loss and degradation of habitat from development, fire suppression, and invasive (native and nonnative) plants; dredge spoil deposition timing and placement on Columbia River islands; incompatibly timed burning and mowing regimes; activities associated with military training; conversion of large grass seed production fields to incompatible agricultural commodities; predation; small population effects; activities associated with airports; and recreation.

Stressors Considered but Determined Not To Be Influencing Condition

In our SSA, we carefully analyzed these previously identified threats, as well as additional potential threats and conservation measures, to determine if they operate at a scope and magnitude as to influence the condition, or resiliency, of populations rather than only some individuals (U.S. Fish and Wildlife Service 2021a, pp. 19–38). Based on our assessment, disease and pesticides do not rise to the level of affecting the condition of local or regional populations. Although the 2013 listing rule stated that predation was likely to be a significant and ongoing threat to the subspecies (particularly in the South Puget Lowlands region), our SSA did not find evidence of effects to the subspecies from predation beyond effects to individuals in any local population (U.S. Fish and Wildlife Service 2021a, p. 20). Predation (typically by coyotes and corvids) does occur and primarily influences eggs, nestling, and juvenile survival; however, we did not find that it occurred at a level beyond regular life-history dynamics. We acknowledge, however, that predation combined with the effects of small population size may reduce the resiliency of some local populations, as noted below under ''Synergistic Effects.'' In 2013, a predator control program under the Wildlife Services Predator Damage Management Program of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (USDA), was initiated at Leadbetter Point and Midway Beach on the Washington coast (U.S. Fish and Wildlife Service 2011). Data show that western snowy plovers have shown improved nesting success since the program was implemented; however, monitoring data for streaked horned larks are inconclusive, and we cannot reliably determine if predator control has improved nesting success for larks at these sites.

Stressors Influencing Current and Future Condition

The primary driver of the status of streaked horned lark has been the scarcity of large, open spaces with very early seral stage plant communities with low-statured vegetation and substantive amounts of bare or sparsely vegetated ground. Historically, habitat was created and maintained by natural ecological processes of flooding, fire, and coastal sediment transport dynamics, as well as prairies maintained by Native American burning. The loss of regular disturbance regimes that created these open spaces impacted the abundance and distribution of historical streaked horned lark populations. Although this loss of historical disturbance led to displacement of lark into less suitable alternative habitat and subsequent population declines, it is not considered a significant influence on the condition of current populations because the impact occurred decades ago and is not ongoing. Furthermore, our current and future condition analyses take into consideration the quality of habitat, so the condition ranking of any populations that were displaced into lower quality habitat due to loss of historical disturbance is reflective of that displacement.

The primary factors currently influencing the condition of streaked horned lark populations are the ongoing loss and conversion of suitable habitat, land management activities and related effects, and recreation. Since we listed the streaked horned lark as threatened under the Act in 2013, multiple entities have implemented a series of regulatory and voluntary conservation measures (section 7 consultations due to the listing of the subspecies under the Act) to offset negative impacts to larks and lark habitat, reducing the overall impact of stressors influencing local populations. We discuss these primary influence factors and associated conservation actions below.

Ongoing Loss and Conversion of Suitable Habitat

Following Euro-American settlement of the Pacific Northwest in the mid-19th century, fire was actively suppressed on grasslands in the Willamette Valley, allowing encroachment by woody vegetation into prairie habitat and oak woodlands (Franklin and Dyrness 1973, p. 122; Boyd 1986, entire; Kruckeberg 1991, p. 286; Agee 1993, p. 360; Altman *et al.* 2001, p. 262). Native and nonnative species that have encroached on these habitats throughout the lark's range include native Douglas fir (*Pseudotsuga menziesii*), nonnative Scotch broom (*Cytisus scoparius*), and nonnative grasses such as tall oatgrass (*Arrhenatherum elatius*) and false brome (*Brachypodium sylvaticum*) (Dunn and Ewing 1997, p. v; Tveten and Fonda 1999, p. 146). This expansion of woody vegetation and nonnative plant species, including noxious weeds, has reduced the quantity and quality and overall suitability of prairie habitats for larks (Tveten and Fonda 1999, p. 155; Pearson and Hopey 2005, pp. 2, 27). On JBLM alone, over 16,000 ac (6,600 ha) of prairie has been converted to Douglas fir forest since the mid-19th century (Foster and Shaff 2003, p. 284). Trees and/or other woody vegetation infiltrate open areas with formerly low vegetation and long sight lines preferred by streaked horned larks.

The introduction of Eurasian beachgrass (*Ammophila arenaria*) and American beachgrass (*Ammophila breviligulata*) in the late 1800s, currently found in high and increasing densities in most of coastal Washington and Oregon, has dramatically altered the structure of dunes on the coast (Wiedemann and Pickart 1996, p. 289). Beachgrass creates areas of dense vegetation unsuitable for larks (MacLaren 2000, p. 5). The spread of beachgrass has reduced the available nesting habitat for streaked horned larks in Washington at Damon Point and at Grays Harbor and Leadbetter Point on Willapa National Wildlife Refuge (NWR) (Washington Department of Fish and Wildlife 1995, p. 19; Stinson 2005, p. 65; U.S. Fish and Wildlife Service 2011, p. 4–2). On the Oregon coast, the low abundance of streaked horned lark is attributed to the invasion of exotic beachgrasses and resultant dune stabilization (Gilligan *et al.* 1994, p. 205). Without management (mechanical and chemical) to maintain the open landscape at sites like these, invasive beachgrasses will continue to influence current and future local populations of streaked horned larks and reduce suitability of these habitats, particularly in the Pacific Coast and Lower Columbia River regions.

Habitat restoration work on Leadbetter Point by the Service's Willapa NWR has successfully reduced the cover of encroaching beachgrasses into streaked horned lark habitat. In 2007, the area of open habitat measured 84 ac (34 ha). However, after mechanical and chemical treatment to clear beachgrass (mostly American beachgrass), including spreading oyster shells across 45 ac (18 ha), there is now 121 ac (50 ha) of sparsely vegetated habitat available, increasing the extent of open habitat (Pearson *et al.* 2009b, p. 23). The main target of the Leadbetter Point restoration project was the federally listed western snowy plover, but the restoration actions also benefited streaked horned larks. Before the restoration project, this area had just 2 streaked horned lark territories (Stinson 2005, p. 63); after the project, an estimated 7 to 10 territories were located in and adjacent to the restoration area (Pearson *in litt.* 2012b).

Human activity has converted native prairie and grassland habitats to residential and commercial development, reducing habitat availability for streaked horned larks throughout their range. About 96 percent of the Willamette Valley is

privately owned, and it is home to almost three-fourths of Oregon's human population, which is anticipated to nearly double in the next 50 years (Oregon Department of Fish and Wildlife 2016, p. 17). The Willamette Valley provides about half of the State's agricultural sales and is the location of 16 of the top 17 private-sector employers (manufacturing, technology, forestry, agriculture, and other services). In the South Puget Lowlands, prairie habitat continues to be lost, particularly via the removal of native vegetation and the excavation and conversion to non-habitat surfaces in the process of residential development (*i.e.,* buildings, pavement, residential development, and other infrastructure) (Stinson 2005, p. 70; Watts *et al.* 2007, p. 736). The region also contains glacial outwash soils and deep layers of gravels underlying the prairies that are valuable for use in construction and road building.

Industrial development has also reduced habitat available to breeding and wintering streaked horned larks. Rivergate Industrial Park, owned by the Port of Portland, is a large industrial site in north Portland near the Columbia River that was developed on a dredge disposal site. Rivergate has long been an important breeding site for streaked horned larks and a wintering site for large flocks of mixed lark subspecies. In 1990, the field used by streaked horned larks at Rivergate measured more than 650 ac (260 ha) of open sandy habitat (Dillon *in litt.* 2012). In the years since, the Port of Portland has constructed numerous industrial buildings on the site, subsequently reducing habitat availability for larks and likely displacing all breeding and wintering larks from the area (Port of Portland 2019, entire).

As part of the section 10(a)(1)(B) permit associated with the development of a habitat conservation plan (HCP) under the Act, the Port of Portland mitigated for the loss of streaked horned lark habitat by securing a long-term easement on a 32-ac (13-ha) parcel at Sandy Island. Sandy Island is an occupied breeding site on the Columbia River about 30 miles (mi) (50 kilometers (km)) north of the Rivergate industrial site and is designated as critical habitat for the streaked horned lark (Port of Portland 2017, p. 4). The Port's 30-year commitment to manage the site and protect breeding streaked horned larks helps to offset impacts to the regional population from the loss of available habitat at the Rivergate site.

Roughly half of all the agricultural land in Oregon, approximately 360,000 ac (145,000 ha), is devoted to grass seed production in the Willamette Valley (Oregon Seed Council 2018, p. 1). Grasslands, both native prairies and grass seed fields, are important habitats for streaked horned larks in the Willamette Valley, as they are used as both breeding and wintering habitat (Altman 1999, p. 18; Moore and Kotaich 2010, p. 11; Myers and Kreager 2010, p. 9). Demand for grass seed and the overall acreage of grass seed harvested in Oregon has declined since 2005 (Oregon State University 2005 and 2019, entire). In 2019, approximately 364,355 ac (147,450 ha) were planted for forage and turf grass seed crops in the Willamette Valley compared to approximately 484,080 ac (195,900 ha) in 2005 (Oregon State University 2005 and 2019, entire). The reduction in grass seed production has resulted in growers switching to other commodities, such as wheat, stock for nurseries and greenhouses, grapes, blueberries, and hazelnuts (U.S. Department of Agriculture National Agricultural Statistics Service 2009, p. 3; Oregon Department of Agriculture 2011, p. 1; U.S. Department of Agriculture National Agricultural Statistics Service 2017, pp. 34, 55, 101). These other crop types do not have the low-statured vegetation and bare ground preferred by the streaked horned lark.

The continued decline of the grass seed industry in the Willamette Valley due to the variable economics of agricultural markets will likely result in a continued conversion from grass seed fields to other agricultural types, and fewer acres of suitable habitat for streaked horned larks. Across the range, the conversion of streaked horned lark habitat into agricultural, industrial, residential, or urban development will continue to influence current and future streaked horned lark local or regional populations to some degree throughout the range of the species, although the Pacific Coast is less affected than other areas.

Land Management Activities and Related Effects

Streaked horned larks evolved in a landscape of ephemeral habitat with regular historical disturbance regimes that maintained the large, open spaces with very early seral stage plant communities with low-statured vegetation and substantive amounts of bare or sparsely vegetated ground relied upon by the subspecies. Human activity led to the stabilization of these historical disturbance regimes, as well as the unintentional creation of ''replacement'' habitat for streaked horned larks that mimics their preferred large, open spaces. Replacement habitat occurs in a variety of settings across the range of the streaked horned lark, including agricultural fields, at airports, and on dredge spoil islands. Open habitat is maintained in these areas by way of frequent human disturbance, including burning, mowing, cropping, chemical treatments (herbicide and pesticide application), or placement of dredged materials (Altman 1999, p. 19). Without regular large-scale, human-caused disturbance, the quantity of suitable habitat available to larks would decrease rapidly. These land management activities are key to providing and maintaining habitat for the streaked horned lark; without replacement habitat, the status of the subspecies would likely be much worse.

However, when these same activities are conducted during the most active breeding season (mid-April to mid-June) for streaked horned larks, they have the potential to result in destruction of nests, crushing of eggs or nestlings, or flushing of fledglings or adults (Pearson and Hopey 2005, p. 17; Stinson 2005, p. 72). During the nesting seasons from 2002 to 2004, monitoring at Gray Army Airfield, McChord Airfield, and Olympia Airport in the South Puget Lowlands region documented nest failure at 8 percent of nests due to mowing over nests, forcing young to fledge early (Pearson and Hopey 2005, p. 18). Additionally, although dredge deposits can mimic sandy beach habitat typically used by larks, they have also been documented to destroy breeding sites and active nests when deposition occurs during the nesting season (Pearson in litt. 2012a; Pearson et al. 2008a, p. 21; MacLaren 2000, p. 3; Pearson and Altman 2005, p. 10). In 2013 and 2014, the U.S. Army Corps of Engineers collaborated with the Service and initiated a strategic multi-year dredging program for the lower Columbia River. The placement of dredge spoils was coordinated to minimize impacts to streaked horned larks by prioritizing placement of material on unsuitable lark habitat during the breeding season and where placement on suitable lark habitat was necessary it occurred outside of the breeding season. Over time, the placement of dredged materials reinitiated habitat succession and the development of suitable lark habitat, supporting long-term availability of suitable lark habitat throughout the lower Columbia River with minimal impacts to larks.

In the Willamette Valley, some habitats in agricultural areas are consistently maintained and therefore available throughout the year (*e.g.,* on the margins of gravel roads), while other patches of suitable habitat shift as areas

such as large fields are mowed, harvested, sprayed, or burned. In 2017, the Willamette Valley NWR entered into a 4-year programmatic section 7 consultation with the Service for its farming and pesticide use program (U.S. Fish and Wildlife Service 2016b, entire). This programmatic consultation documents the National Wildlife Refuge System's commitment to adapting its farming activities to improve the status of the streaked horned lark on the William L. Finley, Ankeny, and Baskett Slough units of the Willamette Valley NWR complex. Conservation measures include ensuring that farming activities minimize disturbance to larks, and that pesticides used in agricultural fields have a low risk of adverse effects to larks and their food sources.

Vegetation Management Activities at Airports

Airports implement hazardous wildlife management programs that include vegetation management around roads and runways, to discourage the presence of wildlife near the runways and thereby promote human safety for flights. Streaked horned lark are very attracted to the wide, open spaces created by vegetation management, and several airports in the range are now sites for local populations of the subspecies. In the South Puget Lowlands, the streaked horned lark might have been extirpated if not for mowing at airports to maintain large areas of short grass (Stinson 2005, p. 70). Five of the eight streaked horned lark nesting sites in the South Puget Lowlands are located on or adjacent to airports and military airfields (Rogers 2000, p. 37; Pearson and Hopey 2005, p. 15). At least five breeding sites are found at airports in the Willamette Valley, including the largest known local population at Corvallis Municipal Airport (Moore 2008b, pp. 14–17). The Corvallis Municipal Airport implements some conservation measures to reduce impacts to larks during airshow and other events at the airport, as well as conservation measures associated with construction activities as described and implemented as part of a programmatic section 7 consultation with the Federal Aviation Administration (U.S. Fish and Wildlife Service 2020, entire). The Port of Olympia's Updated Master Plan includes recommendations to minimize impacts to larks at the Olympia airport by avoiding mowing during the breeding season; however, mowing still occurs during the breeding season (Port of Olympia/Olympia Regional Airport 2013, pp. 10–11) and the local population at the airport has fluctuated (both increased and decreased) in surveys from 2013 to 2019 (Wolf *et al.* 2020, p. 16). The overall count of 30 breeding pairs in 2013 at the Port decreased to 21 pairs in 2018, but then increased to 27 pairs in 2019.

In 2017, the JBLM finalized a programmatic section 7 consultation with the Service that covered multiple activities affecting streaked horned lark, including mowing (U.S. Fish and Wildlife Service 2017, entire), which is allowed during the breeding season only under emergency circumstances (Wolf *et al.* 2017, p. 34). The programmatic consultation also covered military training activities, requiring JBLM to schedule training events as late in the breeding season as possible and restricting the use of vehicles or structures within active nest buffers during these events (U.S. Fish and Wildlife Service 2017, p. 26). As part of the consultation, the JBLM proposed to carry out new conservation measures that have resulted in a significant reduction in adverse effects to larks from mowing and military training activities, as well as additional activities to restore prairie habitats. Additional conservation measures implemented as part of the consultation include an intensive monitoring and research program which informs long-term management goals for the base. As a result of this consultation, the breeding population of larks on JBLM increased from fewer than 100 pairs when the streaked horned lark was listed in 2013 (Wolf and Anderson 2014, p. 12), to over 120 pairs in 2019 (Wolf *et al.* 2020, p. 6). Similar conservation measures are not implemented at the municipal airports in the Puget Lowlands region or at the airports in the Willamette Valley region to reduce effects to streaked horned larks from operations and maintenance activities, including mowing.

Aircraft Strikes

Individual larks in these local populations near runways are at increased risk of aircraft strikes and collisions. Horned lark strikes are frequently reported at military and civilian airports throughout the country, but because of the bird's small size, few strikes result in significant damage to aircraft (Dolbeer *et al.* 2011, p. 48; Air Force Safety Center 2012, p. 2). Juvenile males seem to be struck most often, perhaps because they are trying to establish new territories in unoccupied but risky areas on runway margins (Wolf *et al.* 2017, p. 31). With respect to streaked horned larks in particular, in the 5-year period from 2013 to 2017, McChord Airfield had seven confirmed strikes, and Gray Army Airfield recorded one confirmed streaked horned lark strike (Wolf *in litt.* 2018). Since January 2017, 16 adults have been killed by strikes on JBLM, including 10 adults and 2 juveniles killed by strikes at McChord Airfield in 2020 (Wolf *in litt.* 2020).

The increased number of strikes in 2020 were a direct result of construction activities that redirected aircraft traffic to the northern half of the runway where lark density is highest and lark abundance was relatively high; this led to a higher than normal mortality rate from aircraft strikes. Aside from the 12 strikes in 2020, JBLM recorded a total of 12 strikes in the 7 years between 2013 and 2019, for a rate of 1.7 strikes per year. While aircraft strikes do occur in several local populations at airports throughout the range of the species (particularly in the South Puget Lowlands), the rate appears relatively low and the vegetation management conducted by these airports also maintains replacement habitat that supports breeding pairs (Pearson *et al.* 2008a, p. 13; Camfield *et al.* 2011, p. 10; FAA 2020, entire).

Dredge Material Deposition on the Columbia River

The streaked horned lark uses islands in the Lower Columbia River for both breeding and wintering habitat. The river channel is regularly dredged by the U.S. Army Corps of Engineers (Corps), and dredge deposits can both benefit and harm streaked horned larks, depending on the location and timing of deposition. In 2014, the Corps entered into a programmatic section 7 consultation with the Service for the Corps' navigation channel dredging and dredge materials placement program in the Lower Columbia River (U.S. Fish and Wildlife Service 2014, entire). In this consultation, the Corps committed to planning for the placement of dredge material to minimize adverse effects to the lark on the Corps' network of placement sites and to maintain enough habitat in suitable condition to maintain the current regional population of breeding larks and allow for additional population growth. The 5-year program has been successful; from 2014 to 2019, numbers in the Lower Columbia River increased from an estimate of 77 pairs to 87 pairs, with the increases occurring at dredge deposition sites (Center for Natural Lands Management 2019, pp. 3–4). The original 5-year consultation was extended through 2022. The Corps is currently working on a 20-year dredge material management plan, which will build on the success of the previous consultation.

Military Training and Associated Activities

Military training activities at the 13th Division Prairie at JBLM, including bombardment with explosive ordnance and hot downdraft from aircraft, as well as civilian events, have caused nest failure and abandonment at JBLM's Gray Army and McChord Airfields (Stinson 2005, pp. 71–72). JBLM is also used for helicopter operations (paratrooper practices, touch-and-go landings, and load drop and retrievals) and troop training activities. Artillery training, off-road use of vehicles, and troop maneuvers at the 13th and 91st Division Prairies have been conducted in areas used by streaked horned larks during the nesting season, contributing to nest failure and low nest success. In addition to military training activities, McChord Airfield hosts an international military training event known as the Air Mobility Rodeo, which is held in odd-numbered years. In even-numbered years, McChord Airfield hosts a public air show known as the Air Expo; this event incorporates simulated bombing and fire-bombing, including explosives and pyrotechnics launched from an area adjacent to one of JBLM's most densely populated streaked horned lark nesting sites. The Expo and Rodeo can affect the streaked horned lark through disturbance from aircraft; temporary infrastructure; and spectator-related nest abandonment, nest failure, and adverse effects to fledglings (Pearson *et al.* 2005, p. 18; Stinson 2005, p. 27).

Recreation

Recreation at coastal sites can cause the degradation of streaked horned lark habitat, as well as disturbance to adults and juveniles, and direct mortality to eggs, nestlings, and fledglings. Activities such as the annual spring razor clam digs, dog walking, beachcombing, off-road vehicle use, camping, fishing, and horseback riding in coastal habitats may directly or indirectly increase predation (primarily by corvids), resulting in nest abandonment and nest failure for streaked horned larks (Pearson and Hopey 2005, pp. 19, 26, 29). Streaked horned larks nest in the same areas as western snowy plovers along the Washington coast, and it is highly likely that recreation has caused nest failures for larks at sites that have documented nest failure for plovers; both species are ground nesters and, therefore, similarly at risk of effects of recreation. During western snowy plover surveys conducted between 2006 and 2010 at coastal sites in Washington, human-caused nest failures of between 1 and 2 nests per year were reported in 4 of the 5 years (2 in both 2006 and 2008, 1 in both 2009 and 2010) (Pearson *et al.* 2007, p. 16; Pearson *et al.* 2008b, p. 17; Pearson *et al.* 2009a, p. 18; Pearson *et al.* 2010, p. 16), and one of 16 monitored nests at Midway Beach on the Washington coast was crushed by a horse in 2004 (Pearson and Hopey 2005, pp. 18–19).

In 2002, JBLM began restricting recreational activity at the 13th Division Prairie to protect lark nesting sites; JBLM prohibited model airplane flying, dog walking, and vehicle traffic in the area used by streaked horned larks (Pearson and Hopey 2005, p. 29). JBLM continues to restrict recreational activities during the lark breeding season at the 13th Division Prairie, although enforcement, especially on weekends, is intermittent (Wolf *et al.* 2016, p. 43). In addition, the 2017 programmatic section 7 consultation JBLM entered into with the Service (U.S. Fish and Wildlife Service 2017, entire) included numerous positive conservation measures for the streaked horned lark, including prairie habitat restoration, monitoring and research program, and limits on military activities as well as recreational activities.

Summary of Threats

Table 4, below, summarizes the scope and magnitude of factors influencing the viability of streaked horned lark.

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Table 4. Summary of factors influencing regional populations.

Factors Influencing Populations		Regional Populations		
		South Puget Lowlands	Pacific Coast and Lower Columbia River	Willamette Valley
Habitat Fragmentation, Degradation, and Loss	Vegetation succession	XX	XX	XXX
	Encroachment of woody vegetation or grasses, invasive species	X	XXX	X
	Land use changes or conversion	X	X	XXX
	Crop conversion	--	--	XXX
	Loss of natural disturbance processes	XX	XX	XX
Land Management Activities and Related Effects	Vegetation management activities	XX	--	XX
	Military training and associated activities	X	--	--
	Dredged material placement	--	X	--
Recreation		--	XX	--
Aircraft Strikes		XX	--	X

Note: XXX indicates relatively frequent influence to the regional population; XX indicates moderate influence on the regional population; X indicates occasional influence on the regional population; no entry (--) indicates no known influence on the regional population.

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Climate Change

The effects of climate change have already been observed in the Pacific Northwest. Temperatures have risen 1.5 to 2 degrees Fahrenheit (°F) (0.83 to 1.1 degrees Celsius (°C)) over the past century, and the past three decades have been warmer than any other historical period (Frankson *et al.* 2017a, p. 1; Frankson *et al.* 2017b, p. 1). Climate change is widely expected to affect wildlife and their habitats in the Pacific Northwest by increasing summer temperatures, reducing soil moisture, increasing wildfires, reducing mountain snowpack, and causing more extreme weather events (Bachelet *et al.* 2011, p. 414). Climate change may increase the frequency and severity of stochastic weather events, which may have severe negative effects on small local populations throughout the range of the streaked horned lark. During the breeding season, small local populations of larks are distributed across the range; in the winter, however, streaked horned larks congregate mainly in the Willamette Valley and on islands in the Lower Columbia River. Such concentration exposes the wintering populations to potentially disastrous stochastic events such as ice storms or flooding, which could kill individuals, destroy limited habitat and food availability, or skew sex ratios. Severe winter weather could potentially impact one or more regional populations when birds congregate as larger flocks (Pearson and Altman 2005, p. 13).

Despite the climate projections for the region, the effects of climate change specific to prairie ecosystems are not anticipated to decrease the resiliency of regional streaked horned lark populations in the South Puget Lowlands, Lower Columbia River, and Willamette Valley regions. The grasslands and prairies of Washington and Oregon span a wide geographic and climatic range, encompassing a rich variety of soil types, vegetation cover, elevations, and weather patterns. The rich diversity of all of these factors will likely provide substantial buffering to streaked horned lark habitat from the effects of changing weather and climate (Bachelet *et al.* 2011, p. 412). It is

possible that increased summer droughts may affect less drought-tolerant trees and other forest species adjacent to prairies, possibly resulting in prairie expansion that could benefit the streaked horned lark (Bachelet *et al.* 2011, p. 417). Prairie and grassland ecosystems are well adapted to warm and dry conditions—periodic soil drought and future increases in temperature and drought for the region ''are unlikely to disadvantage (and may benefit) these systems'' (Washington Department of Fish and Wildlife 2015, pp. 5–31).

The outlook for streaked horned larks along the Pacific Coast is less encouraging due to the effects of climate change. Sea-level rise, increased coastal erosion, and more severe weather events will cause significant effects to lark habitats on the coast. Projected sea-level rise could increase erosion or landward shift of dunes; similarly, increased severe weather events with greater wave and wind action from storms could magnify disturbance of dune habitats (Washington Department of Fish and Wildlife 2015, pp. 5–31) and imperil nesting larks. Given these stressors, we expect that climate change may limit the resiliency of some local populations on the coast primarily by amplifying the negative effects from habitat loss due to the spread of invasive species, such as Eurasian beachgrass, where not managed. A conservation measure that may help reduce effects from climate change in one area of the coast in the range of the streaked horned lark is the Shoalwater Bay Shoreline Erosion Control Project (U.S. Fish and Wildlife Service 2018, entire), which is a long-term commitment by the Corps and the Shoalwater Bay Tribe to protect the reservation from coastal erosion. It has created and is maintaining habitat for both western snowy plovers and streaked horned larks, and provides secure nesting area on the coast for both species.

Small Population Size

Most species' populations fluctuate naturally, responding to various factors such as weather events, disease, and predation. These factors have a relatively minor impact on a species with large, stable local populations and a wide and continuous distribution. However, populations that are small, isolated by habitat loss or fragmentation, or impacted by other factors are more vulnerable to extirpation by natural, randomly occurring events (such as predation or stochastic weather events), and to genetic effects that plague small populations, collectively known as small population effects (Purvis *et al.* 2000, p. 3). These effects can include genetic drift, founder effects (over time, an increasing percentage of the population inheriting a narrow range of traits), and genetic bottlenecks leading to increasingly lower genetic diversity, with consequent negative effects on adaptive capacity and reproductive success (Keller and Waller 2002, p. 235).

Various effects of small population size, including low reproductive success, loss of genetic diversity, and male skewed sex-ratio, have been noted in the range of the streaked horned lark, particularly at some local populations in the South Puget Lowlands region and the Lower Columbia River (Anderson 2010, p. 15; Camfield *et al.* 2010, p. 277; Drovetski *et al.* 2005, p. 881; Keren and Pearson 2019, Figures 1 and 2; Drovetski *et al.* 2005, p. 881; Wolf *et al.* 2017, p. 27). Any local population of streaked horned larks with very low abundance that does not interbreed with other local populations will be at more risk in the future due to small population effects.

Current Condition

To maintain adequate resiliency, populations of streaked horned larks need large open spaces with suitable habitat structure—specifically, low-stature vegetation and scattered patches of bare ground—and an appropriate disturbance regime sufficient to maintain habitat and support increased numbers of breeding birds. The size of populations with high resiliency varies among regions, depending on the extent and quality of available habitat. Needs of the streaked horned lark in relation to degree of estimated population resiliency are summarized below in Table 4; to evaluate current condition, we assigned each condition category a number as shown.

TABLE 5—MATRIX FOR EVALUATING CURRENT CONDITION OF THE STREAKED HORNED LARK

Demographic and habitat parameters	High condition ←----------→ Low condition			
Abundance:				
South Puget Lowlands	Regular surveys detect ≥20 breeding pairs (3).	Regular surveys detect 10–20 breeding pairs (2).	Regular surveys detect ≤10 breeding pairs (1).	Extirpated: Larks no longer occupy site or region (0).
Pacific Coast and Lower Columbia River.	Regular surveys detect ≥15 breeding pairs on coast (3).	Regular surveys detect 7–15 breeding pairs on coast (2).	Regular surveys detect ≤7 breeding pairs on coast (1).	
	Regular surveys detect ≥20 breeding pairs on river (3).	Regular surveys detect 10–20 breeding pairs on river (2).	Regular surveys detect ≤10 breeding pairs on river (1).	
Willamette Valley	Regular surveys detect ≥25 breeding pairs (3).	Regular surveys detect 15–25 breeding pairs (2).	Regular surveys detect ≤15 breeding pairs (1).	
Population Trend	Increasing population trend (2).	Stable populations (1)	Declining or insufficient data to assess trends (0).	
Connectivity	Movement between local populations/regions (1).		No movement between local populations/regions (0).	
Habitat	Large, open areas with low-stature grasses, 17 percent bare ground (3).	Open areas with low-stature grasses, some shrubs and trees (2).	Small patches of suitable grasses surrounded by dense vegetation and trees (1).	Extirpated: Habitat to support larks no longer exists at a site (0).

TABLE 5—MATRIX FOR EVALUATING CURRENT CONDITION OF THE STREAKED HORNED LARK—Continued

Demographic and habitat parameters				
Beneficial Disturbance Regime.	Regular disturbance occurs to maintain habitat for nesting, no adverse effects during breeding season (3).	Semi-regular disturbance, habitat is available but not ideal for nesting, some adverse effects during breeding season (2).	Infrequent disturbance, habitat may be temporarily unavailable; high adverse effects during breeding season (1).	Extirpated: Disturbance does not occur to maintain habitat for larks; high adverse effects during breeding season (0).

Parameters that are in high condition support adequate population resiliency, whereas parameters that are in low condition reduce resiliency and increase the risk from stochastic events. Each of the five parameters were given equal weight, and the resulting resiliency scores were averaged to come up with an overall condition score for each local population unit as follows: High (≥1.7), Moderate (1.6 to 1.1), Low (1.0 to 0.2), and Extirpated (≤0.1). The overall condition score thresholds were based on the difference between the highest and lowest possible actual scores (2.4 and 0.2, respectively) for extant populations. If survey data showed a site had no detections of streaked horned larks, then the entire site is categorized as extirpated, regardless of the condition category assigned to the habitat or disturbance factors (*e.g.,* Oyhut Spit and Johns River Island in the Pacific Coast region).

The resulting current condition rankings of extant local population resiliency varied between high to low condition. Some local populations ranked high (those that scored 1.7 or greater) as a result of abundant populations and high-quality habitat; other populations ranked lower (those that scored 1.0 or less) in part because of a combination of low abundance, declining population trends between 2013 and 2019, poor quality habitat, and effects of land management activities.

The current range is a reduction compared to the historical range, where larks were detected on coastal and shoreline habitats as far north as British Columbia and the San Juan Islands in northwest Washington and in prairie habitats as far south as the Umpqua and Rogue Valleys in southwest Oregon. While the overall number of occupied sites represent a reduction from its historical range, of the 42 extant local populations across the three representational regions, there are 8 in high condition, 15 in moderate condition, and 19 in low condition (Table 6). Three sites that were occupied in years prior to the 2013 listing are currently considered extirpated.

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Table 6. Current condition rankings of streaked horned lark local populations.

Representational Area (Region)	Local Population Analysis Unit	Resiliency
South Puget Lowlands	Gray Army Airfield	High
	McChord Airfield	High
	13th Div. Prairie	High
	91st Div. Range 76	High
	Olympia Airport	Moderate
	91st Div. Range 50/53	Low
	Tacoma Narrows Apt.	Low
	Shelton Apt.	Low
Pacific Coast and Lower Columbia River	Rice Island	High
	Sandy Island	High
	Leadbetter Point	Moderate
	Miller Sands Is.	Moderate
	Pillar Rock Is.	Moderate
	Welch Island	Moderate
	Tenasillahe Is.	Moderate
	Brown Island	Moderate
	Crims Island	Moderate
	Howard Island	Moderate
	Lower Deer Is.	Moderate
	Graveyard Spit	Low
	Midway Beach	Low
	Damon Point	Low
	Clatsop Spit	Low
	Hump Island	Low
	Northport	Low
	Sand Island	Low
	Martin Bar	Low
	Austin Point	Low
	Gateway	Low
	Rivergate	Low
	PDX Airfield	Low
	PDX SW Quad	Low
	Oyhut Spit	*Extirpated*
	Johns River Island	*Extirpated*
Willamette Valley	Corvallis Apt.	High
	Baskett Slough NWR	High
	Ankeny NWR	Moderate
	William L. Finley NWR	Moderate
	Private Lands (WRPs)	Moderate
	Herbert Farm Ntrl. Area	Moderate
	Coyote Creek South	Moderate
	Eugene Apt.	Low
	McMinnville Apt.	Low
	Independence St. Apt.	Low
	Salem Municipal Apt.	*Extirpated*

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In general, the local populations with low condition have low abundance that has declined since 2013 and occur in locations that have less habitat

availability and therefore limited capacity to support high numbers of birds. In addition, certain land management activities at these locations, such as construction and development or sand-borrow activities on the Columbia River, would not support long-term resiliency even if population abundance stabilized and increased. Use of these sites is opportunistic based on habitat availability, and most of these sites are not anticipated to meaningfully contribute to subspecies viability or support high numbers of birds.

The South Puget Lowlands region has an overall increasing population trend (based on the 2013–2019 survey data). The region contains four local populations with high condition, one local population with moderate condition, and three local populations with low condition. Those local populations with low condition have small, declining populations and occur in areas where management activities have negative impacts on adult and juvenile birds, currently limiting resiliency. The populations at the JBLM airfields and 13th Division increased between 2013 and 2019, and movement between sites and habitat quality in these areas supports high resiliency. The Shelton Airport has a declining population trend. The Olympia Airport has good connectivity, and its condition is moderate, but the condition of the Shelton and Tacoma airports are low due to loss of habitat and/or size limitations.

The Pacific Coast and Lower Columbia River region has an overall stable population trend (based on the 2013–2019 survey data). It has 2 local populations in high condition (including Sandy Island, which is managed for the conservation of streaked horned lark), 9 local populations in moderate condition, 13 local populations with low condition, and 2 locations that have no breeding pairs and are assumed extirpated (Oyhut Spit and Johns River Island). While Leadbetter Point is managed to improve habitat quality for larks and reduce corvid predation, the local population has fluctuated in the last several years (between 6 in some years and 11 in other years) and abundance is inconsistent from year to year with no clear trend toward either an increasing or decreasing population that is demonstrated by the data. With more data from more survey years, as well as a more recent metapopulation analysis, we may be able to know more about the general trend of the data over time. A number of coastal sites and several Columbia River sites have low resiliency due to low abundance, small patches of high-quality habitat that currently limit potential abundance, limited connectivity, and/or management activities that are not optimal for successful breeding. While the Pacific Coast area currently has low numbers of breeding pairs, recent detections at Clatsop Spit (a previously unoccupied site) indicate the species could recolonize areas with suitable habitat. Streaked horned larks, however, have not recolonized new sites in the South Puget Lowlands despite 20 years of prairie restoration and intensive monitoring, suggesting recolonization is site-specific and difficult to predict.

The number of breeding pairs in the Willamette Valley region appears to have increased for 10 local populations (based on the 2013–2019 survey data), and the region supports two local populations in high condition, five in moderate condition, and three in low condition. One historical location at Salem Airport had no breeding pairs in surveys from 2013–2019 and is assumed extirpated. The three sites with low resiliency are municipal airports where abundance has declined since 2013, or where survey effort is inconsistent and abundance estimates are variable between years. The survey results reported in Table 1, above, may represent a small portion of the total number of streaked horned larks in the Willamette Valley due to lack of access on private lands, and there is no information to infer the condition of these potential populations.

Overall, we consider the streaked horned lark to have moderate-to-low redundancy based on few highly resilient populations throughout the range, low incidence of movement between local populations, and fewer incidences of movement between regions. The current redundancy of larks is characterized by 42 local populations across the range of the subspecies, of which 8 are considered to have high resiliency (4 in the South Puget Lowlands, 2 in the Pacific Coast and Lower Columbia River, and 2 in the Willamette Valley region). The draft recovery plan for streaked horned lark (U.S. Fish and Wildlife Service 2019, entire) provides a preliminary description of potential adequate redundancy and representation for the subspecies. The plan recommends that 38 resilient sites be managed for long-term conservation: 8 sites in the South Puget Lowlands; 3 sites along the Pacific Coast and 6 sites in the Lower Columbia River; and 21 sites in the Willamette Valley. The rangewide distribution of 42 local populations confers some measure of protection against catastrophic events, particularly in the Willamette Valley, where relatively large numbers of birds move about in response to changing habitat conditions. Recent detections of birds at sites previously unoccupied (*i.e.,* Clatsop Spit) suggest individuals are actively moving between sites, adapting to new areas, and potentially recolonizing areas with suitable habitat. However, incidences of movement and colonization of new areas occurs infrequently, reducing overall redundancy for larks.

The streaked horned lark has been extirpated from the northernmost extent of its historical range in the northern Georgia Basin and north Puget Lowlands and from the Rogue and Umpqua Valleys in the south. These losses from the northernmost (*i.e.,* cooler and wetter) and southernmost (*i.e.,* warmer and drier) extremes of the lark's known historical range demonstrate a substantial loss of ecological diversity. Within their current range, larks are found on native prairies; military and civilian airfields; coastal beaches, dunes, and sandy islands; restored native prairies; agricultural areas; road margins; and industrial sites. Occupied sites differ markedly within and among regions, which suggest that larks experience a broad range of ecological diversity. The South Puget Lowlands and Willamette Valley regional populations occur mainly in prairie, wetland, airport and road margins, and agricultural habitats; the Pacific Coast and Lower Columbia River regional population occurs primarily on coastal dune, shorelines, and sandy islands in the Columbia River. There are at least two local populations with high resiliency in each region, suggesting relatively good representation across the habitats within the species current range. Additional local populations in high and moderate condition throughout the range would benefit the overall level of redundancy and representation for the subspecies.

Future Condition

The main factors influencing the future viability of the streaked horned lark include ongoing and sustained habitat loss, continued land management activities and related effects, recreation, and the synergistic effects of climate change and small population size. When we assessed the future condition of the local populations in response to projected land use changes and climate conditions, we used the same habitat and population metrics that we applied in our current condition assessment. We forecasted the condition of local populations over time under three scenarios and used this

information to forecast the viability of the streaked horned lark over the next 30 years. We chose 30 years because it is within the range of the available hydrological and climate change model forecasts, encompasses approximately five generations of streaked horned lark, and represents a biologically meaningful timeframe (time period long enough to encompass multiple generations so that species' responses can be predicted). We evaluated land use trends by looking at data on the quantity and type of agricultural crops in production throughout Oregon every 5 years from the USDA's National Agricultural Statistics Service. In Oregon, where larks largely occur on private agricultural lands, we evaluated trends in land use and crop type over the past 20 years to inform future trends (U.S. Department of Agriculture National Agricultural Statistics Service 2007 and 2017b, Tables 26, and 31–34). Specifically, we used these data to evaluate trends in the overall quantity of grass and other seed farms, and we compared the changes to trends in the quantity of crop types that do not provide suitable habitat for larks, such as hazelnut orchards, blueberry farms, and wine grapes for viticulture.

To assess effects to the streaked horned lark from climate change, we relied on projections to mid-century from the U.S. Geological Survey, Land Change Science Program National Climate Change Viewer (Alder and Hostetler 2013, entire). The Coupled Model Intercomparison Project 5 provides a range of variability in climate projections for the time period 2025 to 2049. We used the combined range of the projection from two model scenarios, representative concentration pathways (RCP) 4.5 and RCP 8.5, to evaluate a range of potential future conditions. RCP 4.5 predicts that greenhouse gas emissions stabilize by the end of the century; RCP 8.5 predicts emissions continue to rise unchecked through the end of the century.

For this analysis, we evaluated possible future conditions using these climate scenarios and the resulting impacts on species and habitat through the year 2050. Climate change is not expected to decrease the resiliency of any local populations in the prairie ecosystem because prairie and grassland ecosystems are well adapted to warm and dry conditions like the periodic soil drought and future increases in temperature and drought forecasted for those areas. Despite the projected changes affecting wildlife in the Pacific Northwest overall, the effects of climate change specific to prairie ecosystems are not anticipated to decrease the resiliency of regional populations in the South Puget Lowlands, Pacific Coast and Lower Columbia River, and Willamette Valley regions. The grasslands and prairies of Washington and Oregon span a wide geographic and climatic range, encompassing a rich variety of soil types, vegetation cover, elevations, and weather patterns. This heterogeneity will likely buffer the effects of changing weather and climate (Bachelet *et al.* 2011, p. 412). It is possible that increased summer droughts may affect less drought-tolerant trees and other forest species adjacent to prairies, possibly resulting in prairie expansion (Bachelet *et al.* 2011, p. 417). Prairie and grassland ecosystems are well-adapted to warm and dry conditions and periodic soil drought, and future increases in temperature and drought for the region, ''are unlikely to disadvantage (and may benefit) these systems'' (Washington Department of Fish and Wildlife 2015, p. 5–31).

With respect to coastal populations, the current primary threat to habitat for the subspecies is the spread of invasive beachgrass, particularly Eurasian beachgrass, because it anchors dune habitats and thereby prevents natural, dynamic processes that form suitable habitat for the lark from occurring. The cumulative impact of projected sea-level rise, increased coastal erosion, and more severe weather events will limit the potential creation of suitable habitat in the remaining natural areas not affected by beachgrass. These synergistic threats may limit the resiliency of some local populations on the coast.

The degree to which some factors affecting larks will change in the future is uncertain. For this reason, we forecasted what the streaked horned lark may experience in terms of resiliency, redundancy, and representation under three plausible future scenarios over the next 30 years:

- Scenario 1—Status Quo: The adverse effects of habitat loss, climate change, and management activities and related effects at existing sites are consistent with current levels (including current levels of conservation); recreation increases, and act on current population sizes.
- Scenario 2—Improved Conditions: The adverse effects of habitat loss and climate change are reduced compared to current conditions; management actions continue at existing sites with additional conservation measures implemented to protect larks, including conservation of additional sites; recreation increases, and act on larger populations with reduced impact to overall population status.
- Scenario 3—Degraded Conditions: The adverse effects of habitat loss and climate change are increased; management activities continue at existing sites with no additional or reduced voluntary or regulatory conservation measures due to funding restrictions; recreation increases, and acts on smaller population sizes with increased impact to overall population status.

Based on the increase in abundance we have seen as a result of conservation measures for streaked horned lark (particularly at JBLM and on the Columbia River), we project that under Scenario 2/Improved Conditions populations would be larger, and, therefore, the overall combined impacts from both recreation and improved management activities and related effects would be limited. Under Scenario 3/Degraded Conditions however, populations would be smaller, and, therefore, the overall combined impacts from both recreation and management activities and related effects would increase.

Changes in the number and size of extant populations in response to assumed habitat conditions and changes in management activities at individual sites would result in changes to redundancy and representation for the subspecies. Under the status quo scenario, one population in the South Puget Lowlands drops from high to moderate condition, four local populations in the Pacific Coast and Lower Columbia River region drop from moderate to low condition, and all five moderate populations in the Willamette Valley drop to low condition. Even though the rate of change of the influence factors was not different than current levels under this scenario, the synergistic effects of small population size would amplify the effect of negative influence factors in some local populations over time. Under this scenario, the subspecies would continue to occupy roughly an equal number of habitat types and distribution of 42 local populations across the range, but some small, isolated populations may be at risk of eventual extirpation without intentional habitat management or conservation measures.

Under the improved conditions scenario, careful management and conservation actions are implemented to increase the quantity, quality, and distribution of suitable habitats for streaked horned larks. One local population in the South Puget Lowlands and three in the Pacific Coast and Lower Columbia River region improve from moderate to high condition, and one population in each of the South Puget

Lowlands and Willamette Valley regions move from low to moderate. As local populations become more resilient under this scenario, the species' ability to move between sites in response to changing environmental conditions and re-establish breeding populations would increase overall redundancy, buffering against adverse effects of catastrophic events. With respect to ecological representation, it is unlikely that birds would occupy new or different habitat types relative to current patterns of occupancy in the Pacific Coast and Lower Columbia River region under this scenario, due to the limited availability of alternative habitats that provide the structural habitat features preferred by larks. In the South Puget Lowlands and Willamette Valley regions, the number of local populations in high condition would increase; however, it is unlikely that larks would disperse into the north Puget Lowlands region, or south into the Umpqua and Rogue Valley areas without substantial recovery efforts to support habitat development in these areas.

Under the degraded conditions scenario, further habitat loss and increased instability would lead to reduced condition in many local populations with only one local population remaining in high condition in the range of the subspecies (Rice Island). Eighteen local populations would decrease in condition across the range of the streaked horned lark, leaving 10 moderate condition and 30 low condition populations distributed across the three regions. Under this scenario, Shelton Airport would become extirpated, reducing redundancy. Many other local populations would decrease in resiliency and be at higher risk of extirpation, putting the subspecies at risk of further reduction in redundancy. If local populations become less resilient, larks would be less able to move between sites in response to changing environmental conditions or re-establish local populations following a catastrophic event. Furthermore, the loss of local populations would decrease the species' representation and overall ability to adapt to changing environmental conditions.

Because the streaked horned lark is dependent on land management activities that create and maintain suitable replacement habitat throughout the species' range, the future viability of the species relies upon the continuation of these actions. The synergistic effects of both small population size and the effects of climate change will likely amplify the negative effects of influence factors and reduce resiliency of some local populations, particularly along the Pacific Coast, the South Puget Lowlands, and the Lower Columbia River.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

We considered all potential influence factors resulting from habitat fragmentation degradation and loss; land management activities and related effects; recreation; and aircraft strikes. We analyzed their level of effect in the various regional populations as noted in Table 4. The small size of these local populations may amplify the effects of stressors influencing individuals, but small population size does not influence populations on its own. The impact of the stressors summarized in Table 4 and the conservation measures implemented to minimize or mitigate impacts to larks and lark habitat is factored into our resiliency, redundancy, and representation (3R) assessment of populations for our current condition analysis. We anticipate habitat loss, changes in land use and agricultural practices, recreation on the Pacific Coast and Lower Columbia River, and aircraft strikes will continue to influence the condition of the streaked horned lark in the future to a degree that may affect the resiliency of populations. The projected future impact of these stressors is factored into the 3R assessment of populations in our future condition analysis.

Determination of Streaked Horned Lark's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We evaluated threats to the streaked horned lark and assessed the cumulative effects of the threats under the Act's section 4(a)(1) factors. The primary driver of the status of streaked horned lark has been the scarcity of large, open spaces with very early seral stage plant communities with low-statured vegetation and substantive amounts of bare or sparsely vegetated ground. Historically, these open spaces were primarily created by natural disturbance regimes such as seasonal flooding of river systems, but the construction of dams and subsequent flood control negatively impacted creation of this open space habitat and thereby the abundance and distribution of historical lark populations. The loss of streaked horned lark habitat due to large-scale water management occurred decades ago and is not ongoing. The best available information indicates that overutilization (Factor B), predation or disease (Factor C), pesticides (Factor E), or loss of historical disturbance regimes (Factor A) are not current or imminent threats to the viability of the subspecies. The streaked horned lark has been affected through loss of preferred habitats (Factor A) as a result of successional changes in plant species composition and encroachment of woody vegetation; invasion of beach grasses; conversion of suitable habitat into unsuitable habitat through changes in land use; and changes in agricultural practices from crops that mimic preferred habitats (*i.e.,* grass seed farms) to crops that diminish habitat suitability (*i.e.,* hazelnut orchards and blueberry farms). The streaked horned lark is also affected by land management activities and related effects (Factor A), as well as other human activities (Factor E), including agricultural activities, airport

management activities and related airstrikes, military training and related activities, the placement of dredged materials, and recreation.

Despite the ongoing influence of these factors, the subspecies is not currently in danger of extinction, because the species retains multiple populations in high and moderate condition across all representative regions, those populations occur in a variety of habitat types, and no threat at its existing or imminent level could plausibly change that state of affairs. Each representative region has at least 8 redundant populations. Survey data from some regularly monitored sites across the range of the subspecies show an increase from 252–253 breeding pairs in 2013 at the time of listing to 383–389 breeding pairs in 2019. The subspecies has shown relative stability for the last 7 years based on survey data from known populations, with 42 populations across the range. Of the 42 populations, 23 are considered to be in high or moderate condition. The Pacific Coast and Lower Columbia River and the Willamette Valley region each have two populations that are in high condition; the South Puget Lowlands has four populations in high condition. Across the range, 15 local populations are considered in moderate condition. Negative influence factors on the subspecies have not fluctuated much for the last 20 years and are not of a scope or magnitude, either currently or imminently, such that the subspecies is currently in danger of extinction. Local populations in South Puget Lowlands and Lower Columbia River populations have benefited from conservation efforts implemented as part of section 7 consultations under the Act.

Abundance of larks across the Willamette Valley appears relatively high, but many of these local populations cannot be surveyed due to lack of access. Although the current abundance of local populations along the Pacific Coast is lower than other areas, it has been low for many years, and we see no apparent declining trend in this regional population based on survey data from 2013 to 2019. Recent detections of birds at Clatsop Spit, as well as sites with restored habitat on private lands in the Willamette Valley, indicate that individuals can move between sites, and there are a few instances of detections at previously unoccupied locations, but recolonization appears very low and difficult to predict.

In the foreseeable future, however, there is potential for a decline in resiliency of local populations across the range. The loss of preferred habitat will continue from plant succession and encroachment of woody vegetation, invasion of beach grasses, changes in land use, and changes in beneficial agricultural practices. The regular large-scale, human-caused disturbance (burning, mowing, cropping, chemical treatments, or placement of dredged materials) that now creates and maintains replacement habitat for the streaked horned lark will continue, as will the related effects of these activities that can negatively impact individual larks (nest destruction, mortality, disturbance, and aircraft strikes). Recreation will also continue. Any negative effects from these factors will likely be amplified in some local populations due to the synergistic effects related to small population size and the increased effects of climate change in the range over the next 30 years, particularly along the Pacific Coast, the South Puget Lowlands, and the Lower Columbia River. As climate change and small population size increase in influence, the realized benefit of these replacement habitats to the subspecies may decrease.

Additionally, any future changes in the maintenance of these landscapes will affect the resiliency of larks in the area. Agriculture remains the primary influence on land use in the Willamette Valley, and the resilience of larks in that area is tied to practices that can change given market demands. This uncertainty regarding future land use and anthropogenic effects to habitat increases the potential risk of extinction in the foreseeable future. Numerous conservation measures resulting from section 7 consultation under the Act in the range of the streaked horned lark have helped reduce effects of threats on the subspecies, but the continued effects of habitat loss (Factor A), land management activities and related effects, and recreation, in combination with small population size and the effects of climate change (Factor E), are expected to continue to affect the viability of the subspecies over the next 30 years.

Thus, after assessing the best available information, we conclude that the streaked horned lark is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy; 79 FR 37578, July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the streaked horned lark, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered. The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, for streaked horned larks, we considered whether the threats are geographically concentrated in any portion of the species' range such that the threats presently affect enough individuals in an area to influence the resiliency of a population.

We examined the following influence factors: Loss of preferred habitats as a result of successional changes in plant species composition and encroachment of woody vegetation; invasion of beach grasses; conversion of suitable habitat into unsuitable habitat through changes

in land use; changes in agricultural practices from crops that mimic preferred habitats to crops that diminish habitat suitability; land management activities and related effects, including airport management activities, military training, and the placement of dredged materials; recreation; and, the cumulative effects associated with climate change and small population size. While the influence of these factors varies somewhat across the range, there is no portion of the range where there is currently a concentration of threats relative to other areas in the range. The available information does not indicate that the effects of climate change, such as sea level rise, are currently decreasing the resiliency of streaked horned lark populations. In the future, the synergistic effects of climate change and small population size are likely to compound the negative effects of dune stabilization from beach grass invasion. This will likely limit the availability and distribution of habitat for streaked horned larks along the Pacific Coast, which could influence the resiliency of these local populations over the next 30 years such that they may be at risk of future extirpation. We have similar concerns that the synergistic effects of climate change and small populations size will also influence the future resiliency of local populations in the Columbia River and South Puget Lowlands. Overall, potential future reductions in resiliency of local populations across the range of the subspecies will limit redundancy and representation, and therefore could affect the future viability of the streaked horned lark.

Although the current abundance of local populations along the Pacific Coast is low compared to other areas, it has been low for many years. The size of those coastal sites is relatively small compared to other local populations and therefore naturally limits the number of breeding pairs, and we see no apparent declining trend in this regional population based on survey data between 2013 and 2019. Based on our review of the best available information, the population in the Pacific Coast region is not currently at risk of extirpation. As noted above, these populations are at risk of extirpation in the future.

The concentrated wintering populations of streaked horned lark in the Willamette Valley and on islands in the Columbia River could be exposed to stochastic events such as ice storms or severe flooding that could kill individuals, destroy limited habitat and food availability, or skew sex ratios. Severe winter weather could potentially impact one or more regional populations when birds congregate as larger flocks. However, available information does not indicate that winter storms are currently a threat that decreases the resiliency of streaked horned lark populations in these regions, and climate change projections specific to prairie ecosystems do not indicate a greater future threat from winter storms to streaked horned lark populations in these regions. The time horizon for the species' response to these ongoing and synergistic threats is not more immediate in any portions of the species' range.

Because there are no portions of the species' range where the species has a different status from its rangewide status, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range. Therefore, we determine that the streaked horned lark is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not need to consider whether any portions are significant and, therefore, did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the streaked horned lark meets the definition of a threatened species. Therefore, we affirm the current listing of the streaked horned lark as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. A notice announcing availability of the draft recovery plan for streaked horned lark was published in the **Federal Register** on October 30, 2019 (84 FR 58170); the draft plan is available on our website (*https://www.fws.gov/endangered*), or from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of

native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Funding for recovery actions is available from a variety of sources, including Federal and State funding, including cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Oregon and Washington are eligible for Federal funds to implement management actions that promote the protection or recovery of the streaked horned lark. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants*.

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the streaked horned lark's habitat that may require consultation include management and any other landscape-altering activities on Federal lands administered by the Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the Corps; and road construction by the Federal Highway Administration in cooperation with the Service at Baskett Slough NWR.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with a wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of a threatened species. The second sentence grants particularly broad discretion to the Secretary when adopting some or all of the prohibitions under section 9 for any particular threatened species.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or included a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats that a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

On October 3, 2013, we issued a rule under the authority of section 4(d) of the Act to provide for the conservation of the streaked horned lark (78 FR 61452) (see 50 CFR 17.41(a)). That rule applies all of the prohibitions of section 9 of the Act to the streaked horned lark, with the following exceptions for incidental take: (1) Certain activities on airports on non-Federal lands; (2) certain agricultural activities on non-Federal land in the range of the subspecies in Oregon and (3) certain noxious weed control activities on non-Federal lands.

The provisions of this revised 4(d) rule will promote conservation of the streaked horned lark by encouraging management of the landscape in ways that meet the conservation needs of the subspecies. The provisions of this revised 4(d) rule are one of many tools that we will use to promote the conservation of the streaked horned lark. For these reasons, we find the revised 4(d) rule as a whole is necessary and advisable to provide for conservation of the streaked horned lark.

Provisions of the Revised 4(d) Rule

The provisions of the revised 4(d) rule for the streaked horned lark are discussed in more detail below, but we note here that the substantive differences between the current 4(d) rule for the streaked horned lark at 50 CFR 17.41(a) and this revised 4(d) rule are limited to the following: The exception for incidental take for certain agricultural activities on non-Federal lands applies throughout the range of the subspecies in Oregon and Washington, rather than only the Willamette Valley of Oregon; and the inclusion of an additional exception to the take prohibition for incidental take associated with habitat restoration activities that benefit streaked horned lark.

The primary driver of the status of streaked horned lark has been the scarcity of large, open spaces with very early seral stage plant communities with low-statured vegetation and substantive amounts of bare or sparsely vegetated

ground. Such areas occur sporadically within the larger agricultural landscape, depending on local soil and topographic conditions. Therefore, this revised 4(d) rule is designed to support the continuation of activities taking place in the range of the subspecies that lead to these features, and to encourage the development of these features in new areas in the range of the subspecies in the future. The revised 4(d) rule provides for the conservation of the streaked horned lark by prohibiting take, except as otherwise authorized, permitted, or incidental to the following activities: Wildlife hazard management at airports and accidental strikes by aircraft, normal agricultural practices in Oregon and Washington, noxious weed control on non-Federal lands, and habitat restoration activities beneficial to streaked horned lark. All take not included in those exceptions (for example, take of lark that is intentional and not incidental to the excepted activities, remains prohibited) will continue to be prohibited in order to support existing populations of the streaked horned lark.

Some management actions taken at airports are generally beneficial to streaked horned larks and have led to the creation of replacement habitat the subspecies relies upon. Streaked horned larks breed successfully and maintain populations at airports in the South Puget Sound and Willamette Valley. Airports maintain safe conditions for aviation, in part by routinely implementing programs to minimize the presence of hazardous wildlife on airfields. These activities unintentionally create suitable habitat for streaked horned larks. Activities involved in wildlife hazard management at airports that benefit streaked horned lark include hazing of hazardous wildlife (geese and other large birds and mammals) and modification and management of forage, water, and shelter to be less attractive to these hazardous wildlife, including vegetation management to maintain desired grass height on or adjacent to airports through mowing, discing, herbicide use, or burning.

As with other land management activities, vegetation management during the nesting season has the potential to destroy streaked horned lark nests and young. However, despite concerns over potential adverse effects of vegetation management during the breeding season at airports, this activity is very important to the maintenance of the low-statured vegetation required by nesting and wintering larks in the area. We believe that the beneficial effects of these actions outweigh the negative effects that occur from these actions during the nesting season. Therefore, excepting hazardous wildlife management from the Act's prohibitions of take, when conducted by airport staff or employees contracted by the airport to perform hazardous wildlife management activities, furthers the conservation of the subspecies by helping to prevent the spread of those noxious weeds that may render existing habitat unsuitable for the streaked horned lark.

The listing of the streaked horned lark imposes a requirement on airport managers where the subspecies occurs to consider the effects of their management activities on this subspecies when actions are funded or approved by the Federal Aviation Administration. Excepting hazardous wildlife management and accidental aircraft strikes from prohibitions on take eliminates the incentive for airports to reduce or eliminate replacement habitat that supports populations of streaked horned larks from the airfields, and therefore provides for the conservation of the species by allowing current beneficial management activities to continue. Accidental aircraft strikes are an unavoidable consequence of the vegetation management that also maintains habitat that supports breeding pairs. While aircraft strikes do occur in several local populations at airports throughout the range of the species (particularly in the South Puget Lowlands), the rate appears relatively low. Additionally, the potential take of streaked horned lark associated with the routine management, repair, and maintenance of roads and runways is minimal. Therefore, in order to support activities involved in wildlife hazard management that maintain habitat features beneficial to streaked horned lark, incidental take associated with wildlife hazard management activities, as well as aircraft strikes and routine maintenance of existing roads and runways at airports, is excepted from the prohibition on take. We recommend that airport operators follow the guidance provided in Federal Aviation Administration advisory circular 150/5200–33C, ''Hazardous Wildlife Attractants on or near Airports'' (FAA 2020, entire), and all other applicable related guidance.

In Oregon's Willamette Valley, large expanses of burned prairie or the scour plains of the Willamette and Columbia Rivers likely provided suitable habitat for streaked horned larks in the past. With the loss of these historical habitats during the last century, alternative breeding and wintering sites, including active agricultural lands, have become critical for the continued survival and recovery of the streaked horned lark. One of the largest areas of potential habitat for streaked horned larks is the agricultural land base in the Willamette Valley. Larks are attracted to the wide, open landscapes and low vegetation structure in agricultural fields, especially in grass seed fields, probably because those working landscapes resemble the historical habitats formerly used by the subspecies when the historical disturbances associated with floods and fires maintained a mosaic of suitable habitats. Habitat characteristics of agricultural lands used by streaked horned larks include: (1) Bare or sparsely vegetated areas within or adjacent to grass seed fields, pastures, or fallow fields; (2) recently planted (0 to 3 years) conifer farms with extensive bare ground; and (3) wetland mudflats or ''drown outs'' (*i.e.,* washed out and poorly performing areas within grass seed or row crop fields).

Currently in the Willamette Valley, there are approximately 360,000 ac (145,000 ha) of grass seed fields in production. In any year, some portion of these lands will have suitable streaked horned lark habitat, but the geographic location of those areas is not consistent from year to year, nor can we predict their occurrence due to variable agricultural practices (crop rotation, fallow fields, etc.), and we cannot predict the changing and dynamic locations of those areas.

These conditions make conservation of streaked horned larks a significant challenge on these large, intensively managed and privately owned agricultural landscapes. On the one hand, agricultural activities can harm or kill individual streaked horned larks or destroy their nests in some localized fields. However, maintenance and continued farming of these private agricultural lands (primarily grass seed farms) in the Willamette Valley creates and provides suitable habitat conditions throughout the Valley, and is therefore crucial to maintaining the overall population of streaked horned larks in the Valley and aiding in the recovery of the subspecies in Oregon. Streaked horned lark conservation in the Willamette Valley is challenging due to these conflicting factors: (1) Enabling and supporting the ongoing agricultural practices that maintain favorable habitat conditions on private lands; and, (2) minimizing the potential for impacting some nesting birds when these farming practices (*e.g.,* grass seed harvest) occur on those lands.

Achieving net conservation of listed species on privately-owned working lands (*i.e.,* farmland, rangeland, tree

farms, etc.) is one of the most difficult challenges in implementation of the Act (Baur et al. 2009, p. 3; Ciuzio et al. 2013, entire; Henson et al. 2018, p. 863). Under certain circumstances and for highly visible species, the prohibitions of the Act under section 9 can discourage local impacts to listed species where individuals of such species are known to occur, and harmful activities can be effectively investigated and addressed. However, using the regulatory functions of section 9 of the Act to achieve effective conservation on private lands is often limited due to a variety of reasons, such as the following: The species is not currently known to be present in otherwise suitable or historic habitat; access to such lands is restricted by the landowner; restoration or maintenance of a species' habitat requires the voluntary support or participation of the landowner; and conservation measures may conflict with a landowner's traditional economic use of their land. As a result, listed species are often viewed as a legal or economic liability by landowners, resulting in disincentives to conservation on these lands (Raymond and Olive 2008, p. 485; Brook et al. 2003, pp. 1644–47; Mir and Dick 2012, entire). This problem is especially acute where public lands are lacking and the species is dependent on private lands for its conservation (Eichenwald et al., p. 443), as is largely the case for the streaked horned lark.

These factors are part of the conservation challenge for this subspecies in the Willamette Valley, and we find that the beneficial effects from maintaining these agricultural practices to facilitate suitable habitat outweigh the negative effects from injuries to individual birds from these same activities.

Although we are unaware of any current breeding populations of streaked horned larks on agricultural lands in Washington, use of these habitats by streaked horned larks would aid in recovery of the subspecies in Washington as in Oregon and is therefore encouraged. The exception for incidental take for certain agricultural activities on non-Federal lands in the revised 4(d) rule applies to the entire range of the subspecies, to encourage management actions that would facilitate the use of areas other than civilian and military airports by streaked horned larks within the range of the subspecies in Oregon and Washington.

Because landowners are free to allow vegetation growth that results in the conversion of lands into habitats unsuitable for the streaked horned lark, conservation of the species will benefit from the support of agricultural practices that result in the creation and maintenance of habitat that is suitable for the subspecies. In general, private landowners, out of concern for being subjected to regulation associated with the Act, may alter land management practices or restrict conservation activities to discourage attracting listed species to their lands (Brook et al. 2003, pp 1644–1648; Mir and Dick 2012, p. 192; Cuizio et al. 2013, p. 271). In case of the streaked horned lark, given the importance of human-created habitat through ordinary agricultural management activities, this risk aversion would be detrimental to the conservation of the species. With this revised 4(d) rule, we remove the negative incentive for private landowners in Oregon to discontinue activities resulting in suitable habitat for larks based on such concerns, and we provide positive incentives for them to voluntarily report and conserve species on their property. Additionally, the rule reduces the liability concerns of private landowners in Washington who may be considering the implementation of agricultural practices that result in the creation and maintenance of habitat that is suitable for the lark, something we seek to encourage.

The primary crop type that results in habitat features preferred by lark is grass seed, and the typical harvest (combining) period for grass seed fields occurs in late June or early July, after the most active part of the breeding season for larks is done. Because the timing of ground disturbance for grass seed farms is after the primary part of the nesting season is over, it does not put the reproductive success of the subspecies at great risk, and the benefits of encouraging the continuation of the inadvertent creation of lark habitat through normal grass seed farming practices outweigh the benefit of restricting the timing of this exception to take. Excepting routine agricultural activities on non-Federal lands throughout the range of the streaked horned lark from the prohibition on take will provide an overall benefit to the subspecies by maintaining suitable habitat and removing incentives to decrease that suitable habitat to avoid liability under the Act. This exception to the prohibition on take for agricultural activities is rangewide in Oregon and Washington, and we find that the definition of ''normal farming practices'' in both the 2013 4(d) rule and this revised 4(d) rule is consistent with relevant Oregon and Washington State laws (Oregon Revised Statutes (ORS), chapter 30, section 30.930, and Revised Code of Washington (RCW), title 7, chapter 7.48, section 7.48.310, respectively).

Streaked horned larks nest, forage, and winter on extensive areas of bare ground with low-statured vegetation. These areas include native prairies, coastal dunes, fallow and active agricultural fields, wetland mudflats, sparsely vegetated edges of grass fields, recently planted conifer farms with extensive bare ground, moderately to heavily grazed pastures, gravel roads or gravel shoulders of lightly traveled roads, airports, and dredge deposition sites in the Lower Columbia River. The suppression and loss of ecological disturbance regimes such as fire and flooding across vast portions of the landscape have resulted in altered vegetation structure and facilitated invasion by nonnative grasses and woody vegetation, including noxious weeds, rendering habitat unsuitable for streaked horned larks. By their nature, noxious weeds grow aggressively and multiply quickly, negatively affecting all types of habitats, including those used by larks. Some species of noxious weeds spread across long distances through wind, water, and animals, as well as via humans and vehicles, thereby affecting habitats far away from the source plants.

Because noxious weed control maintains the low-statured vegetation and the open landscape that streaked horned lark relies upon, this activity is essential to the retention of suitable nesting, wintering, and foraging habitat. As with other land management activities, noxious weed control during the nesting season has the potential to destroy streaked horned lark nests and young. On the other hand, streaked horned larks can benefit from weeds, as they eat the seeds of weedy forbs and grasses. However, the benefit provided to nesting and wintering larks from the eradication (or removal) of noxious weeds wherever they may occur outweighs any potential benefit from weeds or concerns over timing of control. Therefore, excepting the routine mechanical or chemical management of noxious weeds from the prohibition of take furthers the conservation of the subspecies by helping to prevent the spread of those noxious weeds that may render habitat unsuitable for the streaked horned lark. It also encourages landowners to manage their lands in ways that meet their property management needs and also help to prevent degradation or loss of suitable habitat for the streaked horned lark. Noxious weed control targets those species included on County, State, and Federal noxious weed lists (see the

Federal list at *https://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/weedlist.pdf*; Washington State counties each have a noxious weed control website, and selected Oregon State counties maintain noxious weed lists).

Finally, activities associated with streaked horned lark habitat restoration (*e.g.,* removing nonnative plants and planting native plants, creating open areas, and maintaining sparse vegetation through vegetation removal or suppression via controlled burns) will be very beneficial to the subspecies; any adverse effects to the subspecies from these activities will likely be only short-term or temporary, especially with respect to harassment or disturbance of individual lark. In the long term, the risk of adverse effects to both individuals and populations is expected to be mitigated as these types of activities will likely benefit the subspecies by helping to preserve and enhance the habitat of existing local populations over time. Reasonable care for habitat management may include, but will not be limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities, and best efforts to minimize streaked horned lark exposure to hazards (*e.g.,* predation, habituation to feeding, entanglement, etc.). Therefore, we include in the 4(d) rule an exception to the prohibition on take for any habitat restoration actions that would create or enhance streaked horned lark habitat, provided that reasonable care is taken to minimize such take.

We acknowledge that all of these activities excepted from incidental take in this rule have the potential to result in destruction of nests, crushing of eggs or nestlings, or flushing of fledglings or adults when conducted during the active breeding season for streaked horned larks. The 2013 listing rule (78 FR 61452; October 3, 2013) included dredge spoil deposition timing and placement on Columbia River islands; incompatibly timed burning and mowing regimes; activities associated with military training; and activities associated with airports as threats to the subspecies. Despite these threats noted at the time of listing, the Service determined that timing restrictions on these activities were not appropriate, stating in the rule: ''Our purpose in promulgating a special rule to exempt take associated with activities that inadvertently create habitat for the streaked horned lark is to allow landowners to continue those activities without additional regulation. We believe that imposing a timing restriction would likely reduce the utility of the special rule for land managers, and could have the unintended side effect of causing landowners to discontinue their habitat creation activities'' (78 FR 61452, October 3, 2013, p. 78 FR 61464). No timing restrictions were included in the 4(d) rule in 2013, and these land management activities have continued across the range since 2013. Survey data from regularly monitored sites throughout the range of the subspecies now show an increase from 252–253 breeding pairs in 2013, to 383–389 breeding pairs in 2019, despite the lack of timing restrictions on land management activities. While the loss of individuals is never welcome, the continuation of land management activities that create replacement habitat is very important to the conservation of the subspecies, and the benefits to the subspecies as a whole appear to outweigh the associated cost of the loss of individuals. This revised 4(d) rule provides for the conservation of the subspecies by including provisions that support the continuation of land management activities that create replacement habitat.

As discussed above under Summary of Biological Status and Threats, multiple factors are affecting the status of the streaked horned lark. A range of activities have the potential to affect the streaked horned lark, including the management of hazardous wildlife at airports and associated airstrikes, routine agricultural activities, and the routine removal or other management of noxious weeds. Prohibiting take of streaked horned lark rangewide under section 9 of the Act will help preserve the subspecies' remaining populations, slow their rate of decline, and allow for the maintenance of suitable habitat for the species. However, these same activities also benefit streaked horned lark through the creation of the very habitat features (large open spaces with very early seral stage plant communities with low-statured vegetation and substantive amounts of bare or sparsely vegetated ground) that streaked horned larks prefer; without these replacement habitats throughout the range, the status of the subspecies would likely be much worse. Therefore, while we are extending the take prohibition for the streaked horned lark, we are excepting from this prohibition take that is incidental to the management of hazardous wildlife at airports, accidental airstrikes by aircraft, routine agricultural activities, the routine removal or other management of noxious weeds, and habitat restoration activities for streaked horned lark. As discussed above, we believe that that these exceptions will provide for the conservation of the species by supporting the maintenance and creation of habitat features that the streaked horned lark relies upon.

The Service is fully aware of, and sensitive to, the potential for some individual birds to be harmed in the application of these land management practices. We encourage land managers who, in the course of carrying out these excepted activities, observe streaked horned larks nesting in the area of activity to temporarily suspend operations in those areas and to contact the local Service field office or their local State fish and wildlife agency for technical assistance. Possible measures that land managers and the agencies could then consider include temporarily avoiding these areas until fledging has occurred, hazing birds away from active farm or airport safety areas to avoid direct mortality, and seeking direct participation in Federal or state conservation reserve-type incentive programs to manage newly identified areas for longer term lark conservation.

When considering all reasonable measures and likely outcomes, we believe this approach will result in the best net conservation benefit for the subspecies. As discussed above, the vast majority of these lands are privately owned. Supporting landowners' ongoing activities that create or maintain lark habitat, while also encouraging the voluntary conservation of the species on these private lands, is likely to result in more net positive conservation outcomes at the population level when compared to an approach that does not include this section 4(d) take exception. An approach that relies primarily on section 9 take prohibitions and enforcement, for the reasons cited earlier and documented in the scientific literature regarding conservation of species on private lands, would likely result in the following: The loss of suitable habitat on agricultural lands; an increase in landowners actively managing their lands to not attract streaked horned larks; and, an overall reluctance of private landowners to report lark occurrence or support lark conservation. Therefore, we believe the 4(d) rule best promotes the recovery of the species when compared to all alternative approaches. These approaches are becoming increasingly necessary when attempting to conserve species on private lands (Epanchin-Neill and Boyd 2020, p. 415).

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot,

wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other threats.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits for threatened species are codified at 50 CFR 17.32. With regard to threatened wildlife, we may issue a permit for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve streaked horned lark that may result in otherwise prohibited take without additional authorization.

As a subspecies of the horned lark (*Eremophila alpestris*), the streaked horned lark is protected by the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 *et seq.*). The MBTA makes it unlawful, at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, or any part, nest, or egg of any such bird included in the terms of four specific conventions between the United States and certain foreign countries (16 U.S.C. 703). See 50 CFR 10.13 for the list of migratory birds protected by the MBTA.

Like the previous 4(d) rule for the subspecies, this revised 4(d) rule adopts existing requirements under the MBTA as appropriate regulatory provisions for the streaked horned lark. Accordingly, under the revised 4(d) rule, take is not prohibited if the activity is authorized or exempted under the MBTA, such as activities under a migratory bird rehabilitation permit necessary to aid a sick, injured, or orphaned bird. Thus, if a permit is issued for activities resulting in take of streaked horned larks under the MBTA, it will not be necessary to have an additional permit under the Act.

Nothing in this revised 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the streaked horned lark. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate.

III. Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We do not expect any effects on Tribes as a result of the promulgation of this rule.

References Cited

A complete list of references cited in this rule is available on the internet at *http://www.regulations.gov* and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Service's Species Assessment Team and the Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.41 by revising paragraph (a) to read as follows:

§ 17.41 Special rules—birds.

(a) Streaked horned lark (*Eremophila alpestris strigata*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to streaked horned

lark. Except as provided under paragraph (a)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife, and (c)(6) and (7) for endangered migratory birds.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) The management of hazardous wildlife at airport facilities by airport staff or employees contracted by the airport to perform hazardous wildlife management activities. Hazardous wildlife is defined by the Federal Aviation Administration as species of wildlife, including feral animals and domesticated animals not under control, that are associated with aircraft strike problems, are capable of causing structural damage to airport facilities, or act as attractants to other wildlife that pose a strike hazard. Routine management activities include, but are not limited to, the following:

(*1*) Hazing of hazardous wildlife;

(*2*) Habitat modification and management of sources of forage, water, and shelter to reduce the attractiveness of the area around the airport for hazardous wildlife. This exception for habitat modification and management includes control and management of vegetation (grass, weeds, shrubs, and trees) through mowing, discing, herbicide application, or burning; and

(*3*) Routine management, repair, and maintenance of roads and runways (does not include upgrades or construction of new roads or runways).

(B) Accidental aircraft strikes at airports on non-Federal lands.

(C) Agricultural (farming) practices implemented on farms in accordance with State laws on non-Federal lands in Washington and Oregon.

(*1*) For the purposes of this rule, farm means any facility, including land, buildings, watercourses and appurtenances, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products, or the propagation and raising of nursery stock.

(*2*) For the purposes of this rule, an agricultural (farming) practice means a mode of operation on a farm that is or may be used on a farm of a similar nature; is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money; is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use; complies with applicable State laws; and is done in a reasonable and prudent manner. Common agricultural (farming) practices include, but are not limited to, the following activities:

(*i*) Planting, harvesting, rotation, mowing, tilling, discing, burning, and herbicide application to crops;

(*ii*) Normal transportation activities, and repair and maintenance of unimproved farm roads (this exception does not include improvement or construction of new roads) and graveled margins of rural roads;

(*iii*) Livestock grazing according to normally acceptable and established levels;

(*iv*) Hazing of geese or predators; and

(*v*) Maintenance of irrigation and drainage systems.

(D) Removal or other management of noxious weeds. Routine removal or other management of noxious weeds are limited to the following, and must be conducted in such a way that impacts to non-target plants are avoided to the maximum extent practicable:

(*1*) Mowing;

(*2*) Herbicide and fungicide application;

(*3*) Fumigation; and

(*4*) Burning.

(E) Habitat restoration actions. Habitat restoration and enhancement activities for the conservation of streaked horned lark may include activities consistent with formal approved conservation plans or strategies, such as Federal, Tribal, or State plans that include streaked horned lark conservation prescriptions or compliance, which the Service has determined (on a case-by-case basis) would be consistent with this rule.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) through (d)(4).

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–07920 Filed 4–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 210603–0121;RTID 0648–XB905]

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Extension of Emergency Decisions of the Western and Central Pacific Fisheries Commission

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

ACTION: Temporary specifications.

SUMMARY: NMFS is extending the effective date of temporary specifications that implement two short-notice decisions of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). NMFS issued temporary specifications on June 11, 2021, to implement short-notice WCPFC decisions regarding purse seine observer coverage, purse seine transshipments at sea, and transshipment observer coverage. NMFS is extending the effective date of the temporary specifications on purse seine observer coverage and transshipment observer coverage until June 10, 2022. NMFS is also revoking the temporary specification on purse seine transshipment at sea. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention).

DATES: The temporary specifications on purse seine observer coverage and transshipment observer coverage are in

effect from April 13, 2022, until June 10, 2022. The temporary specification on purse seine transshipments at sea is revoked from April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS Pacific Islands Regional Office, 808–725–5033.

SUPPLEMENTARY INFORMATION: Under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), NMFS published an interim final rule that established a framework to implement short-notice WCPFC decisions. NMFS simultaneously issued temporary specifications to implement three short-notice WCPFC decisions until September 14, 2021. Additional background information on the Commission, the Convention, the interim final rule, and temporary specifications, is available in the **Federal Register** document that includes the interim final rule and temporary specifications (86 FR 31178; June 11, 2021). Pursuant to a WCPFC decision, NMFS extended the effective date of those three temporary specifications until April 14, 2022 (87 FR 885; January 7, 2022).

WCPFC Emergency Decisions

On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until June 15, 2022.

On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID–19, the Commission made an intersessional decision to modify the prohibition on at-sea transshipment for purse seine vessels as follows—purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission decided not to extend that decision past March 15, 2022.

On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission subsequently extended that decision and the current extension is effective until June 15, 2022.

Extension of Temporary Specifications

NMFS is using the framework as set forth at 50 CFR 300.228 to extend the effective date of the temporary specifications implementing two of the three recent WCPFC intersessional decisions (WCPFC decisions dated April 8, 2020 and May 13, 2020), described above, that are in effect until June 15, 2022. The regulations to implement short-notice WCPFC decisions at 50 CFR 300.228 provide that temporary specifications to implement such short-notice decisions will remain in effect for less than one year. Because NMFS implemented the temporary specifications on purse seine and at-sea transshipment observer coverage on June 11, 2021, these temporary specifications cannot be extended past June 10, 2022 under the current framework at 50 CFR 300.228.

Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until June 10, 2022, unless NMFS earlier rescinds this waiver by publication in the **Federal Register**:

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry WCPFC observers [1] on all fishing trips in the Convention Area. However, the regulations at 50 CFR 300.215(c)(1) that require all vessels with WCPFC Area Endorsements or for which WCPFC Area Endorsements are required to carry WCPFC observers when directed by NMFS remain in effect; and
- 50 CFR 300.216(b)(2) and 50 CFR 300.215(d). During the term of this waiver, owners and operators of U.S. commercial fishing vessels fishing for highly migratory species in the Convention Area are not prohibited from at-sea transshipment without a WCPFC observer on board the offloading or receiving vessel.

Revocation of Temporary Specification

NMFS is using the framework as set forth at 50 CFR 300.228 to revoke the temporary specification that implemented the WCPFC decision dated April 20, 2020, to waive the prohibition on purse seine at-sea transshipments set forth at 50 CFR 300.216(b)(1).

Classification

NMFS issues this action pursuant to the WCPFC Implementation Act and the regulations at 50 CFR 300.228. This action is exempt from review under Executive Order 12866.

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the temporary measures included in this action, because prior notice and the opportunity for public comment is unnecessary and would be contrary to the public interest. Opportunity for public comment is unnecessary because the regulations establishing the framework and providing notice of the Commission's decisions described above have already been subject to notice and public comment, and all that remains is to notify the public of the extension of those Commission decisions. NMFS will be responding to public comments received on the framework and those Commission decisions in a separate rule. In addition, the opportunity for public comment is unnecessary because the extensions of effective date of two short-notice WCPFC decisions have already gone into effect and as a contracting party to the Convention, NMFS is obligated to carry out those extensions.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective dates for the temporary measures.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: April 7, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–07815 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–22–P

[1] A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme. See 50 CFR 300.211.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02; RTID 0648–XB956]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Re-Opening of Commercial Longline Fishery for South Atlantic Golden Tilefish

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

ACTION: Temporary rule; re-opening.

SUMMARY: NMFS announces the re-opening of the commercial longline component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic through this temporary rule. The most recent commercial longline landings data for golden tilefish indicate the commercial longline annual catch limit (ACL) for the 2022 fishing year has not yet been reached. Therefore, NMFS re-opens the commercial longline component for golden tilefish in the South Atlantic EEZ for 6 days to allow the commercial longline ACL to be caught while minimizing the risk of the commercial ACL being exceeded.

DATES: This temporary rule is effective from 12:01 a.m. eastern time on April 11, 2022, until 12:01 a.m. eastern time on April 17, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial sector for golden tilefish comprises the longline and hook-and-line components. The commercial golden tilefish ACL is allocated 75 percent to the longline component and 25 percent to the hook-and-line component. The commercial ACL (equivalent to the commercial quota) is 331,740 lb (150,475 kg) gutted weight, and the longline component quota is 248,805 lb (112,856 kg) gutted weight (50 CFR 622.190(a)(2)(iii).

Under 50 CFR 622.193(a)(1)(ii), NMFS is required to close the commercial longline component for golden tilefish when the longline component's commercial quota specified under 50 CFR 622.190(a)(2)(iii) is reached or is projected to be reached by filing a notification to that effect with the Office of the Federal Register. After the longline component quota is reached or is projected to be reached, golden tilefish may not be commercially fished or possessed by a vessel with a golden tilefish longline endorsement. NMFS previously determined that the commercial quota for the golden tilefish longline component in the South Atlantic would be reached by March 16, 2022. Therefore, NMFS published a temporary rule to close the commercial longline component for South Atlantic golden tilefish from March 16, 2022, through the end of the 2022 fishing year (87 FR 14419; March 15, 2022). However, a recent landings estimation indicates that the commercial longline ACL for golden tilefish has not been met.

In accordance with 50 CFR 622.8(c), NMFS temporarily re-opens the commercial longline component for golden tilefish for 6 days to allow for the commercial longline ACL to be reached. The commercial longline component will reopen at 12:01 a.m. eastern time on April 11, 2022, and will close at 12:01 a.m. eastern time on April 17, 2022. NMFS has determined that this re-opening will allow for an additional opportunity to commercially harvest the golden tilefish longline component quota while minimizing the risk of exceeding the commercial ACL. Following the 6 day reopening, harvest for golden tilefish by the commercial longline component will be closed for the remainder of 2022 and will open on January 1, 2023, the start of the next fishing year.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper and a valid commercial longline endorsement for golden tilefish having golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m. eastern time on April 17, 2022. During the subsequent commercial longline closure, golden tilefish may still be commercially harvested using hook-and-line gear on a vessel with a commercial South Atlantic Unlimited Snapper-Grouper permit without a longline endorsement until the hook-and-line quota specified in 50 CFR 622.190(a)(2)(ii) is reached.

However, a vessel with a golden tilefish longline endorsement is not eligible to fish for or possess golden tilefish using hook-and-line gear under the hook-and-line commercial trip limit, as specified in 50 CFR 622.191(a)(2)(ii). During the commercial longline closure, the recreational bag limit and possession limits specified in 50 CFR 622.187(b)(2)(iii) and (c)(1), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ by a vessel with a golden tilefish longline endorsement.

The sale or purchase of longline-caught golden tilefish taken from the South Atlantic EEZ is prohibited during the commercial longline closure. The prohibition on sale or purchase does not apply to the sale or purchase of longline-caught golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m. eastern time on April 17, 2022, and were held in cold storage by a dealer or processor. Additionally, the recreational bag and possession limits and the sale and purchase provisions of the commercial closure apply to a person on board a vessel with a golden tilefish longline endorsement, regardless of whether the golden tilefish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.8(c) and 622.190(a)(2)(iii), issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary and contrary to public interest because the regulations associated with the commercial golden tilefish longline component ACL and a reopening of harvest have already been subject to notice and public comment, and all that remains is to notify the public of the commercial longline component reopening.

For the aforementioned reasons, the Assistant Administrator for Fisheries also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: April 8, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–07908 Filed 4–8–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XB954]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2022 total allowable catch of Pacific cod allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 11, 2022, through 1200 hours, A.l.t., June 10, 2022. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 28, 2022.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2020–0141, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2020–0141 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

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

The B season apportionment of the 2022 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 3,262 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022). NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI under § 679.20(d)(1)(iii) on April 2, 2022 (87 FR 19808, April 6, 2022).

NMFS has determined that as of April 7, 2022, approximately 1,700 metric tons of Pacific cod remain in the B season apportionment of the 2022 Pacific cod allocated to catcher vessels using trawl gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2022 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels using trawl gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 7, 2022.

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

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels by trawl gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 28, 2022.

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

Dated: April 8, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–07916 Filed 4–8–22; 4:15 pm]

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Proposed Rules

Federal Register

Vol. 87, No. 71

Wednesday, April 13, 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.

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0014]

RIN 1904–AD98

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers

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

ACTION: Notification of data availability (''NODA'').

SUMMARY: On September 1, 2021, the U.S. Department of Energy (''DOE'') published a notice of proposed rulemaking regarding test procedures for residential clothes washers (''RCWs''), which will be used as the basis for evaluating, issuing, and determining compliance with updated energy conservation standards, should such standards be established. On September 29, 2021, DOE published a preliminary analysis of energy conservation standards for RCWs, which presented preliminary translations between the energy and water efficiency metrics as measured by the current test procedure and new energy and water efficiency metrics as measured by the proposed test procedure. In this NODA, DOE is publishing the results of additional testing conducted in furtherance of the development of the translations between the current test procedure and the proposed new test procedure. DOE requests comments, data, and information regarding the data.

DATES: DOE will accept comments, data, and information regarding this NODA no later than May 13, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2017–BT–STD–0014. Follow the instructions for submitting comments. Alternatively, comments may be submitted by email to: *ConsumerClothesWasher2017STD0014@ee.doe.gov.* Include docket number EERE–2017–BT–STD–0014 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the Federal eRulemaking Portal, email, postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 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.

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

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, 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-0014.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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A. Characteristics Impacting the Translation Equations
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2. Portable Units With Manual Water Fill Control Systems
B. Top-Loading Compact Clothes Washers
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I. Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer (residential) clothes washers,[3] the subject of this document. (42 U.S.C. 6292(a)(7))

The currently applicable energy conservation standards for RCWs are established in terms of a minimum allowable integrated modified energy factor (''IMEF''), measured in cubic feet per kilowatt-hour per cycle (''ft^3/kWh/cycle''), and maximum allowable integrated water factor (''IWF''), measured in gallons per cycle per cubic

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] DOE uses the ''residential'' nomenclature and ''RCW'' abbreviation for consumer clothes washers in order to distinguish from the ''CCW'' abbreviation used for commercial clothes washers, which are also regulated equipment under EPCA.

foot (''gal/cycle/ft^3''). Title 10 Code of Federal Regulations (''CFR'') 430.32(g)(4). DOE currently defines four classes of RCWs: Top-loading, compact (less than 1.6 cubic feet (''ft^3'') capacity); top-loading, standard (1.6 ft^3 or greater capacity); front-loading, compact (less than 1.6 ft^3 capacity); and front-loading, standard (1.6 ft^3 or greater capacity). *Id.*

Representations of energy or water consumption of RCWs, including demonstrating compliance with the currently applicable energy conservation standards, must be based on results generated using the test procedure for RCWs at 10 CFR part 430, subpart B, appendix J2 (''appendix J2''). *See* Note to appendix J2.

On September 1, 2021, DOE published a test procedure notice of proposed rulemaking (''NOPR''; ''September 2021 NOPR'') proposing to establish a new test procedure at 10 CFR part 430, subpart B, appendix J (''appendix J''), which would establish new energy efficiency metrics: an energy efficiency ratio (''EER'') and a water efficiency ratio (''WER''). 86 FR 49140. As proposed, EER would be defined as the weighted-average load size in pounds (''lbs'') divided by the sum of (1) the per-cycle machine energy, (2) the per-cycle water heating energy, (3) the per-cycle drying energy, and (4) the per-cycle standby and off mode energy consumption, in kWh. *Id.* at 86 FR 49172. As proposed, WER would be defined as the weighted-average load size in lbs divided by the total weighted per-cycle water consumption for all wash cycles, in gallons. *Id.* at 86 FR 49173. For both EER and WER, a higher value would indicate more efficient performance. *Id.*

On September 29, 2021, DOE published a preliminary analysis of energy conservation standards for RCWs (''September 2021 Preliminary Analysis''). 80 FR 53886. In the September 2021 Preliminary Analysis, DOE evaluated the per-cycle energy and water consumption values and resulting EER and WER metrics as determined using the version of appendix J proposed in the September 2021 NOPR. *Id.* at 80 FR 53889. DOE presented the evaluated potential efficiency levels using the efficiency metrics under both the currently applicable appendix J2 test procedure and the then-proposed appendix J test procedure in order to assist interested parties in understanding how the analysis based on the proposed appendix J metrics compares to performance as measured under the appendix J2 test procedure (*i.e.,* how the potential efficiency levels based on EER and WER metrics align with the existing IMEF and IWF metrics). *Id.*

In support of the September 2021 Preliminary Analysis, DOE tested a sample of RCWs under both appendix J2 and appendix J as proposed in the September 2021 NOPR. In chapter 5 of the preliminary technical support document (''TSD'') accompanying the September 2021 Preliminary Analysis, DOE first defined preliminary efficiency levels to be used as the basis for the analysis in terms of the existing modified energy factor (''MEF'') and IWF metrics. DOE also published preliminary translation formulas for converting IMEF values into EER values, and for converting IWF values into WER values, for each product class.[4] As described in chapter 5 of the preliminary TSD, DOE supplemented its tested data set with ''predicted'' EER and WER values based on results from how a clothes washer performed under appendix J2 testing and on the clothes washer's physical and operational characteristics. DOE also published an explanation of how the predictive tool was developed, including a table listing the impacts to each underlying variable that were assumed as part of the predictive analysis. *See* section 5.3.3.2 of the preliminary TSD. DOE explained that it planned to continue testing additional units to appendix J to increase the number of tested, rather than predicted, EER and WER values in future stages of the rulemaking. *Id.*

II. Discussion

DOE has tested additional RCW models to both appendix J2 and proposed appendix J in order to provide additional data points for the translation equations and to eliminate the need to rely on ''predicted'' EER and WER values in the translation analysis. In a separate spreadsheet accompanying this NODA and available in the rulemaking docket, DOE publishes the test results for each RCW model and updated translation equations that include these additional data points as well as the data points from units tested for the September 2021 Preliminary Analysis.

DOE received comments in response to the September 2021 NOPR suggesting that DOE use a value of 2 percent rather than 4 percent as the final moisture content (''FMC'') assumption in the calculation of drying energy. (Joint Efficiency Advocates, Docket No. EERE–2016–BT–TP–0011, No. 28 at pp. 5–6; CA IOUs, Docket No. EERE–2016–BT–TP–0011, No. 29 at pp. 8–9)[5] DOE is still reviewing and considering these comments and all other comments received in response to the September 2021 NOPR. Because this issue in particular would directly affect the translation equations between appendix J2 and proposed appendix J, in the spreadsheet accompanying this NODA, DOE has published two sets of translations corresponding to an FMC of 4 percent and 2 percent, respectively.[6]

DOE is also publishing a table of key characteristics associated with each tested model, including the following:

- Product class;[7]
- For top-loading clothes washers: Agitator or wash plate;
- Portable models identified;
- Combination washer-dryer models identified;
- Type of water fill control system (''WFCS'');
- Cabinet width;
- Presence or absence of internal water heater;
- Clothes container capacity; and
- Test cloth lot used for each test.

These test data are available in the docket for this proposed rulemaking at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0044.*

DOE notes that it is also still reviewing and considering comments received in response to the September 2021 Preliminary Analysis, particularly with regard to the definition of product classes. The data presented in the NODA correspond largely to the preliminary product classes identified in the September 2021 Preliminary Analysis, with additional considerations as discussed further in this NODA. DOE does not intend to convey any determinations regarding product class definitions through this NODA.

A. Characteristics Impacting the Translation Equations

Based on the analysis presented in the accompanying spreadsheet, DOE has tentatively determined that remaining moisture content (''RMC'') and WFCS type have a significant impact on the translation equations. DOE performed an in-depth analysis of both of these topics, as detailed in the following sections.

[4] The TSD (corrected) is available at: *www.regulations.gov/document/EERE-2017-BT-STD-0014-0030.*

[5] See the docket for DOE's rulemaking to develop test procedures for RCWs and CCWs. (Docket No. EERE–2016–BT–TP–0011, which is maintained at *www.regulations.gov*). These references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[6] These two sets of data are presented in separate tabs of the accompanying spreadsheet which can be found at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0044.*

[7] Product class corresponds to the product class as analyzed in the September 2021 Preliminary Analysis, as discussed further in this section.

1. Remaining Moisture Content

The RMC is a measure of the amount of water remaining in the clothing load after completion of the clothes washer cycle. The RMC value is used to calculate the total per-cycle energy consumption for removal of moisture from the clothes washer test load in a clothes dryer to an assumed final moisture content, *i.e.,* the ''drying energy,'' which is one of the factors contained within both the IMEF and EER metrics. Lower values of RMC result in less drying energy and thus represent more-efficient performance.

Section 3.8.2 of appendix J2 requires that the RMC be calculated based on a test run with the maximum load size on the Cold Wash/Cold Rinse (''Cold/Cold'') temperature selection. Section 3.8.4 of appendix J2 requires that for clothes washers that have multiple spin settings [8] available within the energy test cycle that result in different RMC values, the maximum and minimum extremes of the available spin settings must be tested with the maximum load size on the Cold/Cold temperature selection.[9] In this case, the final RMC is the weighted average of the maximum and minimum spin settings, with the maximum spin setting weighted at 75 percent and the minimum spin setting weighted at 25 percent.

Appendix J as proposed in the September 2021 NOPR would require measuring RMC on each of the energy test cycles (*i.e.,* each load size and each wash/rinse temperature combination included for testing) using the default spin settings, which may not necessarily be the maximum spin setting. In section 4.3 of proposed appendix J, the final RMC is calculated by weighting the individual RMC measurements using the same temperature and load size weighting factors that apply to the water and energy measurements.

Multiple factors can affect the RMC of a particular cycle, including the spin speed and the duration of the spin portion of the wash cycle. The size of the load can also affect RMC—generally, larger load sizes result in lower (better) RMC values, whereas smaller load sizes result in higher (worse) RMC values. These factors result in different measured RMC values for appendix J as proposed and appendix J2, specifically because under proposed appendix J, RMC would be measured across a wider range of cycles (compared to only the Cold/Cold cycle in appendix J2) and because the appendix J load sizes as proposed would be smaller than the appendix J2 maximum load size (on which the appendix J2 RMC measurement is based).

In addition to these factors, differences in the test cloth ''lot'' used for testing can further affect the measured RMC value. DOE preliminarily concluded in the September 2021 NOPR that although the application of correction factors for each test cloth lot significantly reduces the lot-to-lot variation in RMC (from over 10 percentage points uncorrected), the current methodology may be limited to reducing lot-to-lot variation in corrected RMC to around 3 RMC percentage points. 86 FR 49140, 49190. DOE has identified the test cloth lot number associated with each test in the spreadsheet accompanying this NODA.

In the interest of improving the translation equations as presented in the September 2021 Preliminary Analysis, DOE has conducted an in-depth analysis of the differences in RMC between the appendix J2 and proposed appendix J test procedures. For each unit that DOE tested, DOE examined the cycle-by-cycle test results to determine the key driver behind the difference in RMC when testing to proposed appendix J as compared to appendix J2. Based on this analysis, DOE has identified three categories of spin implementations that result in differences between the proposed appendix J RMC value and the appendix J2 RMC value, described as follows.[10]

- The first type, referred to as ''consistent spin'' throughout the remainder of this NODA, is illustrative of units in which the characteristics of the spin cycle (*e.g.,* spin speed, spin time) are consistent across temperature selections. On these units, RMC values measured on Warm/Cold, Hot/Cold, and Extra Hot/Cold cycles are substantially similar to the RMC value measured on the Cold/Cold cycle.
- The second type, referred to as ''Cold/Cold optimized spin'' throughout the remainder of this NODA, is illustrative of units in which the spin cycle is optimized on the Cold/Cold setting with maximum load size, corresponding to the one cycle combination for which RMC is measured under appendix J2. On these units, the spin portion of the cycle is significantly faster or longer on the Cold/Cold setting with a maximum load size than for the other temperature settings or load sizes that are tested as part of the energy test cycle.
- The third type, referred to as ''non-default maximum spin'' throughout the remainder of this NODA, is illustrative of units in which the maximum spin speed setting (which is tested under appendix J2) is not the default spin speed setting on the Normal cycle. On these units, the default spin speed setting tested under proposed appendix J would provide a lower-speed spin or a shorter spin portion of the cycle.

For clothes washers with ''consistent spin,'' the only source of difference between the measured RMC values under proposed appendix J and appendix J2 is the use of smaller load sizes for proposed appendix J. The observed difference in RMC between the two test procedures is relatively consistent among models from different manufacturers of RCWs with this characteristic, as discussed further in this section.

For clothes washers with ''Cold/Cold optimized spin'' the difference between the measured RMC values under proposed appendix J and appendix J2 is due to a combination of both the smaller load sizes for proposed appendix J and the different spin behavior on the temperature settings other than Cold/Cold. The observed difference in RMC between the two test procedures varies significantly among models from different manufacturers of RCWs with ''Cold/Cold optimized spin,'' depending on the degree to which the Cold/Cold RMC differs from the RMC on all other tested cycles.

For clothes washers with ''non-default maximum spin,'' the difference between the measured RMC values under proposed appendix J and appendix J2 is due to a combination of both the smaller load sizes for proposed appendix J and the different spin behavior on the maximum and default spin settings. Similar to units with ''Cold/Cold optimized spin,'' the observed difference in RMC between the two test procedures varies significantly among models from different manufacturers of RCWs with ''non-default maximum spin,'' depending on the degree to which the maximum spin setting differs from the default spin setting.

The RMC value is the most significant contributor to both the IMEF metric measured by appendix J2 and the EER metric measured by proposed appendix J. Because of the more significant

[8] The term ''spin settings'' refers to spin times or spin speeds. The maximum spin setting results in a lower (better) RMC.

[9] On clothes washers that provide a Warm Rinse option, appendix J2 requires that RMC be measured on both Cold Rinse and Warm Rinse, with the final RMC calculated as a weighted average using temperature use factors (''TUFs'') of 73 percent for Cold Rinse and 27 percent for Warm Rinse. DOE has observed very few RCW models on the market that offer Warm Rinse. For simplicity throughout this discussion, DOE references the testing requirements for clothes washers that offer Cold Rinse only.

[10] The accompanying spreadsheet specifies the spin implementation type identified by DOE for each unit in the test sample.

variation in RMC between the two test procedures for ''Cold/Cold optimized spin'' and ''non-default maximum spin'' units, the correlation between IMEF and EER for these units is less strong (*i.e.,* lower ''R-squared'' values for the best-fit line) than for ''consistent spin'' units.

To investigate strategies for defining translation equations with a stronger correlation between IMEF and EER, DOE developed a second set of EER values based on an ''adjusted'' RMC value (substituted for the measured RMC value) that assumes a ''consistent spin'' characteristic for each unit in the test sample. Under this approach, only the change in load size would be assumed to impact the RMC values measured under proposed appendix J as compared to appendix J2. DOE's test data indicate that the smaller load sizes under proposed appendix J result in an increase in RMC of 4 percentage points compared to the RMC values measured under appendix J2 using the maximum load size. Therefore, for this approach, DOE calculated an ''adjusted RMC'' for each unit as the tested RMC value under appendix J2 plus 4 percentage points. DOE substituted this adjusted RMC for the RMC value in the drying energy equation within the EER calculation. As demonstrated in the second set of ''adjusted'' translation plots, this approach produces translation equations with significantly higher R-squared values, indicating a stronger correlation between IMEF and EER.

Comments submitted by a manufacturer in response to the September 2021 NOPR suggest that, were DOE to amend standards based on appendix J as proposed, manufacturers that currently use ''Cold/Cold optimized spin'' or ''non-default maximum spin''—which yield lower (*i.e.,* better) RMC values on the Cold/Cold temperature setting compared to RMC values obtained using the other temperature settings for RCWs with ''Cold/Cold optimized spin,'' and on the maximum spin setting for RCWs with ''non-default maximum spin''—would likely implement similar strategies to decrease the RMC across all cycles required for testing under appendix J as proposed. (EERE–2016–BT–TP–0011, Whirlpool, No. 26 at p. 8–9). Specifically, for ''Cold/Cold optimized spin'' units, manufacturers would likely increase the spin speeds or spin durations across all temperature settings to match the spin behavior of the Cold/Cold temperature setting. For ''non-default maximum spin'' units, manufacturers would likely make the maximum spin speed the default spin setting to provide the lowest possible (*i.e.,* best possible) RMC measurement under appendix J as proposed.

DOE requests comment on whether, if DOE were to establish amended RCW standards based on appendix J as proposed, manufacturers that currently use the ''Cold/Cold optimized spin'' strategy for their RCWs would modify the spin behavior across all temperature settings to match the spin behavior of the Cold/Cold temperature setting; and whether manufacturers that currently use the ''non-default maximum spin'' strategy for their RCWs would design the maximum spin speed to be the default spin setting. DOE further requests comment on the impact of such changes to the energy and water use, other aspects of consumer-relevant performance, and life-cycle cost of RCWs.

If DOE were to use the ''adjusted'' EER values (based on ''adjusted'' RMC) as the basis for developing the IMEF-to-EER translation equations, DOE requests comment on how DOE should factor into its analysis the changes that manufacturers may implement in response to such an approach (*i.e.,* faster or longer spin speeds across all cycles for ''Cold/Cold optimized spin'' units, and setting the maximum speed as the default spin setting for ''non-default maximum spin'' units).

In the document available in the rulemaking docket, DOE presents revised translation equations using both approaches: Tested RMC and EER values (shown as purple columns and graphs) and ''adjusted'' RMC and EER values (shown as red columns and graphs).

DOE requests comment on its analysis of RMC and on the translation equations resulting from the two different approaches described in this section.

2. Portable Units With Manual Water Fill Control Systems

DOE's test data indicate that RCWs marketed as ''portable'' [11] have a significantly different correlation between IMEF and EER than ''stationary'' clothes washers. An examination of the test sample indicates that all of the portable units in the test sample use manual WFCS, whereas all of the stationary units in DOE's test sample use either automatic WFCS or provide both manual and automatic WFCSs. Generally, the portable units have a higher (better) EER value than stationary units at the same IMEF rating.

The observed difference in correlation is due, at least in part, to how load size is calculated under proposed appendix J and appendix J2 for units with manual WFCS,[12] as compared to units with automatic WFCS.[13] For units with a manual WFCS, the weighted-average load size calculated under proposed appendix J is significantly different than that calculated under appendix J2. Under appendix J2, weighted-average load size for units with manual WFCS is calculated by applying weighting factors of 0.72 and 0.28 to the maximum and minimum load sizes, respectively. Under proposed appendix J, the weighted-average load size for units with manual WFCS is calculated as a simple average of the large and small load sizes (*i.e.,* weighting factors of 0.5 and 0.5 for the large and small load sizes, respectively). The proposed appendix J calculation results in a smaller weighted-average load size than that calculated under appendix J2 for units with a manual WFCS.

In comparison, for units with automatic WFCS, the weighted-average load size is equivalent under appendix J as proposed and appendix J2. Under appendix J2, weighted-average load size is calculated by applying weighting factors of 0.12, 0.74, and 0.14 to the maximum, average, and minimum load sizes, respectively. As discussed in the September 2021 NOPR, DOE defined the load sizes in proposed appendix J such that the weighted-average load size using the small and large load sizes defined in appendix J matches the weighted-average load size using the minimum, average, and maximum load sizes defined in appendix J2. 86 FR 49140, 49157–49158.

DOE is aware of some top-loading stationary RCWs that offer both manual and automatic WFCSs. For these units, both appendix J2 and proposed appendix J require testing both WFCSs; calculating the average of the tested values (one from each water fill control system) for each measured variable (*i.e.,* machine electrical energy, hot water heating energy, drying energy, and water consumption); and using the average value for each variable in the final calculations of the respective efficiency metrics. For these units, the difference in correlation due to the use of a manual WFCS is reduced by half as a result of the averaging with the automatic WFCS results.

DOE reviewed the market and observes that top-loading portable units are the only RCWs on the market that

[11] Products marketed as ''portable'' are generally mounted on caster wheels, which allows the clothes washer to be moved more easily.

[12] Section 1 of appendix J2 defines a manual WFCS as a WFCS that requires the user to determine or select the water fill level.

[13] Section 1 of appendix J2 defines an automatic WFCS as a WFCS that does not allow or require the user to determine or select the water fill level.

use a manual WFCS exclusively. DOE further observes that all RCWs that are marketed as portable have a manual WFCS. DOE is not aware of any top-loading portable RCWs that use an automatic WFCS or any top-loading stationary RCWs that offer only a manual WFCS.

Recognizing this difference in correlation, DOE has presented an alternate set of translation equations that separate top-loading portable RCWs (which use a manual WFCS) from top-loading stationary RCWs (which provide either automatic WFCS or both manual and automatic WFCSs). Each of the separate translation equations has a stronger correlation (*i.e.,* higher R-squared value) than the single translation equation in which top-loading portable and top-loading stationary products are combined.

In future stages of the standards rulemaking, DOE would consider whether separate translation equations should be used for top-loading portable RCWs with a manual WFCS.

DOE requests comment on whether any top-loading stationary RCWs with only a manual WFCS, or any top-loading portable RCWs with an automatic WFCS, are available on the market.

DOE further requests comment on whether top-loading portable RCWs with a manual WFCS should be evaluated using a separate translation equation from top-loading stationary RCWs with an automatic WFCS.

B. Top-Loading Compact Clothes Washers

DOE's RCW product certification database [14] includes both automatic clothes washer models and semi-automatic [15] clothes washer models certified within the top-loading compact product class. While the certification database does not differentiate between automatic and semi-automatic configurations, DOE conducted an analysis of product literature for each certified model to identify the configuration of each model.

DOE's analysis of product literature for each top-loading compact model indicates that all of the automatic top-loading compact models included in the certification database are ''companion'' clothes washers, which are designed to serve as an auxiliary clothes washer for washing a small or delicate load while simultaneously washing a ''normal'' load in the accompanying standard-size RCW.[16] Semi-automatic clothes washers have a single water inlet generally intended to be intermittently connected to a kitchen or bathroom faucet and require user intervention to regulate the water temperature by adjusting the external water faucet valves. These two product types exhibit significantly different design and performance characteristics. In this NODA, DOE presents data only for automatic ''companion'' type top-loading compact RCWs. DOE is continuing to test and analyze semi-automatic top-loading RCWs in support of this rulemaking.

Companion clothes washers are currently available from two manufacturers. DOE has included one unit from each manufacturer in its data set, as presented in the accompanying spreadsheet.

III. Public Participation

DOE will accept comments, data, and information regarding this document, but no later than the date provided in the **DATES** section at the beginning of this document. 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. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, 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

[14] DOE's product certification database is available at *www.regulations.doe.gov/certification-data/CCMS-4-Clothes_Washers.html#q=Product_Group_s%3A%22Clothes%20Washers%22.*

[15] Semi-automatic clothes washer is defined at 10 CFR 430.2 as a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. DOE has previously defined a design standard for top-loading, semi-automatic clothes washers, requiring such products to have an unheated rinse water option. 10 CFR 430.32(g)(1).

[16] Companion clothes washers are currently available in two different configurations: (1) Integrated into (*i.e.,* built into) the cabinet above a standard-size front-loading RCW, and (2) built into a pedestal drawer for installation underneath a standard-size front-loading RCW.

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 to *ConsumerClothes Washer2017STD0014@ee.doe.gov* 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).

Signing Authority

This document of the Department of Energy was signed on April 8, 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 April 8, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–07915 Filed 4–12–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0376; Airspace Docket No. 22–ANE–4]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Montpelier, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Edward F. Knapp State Park, Montpelier, VT, due to the decommissioning of the Mount Mansfield non-directional beacon (NDB) and cancellation of associated approaches, as well as updating the airport's geographic coordinates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before May 31, 2022.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2022–0376; Airspace Docket No. 22–ANE–4 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION, CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend airspace in Montpelier, VT, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2022–0376 and Airspace Docket No. 22–ANE–4) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0376, Airspace Docket No. 22–ANE–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking

documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, Room 350, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Edward F. Knapp State Park, Montpelier, VT, due to the decommissioning of the Mount Mansfield NDB and cancellation of associated approaches. This action would amend the north and south extensions, and eliminate the southwest extension. This action would also remove the city name from the descriptions, and update the airport's geographic coordinates to coincide with the FAA's database. In addition, this action would remove all navigational aids from the Class E5 description, as they are not necessary.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Surface Airspace.

* * * * *

ANE VT E2 Montpelier, VT [Amended]

Edward F. Knapp State Airport, VT
(Lat. 44°12′13″ N, long. 72°33′44″ W)

That airspace extending upward from the surface within a 4.1-mile radius of the Edward F. Knapp State Airport, and within 1 mile each side of the 152° bearing, extending from the 4.1-mile radius to 10.3-miles southeast of the airport, and within 1.2-miles each side of the 332° bearing, extending from the 4.1-mile radius to 10.3-miles northwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE VT E5 Montpelier, VT [Amended]

Edward F. Knapp State Airport, VT
(Lat. 44°12′13″ N, long. 72°33′44″ W)

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Edward F. Knapp State Airport.

Issued in College Park, Georgia, on April 7, 2022.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2022–07809 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0253; FRL–9611–01–R9]

Air Plan Approval; California; San Diego County; Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the San Diego Air Pollution Control District (SDAPCD or ''District'') portion of the California State Implementation Plan (SIP). These revisions concern SDAPCD's negative declarations for certain Control Techniques Guidelines (CTGs) as they apply to the 2008 and 2015 ozone national ambient air quality standards (NAAQS or ''standards'') reasonably available control technology (RACT) SIP. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before May 13, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0253 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e..* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3959 or by email at *lo.doris@epa.gov.*

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

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I. The State's Submittal

A. What document did the State submit?

Table 1 lists the negative declarations addressed by this proposal, with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED DOCUMENT [1]

Local agency	Document	Adopted	Submitted
SDAPCD	''2020 Reasonably Available Control Technology Demonstration for the National Ambient Air Quality Standards For Ozone in San Diego County, October 2020 (2020 RACT SIP)—Negative Declarations for the 2008 and 2015 NAAQS:. *Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products* (EPA–450/2–78–029). *Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials* (EPA–453/R–08–004). *Control of Volatile Organic Emissions from Miscellaneous Metal and Plastic Parts Coatings* (EPA–453/R–08–003); Table 3—Plastic Parts and Products, Table 4—Automotive/Transportation and Business Machine Plastic Parts, Table 5—Pleasure Craft Surface Coating, Table 6—Motor Vehicle Materials.	10/14/2020	12/29/2020

On June 29, 2021, the submittal of the SDAPCD 2020 RACT SIP, with the exception of the negative declaration for the CTG for the Oil and Natural Gas Industry (EPA–453/B–16–001, 2016/10), was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.[2]

B. Are there other versions of this document?

There are no previous versions of the negative declarations listed in Table 1 in the SDAPCD portion of the California SIP for the 2008 or 2015 ozone NAAQS.

C. What is the purpose of the negative declarations?

Emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) contribute to the production of ground-level ozone, smog, and particulate matter (PM), which harm human health and the environment. Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control VOC and NO_X emissions. CAA section 182(b)(2) requires states to submit SIP revisions to implement reasonably available control technology (RACT) for, among other things, each category of VOC sources in the nonattainment areas covered by Control Technique Guidelines (CTGs). SDAPCD is subject to this requirement as it regulates the San Diego County 2008 and 2015 ozone nonattainment areas (NAAs) classified as ''Severe.'' [3] In lieu of adopting local regulations to implement a CTG, air agencies must adopt a negative declaration if the nonattainment area has no sources covered by a CTG.[4] SDAPCD's submittal of negative declarations is the District's certification that there are no sources covered by the CTGs.

On December 3, 2020 (85 FR 77996), the EPA partially approved and partially disapproved SDAPCD's RACT demonstrations for the 2008 8-hr ozone national ambient air quality standards (NAAQS) (also referred to as the ''2016 RACT SIP'').[5] Specifically, the EPA found that certain CTG categories were not addressed by either a negative declaration or a RACT rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the negative declarations?

Generally, CAA section 110(a)(2)(A) requires SIPs to ''include enforceable

[1] The EPA is only acting on the negative declarations for the Control Techniques Guidelines (CTGs) for Synthesized Pharmaceutical Products, Fiberglass Boat Manufacturing Materials, and Miscellaneous Metal and Plastic Products, Tables 3–6. The EPA will propose separate action on the remainder of the 2020 SDAPCD RACT SIP submittal at a future date.

[2] On May 6, 2021, in a letter from Elizabeth J. Adams, EPA to Richard Corey, CARB, the EPA determined that the following element was deemed complete: Negative Declaration for Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001, 2016/10).

[3] 86 FR 29522 (June 2, 2021) ''Designation of Areas for Air Quality Planning Purposes; California; San Diego County Ozone Nonattainment Area; Reclassification to Severe.'' Section 182 applies to ozone nonattainment areas classified as Moderate and above.

[4] Memorandum from William T. Harnett to Regional Air Division Directors, dated May 18, 2006, ''RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers.''

[5] The nonattainment area was classified as ''Moderate'' when the 2016 RACT SIP was submitted.

emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA],'' and SIPs must be consistent with the requirements of CAA sections 110(l) and 193. SIPs must also require RACT for each category of sources covered by a CTG document and each major source in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and (f)).

States should also submit, for SIP approval, negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold), regardless of whether such negative declarations were made for an earlier SIP.[6] To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the SDAPCD.

Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. EPA Office of Air Quality Planning and Standards, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' May 25, 1988 (''the Bluebook,'' revised January 11, 1990).

3. EPA Region IX, ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' August 21, 2001 (''the Little Bluebook'').

4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, (November 25, 1992).

5. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers.''

6. ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).

7. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' 80 FR 12264 (March 6, 2015).

8. ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,'' 83 FR 62998 (December 6, 2018).

B. Do the negative declarations meet the evaluation criteria?

The submittal contains the District's certification that there are no sources within the 2008 or 2015 ozone nonattainment areas under District jurisdiction that are subject to the CTGs listed in Table 1. The District based its certifications on reviews of permit files and emission inventories. We accessed CARB databases and performed internet searches and did not find indications that any sources exist for which the CTGs would apply.

The EPA's technical support document (TSD) for this action has more information about the District's submittal and the EPA's evaluation thereof.

C. Public Comment and Proposed Action

We propose to approve the negative declarations listed in Table 1, as submitted by CARB on December 29, 2020. We also propose that these negative declarations remedy the deficiencies for the following CTGs identified in our partial disapproval of the 2016 RACT SIP: *Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products* (EPA–450/2–78–029); *Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials* (EPA–453/R–08–004); and *Control of Volatile Organic Emissions from Miscellaneous Metal and Plastic Parts Coatings* (EPA–453/R–08–003); Table 3—Plastic Parts and Products, Table 4—Automotive/Transportation and Business Machine Plastic Parts, Table 5—Pleasure Craft Surface Coating, Table 6—Motor Vehicle Materials. We will accept comments from the public on the proposed approval for the next 30 days.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

[6] 57 FR 13498, 13512 (April 16, 1992).

Dated: April 7, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–07918 Filed 4–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–HQ–OAR–2021–0741; FRL–8426–01–OAR]

RIN 2060–AV33

Determinations of Attainment by the Attainment Date, Extension of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes three actions pursuant to section 181(b)(2) of the Clean Air Act (CAA) related to seven areas classified as ''Serious'' for the 2008 ozone National Ambient Air Quality Standards (NAAQS). First, the Agency proposes to determine that one area attained the 2008 ozone NAAQS by the July 20, 2021, attainment date. Second, the Agency proposes to deny a request for a 1-year attainment date extension for one area and to determine that the area failed to attain the 2008 ozone NAAQS by the attainment date, while also taking comment on granting that request. Third, the Agency proposes to determine that five areas failed to attain the 2008 ozone NAAQS by the attainment date and do not qualify for a 1-year attainment date extension.. The effect of failing to attain by the attainment date is that such areas will be reclassified by operation of law to ''Severe'' upon the effective date of the final reclassification notice. Except for one separate tribal area, states will need to submit state implementation plan (SIP) revisions that meet the statutory and regulatory requirements for any areas reclassified as Severe for the 2008 ozone NAAQS. The EPA proposes deadlines for submission of those SIP revisions and for implementation of the related control requirements. Additionally, for any areas reclassified as Severe, where not already prohibited, the CAA would prohibit the sale of conventional gasoline and require that federal reformulated gasoline instead be sold beginning 1 year after the effective date of the reclassification. This action, when finalized, will fulfill the EPA's statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the attainment date and to publish a document in the **Federal Register** identifying each area that is determined as having failed to attain and identifying the reclassification. Several areas included in this proposed rule are also addressed in a separate rulemaking to determine whether areas classified as ''Marginal'' for the 2015 ozone NAAQS attained the standard by the applicable attainment date of August 3, 2021 (*see* Docket ID EPA–HQ–OAR–2021–0742).

DATES: *Comments.* Written comments must be received on or before June 13, 2022.

Virtual public hearing. The virtual hearing will be held on May 9, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0741, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0741 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

Submitting Confidential Business Information (CBI). Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted to electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, *oaqpscbi@epa.gov,* and should include clear CBI markings as described above. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2021–0741. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Virtual public hearing. The virtual hearing will be held on May 9, 2022. The hearing will be held in three sessions: 9:00 a.m. to noon (Eastern

time), 1:00 p.m. to 3:00 p.m. (Eastern time), and 6:00 p.m. to 8:00 p.m. (Eastern time). We invite the public to register to speak using *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment* or (919) 541–0641. The EPA will confirm your approximate speaking time by May 9, 2022 and we will post a list of registered speakers in approximate speaking order at: *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.* If we reach a point in any session where all present, registered speakers have been called on and no one else wishes to provide testimony we will adjourn that session early. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Robert Lingard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01 Research Triangle Park, NC 27709; by telephone number: (919) 541–5272; email address: *lingard.robert@epa.gov;* or Emily Millar, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01 Research Triangle Park, NC 27709; telephone number: (919) 541–2619; email address: *millar.emily@epa.gov.*

SUPPLEMENTARY INFORMATION: *Participation in virtual public hearing.* Because of current Centers for Disease Control and Prevention recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, individuals may use the online registration form available via the EPA's 2008 Ozone National Ambient Air Quality Standards (NAAQS) Nonattainment Actions web page for this hearing (*https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment*) or contact Pam Long at 919–541–0641 or *long.pam@epa.gov.* The last day to pre-register to speak at the hearing will be May 9, 2022. On May 9, 2022, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Pam Long at *long.pam@epa.gov.* The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing is posted online at *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.* While the EPA expects the hearing to go forward as set forth previously, please monitor our website or contact Pam Long at 919–541–0641 or *long.pam@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

A Spanish interpreter will be provided. If you require the services of an interpreter for any language other than Spanish or special accommodations such as audio description, please pre-register for the hearing with Pam Long and describe your needs by May 4, 2022. The EPA may not be able to arrange accommodations without advanced notice.

Throughout this document ''we,'' ''us,'' or ''our'' means the EPA.

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I. Overview and Basis of Proposal

A. Overview of Proposal

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain (*see* Clean Air Act (CAA) section 181(b)(2)). For a concentration-based standard, such as the 2008 ozone NAAQS,[1] a determination of attainment is based on a nonattainment area's design value (DV).[2]

The 2008 ozone NAAQS is met at an EPA regulatory monitoring site when the DV does not exceed 0.075 parts per million (ppm). For areas classified as Serious nonattainment for the 2008 ozone NAAQS, the attainment date was July 20, 2021. Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (*i.e.,* December 31, 2020, in the case of

[1] Because the 2008 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as ''the NAAQS'' or ''the standard.''

[2] A DV is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The DV for the 2008 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area and the area's DV is the highest DV among the individual monitoring sites in the area.

Serious nonattainment areas for the 2008 ozone NAAQS). As such, the EPA's proposed determinations for each area are based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020.

This proposed action addresses seven of the nine nonattainment areas that were classified as Serious for the 2008 ozone NAAQS as of the Serious area attainment date of July 20, 2021.[3] [4] The remaining two areas will be addressed in separate actions, as follows:

(1) The Nevada County (Western Part), California, Serious nonattainment area is not included in this proposed action. On September 17, 2021, the California Air Resources Board (CARB) submitted exceptional events (EE) demonstrations for 11 days in 2018 with exceedances of the standard, and on November 18, 2021, CARB submitted EE demonstrations for five days in 2020 with exceedances of the standard. The EPA's action on these demonstrations may affect a determination of attainment by the attainment date for this area.[5] The EE initial notification, EE demonstrations, and the EPA's response to the initial notification are provided in the docket for this rulemaking (Docket ID EPA–HQ–OAR–2021–0741). The proposed action to determine attainment for the Nevada County (Western Part), California, area by the Serious attainment date for the 2008 ozone NAAQS will be addressed in a separate **Federal Register** document.

(2) The Ventura, California, Serious nonattainment area is also not included in this proposed action. On December 8, 2021, CARB submitted EE demonstrations for five days in 2020 with exceedances of the standard . The EPA's action on these demonstrations may affect a determination of attainment by the attainment date for this area. The EE initial notification, EE demonstrations and the EPA's response to the initial notification are provided in the docket for this rulemaking. The proposed action to determine attainment for the Ventura County, California, area by the Serious attainment date for the 2008 ozone NAAQS will be addressed in a separate **Federal Register** document.

Table 1 of this action provides a summary of the ozone air quality DVs and the EPA's proposed air quality-based determinations for the seven Serious areas addressed in this action.

TABLE 1—2008 OZONE NAAQS SERIOUS NONATTAINMENT AREA EVALUATION SUMMARY

2008 NAAQS nonattainment area	2018–2020 DV (ppm)	2008 NAAQS attained by the serious area attainment date	2020 4th Highest daily maximum 8-hr average (ppm)	Area failed to attain 2008 NAAQS but state requested 1-year attainment date extension based on 2020 4th highest daily maximum 8-hr average ≤0.075 ppm
Chicago-Naperville, IL-IN-WI *	0.077	Failed to Attain	0.079	No.
Dallas-Fort Worth, TX **	0.076	Failed to Attain	0.077	No.
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO.	0.081	Failed to Attain	0.087	No.
Greater Connecticut, CT	0.073	Attained	0.071	N/A.
Houston-Galveston-Brazoria, TX	0.079	Failed to Attain	0.075	Yes.
Morongo Band of Mission Indians	0.099	Failed to Attain	0.103	No.
New York-N. New Jersey-Long Island, CT-NJ-NY.	0.082	Failed to Attain	0.080	No.

* In a letter to the Illinois Environmental Protection Agency dated July 30, 2021, EPA Region 5 indicated that it did not concur on EE demonstrations for the Chicago-Naperville area submitted to the EPA on February 1, 2021; a copy of this letter and the supporting EPA technical review is provided in the docket for this rulemaking.

** In a letter to the Texas Commission on Environmental Quality dated June 30, 2021, EPA Region 6 indicated that it did not concur on EE demonstrations for the Dallas-Fort Worth area submitted to the EPA on May 28, 2021; a copy of this letter and the supporting EPA technical review is provided in the docket for this rulemaking.

The data used to calculate both the 2018–2020 DVs and the 2020 fourth highest daily maximum 8-hour averages are provided in the technical support document (TSD) provided in the docket for this rulemaking.[6]

The EPA proposes to find that the Greater Connecticut, Connecticut, Serious nonattainment area attained by the attainment date based on the 2018–2020 DV presented in Table 1 of this action, which does not exceed 0.075 ppm. The EPA also proposes to deny a request for a 1-year attainment date

[3] Prior to July 20, 2021, two additional Serious areas were reclassified from Serious to Severe, and thus are not addressed in this action. The San Diego County, California, nonattainment area was reclassified from Serious to Severe effective July 2, 2021, in response to a voluntary reclassification request submitted by the state of California (*see* 86 FR 29522, June 2, 2021). SIP revisions addressing Severe area requirements for San Diego County will be due no later than July 2, 2022. The Eastern Kern, California, nonattainment area was reclassified from Serious to Severe effective July 7, 2021, in response to a voluntary reclassification request submitted by the state of California (*see* 86 FR 30204, June 7, 2021). In a separate action, the EPA finalized a rule establishing that SIP revisions addressing Severe area requirements for Eastern Kern would be due no later than 18 months from the effective date of reclassification (*i.e.,* January 7, 2023) and that any new RACT rules for Eastern Kern must be implemented as expeditiously as practicable but no later than 18 months following the RACT SIP due date (*i.e.,* July 7, 2024) (*see* 86 FR 47580, August 26, 2021). Both the San Diego County and Eastern Kern areas must attain the 2008 ozone standard by July 20, 2027.

[4] In separate rulemakings, the EPA is proposing to redesignate all portions of the Chicago-Naperville, IL-IN-WI Serious nonattainment area to attainment for the 2008 ozone NAAQS based upon complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021: Wisconsin portion (87 FR 6806, February 7, 2022); Indiana portion (87 FR 12033, March 3, 2022); and, Illinois portion (87 FR 13668, March 10, 2022). If all portions of the area are redesignated prior to EPA finalizing this proposal, EPA would not finalize its proposed action for this area.

[5] CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through the process established in regulation to be an EE. CARB submitted its initial notification and demonstrations pursuant to 40 CFR 50.14, which establishes the process by which states may request that the Administrator determine that air quality monitoring data showing exceedances or violations of the NAAQS that are directly due to an EE may be excluded from certain regulatory determinations, including whether a nonattainment area has met the NAAQS by its deadline.

[6] ''Technical Support Document Regarding Ozone Monitoring Data—Determinations of Attainment, 1-Year Attainment Date Extensions, and Reclassifications for Serious Areas under the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS),'' available in the docket for this rulemaking.

extension for the Houston-Galveston-Brazoria, Texas, nonattainment area (herein referred to as the Houston area) taking into account applicable statutory and regulatory criteria,[7] current air quality trends, and potential environmental justice (EJ) concerns within the area (Section II.B of this action). Finally, the EPA proposes to determine that the five remaining Serious areas with a 2018–2020 DV greater than 0.075 ppm did not attain by the attainment date and do not qualify for a 1-year attainment date extension. If the EPA determines that a nonattainment area classified as Serious failed to attain by the attainment date, CAA section 181(b)(2)(B) requires the EPA to publish the identity of each such area in the **Federal Register** no later than 6 months following the attainment date and identify the reclassification level.

Furthermore, as required under CAA section 181(b)(2)(A), if the EPA finalizes the determinations that these areas failed to attain by the attainment date, they will be reclassified as Severe by operation of law. Also, these determinations will trigger contingency measures approved into the area's SIP. Section 172(c)(9) of the CAA requires that these measures must take effect without any further action by the state or the EPA. Accordingly, implementation of the contingency measures must commence upon the effective date of the EPA's determination that an area failed to timely attain (*see* 80 FR 12264, 12285, March 6, 2015). The reclassified areas will then be subject to the Severe area requirement to attain the 2008 ozone NAAQS as expeditiously as practicable, but not later than July 20, 2027.

Once reclassified as Severe, the relevant states must submit to the EPA the SIP revisions for these areas that satisfy the statutory and regulatory requirements applicable to Severe areas established in CAA section 182(d) and in the 2008 Ozone NAAQS SIP Requirements Rule (*see* 80 FR 12264, March 6, 2015).[8] Because the deadlines specified in section 182(d) have passed for plan submissions applicable to areas initially classified as Severe for the 2008 ozone NAAQS, the EPA is exercising the discretion granted under CAA section 182(i) to propose adjusting the deadlines for submitting SIP revisions that would otherwise apply under CAA section 182(d). As discussed in Section II.D of this action, the EPA proposes an overall 36-month schedule for both submission of SIP revisions addressing all required elements of a Severe area plan and implementation of any related emissions controls, including reasonably available control technology (RACT) and transportation-related measures. Under the CAA and the Tribal Authority Rule (TAR),[9] tribes may, but are not required to, submit implementation plans to the EPA for approval. Accordingly, for the Morongo Band of Mission Indians nonattainment area, the Morongo Tribe would not be required to submit any tribal implementation plan (TIP) revisions applicable to Severe areas established in CAA section 182(d) and in the 2008 Ozone SIP Requirements Rule.

B. What is the background for the proposed actions?

On March 12, 2008, the EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards (*see* 73 FR 16436, March 27, 2008). In that action, the EPA promulgated identical revised primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.075 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.075 ppm.

Effective on July 20, 2012, the EPA designated 46 areas throughout the country as nonattainment for the 2008 ozone NAAQS (*see* 77 FR 30088, May 21, 2012; and 77 FR 34221, June 11, 2012). In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of each nonattainment area's ozone problem, determined by the area's DV (*see* 77 FR 30160, May 21, 2012).[10] The attainment dates for Serious and Severe nonattainment areas are 9 years and 15 years, respectively, from the effective date of the final designation, July 20, 2012.[11] Thus, the attainment date for Serious nonattainment areas for the 2008 ozone NAAQS was July 20, 2021, and the attainment date for Severe areas is July 20, 2027. In a separate action effective on September 23, 2019, the EPA reclassified seven of the 11 Moderate areas to Serious for failing to attain the NAAQS by the July 20, 2018, Moderate area attainment date (*see* 84 FR 44238, August 23, 2019). In that action, two Moderate areas received 1-year attainment date extensions. These two areas were later redesignated to attainment (Inland Sheboygan County, Wisconsin—85 FR 41400, July 10, 2020, and Shoreline Sheboygan County, Wisconsin—85 FR 41405, July 10, 2020).

C. What is the statutory authority for the proposed actions?

The statutory authority for the actions proposed in this document is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 181(a)(5), 181(b)(2) and 182(i).

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the Agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's DV). Classifications for ozone nonattainment areas range from ''Marginal'' to ''Extreme.'' CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations at 40 CFR 51.1108 through 51.1117, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2008 ozone NAAQS. For reclassified areas, CAA section 182(i) provides that the Administrator may adjust applicable deadlines other than attainment dates if

[7] *See* CAA section 181(a)(5) and 40 CFR 51.1107.

[8] In *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018), the D.C. Circuit granted in part and denied in part petitions for review challenging the 2008 Ozone NAAQS SIP Requirements Rule. Among other things, the D.C. Circuit vacated the portion of the rule that allowed states to select an alternative baseline year (*i.e.,* a year other than 2011) for purposes of calculating reasonable further progress. *See id.* at 882 F.3d at 1152–53. The South Coast Air Quality Management District petitioned the Court for rehearing on this issue and the Court denied that petition. *South Coast,* No. 15–1123, Order No. 1750751 (D.C. Cir. September 14, 2018).

[9] *See* CAA section 301(d) and 40 CFR part 49.

[10] Initial classifications for the 46 areas designated nonattainment for the 2008 ozone NAAQS included 36 Marginal, three Moderate, two Serious, three Severe, and two Extreme areas.

[11] *See* 40 CFR 51.1103(a) and 80 FR 12264, 12267 (March 6, 2015).

such adjustment is necessary or appropriate to assure consistency among the required submissions. Therefore, the EPA proposes in Section II.D of this action to adjust the deadlines for SIP revisions for any newly reclassified Severe nonattainment areas.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. Upon application by any state, the EPA may grant a 1-year extension of the attainment date for qualifying areas upon application by any state (Section II.B of this action). In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that the ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and reclassifies the area by operation of law to the higher of: (1) The next higher classification for the area, or (2) the classification applicable to the area's DV as of the determination of failure to attain.[12] Section 181(b)(2)(B) of the CAA requires the EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the Serious nonattainment areas considered in this proposal was January 20, 2022.

Once an area is reclassified, each state that contains a reclassified area is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than the Severe area attainment date of July 20, 2027. Per CAA section 182(i), each state containing an ozone nonattainment area reclassified as Severe under CAA section 181(b)(2) shall submit SIP revisions consistent with the schedules contained in CAA section 182(b) for Moderate areas, 182(c) for Serious areas and 182(d) for Severe areas, but the EPA ''may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' In Section II.D of this action, the EPA explains its proposal to adjust such deadlines.

D. How does the EPA determine whether an area has attained the 2008 ozone standard?

Under the EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.,* DV) does not exceed 0.075 ppm. When the DV does not exceed 0.075 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. The rounding convention in Appendix P dictates that concentrations shall be reported in parts per million to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and would exceed the standard, but a DV of 0.0759 is truncated to 0.075 and attains the 2008 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS).[13] Ambient air quality monitoring data for the 3-year period preceding the year of the attainment date (2018–2020 for the 2008 ozone NAAQS Serious areas) must meet the data completeness requirements in Appendix P.[14] The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

II. What is the EPA proposing and what is the rationale?

The EPA proposes this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether seven Serious ozone nonattainment areas attained the 2008 ozone NAAQS as of the attainment date of July 20, 2021. The EPA evaluated air quality monitoring data submitted by the appropriate state and local air agencies to determine the attainment status of the seven areas as of the applicable attainment date of July 20, 2021. This section describes the separate determinations and actions being proposed in this document.

A. Determinations of Attainment by the Attainment Date

The EPA proposes to determine, in accordance with CAA section 181(b)(2)(A) and the provisions of the 2008 Ozone NAAQS SIP Requirements Rule (40 CFR 51.1103), that the Greater Connecticut, CT, area attained the 2008 ozone NAAQS by the Serious area attainment date of July 20, 2021, based on its 2018–2020 DV (Table 1 of this action).

The EPA's Clean Data Policy,[15] as codified for the 2008 ozone NAAQS at 40 CFR 51.1118, suspends the requirements for states to submit certain attainment planning SIPs such as the attainment demonstration, including reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures for so long as an area continues to attain the standard. The EPA determined previously that the Greater Connecticut, CT, area was attaining the 2008 ozone standard and, therefore, suspended the requirements for the state to submit an attainment demonstration and associated RACM, RFP plans, contingency measures, and other attainment planning elements, in accordance with 40 CFR 51.1118.[16] Per that Clean Data Determination, these requirements will remain suspended until the area is redesignated to attainment for the 2008 ozone NAAQS (at which time the submission requirements would no longer apply), or the EPA determines that the area has violated the 2008 ozone standard, at which time the Clean Data Determination would be rescinded and the state would again be required to submit such Serious area elements for the Greater Connecticut, CT, nonattainment area.

This proposed determination of attainment by the attainment date does

[12] All nonattainment areas named in this action that failed to attain by the attainment date would be classified to the next higher classification, Severe. None of the affected areas has a DV that would otherwise place an area in a higher classification (also, *see* CAA section 181(b)(2)(A) exception for Extreme areas).

[13] The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for nonattainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at *https://www.epa.gov/aqs.*

[14] *See* 40 CFR part 50, appendix P, section 2.3(b).

[15] More information about the Clean Data Policy and redesignation guidance is available at *https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp.*

[16] For the Greater Connecticut, CT, area, the final 2008 ozone NAAQS Clean Data Determination was effective on August 12, 2020 (85 FR 41924, July 13, 2020).

not constitute formal redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations to attainment require the states responsible for ensuring attainment and maintenance of the NAAQS to meet the requirements under CAA section 110 and part D, including submitting for EPA approval a maintenance plan to ensure continued attainment of the standard for 10 years following redesignation, as provided under CAA section 175A.

The EPA requests comment on this proposed determination of attainment by the attainment date for the Greater Connecticut, CT, area. Further technical analysis supporting this proposed determination is in the TSD for this action, which is provided in the docket for this rulemaking.

B. Extension of Serious Area Attainment Date

1. Summary of Proposed Action for the Houston area

By way of letter dated April 5, 2021, the Texas Commission on Environmental Quality (TCEQ) requested an extension of the Houston area Serious area attainment date, which is provided in the docket for this rulemaking.[17] In this action, the EPA is proposing to deny TCEQ's request, but is also soliciting comment on whether it would be appropriate to grant the state's request.

By proposing to deny the requested 1-year attainment date extension for the Houston area and determining that the area failed to attain by the Serious area attainment date, this action, if finalized, would result in the area being reclassified as Severe. As described below, CAA section 181(a)(5) makes clear that the Administrator may exercise reasoned discretion to deny a request for a 1-year extension even where the statutory criteria for an extension are met. Here, even though the state meets the two statutory criteria for an extension, we propose to find that other considerations weigh in favor of not granting the state's request for an extension. First, as discussed in Section II.B.2.b of this action, preliminary data indicate that the area will not attain by an extended attainment date of July 20, 2022, nor is the area likely to qualify for a second extension. The EPA is concerned that extending the July 20, 2021, attainment date by an additional year, when preliminary data indicate the area will not reach attainment with that extension, would delay attainment planning requirements (including emissions control requirements) that are necessary for the area to expeditiously attain the NAAQS. Second, as discussed in Section II.B.2.b of this action, screening level analyses of portions of the Houston area indicate that individuals residing and working near the Houston Ship Channel and violating regulatory ozone monitoring sites may already be exposed to a significant pollution burden. Delays in implementing the more stringent requirements associated with reclassification would delay related air quality improvements and human health benefits for residents across the Houston area, including those that may already bear a disproportionate burden of pollution. Under these circumstances, we propose that it is a reasonable exercise of the Administrator's discretion under CAA section 181(a)(5) to deny the state's request.

2. Proposal To Deny the Requested 1-Year Attainment Date Extension and Determine the Houston Area Failed To Timely Attain

a. Summary and Legal Background

Section 181(a)(5) of the CAA provides the EPA the discretion to (*i.e.,* ''the Administrator may'') extend an area's applicable attainment date by 1 additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1107.

With respect to the first criterion, the EPA interprets the provision as having been satisfied if a state can certify that it is in compliance with its approved implementation plan. *See Delaware Dept. of Nat. Resources and Envtl. Control* v. *EPA,* 895 F.3d 90, 101 (D.C. Cir. 2018) (holding that the CAA requires only that an applying state with jurisdiction over a nonattainment area comply with the requirements in its applicable SIP, not every requirement of the Act); *see also Vigil* v. *Leavitt,* 381 F.3d 826, 846 (9th Cir. 2004). A state may meet this requirement by certifying its compliance, and in the absence of such certification, the EPA may make a determination as to whether the criterion has been met. *See Delaware,* 895 F.3d at 101–102. TCEQ certified that it is complying with its applicable SIP in its attainment date extension request, which is provided in the docket for this rulemaking.

With respect to the second criterion, the EPA has interpreted CAA section 181(a)(5)(B)'s exceedance-based air quality requirement for purposes of a concentration-based standard like the 2008 8-hour ozone NAAQS (*see* 40 CFR 51.1107). For the 2008 ozone NAAQS, the EPA has interpreted the air-quality criterion of CAA section 181(a)(5)(B) to mean that, for the first attainment date extension, an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard (0.075 ppm).[18] The Houston area's fourth highest daily maximum 8-hour value for 2020 was 0.075 ppm.

However, CAA section 181(a)(5) gives the EPA the discretion to either grant or deny a state's requested 1-year attainment date extension even where an area meets both of the statutory criteria. Specifically, that provision states, ''Upon application by any State, the Administrator *may* extend for 1 additional year . . . [the attainment date] if'' the two criteria are met. CAA section 181(a)(5) (emphasis added). Under this provision, the two enumerated criteria are necessary conditions, but, by granting discretion, the statute contemplates that in certain circumstances, it may still be reasonable to deny a state's request even if both conditions are met. The D.C. Circuit recently upheld the EPA's interpretation of a similarly constructed CAA provision, finding that ''[t]he statute requires this showing to be made, but once it has been made, the statute provides only that EPA 'may' expand the region, not that it 'shall' or 'must' do so . . . . In other words, this requirement is a necessary but not sufficient condition for expansion of the region.'' *New York* v. *EPA,* 921 F.3d 257, 298 (D.C. Cir. 2019) (internal citations omitted).

With respect to CAA section 181(a)(5), the D.C. Circuit has acknowledged that the provision grants the EPA discretion to look beyond the enumerated factors. *Delaware,* 895 F.3d 90, 100 (D.C. Cir. 2018) (noting that despite its holding that the EPA was not *required* to determine every state in a multi-state nonattainment area's compliance with its SIP under section 181(a)(5)(A), ''EPA nevertheless *retained discretion* to consider Delaware's compliance, given that the Act only dictates that EPA 'may' grant an extension when the statute's requirements are met'') (emphasis added). The court added that the EPA's exercise of discretion under this provision is subject to arbitrary-and-capricious review, such that the Agency ''must cogently explain why it has

[17] Baer, Tonya, Director, Office of Air, TCEQ. ''Request for a One-Year Extension of the Houston-Galveston-Brazoria (HGB) 2008 Eight-Hour Ozone Standard Attainment Date.'' April 5, 2021.

[18] *See* 40 CFR 51.1107 pertaining to determining eligibility under CAA section 181(a)(5)(B) for the first and the second 1-year attainment date extensions for the 2008 ozone NAAQS.

exercised *its discretion* in a given manner.'' *Id.* (emphasis in original) (citing *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Auto. Ins. Co.,* 463 U.S. 29, 48 (1983)). The statute does not compel the Agency to grant an extension when the two criteria are met, and it is reasonable to exercise our discretionary authority in light of the Act's goals.

CAA section 181(a)(5), which establishes the extension process for ozone nonattainment areas, mirrors the extension process established in the general nonattainment area provisions at CAA section 172(a)(2)(C), and is appropriately read in light of the Act's focus on the expeditious attainment of the NAAQS—both in subpart 2 specifically [19] and in Part D more generally. The ultimate goal of Part D of the CAA, which governs planning requirements for nonattainment areas, and the responsibility of states and the EPA under that section of the Act, is to drive progress in nonattainment areas towards attainment as expeditiously as practicable but by no later than the maximum attainment dates prescribed by the Act.[20] We think the EPA's discretion under the extension provision should also be exercised consistent with the broader purposes of the Act ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' [21] and Congress's ''primary goal'' in enacting the Clean Air Act to encourage and promote actions ''for pollution prevention.'' [22] The EPA therefore proposes to evaluate TCEQ's request mindful of the intent of the CAA's Part D nonattainment planning requirements to promote expeditious attainment to protect public health, as well as the Act's broader purposes.

In proposing this approach, we recognize that the CAA, and in particular those provisions of the Act related to implementation of requirements that are designed to achieve criteria pollutant standards (*i.e.,* attain the NAAQS), embodies principles of cooperative federalism. After the EPA sets the NAAQS to be protective of human health and the environment, the states, subject to the general nonattainment planning requirements of part D, subpart 1 and the pollutant-specific planning requirements of the additional subparts (in this case, part D, subpart 2), are generally permitted flexibility in deciding how to achieve those standards. However, within this context, we think the discretion provided by CAA section 181(a)(5) permits the EPA to weigh a state's prerogative to plan for attainment with other important considerations such as ensuring expeditious attainment of the NAAQS or mitigating particular impacts an action might have. CAA section 181(a)(5) is intended to provide flexibility where an area is close to achieving attainment and can likely do so with a bit more time, but we do not think it is appropriate to employ that process in a way that frustrates the goal of expeditious attainment, particularly where additional burden from delaying expeditious attainment would fall on already overburdened populations, as will be discussed later in this section. It is fully consistent with EPA's role in overseeing the state planning process to exercise its discretion to ensure that extensions under CAA section 181(a)(5) advance, rather than frustrate, the Act's ultimate goal of expeditious attainment to protect public health.

In this case, we do not think an attainment date extension would serve the purposes of the NAAQS extension provision, Part D's focus on timely attainment, or the Act's broader emphasis on public health protection. As discussed further in section II.B.2.b, Houston does not need only a little additional time to come into attainment of the 2008 ozone NAAQS; even with an extension, preliminary air quality data for 2021 indicate that the area will not attain. Granting an extension under these circumstances would amount only to delaying today's determination and reclassification, and ultimately could delay expeditious attainment of the NAAQS. As discussed further in section II.B.2.c., we also think it is reasonable for the EPA to consider whether those who will bear the additional burden caused by the extension are already overburdened by pollution, and we provide screening analyses indicating populations in the Houston area may be exposed to higher levels of ozone pollution and other burdens of pollution, relative to other Americans. We therefore propose to deny TCEQ's request for an extension, after considering that it is not prudent in this case to delay controls that are designed to achieve expeditious attainment of the NAAQS, and that delay would impact populations that may already bear a disproportionately high pollution burden, relative to the rest of the United States.

b. Air Quality Trends

The NAAQS are set at levels necessary to protect public health with an adequate margin of safety and to protect public welfare, and expeditious attainment of the standards would result in public health benefits across the Houston area. As shown in Table 1 of this action, the Houston nonattainment area did not attain the 2008 ozone NAAQS by the Serious area attainment date of July 20, 2021, based on its final 2018–2020 DV of 0.079 ppm. Moreover, while the Houston area meets the specific air quality criterion for an initial 1-year extension under 40 CFR 51.1107(a)(1), the area met that criterion with no room to spare—its attainment year fourth highest daily maximum 8-hour average concentration was 0.075 ppm (Table 1 of this action), *i.e.,* right at the level of the 2008 ozone NAAQS. Preliminary 2021 ozone monitoring data indicate the area likely will not attain the 2008 ozone NAAQS by July 20, 2022, nor qualify for a second 1-year extension. As of December 31, 2021, the Houston area's preliminary 2019–2021 DV was 0.077 ppm and the preliminary 2021 fourth highest daily maximum 8-hour value was 0.083 ppm.[23] With respect to a second 1-year extension, in order to qualify, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 0.075 ppm or less (40 CFR 51.1107(a)(2)). Based on 2021 preliminary data, the average of the two extension years for Houston would be 0.079 ppm.[24]

In addition, even if Houston were able to qualify for a second extension to July 20, 2023, historical air quality trends suggest it could be difficult for the area to attain the 2008 ozone standard by that date. As shown in Table 2,

[19] CAA section 181(a)(1).

[20] *See, e.g.,* CAA section 171(1) (defining reasonable further progress as annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date''); CAA section 172(a)(2)(A) (establishing attainment dates for the primary NAAQS as ''the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under [107(d)] of this title . . . ''); CAA section 172(c)(1) (requiring implementation of all reasonably available control measures as expeditiously as practicable and that plans provide for attainment of the NAAQS); CAA section 172(c)(6) (requiring state plans to include enforceable emission limitations, and such other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of the NAAQS by the applicable attainment date).

[21] CAA section 101(b)(1).

[22] CAA section 101(c).

[23] Current TCEQ data report is available at *https://www.tceq.texas.gov/cgi-bin/compliance/monops/8hr_attainment.pl.*

[24] 0.083 ppm [2021 preliminary fourth high] + 0.075 ppm [2020 fourth high] = 0.158/2 = 0.079 ppm.

historical DVs for the area (2014–2020) have fluctuated between 0.078 and 0.081 ppm without a consistent downward trend during this time period,[25] and the area would need a DV of 0.075 ppm to attain.

TABLE 2—HOUSTON NONATTAINMENT AREA HISTORICAL OZONE DVS

Values (ppm) for DV Period						
2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020
0.080	0.080	0.079	0.081	0.078	0.081	0.079

We note that in addition to the state's obligation to attain the 2008 ozone NAAQS, Houston is also well out of attainment of the 2015 ozone NAAQS, which is set at 0.070 ppm. CAA emissions reduction measures associated with reclassification that are designed to help Houston achieve attainment of the less stringent 2008 ozone NAAQS would also aid the area in attaining the newer, more stringent 2015 ozone standard. The EPA is proposing in a separate action to find that the Houston area failed to attain the 2015 ozone NAAQS by its Marginal area attainment date of August 3, 2021; if finalized, the area would be reclassified as Moderate for the 2015 ozone NAAQS and subject to a new attainment date of August 3, 2024, for that NAAQS. We are concerned that granting the state's request for an attainment date extension for the 2008 ozone NAAQS, when the area's 2020 fourth high daily maximum average concentration just barely met the regulatory criterion and the preliminary 2021 fourth high daily maximum average concentration is above the regulatory criterion, would not facilitate the area's expeditious attainment of that standard. As noted, the purpose of the Act's extension provisions is to provide limited flexibility in the attainment date for areas that are close to attaining the NAAQS and likely could do so with a bit more time. We do not think that purpose is served by extending the attainment date where the preliminary data indicate that an extension that would simply delay a determination that the area failed to timely attain the 2008 ozone NAAQS, which would in turn delay the implementation of Severe area permitting and control requirements that may be necessary for the area's attainment.

c. Environmental Justice

Where the statute has provided the Administrator a discretionary authority in the attainment date extension provisions, we think it is reasonable to consider the existing environmental burden in the area in question, and what impact our action may have on that burden. Granting the state's request would by definition prolong the ozone air quality problem; it would extend the deadline by which the Houston area must achieve the applicable air quality standards that were set at a level to protect public health (and in fact have been further tightened since). Consideration of the existing pollution burden already borne by the population that will be impacted by our action is a relevant factor of reasoned decisionmaking. The EPA therefore performed screening analyses to better understand the pollution burdens borne by the population that will be affected by the requested extension in order to fully understand the potential public health ramifications of the extension. That analysis demonstrated that there are populations in the Houston area that are potentially already significantly overburded by pollution compared to the wider U.S. population, and who would be adversely affected by an extension of the attainment date.

Our proposed action is also consistent with multiple executive orders addressing environmental justice as well as an April 7, 2021 directive by the EPA Administrator.[26] [27] In that directive, the Administrator instructed all EPA offices to take immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.[28]

Screening Analyses

To conduct the screening analyses, we used the EJSCREEN tool, an EJ mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators, to undertake these analyses.[29] The EJSCREEN tool presents these indicators at a Census block group (CBG) level.[30] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[31] To help mitigate this uncertainty, we have summarized EJSCREEN data within larger ''buffer'' areas covering multiple block groups and representing the average resident within the buffer areas, as well as a summary report covering the 8-county Houston nonattainment area included in

[25] Also at *https://www.epa.gov/air-trends/air-quality-design-values.*

[26] Message from the EPA Administrator, Our Commitment to Environmental Justice (issued April 7, 2021) at *https://www.epa.gov/sites/production/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf.*

[27] *See* E.O. 13985 (''Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' issued January 20, 2021, available at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* and 86 FR 7009 (January 25, 2021)) and E.O. 12898 (''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' issued February 11, 1994, available at *https://www.epa.gov/sites/production/files/2015-02/documents/exec_order_12898.pdf* and 59 FR 7629 (February 16, 1994)).

[28] The EPA has defined environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.'' *See https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[29] EJ SCREEN tool is available at *https://www.epa.gov/ejscreen/what-ejscreen.*

[30] *See https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[31] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

the docket for this rulemaking. We present ozone DVs for 2018–2020 as an indicator of potential ozone pollution exposure,[32] as well as additional EJSCREEN environmental indicators to help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population. These additional indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[33] EJSCREEN also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education.

We focused these analyses on portions of the Houston nonattainment area in close proximity to the Port of Houston's Ship Channel and its industrial sources and activities, and on portions of the Houston nonattainment area surrounding violating ozone regulatory air quality monitor sites. We examined the extent to which residents living in these areas are exposed to high ozone concentrations and may be exposed to other pollution sources, relative to the Houston area and the U.S. population as a whole.[34]

Screening Analysis Results for Port of Houston Ship Channel

We elected to center an analysis on the Port of Houston's Ship Channel because we are aware of the dense concentration of industrial and commercial facilities and infrastructure located along the Channel.[35] Houston and the surrounding areas experience some of the highest economic and population growth rates in the U.S., and the Port of Houston region is ranked the highest in the U.S. for total waterborne cargo tonnage. Each year, more than 247 million tons of cargo move through the greater Port of Houston, carried by more than 8,200 vessels and 215,000 barges. The Port of Houston includes the public terminals owned, managed, operated, and leased by the Port of Houston Authority and the 150-plus private industrial companies along the 52-mile-long Houston Ship Channel. Typical sources of air emissions from port-related operations include heavy-duty vehicles, cargo handling equipment, locomotives, harbor vessels, ocean-going vessels, and liquids loading and unloading operations.

The EPA prepared three EJSCREEN reports covering buffer areas of approximately 1-, 2- and 3-mile diameters around the analyzed section of the Channel, and a report covering the 8-county Houston nonattainment area.[36] The analyzed section falls between the Channel's upstream terminus (referred to as the Turning Basin) and a selected downstream boundary corresponding with the Washburn Tunnel (Federal Road), which connects the Houston suburbs of Galena Park and Pasadena. In addition to residential sections of Galena Park and Pasadena, the buffer areas also include, *e.g.,* parts of the Second Ward, Greater East End, Pecan Park and Harrisburg/Manchester communities. Table 3 presents a summary of results from the EPA's screening-level analysis for the Houston Ship Channel area compared to the overall Houston nonattainment area and the U.S. as a whole (the four detailed EJSCREEN reports are provided in the docket for this rulemaking). Table 3 also includes ozone DVs that were not reported by EJSCREEN (see Footnote 28).

TABLE 3—HOUSTON SHIP CHANNEL EJSCREEN ANALYSIS SUMMARY

Variables	Values for buffer areas (diameter), the Houston nonattainment area, and the U.S. (percentile within U.S. where indicated)				
	1 mile	2 miles	3 miles	Houston area	U.S.
Pollution Burden Indicators:					
Ozone DV for 2018–2020*	69 ppb (78th %ile)	69 ppb (78th %ile)	69 ppb (78th %ile)	79 ppb (95th %ile)	65 ppb (—)
Particulate matter ($PM_{2.5}$), annual average.	9.97 μg/m³ (89th %ile).	9.93 μg/m³ (89th %ile).	9.92 μg/m³ (89th %ile).	9.25 μg/m³ (72nd %ile).	8.55μg/m³ (—)
Traffic proximity and volume score**	620 (72nd %ile)	1,100 (83rd %ile)	1,300 (85th %ile)	245 (48th %ile)	750 (—)
Lead paint (percentage pre-1960 housing).	0.65% (85th %ile)	0.61% (83rd %ile)	0.59% (82nd %ile)	0.09% (36th %ile)	0.28% (—)
Superfund proximity score**	0.26 (90th %ile)	0.31 (91st %ile)	0.35 (92nd %ile)	0.09 (56th %ile)	0.13 (—)
RMP proximity score**	4.1 (98th %ile)	4.5 (98th %ile)	4 (97th %ile)	0.95 (69th %ile)	0.74 (—)
Hazardous waste proximity score**	4.7 (83rd %ile)	4.8 (83rd %ile)	4.5 (82nd %ile)	0.71 (41st %ile)	5 (—)
Demographic Indicators:					
People of color population	95% (94th %ile)	95% (93rd %ile)	93% (92nd %ile)	49% (64th %ile)	39% (—)
Low-income population	59% (87th %ile)	56% (85th %ile)	55% (84th %ile)	30% (51st %ile)	33% (—)
Linguistically isolated population	31% (97th %ile)	30% (97th %ile)	26% (96th %ile)	6% (72nd %ile)	4% (—)
Population with less than high school education.	48% (97th %ile)	46% (97th %ile)	44% (97th %ile)	15% (67th %ile)	13% (—)
Population under 5 years of age	7% (66th %ile)	8% (69th %ile)	8% (72nd %ile)	7% (63rd %ile)	6%
Population over 64 years of age	12% (40th %ile)	10% (29th %ile)	9% (27th %ile)	12% (38th %ile)	15% (—)

*The buffer areas are assigned the DV for the single monitor site within the analyzed buffer diameter (Clinton). The Houston nonattainment area DV is based on the highest DV among the individual monitor sites in the area (Aldine).

[32] The ozone metric in EJSCREEN represents the summer seasonal average of daily maximum 8-hour concentrations (parts per billion, ppb) and was not used in our EJ analyses because it does not represent summertime peak ozone concentrations, which are instead represented here by the DV metric. Ozone DVs are the basis of attainment determinations in this proposed action, and in this case we consider it a more informative indicator of pollution burden relative to the overall Houston area and the U.S. as a whole.

[33] For additional information on environmental indicators and proximity scores in EJSCREEN, *see* ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' Chapter 3 and Appendix C (September 2019) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

[34] Ozone pollution is not generally directly emitted but is formed near the ground when precursor pollutants chemically react in sunlight; these ozone precursors include nitrogen oxides (NO_X) and volatile organic compounds (VOCs) emitted by vehicles and industrial sources, and can include VOCs that are hazardous air pollutants (HAPs).

[35] The American Society of Civil Engineers describes the Houston Ship Channel as stretching from the Gulf of Mexico through Galveston Bay and up the San Jacinto River, ending four miles east of downtown Houston, and supporting the second largest petrochemical complex in the world; *see https://www.asce.org/project/houston-ship-channel/.*

[36] The Houston-Galveston-Brazoria, Texas nonattainment area for the 2008 ozone NAAQS is comprised of the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller County. *See also https://www3.epa.gov/airquality/greenbook/hbcs.html#TX.*

** The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

Our screening-level analysis of the Houston Ship Channel area strongly suggests that communities within the selected buffer areas bear a disproportionate overall pollution burden as indicated by high percentile values for ozone and multiple EJSCREEN environmental indicators.

Screening Analysis Results for Violating Regulatory Ozone Monitor Sites

The EPA also ran an EJSCREEN analysis focused on areas within the Houston nonattainment area that are highly exposed to ozone pollution. Specifically, we selected representative locations by examining historical DV trends for the 20 regulatory ozone monitoring sites in the Houston area (five most recent DV periods covering 2014–2016 to 2018–2020), identifying the monitor sites most frequently included in the top three highest DVs, and preparing 1-mile diameter buffer area reports for the resulting four sites. The four analyzed monitor sites and their number of top-3 DV periods were Aldine (5 of 5 DV periods), Bayland Park (4 of 5 DV periods), Galveston 99th Street (3 of 5 DV periods), and Conroe Relocated (2 of 5 DV periods).[37]

Table 4 presents a summary of results from the EPA's screening-level analysis of 1-mile diameter buffer areas around the four analyzed regulatory ozone monitor sites in the Houston area compared to the overall Houston nonattainment area and the U.S. as a whole (detailed EJSCREEN reports are provided in the docket for this rulemaking). Table 4 also presents ozone DV information for the monitor sites (see Footnote 28).

TABLE 4—HOUSTON AREA VIOLATING OZONE MONITOR EJSCREEN ANALYSIS SUMMARY

Variables	Values for monitor site (1-mile buffer), the Houston nonattainment area, and the U.S. (percentile within U.S. where indicated)					
	Aldine	Bayland Park	Galveston 99th St.	Conroe relocated	Houston area	U.S.
Pollution Burden Indicators:						
Ozone DV for 2018–2020	79 ppb (95th %ile)	76 ppb (92nd %ile)	74 ppb (90th %ile)	74 ppb (90th %ile)	79 ppb* (95th %ile)	65 ppb (—)
Particulate matter ($PM_{2.5}$), annual average.	10 μg/m³ (90th %ile).	9.95 μg/m³ (89th %ile).	8 μg/m³ (32nd %ile).	9.62 μg/m³ (84th %ile).	9.25 μg/m³ (72nd %ile).	8.55 μg/m³ (—)
Traffic proximity and volume score**.	800 (78th %ile)	870 (79th %ile)	380 (62nd %ile)	84 (32nd %ile)	245 (48th %ile)	750 (—)
Superfund proximity score**.	0.092 (63rd %ile)	0.14 (78th %ile)	0.1 (68th %ile)	0.83 (97th %ile)	0.09 (56th %ile)	0.13 (—)
RMP proximity score**	0.13 (23rd %ile)	0.37 (53rd %ile)	1.2 (80th %ile)	0.97 (75th %ile)	0.95 (69th %ile)	0.74 (—)
Hazardous waste proximity score**.	2.1 (66th %ile)	0.94 (49th %ile)	0.083 (11th %ile)	1.2 (53rd %ile)	0.71 (41st %ile)	5 (—)
Demographic Indicators:						
People of color population	96% (94th %ile)	84% (86th %ile)	31% (50th %ile)	38% (56th %ile)	49% (64th %ile)	39% (—)
Low-income population	61% (89th %ile)	60% (88th %ile)	35% (60th %ile)	28% (49th %ile)	30% (51st %ile)	33% (—)
Linguistically isolated population.	54% (99th %ile)	29% (97th %ile)	1% (50th %ile)	7% (79th %ile)	6% (72nd %ile)	4% (—)
Population with less than high school education.	54% (98th %ile)	33% (92nd %ile)	8% (47th %ile)	19% (77th %ile)	15% (67th %ile)	13% (—)
Population under 5 years of age.	8% (71st %ile)	9% (81st %ile)	2% (11th %ile)	7% (65th %ile)	7% (63rd %ile)	6% (—)
Population over 64 years of age.	9% (24th %ile)	7% (16th %ile)	17% (66th %ile)	15% (55th %ile)	12% (38th %ile)	15% (—)

* The Houston nonattainment area DV for 2018–2020 is based on the highest DV among the individual monitor sites in the area (Aldine).

** The traffic proximity and volume indicator is a score calculated by daily traffic count divided by distance in meters to the road. The Superfund proximity, RMP proximity, and hazardous waste proximity indicators are all scores calculated by site or facility counts divided by distance in kilometers.

Ozone DV information for the four Houston area ozone monitor sites with the highest historical ozone DVs indicates that these areas bear a disproportionate ozone pollution burden when compared to the U.S. as a whole. The average U.S. ozone DV for the 2018–2020 timeframe was 65.4 ppb; for the four Houston monitors examined, ozone DVs were 9–14 ppb higher during the same time period. We also note that, while Table 4 indicates the Houston area ozone DV for 2018–2020 was 0.079 ppm, that DV is based on the reading from the Aldine monitor (area DVs are based on the monitor in the area with the highest recorded values). Ozone air quality near these monitors is considerably worse than the rest of Houston; for the five most recent DV periods considered in these analyses, approximately 75 percent of the Houston area ozone monitor sites have had attaining DVs.[38] Residents living near these monitors are therefore subject to ozone concentrations that are well in excess of the national average, and high even relative to the rest of Houston. The screening-level analysis with respect to other pollution burdens (as reflected in the environmental indicators from EJSCREEN) shows that communities around violating monitors may also experience significant burdens with respect to, *e.g.,* particulate matter pollution and proximity to traffic.

[38] *See* Table 5 (Site Status) of the spreadsheet containing EPA's final 2020 Ozone Design Values report, available at *https://www.epa.gov/air-trends/air-quality-design-values#report* and provided in the docket for this rulemaking.

Conclusion

As discussed earlier, screening analyses for portions of the Houston nonattainment area indicated that there are populations in the area that may be exposed to a significant and disproportionate burden of ozone pollution and other sources of pollution, relative to the greater Houston area and the U.S. as a whole. Recognizing that CAA section 181(a)(5) permits some exercise of discretion beyond the enumerated criteria, the EPA believes it is appropriate to consider existing pollution burdens in the area when deciding whether to grant an extension. Given the EPA's findings regarding the area's air quality trends, our consideration of existing pollution burdens in the area weighs in favor of

electing the more protective approach of not extending the attainment date.

d. Stakeholder Input and Agency Outreach

EPA's screening analyses for both the Houston Ship Channel and areas surrounding violating ozone monitors indicated the presence of significant populations of low-income individuals, communities of color, individuals with less than a high school education, and linguistically isolated individuals, relative to the greater Houston area and to the U.S. as a whole.

As part of the EPA's outreach for this proposed rule, we will notify our national EJ contacts and the advocacy organizations with whom we have engaged previously on Houston-area EJ concerns about the availability of the pre-publication version of this proposed rule, the conduct of a 60-day public comment period, and the anticipated timing of a virtual public hearing (see the **SUPPLEMENTARY INFORMATION** section of this document). The EPA will also make available a fact sheet in English and Spanish-language versions for this proposed rule, explaining the proposed actions and their implications in non-technical terms to better engage a broad audience that includes residents that may be particularly impacted by existing pollution or would be impacted by the EPA's determination. We are hopeful these steps will improve the capacity of all residents in the Houston area to participate in this proposed rulemaking.[39]

e. Proposed Action

Based on the analysis of air quality trends and EJ considerations presented above, the EPA proposes to deny the requested 1-year extension of the attainment date and to find that the Houston area failed to attain by the July 20, 2021, Serious area attainment date. This proposal is based on a number of considerations that, taken together, weigh in favor of proposing to deny the state's request, even though the area meets the statutory criteria for an extension. Specifically, the EPA's assessment of air quality trends in the Houston area indicates the area likely will not qualify for a second 1-year extension of the attainment date, nor will the area likely timely attain by a first extended attainment date of July 20, 2022. We are also cognizant of the area's obligations to attain the newer, more stringent 2015 standard. In addition, the EPA's screening-level analyses of communities near the Houston Ship Channel and of communities around violating ozone regulatory monitor sites in the Houston area indicate communities that are exposed to elevated ozone levels relative to other parts of Houston and the country, and may be exposed to additional pollution burdens as well.

Denying the extension request and determining that the Houston area failed to attain the 2008 ozone NAAQS by its attainment date would, by operation of law, reclassify the area to Severe for the 2008 ozone NAAQS. Per Congress's scheme for ozone implementation under part D, subpart 2 of the CAA, such a reclassification would trigger a set of more protective Severe area attainment planning requirements. Such requirements would include the immediate implementation of more stringent Severe area nonattainment new source review (NNSR) permitting requirements for new and modified major stationary sources. These Severe area NNSR permitting requirements would expand required implementation of lowest achievable emission rate (LAER) to smaller sources (changing the major source threshold of potential to emit from 50 tpy to 25 tpy) in addition to imposing more stringent requirements to offset new emissions with emissions reductions from existing sources (offset ratio of 1.3:1, rather than 1.2:1).[40] The reclassification would also require Texas to develop, submit, and implement RACT controls on additional sources, by lowering the major source threshold for RACT applicability to the potential to emit 25 tpy (CAA section 182(d)).

The more stringent Severe area attainment planning requirements are designed to promote expeditious attainment of the ozone NAAQS, which would benefit all residents of the Houston area. As discussed previously, preliminary air quality data for 2021 indicates that the area likely will not attain by the extended attainment date nor will it likely qualify for a second extension. Given the preliminary 2021 data and air quality trends in the area, it is likely that the Houston area will be subject to these more stringent requirements and the question before the Agency is whether to impose them sooner rather than later. We propose that avoiding delay of the requirements is appropriate under these circumstances in order to facilitate the area attaining as expeditiously as practicable, and applying a protective approach is particularly warranted where the Agency has identified populations that may already be overburdened with pollution.

The EPA is soliciting comments on our proposal to deny TCEQ's requested 1-year attainment date extension for the Houston Serious nonattainment area.

3. Solicitation of Comment on Granting the Requested 1-Year Attainment Date Extension for the Houston Area

As noted above, we have evaluated the information submitted by TCEQ and the information indicates that the Houston area meets the two statutory criteria for the 1-year extension under CAA section 181(a)(5) and 40 CFR 51.1107(a)(1). We take comment on whether the EPA should grant the requested 1-year extension of the July 20, 2021, Serious area attainment date for the Houston area.

If made effective, the attainment date for the Houston area would be extended to July 20, 2022. This means the area would remain classified as Serious for the 2008 ozone NAAQS unless and until the EPA makes a determination that the area failed to attain the NAAQS by the new attainment date (based on the area's 2019–2021 DV) and thus reclassifies the area to Severe by operation of law, or redesignates the area to attainment. The EPA solicits comments on granting the 1-year attainment date extension for the Houston Serious nonattainment area.

C. Determinations of Failure To Attain and Reclassification

The EPA proposes to determine that five Serious nonattainment areas failed to attain the 2008 ozone NAAQS by the attainment date of July 20, 2021. These areas are not eligible for a 1-year attainment date extension because they do not meet the extension criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1107. The areas' ozone DVs for 2018–2020 are shown in Table 1 of this action.

If we finalize our action as proposed, each of these areas will be reclassified as Severe nonattainment for the 2008 ozone NAAQS, the next higher classification, as provided under CAA section 181(b)(2)(A)(i) and codified at 40 CFR 51.1103. These areas would then be required to attain the standard as expeditiously as practicable but no later than 15 years after the initial designation as nonattainment, which in this case would be no later than July 20, 2027. If an area attains the 2008 ozone

[39] For additional discussion of factors affecting public participation in the environmental decision-making process *see* ''Guidance on Considering Environmental Justice During the Development of Regulatory Actions,'' Part 1, Section F (May 2015) at *https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf.*

[40] NNSR major source thresholds and LAER are defined in 40 CFR 51.165(a)(1)(iv)(A) and (a)(1)(xiii), respectively; emission offset ratios are defined in appendix S to 40 CFR part 51 paragraph IV.G.2.

NAAQS, the relevant state may seek a Clean Data Determination, under which certain attainment planning SIPs for the area would be suspended under 40 CFR 51.1118. If an area meets all the other applicable statutory criteria, the state could seek a redesignation to attainment (Section II.A of this action).

The EPA requests comment on this proposal for determining that these areas did not attain the 2008 ozone NAAQS by the Serious area attainment date.

D. Severe Area SIP Revisions

Serious nonattainment areas that the EPA has determined failed to attain the 2008 ozone NAAQS by the attainment date will be reclassified as Severe by operation of law upon the effective date of the final reclassification action. Each responsible state air agency must submit SIP revisions that satisfy the general air quality planning requirements under CAA section 172(c) and the ozone specific requirements for Severe nonattainment areas under CAA section 182(d), as interpreted and described in the final SIP Requirements Rule for the 2008 ozone NAAQS (*see* 40 CFR 51.1100 *et seq.*). This section provides discussion of particular Severe area plan elements (RACM and RACT, fee program, and transportation-related requirements), and proposes submission and implementation deadlines for Severe area SIP revisions required by reclassification. As noted previously, tribes are not required to submit TIP revisions to address Severe area plan elements.

1. Required Submission Elements

SIP requirements that apply to Severe areas are cumulative of CAA requirements for lower area classifications (*i.e.,* Marginal through Serious) and include additional Severe area requirements as interpreted and described in the final SIP Requirements Rule for the 2008 ozone NAAQS (*see* CAA sections 172(c)(1) and 182(a)–(d), and 40 CFR 51.1100 *et seq.*). For areas reclassified as Severe, SIP submissions must address the more stringent major source threshold of 25 tons per year (tpy) [41] for RACT and NNSR, and the more stringent NNSR emissions offset ratio of 1.3:1.[42] In order to fulfill their Severe area SIP submission requirements, states may, where appropriate, certify that existing SIP provisions for an area are adequate to address one or more Severe area requirements. Such certifications must be submitted as a SIP revision.[43] We are providing additional discussion in the following sections for these Severe area requirements: (a) RACM and RACT; (b) fee program for major sources if the Severe area fails to attain (CAA section 185); and (c) vehicle miles traveled offset demonstration and related elements (CAA section 182(d)(1)). Although not a required SIP submission, we are also providing a discussion of federal reformulated gasoline requirements (CAA section 211(k)(10)(D)) that would apply in newly reclassified Severe areas (Section II.D.1.d of this action).

a. RACM and RACT

States with jurisdiction over all or a portion of an ozone nonattainment area classified as Moderate or higher must provide an analysis of—and adopt all—RACM, including RACT, needed for purposes of meeting RFP and timely attaining the ozone NAAQS in that area. EPA interprets the RACM provision to require a demonstration that the state has adopted all technologically and economically feasible measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area (80 FR 12264, 12282 March 6, 2015). For areas reclassified as Severe, such an analysis should primarily include an evaluation of currently available RACT controls for sources that emit or have the potential to emit 25 tpy or more, consistent with the Severe area classification. CAA section 182(d) establishes a major source threshold of 25 tpy for areas designated Severe. Under CAA section 182(b)(2)(C), states must provide a SIP submission to adopt RACT for all major sources of VOC located in the nonattainment area, and section 182(f) applies this requirement to NO_X. As such, areas classified as Severe must adopt RACT for all sources in the nonattainment area that emit, or have the potential to emit, at least 25 tpy of VOC or NO_X. The EPA recognizes that in the context of a reclassification to Severe, these areas should already have RACT in place to address the lower classifications' requirements (those required when the areas were previously classified as Moderate and/or Serious); RACT should already be implemented in these areas for sources that emit, or have the potential to emit, at least 50 tpy of VOC or NO_X. CAA subpart 2 requirements are cumulative and Severe areas are required to address not only those requirements listed in CAA section 182(d) but also in sections 182(a) and (c), to the extent those requirements are not superseded by the more stringent requirements in section 182(d) and/or have not been previously addressed. However, states with areas reclassified as Severe should be primarily focused on identifying and adopting new RACT measures required to control sources with the potential to emit between 25 to 50 tpy of VOC or NO_X.

The EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas.[44] In addition to the independent RACT requirement, states have a statutory obligation to evaluate potential RACM and adopt such measures needed to meet RFP requirements and to demonstrate attainment as expeditiously as practicable when also considering emissions reductions associated with the implementation of RACT on sources in the area.[45] Therefore, to the extent

[41] ''For any Severe Area, the terms 'major source' and 'major stationary source' include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.'' CAA section 182(d).

[42] *See* CAA section 182(d)(2). If a state's plan requires all existing major sources in the nonattainment area to use best available control technology for VOCs consistent with CAA section 169(3), the required offset ratio is 1.2 to 1.

[43] Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS. This review should include determining whether the nonattainment area boundary for the current ozone NAAQS is consistent with the boundary for the previous standards. Where an air agency determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements of CAA section 182 (or ozone transport region RACT requirements of CAA section 184) for a revised ozone NAAQS, that air agency's SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations.

[44] *See* Memo from John Seitz, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (1995), at 5 (explaining that Subpart 2 requirements linked to the attainment demonstration are suspended by a finding that a nonattainment area is attaining but that requirements such as RACT must be met whether or not an area has attained the standard); *see also* 40 CFR 51.1118 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment).

[45] Though not directly a part of a nonattainment area RACM analysis, the EPA has interpreted CAA section 172(c)(6) to require that air agencies also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries) and must include in the RACM

that a state adopts new or additional RACT controls to meet RFP requirements or to demonstrate attainment as expeditiously as practicable, those states must include such RACT revisions with the other SIP elements due as part of the attainment plan required under CAA sections 172(c) and 182(d).

b. Fee Program for Severe Areas That Fail To Attain in the Future

CAA section 185 requires that states develop SIP revisions for Severe and Extreme areas that provide that, if the area fails to timely attain the ozone NAAQS in the future, each major stationary source of VOCs located in the area shall (except in the case of an attainment date extension) pay a fee to the State as a penalty for such failure. Section 185(b) of the CAA specifies the method for computing the fee amount. The fee is payable for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

The EPA's fee program provisions, codified for the 2008 ozone NAAQS at 40 CFR 51.1117, require states with ozone nonattainment areas initially classified Severe or Extreme to submit a SIP revision that meets the requirements of CAA section 185 within 10 years of the effective date of an area's nonattainment designation. For nonattainment areas reclassified as Severe or Extreme [46] from a lower classification after the date of their initial nonattainment designation, the EPA retains the ability to set an alternative deadline for the CAA section 185 SIP submission, which is discussed in Section II.D.2 of this action.

c. Vehicle Miles Traveled Offset Demonstration and Related Elements

CAA section 182(d)(1)(A) requires a state with a Severe or Extreme ozone nonattainment area to submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures (TCMs) to offset any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips in such area.[47] The EPA has provided guidance titled, ''Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled.'' [48] The guidance describes how to demonstrate whether there has been any growth in emissions from growth in VMT or growth in the number of vehicle trips. The EPA has also developed a tool for use with the MOVES3 emission factor model that allows states to perform the calculations described in the guidance.[49] If the demonstration shows that there has been an increase in emissions due to growth in VMT or vehicle trips, the state must adopt transportation control strategies or TCMs to offset the identified increase in emissions due to growth in VMT or vehicle trips in the nonattainment area and submit those transportation control strategies or TCMs as a SIP revision.

CAA section 182(d)(1)(A) additionally requires that states with Severe and Extreme ozone nonattainment areas submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and TCMs to obtain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements, to comply with RFP requirements. Finally, CAA section 182(d)(1)(A) requires states to consider measures specified in CAA section 108(f) and choose from among those measures and implement such measures as necessary to demonstrate attainment with the relevant ozone NAAQS. CAA section 182(d)(1)(A) also requires that in considering these measures, states should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Section II.D.2 of this action discusses the proposed SIP submission and implementation deadlines for the VMT offset demonstration and any necessary transportation control strategies and TCMs for newly reclassified Severe areas.

d. Reformulated Gasoline

The CAA prohibits the sale of conventional gasoline in any ozone nonattainment area that is reclassified as Severe and requires that federal reformulated gasoline (RFG) must instead be sold. The prohibition on the sale of conventional gasoline takes effect 1 year after the effective date of the reclassification (*see* CAA section 211(k)(10)(D)). Many of the areas discussed in today's proposal already sell RFG because of their 1987–1989 DVs for the 1-hour ozone NAAQS [50] or because states opted areas into RFG under CAA section 211(k)(6)(A). Areas already subject to federal RFG requirements are listed in 40 CFR 1090.285(a)–(d). Following is a discussion of how subject areas would be impacted if the EPA finalizes its proposed determinations of failure to attain and reclassifications to Severe for the 2008 ozone NAAQS. It is important to note that for any areas that are reclassified as Severe for the 2008 ozone NAAQS, states would not promulgate state fuel rules for implementing federal RFG because the CAA requirements would be implemented as written. Air agencies are thus not required to submit a SIP revision addressing RFG requirements, and we are not proposing related SIP submission and implementation deadlines. The EPA would instead publish another final rule at a later date to appropriately revise the lists of RFG covered areas in 40 CFR 1090.285 for administrative purposes (*see* 40 CFR 1090.290(e)).

New York-N. New Jersey-Long Island, NY-NJ-CT

The New York-N. New Jersey-Long Island, NY-NJ-CT area (herein referred to as the New York City area) is one of the nine federal RFG areas where the sale of conventional gasoline is currently prohibited because of its 1987–1989 1-hour ozone NAAQS DV. However, there are some geographic differences between the New York-Northern New Jersey-Long Island-Connecticut federal RFG area and the

analysis other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. For discussion of this ''other control measures'' provision *see also* the final rule to implement the 2015 ozone NAAQS (83 FR 63015, December 6, 2018, and 40 CFR 51.1312(c)), the Phase 2 proposed rulemaking (68 FR 32829, June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623, November 29, 2005), and the final rule to implement the $PM_{2.5}$ NAAQS (81 FR 58035, August 24, 2016).

[46] The EPA interprets CAA section 181(b)(2)(A) as prohibiting reclassification of any nonattainment area by operation of law to Extreme for failure to timely attain; however, states may request, and the Administrator shall grant, a state's request for voluntary area reclassification to Extreme under CAA section 181(b)(3).

[47] Transportation control strategies include diesel engine and vehicle replacement programs and TCMs include mass transit improvements and bicycle and pedestrian programs.

[48] Guidance on implementing the CAA section 182(d)(1)(A) requirement for offsetting growth in emissions due to growth in VMT is available at *https://www.epa.gov/state-and-local-transportation/transportation-related-documents-state-and-local-transportation.*

[49] The MOVES3 VMT offset tool is available at *https://www.epa.gov/moves/tools-develop-or-convert-moves-inputs#special-inputs.*

[50] CAA section 211(k)(10)(D) required that the ''. . . 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone DV during the period 1987 through 1989 shall be 'covered areas' for purposes of this subsection.''

2008 ozone NAAQS nonattainment area. Warren County, NJ and all of Fairfield, Middlesex and New Haven Counties in Connecticut are part of the 2008 ozone NAAQS nonattainment area but are not included in the current New York-Northern New Jersey-Long Island-Connecticut federal RFG area. However, the sale of conventional gasoline is already prohibited in these four counties as follows. Warren County, NJ is an RFG opt-in area (*see* 40 CFR 1090.285(c)). A portion of Fairfield County, Connecticut is already part of the New York-Northern New Jersey-Long Island-Connecticut federal RFG area and the remainder of Fairfield County is already part of the Greater Connecticut, CT, federal RFG area. Finally, Middlesex and New Haven Counties in Connecticut are already part of the Greater Connecticut, CT, federal RFG area (*see* 40 CFR 1090.285(a)).

Therefore, if the New York City area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to where federal RFG is sold in the nonattainment area.

Chicago-Naperville, IL-IN-WI

The Chicago-Naperville, IL-IN-WI area (herein referred to as the Chicago area) is one of the nine federal RFG areas where the sale of conventional gasoline is prohibited because of its 1987–1989 1-hour ozone NAAQS DV (*see* 40 CFR 1090.285(a)). However, there is one difference between the Chicago-Gary-Lake County federal RFG area and the Chicago 2008 ozone NAAQS nonattainment area. Part of Kenosha County, WI is included in the Chicago 2008 ozone nonattainment area. The sale of conventional gasoline is already prohibited in Kenosha County, WI because it is part of the Milwaukee-Racine federal RFG area. Therefore, if the Chicago area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to where federal RFG is sold in the nonattainment area (*see* 40 CFR 1090.285(a)).

Houston-Galveston-Brazoria, TX

The Houston-Galveston-Brazoria area (herein referred to as the Houston area) is one of the nine federal RFG areas where the sale of conventional gasoline is prohibited because of its 1987–1989 1-hour ozone NAAQS DV (*see* 40 CFR 1090.285(a)). The Houston 2008 ozone NAAQS nonattainment area and the Houston-Galveston-Brazoria federal RFG area are identical. Therefore, whether or not the Houston area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to where federal RFG is sold in the nonattainment area.

Dallas-Fort Worth, TX

The sale of conventional gasoline is already prohibited in Colin, Dallas, Denton, and Tarrant Counties because Texas chose to opt the 4-county Dallas-Fort Worth 1-hour ozone nonattainment area into RFG (*see* 57 FR 46316, October 8, 1992, and 40 CFR 1090.285(c)). If the 10-county Dallas-Fort Worth 2008 ozone NAAQS nonattainment area is reclassified as Severe, the prohibition on the sale of conventional gasoline under CAA section 211(k)(10)(D) and the sale of federal RFG would apply to the 10-county nonattainment area 1 year after the effective date of the reclassification.

Denver-Boulder-Greeley-Ft. Collins-Loveland, CO

If the Denver-Boulder-Greeley-Ft. Collins-Loveland area (herein referred to as the Denver area) is reclassified as Severe for the 2008 ozone NAAQS, the prohibition on the sale of conventional gasoline would apply to the entire area under CAA section 211(k)(10)(D). This would be a new requirement for the area as federal RFG is not currently required to be sold in any part of the Denver 2008 ozone NAAQS nonattainment area. The sale of federal RFG would apply to the entire nonattainment area 1 year after the effective date of the reclassification.

Morongo Band of Mission Indians Area

If the Morongo Band of Mission Indians area is reclassified as Severe for the 2008 ozone NAAQS, the prohibition on the sale of conventional gasoline would apply in the area. However, the Morongo Band of Mission Indians area is within the Los Angeles-Anaheim-Riverside federal RFG area, which is one of the nine areas where the sale of conventional gasoline is already prohibited because of its 1987–1989 1-hour ozone NAAQS DV (*see* 40 CFR 1090.285(a)). Therefore, if this proposal is finalized and the Morongo Band of Mission Indians area is reclassified as Severe for the 2008 ozone NAAQS, it will not result in any changes to federal RFG requirements for the nonattainment area.

2. Submission and Implementation Deadlines

On July 20, 2012, when final nonattainment designations became effective for the 2008 ozone NAAQS, states responsible for areas initially classified as Severe were required to prepare and submit SIP revisions by deadlines relative to that effective date. For those areas, the submission deadlines ranged from 2 to 10 years after July 20, 2012, depending on the SIP element required (*e.g.,* 2 years for the RACT SIP and VMT offset demonstration, 4 years for the attainment demonstration, 10 years for the section 185 fee program). Initial Severe areas were also required to implement RACT as expeditiously as practicable but no later than January 1 of the 5th year after July 20, 2012 (*i.e.,* January 1, 2017). Except for the section 185 fee program submission deadline, those deadlines have passed, and the EPA proposes to use its discretion under CAA section 182(i) to adjust the SIP deadlines that would otherwise apply. We discuss submission and implementation deadlines for areas reclassified as Severe in the following sections: (a) Submission deadline for SIP revisions, and (b) implementation deadline for required controls.

a. Submission Deadline for SIP Revisions

The EPA proposes that states submit SIP revisions addressing all Severe area requirements (Section II.D.1 of this action) no later than 18 months after the effective date of the final reclassification action. With the exception of SIP revisions addressing CAA section 185 fee program requirements (discussed as follows in this section), the SIP revision submission deadlines for areas initially classified as Severe have passed (*see* 40 CFR 51.1100 *et seq.*).

For newly reclassified Severe areas, the EPA believes that an 18-month deadline for the attainment planning requirements ''is necessary and appropriate'' to assure consistency among these submissions (per CAA section 182(i)). For ozone areas reclassified by operation of law under CAA section 181(b)(2) from Moderate to Serious, we have generally established 12-month SIP submission deadlines.[51] However, we now propose that an 18-month schedule for submission of SIP revisions is appropriate for reclassifications from Serious to Severe given the longer interval to the ''maximum'' attainment date associated with areas reclassified from Serious to Severe as compared to areas reclassified from Moderate to Serious.[52] That is, there is generally a 3-year interval between the attainment dates for areas

[51] *See, e.g.,* 75 FR 79302 (December 20, 2010) (Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 8-hour ozone NAAQS); 69 FR 16483 (March 30, 2004) (Beaumont-Port Arthur, Texas, reclassification to Serious for the 1979 1-hour ozone NAAQS); 68 FR 4836 (January 30, 2003) (St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS).

[52] Nonattainment areas are required to attain the ozone NAAQS as expeditiously as practicable but not later than the applicable attainment date (*see* CAA section 181(a)(1)); this ''not later than'' date is also referred to as the maximum attainment date.

reclassified from Moderate to Serious (with exceptions for areas that states can demonstrate can attain the NAAQS more quickly and for areas once they are granted attainment date extensions). However, there is a 6-year interval between maximum attainment dates for areas reclassified from Serious to Severe (*see* 40 CFR 51.1103). Given the longer interval between the Serious and Severe maximum attainment dates, we find that providing a longer period for submission of SIP revisions addressing Severe area requirements for reclassified areas is appropriate and will allow air agencies time to finish reviews of available control measures, adopt revisions to necessary control strategies, address other SIP requirements and complete the public notice process necessary to adopt and submit timely SIP revisions. As discussed in Section II.D.2.b of this action, we are proposing that any controls that air agencies determine are needed for meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the proposed SIP submission deadline. In combination with our proposed submission deadline, the proposed overall 36-month schedule for controls implementation could result in meaningful emissions reductions by the Severe area attainment DV time period (2024–2026).

RACM and RACT. The EPA proposes that the SIP revision to address RACM and RACT requirements will be due 18 months after the effective date of reclassification, consistent with all other required Severe area plan elements. We believe this deadline would provide a reasonable planning schedule and consistency across submissions (per CAA section 182(i)) while not unduly delaying implementation of additional needed controls. As noted previously, states with areas reclassified as Severe should be primarily focused on identifying and adopting new RACT measures required to control sources with the potential to emit between 25 to 50 tpy of VOC or NO_X. The slightly longer timeframe to prepare and adopt SIP revisions for reclassified Severe areas (compared to approximately 12 months for previous 2008 ozone reclassification actions) could result in states determining that additional controls are reasonable (compared to what controls the state may be able to assess in a shorter 12-month timeframe), which could then help expedite air quality improvements in these areas. We believe an 18-month submission deadline would best balance the goals of more robust SIP revisions and—in combination with our proposed controls implementation deadline—expeditious and meaningful emissions reductions for areas reclassified as Severe (Section II.D.2.b of this action). The EPA requests comment on this proposed deadline for RACM and RACT submissions.

CAA section 185 fee programs. The EPA proposes that the SIP revision to address the section 185 fee program requirements will be due 18 months after the effective date of reclassification, consistent with all other required Severe area plan elements. As previously described, the due date for the section 185 fee programs for the 2008 NAAQS for an area initially classified as Severe is 10 years from the effective date of designation, or July 20, 2022, as codified at 40 CFR 51.1117. This 2022 date was chosen because it followed the approach laid out in CAA section 182(d)(3), which established a section 185 fee program due date of December 31, 2000, for areas classified Severe by operation of law under the 1990 CAA Amendments (*see* 80 FR 12264, 12266, March 6, 2015). CAA section 181(a) assigned these same areas an attainment date of November 15, 2005. These deadlines are intended to ensure that the section 185 fee program was submitted to EPA for approval well in advance of (*i.e.,* just short of 5 years before) the attainment date. This allowance gives EPA time to review and act on the program submission, which in turn ensures that the air agency's fee program infrastructure will be in place in advance of the actual Severe area attainment date. This is important in ensuring smooth implementation of the program if the area fails to timely attain, because collection of fees is required under section 185 to begin for the calendar year immediately following the Severe area attainment date. For the 2008 NAAQS, the July 20, 2022, date for initial Severe areas is consistent with that approach. However, Congress did not specify dates for areas reclassified as Severe, and we believe there are timing considerations that warrant a later date here. A later date would also provide consistency with other proposed Severe area SIP submission deadlines for the areas currently being reclassified.

Applying the July 20, 2022, date to areas reclassified as Severe would result in an unreasonably short time for air agencies to develop their section 185 fee programs, especially since these agencies will also be working to address all the other Severe area requirements discussed in this action. Accordingly, the EPA believes it is reasonable to set the section 185 fee program due date at 18 months after reclassification, in line with the other elements. Although this will reduce implementation lead time compared to that in CAA section 182(d)(3) and 40 CFR 51.1117 for initially classified Severe areas, we anticipate that this timing would still be adequate to get the fee program in place ahead of the Severe area attainment date. The EPA recognizes the effort required to develop a section 185 fee program, but we also note the opportunities to synchronize the adoption process for the section 185 program with that of the other Severe area requirements. Providing longer than 18 months for submission of the section 185 program element would create inconsistent deadlines and would reduce the lead time for implementing the program by an even greater amount than the EPA's proposal. Accordingly, we are proposing a deadline of 18 months for submission of the section 185 fee program element. The EPA requests comment on this proposed deadline.

VMT offset demonstration and related elements. The EPA proposes that a SIP revision to address the VMT offset demonstration will be due 18 months after the effective date of reclassification, consistent with all other Severe area requirements. If the demonstration shows that a state must adopt transportation control strategies or TCMs to offset any identified increase in emissions due to growth in VMT or vehicle trips, we are proposing that the transportation control strategies and/or TCMs be submitted at that same time as the SIP revision to address the VMT offset demonstration. The EPA requests comment on this proposed deadline.

b. Implementation Deadline for Required Controls

As required by 40 CFR 51.1108(d) the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.[53] Further, the EPA proposes that any controls that air agencies determine are needed for meeting CAA requirements must be implemented as expeditiously as practicable but no later than 18 months from the proposed SIP submission deadline. These controls would include any identified RACT, and any needed transportation control strategies or TCMs indicated in the VMT offset demonstration. In combination with our proposed submission deadline for Severe area SIP revisions (no later than 18 months after the effective date

[53] ''Attainment year ozone season'' is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date (*see* 40 CFR 51.1100(h)), with the attainment year being the calendar year corresponding with that final ozone season for determining attainment.

of the final reclassification action, as discussed in Section II.D.2.a of this action), air agencies and affected sources would have an overall schedule of 36 months to identify, adopt, and implement new pollution controls.

The EPA's proposed implementation deadline is intended to balance the time needed for sources to install and implement new required controls with the time needed for resulting emissions reductions to meaningfully contribute to RFP and timely attainment in newly reclassified Severe areas. As a general matter, the Act requires implementation of RACM and RACT requirements needed for timely attainment ''as expeditiously as practicable'' (*see* CAA section 172(c)(1)). The EPA's implementing regulations for the 2008 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACM and RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (*see* 40 CFR 51.1112(a)(3)), which corresponded with the beginning of the attainment year for initial Moderate areas (January 1, 2017). The modeling and attainment demonstration requirements for 2008 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season (*see* 40 CFR 51.1108(d)). These regulations allow a comparable amount of time for sources to meet RACT requirements as originally anticipated under the 1990 CAA Amendments (*see* CAA section 182(b)(2)), with the objective that RACT measures be in place to influence an area's attainment year air quality and DV. Although the CAA does not establish an implementation deadline for transportation control strategies or TCMs (*see* CAA section 182(d)(1)(A)), we believe the same timing rationale would apply and that it would be appropriate to align the implementation deadline for RACT and these transportation-related controls.

In the case of newly reclassified Severe areas, the longer interval between the Serious and Severe maximum attainment dates means that the proposed 36-month schedule for controls implementation could result in meaningful emissions reductions even earlier in the attainment DV time period (2024–2026). For areas implementing both the 2008 and the 2015 ozone standards, we believe allowing adequate time to identify and implement additional controls will help nonattainment areas attain both standards more expeditiously.

The EPA requests comment on aligning the implementation deadlines for RACT and transportation-related controls and requiring that any controls needed for meeting RFP or timely attainment of the 2008 ozone NAAQS be implemented as expeditiously as practicable but no later than 18 months after the proposed SIP submission deadline. We also request comment on providing an overall 36-month schedule for SIP submission and controls implementation.

III. Environmental Justice Considerations

As discussed in Section II.B of this action, the EPA proposes to deny a request for a 1-year attainment date extension for the Houston-Galveston-Brazoria, Texas, nonattainment area and to determine that the area failed to attain the 2008 ozone NAAQS by the attainment date. The proposal to deny the extension request is based on our assessment of air quality trends in the Houston area, and, given our findings that the area is not likely to attain by an extended attainment date or qualify for a second extension, our consideration of the impact of our action on existing pollution burdens in the area. Screening-level EJ analyses indicate an already disproportionate pollution burden for communities near the Houston Ship Channel and communities around violating ozone regulatory monitor sites in the Houston area. Denying the state's request to extend the attainment date would result in the area's reclassification to Severe, and in more timely application in this area of the Act's more stringent controls associated with that higher classification. Expeditious attainment of the NAAQS will protect all those residing, working, attending school, or otherwise present in those areas, including communities of color and low-income communities.

IV. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0695. This action proposes to: (1) Find that certain Serious ozone nonattainment areas listed in Table 1 of this action failed to attain the 2008 NAAQS by the applicable attainment date; (2) identify those areas subject to reclassification as Severe ozone nonattainment areas by operation of law upon the effective date of the reclassification notice; and (3) adjust any applicable implementation deadlines. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the proposed determination either to grant or to deny a 1-year attainment date extension do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal government and the states for purposes of implementing the NAAQS is established under the CAA.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified tribal areas within the nonattainment areas covered by this proposed rule, that would be potentially affected by this rule. Specifically, two of the nonattainment areas addressed in this proposal have tribes located within their boundaries: the Greater Connecticut, CT, area (Mashantucket Pequot Tribal Nation and Mohegan Indian Tribe), and the New York-Northern New Jersey-Long Island, CT–NJ–NY area (Shinnecock Indian Nation). One of the nonattainment areas addressed in this document is a separate tribal nonattainment area (Morongo Band of Mission Indians, California area).

The EPA has concluded that the proposed rule may have tribal implications for these tribes for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As noted previously, a tribe that is part of an area that is reclassified from Serious to Severe nonattainment is not required to submit a TIP revision to address new Severe area requirements. However, if the EPA finalizes the determinations of failure to attain proposed in this action, the NNSR major source threshold and offset requirements would change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Severe (Section II.D.1 of this action), including on tribal lands within these nonattainment areas. Areas that are already classified Severe for a previous ozone NAAQS are already subject to these higher offset ratios and lower thresholds, so a reclassification to Severe for the 2008 ozone NAAQS would have no effect on NNSR permitting requirements for tribal lands in those areas.

The EPA has communicated or intends to communicate with the potentially affected tribes located within the boundaries of the nonattainment areas addressed in this proposal, including offering government-to-government consultation, as appropriate.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income poulations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is presented in Section II.B of this action, ''Extension of Serious Area Attainment Date,'' and summarized in Section III of this action, ''Environmental Justice Considerations,'' and the relevant documents have been placed in the public docket for this action.

With respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address EJ in these determinations. The CAA directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area attained the standard by that date. CAA section 181(b)(2)(A). Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area's design value. *Id.*

K. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[54]

The EPA is proposing findings regarding attainment of the NAAQS in nonattainment areas within nine states located in six of the ten EPA regions pursuant to a uniform process and standard. The EPA is also proposing to establish SIP submission and implementation deadlines for all newly reclassified areas in the identified states using a common, nationwide method. The jurisdictions that would be affected by this action, if finalized, represent a wide geographic area and fall within several different judicial circuits.

If the Administrator takes final action on this proposal, then, in consideration of the effects of the action across the country, the EPA views this action to be ''nationally applicable'' within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this proposal, if finalized, to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[55]

[54] In deciding whether to invoke the exception by making and publishing a finding that this action, if finalized, is based on a determination of nationwide scope or effect, the Administrator intends to take into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[55] In the report on the 1977 Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Michael Regan,

Administrator.

[FR Doc. 2022–07509 Filed 4–12–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–HQ–OAR–2021–0742; FRL–8425–01–OAR]

RIN 2060–AV32

Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing three actions pursuant to section 181(b)(2) of the Clean Air Act (CAA) related to the attainment date for 31 areas classified as ''Marginal'' nonattainment for the 2015 ozone National Ambient Air Quality Standards (NAAQS). First, the Agency is proposing to determine that six areas attained the standard by the applicable August 3, 2021, attainment date. Second, the Agency is proposing to grant a 1-year attainment date extension for the Uinta Basin, Utah, nonattainment area. Third, the Agency is proposing to determine that 24 areas failed to attain the standard by their applicable attainment date and. The effect of failing to attain by the attainment date is that such areas will be reclassified by operation of law to ''Moderate'' upon the effective date of the final reclassification notice. Consequently, the responsible state air agencies must submit state implementation plan (SIP) revisions required to satisfy the statutory and regulatory requirements for Moderate areas for the 2015 ozone NAAQS. The EPA proposes deadlines for submission of those SIP revisions and implementation of the related control requirements. This action, when finalized, will fulfill the EPA's statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the attainment date and to publish a document in the **Federal Register** identifying each area that is determined as having failed to attain and identifying the reclassification. Several areas included in this proposed rule are also addressed in a separate rulemaking to determine whether areas classified as ''Serious'' for the 2008 ozone NAAQS attained the standard by the applicable attainment date of July 20, 2021 (*see* Docket ID EPA–HQ–OAR–2021–0741).

DATES: Comments must be received on or before June 13, 2022. *Virtual public hearing:* The virtual hearing will be held on May 9, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0742, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0742 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, *see* the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this notice. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

Submitting Confidential Business Information (CBI). Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted to electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, *oaqpscbi@epa.gov,* and should include clear CBI markings as described earlier. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S.

Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2021–0742. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Virtual public hearing. The virtual hearing will be held on May 9, 2022. The hearing will be held in three sessions: 9:00 a.m. to noon (Eastern time), 1:00 p.m. to 3:00 p.m. (Eastern time), and 6:00 p.m. to 8:00 p.m. (Eastern time). We invite the public to register to speak using *https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0* or (919) 541–0641. The EPA will confirm your approximate speaking time by May 9, 2022 and we will post a list of registered speakers in approximate speaking order at: *https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0.* If we reach a point in any session where all present, registered speakers have been called on and no one else wishes to provide testimony we will adjourn that session early. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Emily Millar, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01 Research Triangle Park, NC 27709; telephone number: (919) 541–2619; email address: *millar.emily@epa.gov;* or Robert Lingard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–01 Research Triangle Park, NC 27709; by telephone number: (919) 541–5272; email address: *lingard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: *Participation in virtual public hearing.* Because of current Centers for Disease Control and Prevention recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this notice in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, individuals may use the online registration form available via the EPA's 2015 Ozone National Ambient Air Quality Standards (NAAQS) Nonattainment Actions web page for this hearing (*https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0*) or contact Pam Long at (919) 541–0641 or *long.pam@epa.gov.* The last day to pre-register to speak at the hearing will be May 9, 2022. On May 9, 2022 the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Pam Long at *long.pam@epa.gov.* The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing is posted online at *https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0.* While the EPA expects the hearing to go forward as set forth previously, please monitor our website or contact Pam Long at (919) 541–0641 or *long.pam@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

A Spanish interpreter will be provided. If you require the services of an interpreter for any language other than Spanish or special accommodations such as audio description, please pre-register for the hearing with Pam Long and describe your needs by May 4, 2022. The EPA may not be able to arrange accommodations without advanced notice.

Throughout this document ''we,'' ''us,'' or ''our'' means the EPA.

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I. Overview and Basis of Proposal

A. Overview of Proposal

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain (*see* CAA section 181(b)(2)). For a concentration-based standard, such as the 2015 ozone NAAQS,[1] a determination of attainment is based on a nonattainment area's design value (DV).[2]

[1] Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as ''the 2015 ozone NAAQS'' or as ''the standard.''

[2] A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The DV for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each

Continued

The 2015 ozone NAAQS is met at an EPA regulatory monitoring site when the DV does not exceed 0.070 parts per million (ppm). For areas classified as Marginal nonattainment for the 2015 ozone NAAQS, the attainment date was August 3, 2021, except for the San Antonio, Texas area that had an attainment date of September 24, 2021.[3] Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (*i.e.,* December 31, 2020, in the case of Marginal nonattainment areas for the 2015 ozone NAAQS). As such, the EPA's proposed determinations for each area are based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020.

This proposed action addresses 31 of the 40 nonattainment areas that were classified as Marginal for the 2015 ozone NAAQS as of the Marginal area attainment date of August 3, 2021.[4] [5] The remaining nine areas will be addressed in separate actions, as follows:

(1) The Imperial County, California area is not included in this action. The EPA received the CAA section 179B(b) demonstration from the California Air Resources Board on August 16, 2021, for the Imperial County nonattainment area.[6] Actions taken by the EPA on the demonstration may affect a determination of attainment by the attainment date for the area and at this time the EPA is still assessing the merits of the state's submission.

(2) The El Paso-Las Cruces, Texas-New Mexico, Marginal nonattainment area is not included in this proposed action. On November 30, 2021, the EPA completed its response to the D.C. Circuit Court's remand of certain air quality designations for the 2015 Ozone NAAQS by expanding its initial designations for the Doña Ana County (Sunland Park Area), New Mexico nonattainment area. The nonattainment area now includes all of El Paso County, Texas, and has been renamed the El Paso-Las Cruces, Texas-New Mexico nonattainment area, with an attainment date of August 3, 2021, applying to the entire area. The State of New Mexico submitted a CAA section 179B(b) demonstration for the Doña Ana County (Sunland Park) nonattainment area on June 3, 2021. Texas Commission on Environmental Quality (TCEQ) submitted a CAA section 179B(b) demonstration for the El Paso County, Texas, nonattainment area on February 28, 2022. At this time, the EPA is still assessing the merits of each state's submission and plans to address the attainment status of the El Paso-Las Cruces, Texas-New Mexico nonattainment area, including considering each submitted CAA section 179B(b) demonstrations from both states.

(3) The Las Vegas, Nevada nonattainment area is not included in this action. The Clark County Department of Environment and Sustainability (CCDES) has submitted a number of exceptional events (EE) demonstrations for the Las Vegas, Nevada area. Specifically, on July 1, 2021, the Clark County Department of Environment and Sustainability (CCDES) submitted EE demonstrations for 2 days in 2018 and 6 days in 2020 with exceedances of the standard. On September 2, 2021, the CCDES submitted additional EE demonstrations for 13 days in 2018 and for 7 days in 2020. The EPA's concurrence decision on this demonstration may affect determinations of attainment by the attainment date for this area.[7] The EE initial notification, EE demonstration, and the EPA's response to the initial notification are provided in the docket for this rulemaking.

(4) The Butte County, Calaveras County, San Luis Obispo, Sutter Buttes, Tuolumne County, and Tuscan Buttes County nonattainment areas in California are not included in this action. On September 3, 2021, the California Air Resources Board (CARB) submitted EE demonstrations for the San Luis Obispo area for five days with exceedances of the standard in 2018, and on September 17, 2021, CARB submitted EE demonstrations for multiple days in 2018 with exceedances of the standard in the Calaveras County, Butte County, Tuolumne County, Sutter Buttes, and Tuscan Buttes areas. Specifically, CARB submitted demonstrations for eight exceedances in 2018 for the Calaveras County area, 11 exceedances in 2018 for the Butte County area, 11 exceedances in 2018 for the Tuolumne County area, 9 exceedances in 2018 for the Sutter Buttes area, and 9 exceedances in 2018 for the Tuscan Buttes area. In addition, on November 18, 2021, CARB submitted EE demonstrations for multiple days in 2020 with exceedances of the standard in the Tuolumne County and Sutter Buttes areas, and on December 8, 2021, CARB submitted EE demonstrations for multiple days in 2020 with exceedances of the standard in the San Luis Obispo area. Specifically, CARB submitted demonstrations for three exceedances in 2020 for the Tuolumne County area, two exceedances in 2020 for the Sutter Buttes area, and eight exceedances in 2020 for the San Luis Obispo area. The EPA's concurrence decision on these demonstrations may affect determinations of attainment by the attainment date for these areas. The EE initial notifications, EE demonstrations, and the EPA's responses to the initial notifications are provided in the docket for this rulemaking.

Table 1 provides a summary of the DVs and the EPA's proposed air quality-based determinations for the 31 Marginal areas addressed in this action. Several areas included in this proposed rule are also addressed in a separate rulemaking to determine whether areas classified as Serious for the 2008 ozone NAAQS attained the standard by the applicable attainment date of July 20, 2021.[8]

air quality monitor in an area, and the DV for an area is the highest DV among the individual monitoring sites located in the area.

[3] For general purposes, further references to the 2015 ozone NAAQS Marginal area attainment date in this notice will indicate August 3, 2021, except where otherwise indicated.

[4] Two Marginal nonattainment areas have been redesignated to maintenance for the 2015 ozone NAAQS. Columbus, Ohio (84 FR 43508, August 21, 2019) and Door County, Wisconsin (85 FR 35377, June 10, 2020). See Section II.C of this notice for additional information regarding EPA's designation and redesignation actions for Door County.

[5] In separate rulemakings, the EPA is proposing to redesignate the following Marginal nonattainment areas to attainment for the 2015 ozone NAAQS based upon complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021: Manitowoc County, WI (87 FR 5438, February 1, 2022); Ohio portion of Cincinnati, OH-KY (87 FR 7978, February 11, 2022); Door County-Revised, WI (87 FR 12020, March 3, 2022); and Detroit, MI (87 FR 14210, March 14, 2022). If any of these areas is fully redesignated prior to EPA finalizing this proposal, EPA would not finalize its proposed action for the area.

[6] CAA section 179B(b) provides that where a state demonstrates to the Administrator's satisfaction that an ozone nonattainment area would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States, that area shall not be subject to the mandatory reclassification provision, CAA section 181(b)(2). Note that the statute cites 42 U.S.C. 7511(a)(2), but that provision establishes ozone attainment deadlines for severe areas under the 1-hour standard. The EPA has long interpreted the citation in CAA section 179B(b) to be a scrivener's error that was supposed to refer to 42 U.S.C. 7511(b)(2), which refers to consequences for failure to attain by the attainment date.

[7] CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through a process established in regulation to be an exceptional event.

[8] Includes the Chicago-Naperville, IL-IN-WI, Dallas-Fort Worth, TX, Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, Greater Connecticut, Connecticut, and Houston-Galveston-Brazoria, Texas areas.

TABLE 1—2015 OZONE NAAQS MARGINAL NONATTAINMENT AREA EVALUATION SUMMARY

2015 NAAQS nonattainment area	2018–2020 DV (ppm)	2015 NAAQS attained by the marginal attainment date	2020 4th highest daily maximum 8-hr average (ppm)	Area failed to attain 2015 NAAQS but state requested 1-year attainment date extension based on 2020 4th highest daily maximum 8-hr average ≤0.070 ppm
Allegan County, MI	0.073	Failed to Attain	0.076	No.
Amador County, CA	0.069	Attained	Not applicable	Not applicable.
Atlanta, GA	0.070	Attained	Not applicable	Not applicable.
Baltimore, MD	0.072	Failed to Attain	0.069	No.
Berrien County, MI	0.072	Failed to Attain	0.078	No.
Chicago, IL-IN-WI	0.077	Failed to Attain	0.079	No.
Cincinnati, OH-KY	0.074	Failed to Attain	0.071	No.
Cleveland, OH	0.074	Failed to Attain	0.075	No.
Dallas-Fort Worth, TX	0.076	Failed to Attain	0.077	No.
Denver Metro/North Front Range, CO	0.081	Failed to Attain	0.087	No.
Detroit, MI	0.072	Failed to Attain	0.074	No.
Door County-Revised, WI (Rural Transport Area (RTA))*.	0.072	Failed to Attain	0.075	No.
Greater Connecticut, CT	0.073	Failed to Attain	0.071	No.
Houston-Galveston-Brazoria, TX	0.079	Failed to Attain	0.075	No.
Louisville, KY-IN	0.072	Failed to Attain	0.071	No.
Manitowoc County, WI	0.070	Attained	Not applicable	Not applicable.
Mariposa County, CA	0.079	Failed to Attain	0.091	No.
Milwaukee, WI	0.071	Failed to Attain	0.077	No.
Muskegon County, MI	0.076	Failed to Attain	0.080	No.
Northern Wasatch Front, UT**	0.077	Failed to Attain	0. 080	No.
Pechanga Band of Luiseño Mission Indians***	0.078	Failed to Attain	0.084	No.
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE.	0.074	Failed to Attain	0.071	No.
Phoenix-Mesa, AZ	0.079	Failed to Attain	0.087	No.
San Antonio, TX****	0.072	Failed to Attain	0.074	No.
San Francisco Bay, CA	0.069	Attained	Not applicable	Not applicable.
Sheboygan County, WI	0.075	Failed to Attain	0.076	No.
Southern Wasatch Front, UT	0.069	Attained	Not applicable	Not applicable.
St. Louis, MO-IL	0.071	Failed to Attain	0.074	No.
Uinta Basin, UT	0.076	Failed to Attain	0.066	Yes.
Washington, DC-MD-VA	0.071	Failed to Attain	0.065	No.[9]
Yuma, AZ	0.068	Attained	Not applicable	Not applicable.

* Door County-Revised, Wisconsin, is an RTA and therefore will remain subject to Marginal area requirements if the EPA finalizes its proposed determination of failure to timely attain and reclassification to Moderate. For more information see Section II.C of this notice.

** On May 28, 2021, the State of Utah submitted a CAA section 179B demonstration for the Northern Wasatch Front nonattainment area that EPA found does not meet the criteria for such a demonstration. For more information, see Section II.C.1.b of this notice.

*** Concentrations listed are for the Temecula monitor (AQS ID 06–065–0016); quality assurance issues with the data from the Pechanga monitor resulted in the 2018 data year not being appropriate for comparison to the NAAQS, and an invalid 2020 DV per DV calculation requirements contained in 40 CFR part 50, Appendix U, section 4(b). Ozone data collected at the Temecula monitoring site was used in previous regulatory actions and deemed representative of ozone conditions on the Pechanga Reservation. *E.g.,* 80 FR 18120, April 3, 2015, at 18121–18122 (final rule redesignating the Pechanga air quality planning area from nonattainment to attainment for the 1997 ozone NAAQS).

**** On July 13, 2020, the State of Texas submitted a CAA section 179B demonstration for the San Antonio nonattainment area that the EPA found does not meet the criteria for such a demonstration. For more information, *see* Section II.C.1.b of this notice.

The data used to calculate both the 2018–2020 DVs and the 2020 fourth highest daily maximum 8-hour averages are provided in the technical support document (TSD) which can be found in the docket for this rulemaking.[10]

The EPA proposes to find that the Atlanta, Georgia; Manitowoc County, Wisconsin; Southern Wasatch Front, Utah; Amador County, California; San Francisco Bay, California; and Yuma, Arizona Marginal nonattainment areas attained by the attainment date based on the 2018–2020 DVs presented in Table 1, which do not exceed 0.070 ppm. The EPA is also proposing to grant a 1-year attainment date extension for the Uinta Basin, Utah, nonattainment area (Section II.B of this notice). Finally, the EPA is proposing to determine that 24 Marginal areas with 2018–2020 DVs greater than 0.070 ppm did not attain by their attainment dates and do not qualify for a 1-year attainment date extension. If the EPA determines that a nonattainment area classified as Marginal failed to attain by the attainment date, CAA section 181(b)(2)(B) requires the EPA to publish the identity of each such area in the **Federal Register** no later than 6 months following the attainment date and identify the reclassification level.

Furthermore, as required under CAA section 181(b)(2)(A), if the EPA finalizes the determinations that these 24 areas failed to attain by their attainment dates, they will be reclassified to Moderate by operation of law. The reclassified areas will then be subject to the Moderate area requirement to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2024 (September 24, 2024, for the San Antonio, Texas, area).

Once reclassified as Moderate, the relevant states must submit to the EPA

[10] ''Technical Support Document Regarding Ozone Monitoring Data—Determinations of Attainment, 1-Year Attainment Date Extensions, and Reclassifications for Marginal Areas under the 2015 8-Hour Ozone National Ambient Air Quality Standards (NAAQS),'' available in the docket for this rulemaking.

the SIP revisions for these areas that satisfy the statutory and regulatory requirements applicable to Moderate areas [11] established in CAA section 182(b) and in the 2015 Ozone NAAQS SIP Requirements Rule (*see* 83 FR 62998, December 6, 2018). The EPA proposes to establish deadlines for submitting SIP revisions for these reclassified areas, consistent with CAA section 182(i). As discussed in Section II.D. of this notice, the EPA proposes that the new SIP revisions associated with these reclassifications will be due to the EPA by no later than January 1, 2023. Under the CAA and the Tribal Authority Rule (TAR), tribes may, but are not required to, submit implementation plans to the EPA for approval (*see* CAA section 301(d) and 40 CFR part 49). Accordingly, for the Pechanga Band of Luiseño Mission Indians nonattainment area, the Pechanga Tribe would not be required to submit any tribal implementation plan (TIP) revisions applicable to Moderate areas established in CAA section 182(b) and in the 2015 Ozone NAAQS SIP Requirements Rule. Tribes that are part of multi-jurisdictional nonattainment areas are also not required to submit implementation plan revisions applicable to Moderate areas.

B. What is the background for the proposed actions?

On October 26, 2015, the EPA issued its final action to revise the NAAQS for ozone to establish a new 8-hour standard (*see* 80 FR 65452, October 26, 2015). In that action, the EPA promulgated identical tighter primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.070 ppm.

Effective on August 3, 2018, the EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS (*see* 83 FR 25776, June 4, 2018). The EPA later designated the San Antonio, Texas, area as a 2015 ozone NAAQS nonattainment area effective September 24, 2018 (*see* 83 FR 35136, July 25, 2018). In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone problem, determined by the area's DV (*see* 83 FR 10376, May 8, 2018). The EPA established the attainment date for Marginal and Moderate nonattainment areas as 3 years and 6 years, respectively, from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021, and the attainment date for Moderate areas is August 3, 2024 (September 24, 2021, and September 24, 2024, respectively, for the San Antonio, Texas, area).

C. What is the statutory authority for the proposed actions?

The statutory authority for the actions proposed in this document is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 181(a)(5), 181(b)(2) and 182(i).

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's DV). Classifications for ozone nonattainment areas range from ''Marginal'' to ''Extreme.'' CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations at 40 CFR 51.1308 through 51.1317, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2015 ozone NAAQS. For reclassified areas, CAA section 182(i) provides that the Administrator may adjust applicable deadlines other than attainment dates if such adjustment is necessary or appropriate to assure consistency among the required submissions. Therefore, the EPA is proposing in Section II.D of this notice to adjust the SIP revision and implementation deadlines for newly reclassified Moderate nonattainment areas.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. Upon application by any state, the EPA may grant a 1-year extension of the attainment date for qualifying areas (Section II.B of this notice). In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the higher of: (1) The next higher classification for the area, or (2) the classification applicable to the area's DV as of the determination of failure to attain.[12] Section 181(b)(2)(B) of the CAA requires the EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the Marginal nonattainment areas considered in this proposal was February 3, 2022.

Once an area is reclassified, each state that contains a reclassified area is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than August 3, 2024, the Moderate area attainment date for the 2015 ozone NAAQS (September 24, 2024, for the San Antonio, Texas, area). Per CAA section 182(i), a state with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements ''according to the schedules prescribed in connection with such requirements'' in CAA section 182(b) for Moderate areas, but the EPA ''may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' In Section II.D of this notice, the EPA explains its proposal to adjust such deadlines.

[11] *See* Section II.C of this notice for additional information regarding the Door County-Revised, Wisconsin, area.

[12] All nonattainment areas named in this notice that failed to attain by the attainment date would be classified to the next higher classification, Moderate. None of the affected areas has a DV that would otherwise place an area in a higher classification (*i.e., see* CAA section 181(b)(2)(A) reference to Extreme areas).

D. How does the EPA determine whether an area has attained the 2015 ozone standard?

Under the EPA regulations at 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.,* DV) does not exceed 0.070 ppm. When the DV does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. The rounding convention in Appendix P dictates that concentrations shall be reported in ''ppm'' to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a DV of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.[13] Ambient air quality monitoring data for the 3-year period preceding the attainment date (2018–2020 for the 2015 ozone NAAQS Marginal areas) must meet the data completeness requirements in Appendix U.[14] The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

II. What is the EPA proposing and what is the rationale?

The EPA is proposing this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether 31 Marginal ozone nonattainment areas attained the 2015 ozone NAAQS as of the attainment date of August 3, 2021 (September 24, 2021, for the San Antonio, Texas, area). The EPA evaluated air quality monitoring data submitted by the appropriate state, local, and tribal air agencies to determine the attainment status of the 31 areas as of their applicable Marginal area attainment dates. This section describes the separate determinations and actions being proposed in this document.

A. Determinations of Attainment by the Attainment Date

The EPA is proposing to determine, in accordance with CAA section 181(b)(2)(A) and the provisions of the 2015 Ozone NAAQS SIP Requirements Rule (40 CFR 51.1303), that the Atlanta, Georgia; Manitowoc County, Wisconsin; Southern Wasatch Front, Utah; Amador County, California; San Francisco Bay, California; and Yuma, Arizona areas attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, based on their 2018–2020 DV (Table 1).

These proposed determinations of attainment by the attainment date do not constitute formal redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations to attainment require, among other things, that the states responsible for ensuring attainment and maintenance of the NAAQS have met the applicable requirements under CAA section 110 and part D, and to submit to EPA for approval a maintenance plan to ensure continued attainment of the standard for 10 years following redesignation, as provided under CAA section 175A.

The EPA requests comment on these proposed determinations of attainment by the applicable attainment date for the Atlanta, Georgia; Manitowoc County, Wisconsin; Southern Wasatch Front, Utah; Amador County, California; San Francisco Bay, California; and Yuma, Arizona areas. Further technical analysis supporting these proposed determinations are in the TSD for this proposed rule, which is available in the docket for this rulemaking.

B. Extension of Marginal Area Attainment Date

1. Summary of Proposed Action

By way of letter dated March 29, 2021, the Utah Division of Air Quality (UDAQ) requested an extension of the Uinta Basin area Marginal area attainment date; the letter is provided in the docket for this rulemaking.[15] We propose to grant UDAQ's request and extend the August 3, 2021, Marginal area attainment date to August 3, 2022, for the Uinta Basin area, based on our finding that the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307 and that no other facts or circumstances compel the EPA Administrator to consider information beyond the statutory criteria—*i.e.,* (1) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) for a first attainment date extension, an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard.[16]

2. Proposed Action To Grant the Requested 1-Year Attainment Date Extension

Section 181(a)(5) of the CAA provides the EPA the discretion (*i.e.,* ''the Administrator may'') to extend an area's applicable attainment date by 1 additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307.

With respect to the first criterion, the EPA interprets the provision as having been satisfied if a state can demonstrate that it is in compliance with its approved implementation plan. *See Delaware Dept. of Nat. Resources and Envtl. Control* v. *EPA,* 895 F.3d 90, 101 (D.C. Cir. 2018) (holding that the CAA requires only that an applying state with jurisdiction over a nonattainment area comply with the requirements in its applicable SIP, not every requirement of the Act); *see also Vigil* v. *Leavitt,* 381 F.3d 826, 846 (9th Cir. 2004). A state may meet this requirement by certifying its compliance, and in the absence of such certification, the EPA may make a determination as to whether the criterion has been met. *See Delaware,* 895 F.3d at 101–102.

With respect to the second criterion, the EPA has interpreted CAA section 181(a)(5)(B)'s exceedance-based air quality requirement of the extension criteria for purposes of a concentration-based standard like the 2015 8-hour ozone NAAQS (*see* 40 CFR 51.1307). For purposes of the 2015 ozone NAAQS, the EPA has interpreted the air quality criterion of CAA section 181(a)(5)(B) to mean that an area's fourth highest daily

[13] The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at *https://www.epa.gov/aqs.*

[14] *See* 40 CFR part 50, appendix U, section 4(b).

[15] Bird, Bryce, Director, UDAQ. ''Request for One-year Extension of the 2015 Ozone National Ambient Air Quality Standard Attainment Date for the Uinta Basin Marginal Nonattainment Area.'' March 29, 2021.

[16] The attainment year is the calendar year corresponding with the final ozone season for determining attainment; ''attainment year ozone season'' is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date (*see* 40 CFR 51.1300(g)).

maximum 8-hour value for the attainment year must not exceed the level of the standard (0.070 ppm).[17]

We have evaluated the information submitted by UDAQ and propose to determine that the area meets the two necessary statutory criteria for the 1-year extension under CAA section 181(a)(5) and 40 CFR 51.1307(a)(1), and that no other facts or circumstances compel the EPA Administrator to consider information beyond the statutory criteria. UDAQ has certified that they have complied with all requirements and commitments pertaining to these areas in their approved implementation plan. Additionally, the fourth highest daily maximum 8-hour average ozone concentration recorded during 2020 for the Uinta Basin was 0.066 ppm, well below the level of the 2015 ozone NAAQS of 0.070 ppm (Table 1 of this notice). The EPA proposes to grant the requested 1-year extension of the August 3, 2021, Marginal area attainment date for the Uinta Basin area.

If we finalize this proposal, on the effective date of the final action the attainment date for the Uinta Basin area would be extended to August 3, 2022. The area would then remain classified as Marginal for the 2015 ozone NAAQS until the EPA either made a determination that the area had failed to attain the NAAQS by the new attainment date, granted a second 1-year attainment date extension, or redesignated the area to attainment. The EPA solicits comments on our proposal to grant the requested 1-year attainment date extension for the Uinta Basin Marginal nonattainment area, and whether there are any particular circumstances, such as disproportionate environmental exposure or burdens, that the EPA should consider before granting the request.

3. Additional Information

In evaluating Utah's request for a 1-year extension of the Marginal attainment date, the EPA considered other facts and circumstances, and we propose to find that these considerations do not weigh against our proposal to grant Utah's request.

i. Ute Tribe Support for 1-Year Extension

In a letter dated May 25, 2021, the Ute Indian Tribe also requested an attainment date extension for the area.[18] This letter is provided in the docket for this rulemaking. The EPA's proposed extension is based on the request from UDAQ for the entire Uinta Basin area, but we note the tribe's independent support for an attainment date extension. In accordance with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA offered an opportunity for consultation to seek the Tribe's input during the development of this notice.[19] [20] The Ute Indian Tribe met with the EPA on October 6, 2021. In this meeting tribal leadership reiterated their support for the emissions controls in EPA's proposed Federal Implementation Plan (FIP) for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the Uintah and Ouray (U&O) Indian Reservation in Utah (U&O FIP) [21] as a way to make regulations related to oil and natural gas more consistent across the basin and urged EPA to finalize the U&O FIP.

ii. FIP for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the U&O Indian Reservation in Utah (U&O FIP)

The proposed U&O FIP would require new, modified, and existing oil and natural gas (O&NG) sources on Indian country lands within the U&O Reservation to implement new control requirements. While the FIP is not designed to bring the area into attainment, the EPA expects these emission limits to reduce ozone precursor emissions and improve air quality in the area. The EPA proposed the U&O FIP in January 2020 and is working to finalize it. Most VOC emissions within the Basin are from existing O&NG activity, and most of those O&NG emissions are from existing sources on the U&O Indian Reservation and in the nonattainment area.[22] VOC emissions control requirements for existing O&NG sources currently exist in areas of the Uinta Basin under Utah jurisdiction, but do not exist in the U&O Indian Reservation where most sources are uncontrolled. To this end, we expect the new control requirements in the final U&O FIP to make a meaningful improvement in air quality and address winter ozone exceedances on the reservation, and in the nonattainment area and larger Uinta Basin region.

iii. Air Quality Trends

As shown in Table 1 of this notice, the Uinta Basin area did not attain the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, based on its final 2018–2020 DV of 0.076 ppm. The Uinta Basin area meets the specific air quality criteria for an initial 1-year extension under 40 CFR 51.1307(a)(1) with an attainment year (2020) fourth highest daily maximum 8-hour average concentration of 0.066 ppm. Preliminary 2021 ozone monitoring data indicate that the area may not attain the 2015 ozone NAAQS by the extended August 3, 2022, attainment date; [23] however, it appears that the area could meet the air quality criteria for a second 1-year extension.[24]

The Uinta Basin nonattainment area has a wintertime ozone problem, which means that violating ozone concentrations are driven by local ozone precursor emissions from existing O&NG sources and are dependent on stagnant winter conditions associated with snow cover and strong temperature inversions. These winter meteorological conditions occur periodically,[25] as

[17] *See* 40 CFR 51.1307 pertaining to determining eligibility under CAA section 181(a)(5)(B) for the first and the second 1-year attainment date extensions for the 2015 ozone NAAQS.

[18] Chapoose, Shaun, Chairman, Ute Indian Tribe Business Committee. ''Request for One Year Extension of the 2015 Ozone National Ambient Air Quality Standard Attainment Date for the Uinta Basin Marginal Nonattainment Area.'' May 25, 2021.

[19] Daly, Carl, Acting Director, Air and Radiation Division, U.S. EPA Region 8. ''Request for One-Year Extension of the 2015 Ozone National Ambient Air Quality Standard Attainment Date for the Uinta Basin Marginal Nonattainment Area and Consultation on the Draft Proposal for the National Determination of Attainment by the Attainment Date.'' September 10, 2021.

[20] *See* EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011, *https://www.epa.gov/sites/default/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf.*

[21] ''Proposed Rule: Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah'' (85 FR 3492, January 21, 2020).

[22] For the proposed FIP, the EPA estimated, using 2014 emissions inventory data, that of the approximately 10,400 individual existing active O&NG wells in the Uinta Basin, over 7,900 wells, or about 76 percent, were on Indian country lands within the U&O Reservation. Over 6,700 individual O&NG (primarily well sites) were processing fluids from those wells. Additionally, EPA estimated that the majority of the O&NG sources were uncontrolled and over 2,100 of those sources would be subject to the substantive VOC emissions control requirements of a final and effective U&O FIP (*see* 85 FR 3500–3501 and 3512). The draft final FIP is being analyzed using 2017 emissions inventory data, so the impacts of the final rule may differ from the numbers of sources used to analyze the proposed FIP.

[23] As of February 9, 2022, the Uinta Basin area's preliminary 2019–2021 DV was 0.078 ppm and the preliminary 2021 fourth highest daily maximum 8-hour value was 0.072 ppm, available at *https://www.epa.gov/outdoor-air-quality-data/download-daily-data.*

[24] To qualify for a second 1-year extension, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 0.070 ppm or less (40 CFR 51.1307(a)(2)). If the preliminary 2021 ozone data are certified, then the fourth highest daily maximum 8-hour value, averaged over 2020 and 2021, would be 0.069 ppm.

[25] Some winters may have one or more multi-day episodes with conducive meteorological conditions

evidenced by elevated fourth highest daily maximum average ozone 8-hour concentrations of 0.103 ppm (2017) and 0.098 ppm (2019), which were measured in Indian country near Ouray, Utah.[26] The Uinta Basin area could potentially attain the 2015 ozone standard by a second extended attainment date (August 3, 2023) if the fourth highest daily maximum 8-hour average concentrations for 2021 and 2022 remain consistent with the final value for 2020 (0.066 ppm), *e.g.,* 0.072 ppm (2021 preliminary) and 0.072 ppm (2022 hypothetical) that, when averaged with the 2020 value, would result in an attaining 2020–2022 DV of 0.070 ppm.

iv. Environmental Justice

Where the statute has provided the Administrator a discretionary authority in the attainment date extension provisions, we think it is reasonable to consider the existing environmental burden in the area in question, and what impact our action may have on that burden. Consideration of the existing pollution burden already borne by the population that will be impacted by our action is a relevant factor of reasoned decisionmaking. The EPA therefore performed screening analyses to better understand the pollution burdens borne by the population that will be affected by the requested extension in order to fully understand the potential public health ramifications of the extension. That analysis did not indicate disproportionate pollution exposure or burdens for populations in the Uinta Basin area compared to the wider U.S. population.

The EPA's inquiry is also consistent with multiple executive orders addressing environmental justice as well as an April 7, 2021, directive by the EPA Administrator.[27] [28] In that directive, the Administrator instructed all EPA offices to take immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.[29]

Screening Analyses

To conduct the screening analyses, we used EJSCREEN, an EJ mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[30] The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[31] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ. We also examined ozone design value data for the Uinta Basin area.[32]

With respect to the Uinta Basin, the EPA conducted an EJSCREEN analysis for the two counties (Duchesne and Uintah) that encompass the entire Uinta Basin nonattainment area, as well as analyses of five-kilometer buffers around the five monitors inside the nonattainment area that showed a fourth highest daily maximum value that exceeded the ozone NAAQS between 2018 and 2020.[33] The results of our screening analysis did not indicate disproportionate exposure or burdens with respect to the non-ozone environmental indicators assessed in EJSCREEN,[34] either between the monitor site buffer areas and the 2-county (Duchesne and Uintah) area, or relative to the U.S. as a whole. (The full results of our analyses are provided in the docket for this rulemaking.)

The EPA considered the information described above in evaluating Utah's request for a 1-year extension of the Marginal attainment date, and we propose to find that this information does not weigh against our proposal to grant Utah's request. Again, we seek comment on our proposal to grant the attainment date extension request for the Uinta Basin, Utah, 2015 ozone NAAQS nonattainment area.

C. Determinations of Failure to Attain and Reclassification

The EPA is proposing to determine that 24 Marginal nonattainment areas failed to attain the 2015 ozone NAAQS by the attainment date of August 3, 2021 (September 24, 2021, for the San Antonio area). The 24 areas are: Allegan County, Michigan; Baltimore, Maryland; Berrien County, Michigan; Chicago, IL-IN-WI; Cincinnati, OH-KY; Cleveland, Ohio; Dallas-Fort Worth, Texas; Denver Metro/North Front Range, Colorado; Detroit, Michigan; Door County-Revised, Wisconsin; Greater Connecticut, Connecticut; Houston-Galveston-Brazoria, Texas; Louisville, KY-IN; Mariposa, California; Milwaukee, Wisconsin; Muskegon County, Michigan; North Wasatch Front, Utah; Pechanga Band of Luiseño Mission Indians; Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE; Phoenix-Mesa, Arizona; San Antonio, Texas; Sheboygan County, Wisconsin; St. Louis, Missouri; and Washington DC-MD-VA. These areas are not eligible for a 1-year attainment date extension and because they do not meet the extension criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307. The areas' ozone DVs for 2018–2020 are shown in Table 1.

We note that the State of Texas and the State of Utah submitted CAA section 179B demonstrations for the San Antonio and Northern Wasatch Front areas, respectively. In this action, the EPA is proposing to disapprove these CAA section 179B demonstrations and to determine that these areas failed to attain. The basis for the proposed

while in other years these conditions may not occur at all.

[26] We use the fourth highest daily maximum average ozone 8-hour concentrations here for illustration, but these values, by definition, are not the highest values recorded for a monitoring site. Values presented are for AQS Site Number 490472003; *see* Table 5 of ''o3_designvalues_2017_2019_final_05_26_20.xlsx'' available at *https://www.epa.gov/air-trends/air-quality-design-values.*

[27] Message from the EPA Administrator, Our Commitment to Environmental Justice (issued April 7, 2021) at *https://www.epa.gov/sites/production/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf.*

[28] *See* E.O. 13985 (''Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' issued January 20, 2021, available at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* and 86 FR 7009 (January 25, 2021)) and E.O. 12898 (''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' issued February 11, 1994, available at *https://www.epa.gov/sites/production/files/2015-02/documents/exec_order_12898.pdf* and 59 FR 7629 (February 16, 1994)).

[29] The EPA has defined environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.'' *See https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[30] The EJ SCREEN tool is available at *https://www.epa.gov/ejscreen.*

[31] *See https://www.census.gov/programs-surveys/geography/about/glossary.html.*

[32] The ozone metric in EJSCREEN represents the summer seasonal average of daily maximum 8-hour concentrations (parts per billion, ppb) and was not used in our EJ analyses because this metric is not informative of peak ozone concentrations for this area, which are instead represented here by the design value metric. Ozone design values are the basis of attainment determinations in this proposed action, and we consider it a more informative indicator of pollution burden from ozone in the Uinta Basin area.

[33] AQS Site IDs: 49–013–0002, 49–013–7011, 49–047–2002, 49–047–2003, 49–047–7022.

[34] EJSCREEN examines multiple environmental indicators including, *e.g.,* particulate matter, traffic proximity and volume, lead paint in housing, and proximity scores for Superfund, RMP and hazardous waste facilities.

disapprovals is explained in more detail in Section II.C.1 of this notice.

If we finalize our action as proposed, each of these areas will be reclassified as Moderate nonattainment for the 2015 ozone NAAQS, the next higher classification, as provided under CAA section 181(b)(2)(A)(i) and codified at 40 CFR 51.1303. These areas would then be required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024 (September 24, 2024, for the San Antonio, Texas, area). If an area attains the 2015 ozone NAAQS, the relevant state may seek a Clean Data Determination, under which certain attainment planning requirements for the area would be suspended under 40 CFR 51.1318. If an area meets all the other applicable statutory criteria, the state with an attaining nonattainment area could also seek a redesignation to attainment.[35]

On July 14, 2021, the EPA finalized the Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards action which expanded the boundaries of the Door County, Wisconsin, nonattainment area (*see* 86 FR 31438, 31444, July 14, 2021). We recognize that the original Door County area (comprising only Newport State Park) was redesignated to attainment in 2020 (*see* 85 FR 35377, June 10, 2020), prior to the EPA revising the boundaries of the nonattainment area to respond to the court's remand in *Clean Wisconsin* v. *EPA,* 964 F.3d 1145 (D.C. Cir. 2020). Given the different implementation deadlines for the different portions of Door County, the EPA has labeled the original area as ''Door County, WI'' and the expanded area as ''Door County-Revised, WI'' in the amended 40 CFR part 81 tables for the revised designations. In this current action, the EPA is proposing to reclassify the Door County-Revised, Wisconsin, area from Marginal to Moderate for the 2015 ozone NAAQS; the EPA is not proposing any action related to the Door County, Wisconsin, area because it is no longer subject to the attainment determination requirements of CAA section 181(b)(2) due to the fact that it has been redesignated to attainment (*i.e.,* it is a maintenance area for the 2008 ozone NAAQS). However, because the Door County-Revised, Wisconsin, area is also a Rural Transport Area (RTA) under CAA section 182(h), and the EPA does not have information indicating that the bases for treating the Door County-Revised, Wisconsin, area as an RTA under CAA section 182(h) have changed, Wisconsin would not be required to submit Moderate area SIP revisions for the area, if this proposal is finalized.[36,37]

The EPA requests comment on our proposal to determine that these 24 nonattainment areas did not attain the 2015 ozone NAAQS by the Marginal area attainment date.

1. International Transport and Requirements for CAA Section 179B

CAA section 179B(b) provides that where a state demonstrates to the Administrator's satisfaction that an ozone nonattainment area would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States, that area shall not be subject to the mandatory reclassification provision, CAA section 181(b)(2). The State of Texas submitted a CAA section 179B demonstration for the San Antonio nonattainment area on July 13, 2020. Additionally, the State of Utah submitted a CAA section 179B demonstration for the Northern Wasatch Front nonattainment area on May 28, 2021. As described in this subsection, the EPA is proposing to disapprove the demonstrations for San Antonio and Northern Wasatch Front, resulting in the proposed determinations that both areas failed to timely attain the 2015 ozone NAAQS discussed previously in this section.

a. Background for the Proposed Actions

Anthropogenic emission sources outside of the U.S. can affect to varying degrees the ability of some air agencies to attain and maintain the 2015 ozone NAAQS in areas within their jurisdiction. In a nonattainment area affected by international emissions, an air agency may elect under CAA section 179B[38] to develop and submit to the EPA a demonstration intended to show that a nonattainment area would attain, or would have attained, the relevant NAAQS by the applicable statutory attainment date ''but for'' emissions emanating from outside the U.S. Under CAA section 179B, the EPA evaluates such demonstrations, and if it agrees with the air agency's demonstration, the EPA considers the impacts of international emissions in taking specific regulatory actions.

CAA section 179B provides the EPA with authority to consider impacts from international emissions in two contexts: (1) A ''prospective'' state demonstration submitted as part of an attainment plan, which the EPA considers when determining whether the SIP adequately demonstrates that a nonattainment area will attain the NAAQS by its future attainment date (see CAA section 179B(a)); or (2) a ''retrospective'' state demonstration, which the EPA considers after the attainment date in determining whether a nonattainment area attained the NAAQS by the attainment date (*see* CAA section 179B(b)–(d)).

First, CAA section 179B(a) provides that, ''[N]otwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if (1) such plan or revision meets all the requirements applicable to it . . . other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and (2) the submitting state establishes to the satisfaction of the Administrator that the implementation plan of such state *would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date* . . . but for emissions emanating from outside of the United States,'' (emphasis added). The

[35] The EPA's Clean Data Policy, as codified for the 2015 ozone NAAQS at 40 CFR 51.1318, suspends the requirements for states to submit certain attainment planning SIPs such as the attainment demonstrations, including RACM, RFP, and contingency measures for so long as an area continues to attain the standard.

[36] Section 182(h) of the CAA allows the EPA to determine that a designated nonattainment area can be treated as an RTA if: the area does not contain emission sources that make significant contribution to monitored ozone concentration in the area or other areas; and the area does not include and is not adjacent to a Metropolitan Statistical Area. The General Preamble further states that ''Any RTA that fails to meet the Marginal area attainment deadlines is subject to bump-up to the appropriate higher nonattainment status. However, if the area still qualifies as an RTA, although the area will be subject to the attainment date for the higher classification, it remains subject only to the submittal and implementation requirements for Marginal areas. If it is found that the area no longer qualifies as an RTA, the area will be treated as the higher classified area for SIP requirements as well.'' (57 FR 13498, April 16, 1992).

[37] In a separate rulemaking, the EPA is proposing to redesignate the Door County-Revised, WI Marginal nonattainment area to attainment for the 2015 ozone NAAQS based upon complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021 (87 FR 12020, March 3, 2022). If this area is fully redesignated prior to EPA finalizing this proposal, EPA would not finalize its proposed action for the area.

[38] All references to CAA section 179B are to 42 U.S.C. 7509a. International border areas, as added Public Law 101–549, title VIII, § 818, 104 Stat. 2697 (November 15, 1990). See the docket for this rulemaking for the full statutory text.

EPA refers to CAA section 179B(a) demonstrations as ''prospective'' demonstrations because they are intended to assess future air quality, taking into consideration the impact of international emissions. Thus, if EPA approves a prospective demonstration, the state is relieved from the requirement to submit to the EPA a demonstration showing that the nonattainment area will attain the NAAQS by the attainment date.[39]

Second, CAA section 179B(b) provides that, for ozone nonattainment areas, ''[n]otwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that . . . such State *would have attained* the national ambient air quality standard . . . by the applicable attainment date but for emissions emanating from outside of the United States,'' (emphasis added) shall not be subject to reclassification to a higher classification category by operation of law, as otherwise required in CAA section 181(b)(2).[40] The EPA refers to demonstrations developed under CAA section 179B(b) as ''retrospective'' demonstrations because they involve analyses of past air quality (*e.g.,* air quality data from the years to be evaluated for determining whether an area attained by the attainment date). Thus, an EPA-approved retrospective demonstration provides relief from reclassification that would have resulted from the EPA determining that the area failed to attain the NAAQS by the relevant attainment date.

Irrespective of developing and submitting a prospective or retrospective demonstration, states still have to meet all nonattainment area requirements applicable for the relevant NAAQS and area classification. The 2015 ozone NAAQS SIP Requirements Rule did not include regulatory requirements specific to CAA section 179B but did provide guidance on certain points. In the rule, the EPA confirmed that: (1) Only areas classified Moderate and higher must show that they have implemented reasonably available control measures and reasonably available control technology (RACM/RACT); (2) CAA section 179B demonstrations are not geographically limited to nonattainment areas adjoining an international border; and, (3) a state demonstration prepared under CAA section 179B can consider emissions emanating from sources in North America (*i.e.,* Canada or Mexico) or sources on other continents (*see* 86 FR 62998, 63009, December 6, 2018). In that rule, the EPA encouraged air agencies to consult with the appropriate EPA regional office to determine technical requirements for the CAA section 179B demonstrations. In addition, the EPA noted its development of supplementary technical information and guidance to assist air agencies in preparing demonstrations that meet the requirements of CAA section 179B.

The EPA issued more detailed guidance regarding CAA section 179B on December 18, 2020, that includes recommendations to assist state, local, and tribal air agencies that intend to develop a CAA section 179B demonstration.[41] The guidance describes and provides examples of the kinds of information and analyses that the EPA recommends air agencies consider for inclusion in a CAA section 179B demonstration.

In the guidance, the EPA confirmed that while approval of a CAA section 179B demonstration provides specific forms of regulatory relief for air agencies, the EPA's approval does not relieve air agencies from obligations to meet the remaining applicable planning or emission reduction requirements in the CAA. It also does not provide a basis either for excluding air monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment, or for redesignating an area to attainment. If an air agency is contemplating a CAA section 179B demonstration in either the CAA section 179B(a) ''prospective'' context or the CAA section 179B(b) ''retrospective'' context, the EPA encourages communication throughout the demonstration development and submission process, along the lines of these basic steps: (1) The air agency contacts its EPA Regional office to discuss CAA section 179B regulatory interests and conceptual model; (2) the air agency begins gathering information and developing analyses for a demonstration; (3) the air agency submits a draft CAA section 179B demonstration to its EPA Regional office for review and discussion; and (4) the air agency submits its final CAA section 179B demonstration to the EPA. After that process is complete, the EPA makes a determination as to the sufficiency of the demonstration after a public notice and comment process. EPA may act on a prospective demonstration when taking action on an area's attainment plan. For a retrospective demonstration, EPA may determine its adequacy when taking action to determine whether the area attained by the attainment date and is subject to reclassification.

The EPA's consideration of the CAA section 179B demonstrations submitted by states in connection with reclassification of ozone nonattainment areas, as is relevant to this action, is governed by CAA section 179B(b).[42] Pursuant to that provision, the state must establish ''to the satisfaction of the Administrator that, with respect to [the relevant] ozone nonattainment area in such State, such State would have attained the [2015 ozone NAAQS] by the applicable attainment date, but for emissions emanating from outside of the United States . . .'' Because the wording in CAA section 179B(b) is in the past tense, it is reasonable for EPA to conclude that such demonstrations should be retrospective in nature. In other words, the demonstration should include analyses showing that the air quality data on specific days in the time period used to assess attainment were affected by international emissions to an extent that prevented the area from attaining the standard by the attainment date. By definition, states can only make such a demonstration after air quality data collected pursuant to Federal reference or equivalent monitoring methods are certified and indicate that the area failed to attain by the attainment date. Where the EPA approves a state's CAA section 179B(b) retrospective demonstration, the area retains its nonattainment designation and is still subject to all applicable requirements for the area's current

[39] Section 182(a) of the CAA, which describes nonattainment area requirements for ozone Marginal areas, states that the requirements of section 182(a) ''shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.'' In other words, there is no prospective relief that can be granted by the EPA under section 179B(a) for ozone nonattainment areas classified as Marginal.

[40] The EPA's longstanding view is that CAA section 179B(b) contains an erroneous reference to section 181(a)(2), and that Congress actually intended to refer here to section 181(b)(2), which addresses reclassification requirements for ozone nonattainment areas. *See* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, 13569 n.41 (April 16, 1992).

[41] ''Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions'' issued on December 18, 2020; available at *https://www.epa.gov/sites/default/files/2020-12/documents/final_caa_179b_guidance_december_2020_with_disclaimer_ogc.pdf.* The EPA also issued a notice of availability in the **Federal Register** on January 7, 2021 (86 FR 1107).

[42] The regulatory relief a state would receive from a satisfactory prospective CAA section 179B(a) demonstration is limited to approval of an attainment plan that does not demonstrate attainment and maintenance of the relevant NAAQS, but meets all other applicable requirements. CAA section 179B(a) is not germane to this proposal.

classification, but is not subject to the applicable requirements for any higher classification.

The CAA does not specify what technical analyses would be sufficient to demonstrate ''to the satisfaction of the Administrator'' that a ''State would have attained the [NAAQS for the pollutant in question] by the applicable attainment date, but for'' international emissions. The EPA recognizes that the relationship between certain NAAQS exceedances and associated international transport is clearer in some cases than in others. The following characteristics would suggest the need for a more detailed demonstration with additional evidence: (1) Affected monitors are not located near an international border; (2) specific international sources and/or their contributing emissions are not identified or are difficult to identify; (3) exceedances on internationally influenced days are in the range of typical exceedances attributable to local sources; and, (4) exceedances occurred in association with other processes and sources of pollutants, or on days where meteorological conditions were conducive to local pollutant formation (*e.g.,* for ozone, clear skies and elevated temperatures). Therefore, CAA section 179B demonstrations for non-border areas may involve additional technical rigor, analyses and resources compared to demonstrations for border areas.

Given the extensive number of technical factors and meteorological conditions that can affect international transport of air pollution, and the lack of specific guidance in the Act, the EPA has decided to evaluate CAA section 179B demonstrations based on the weight of evidence of all information and analyses provided by the air agency. The appropriate level of supporting documentation will vary on a case-by-case basis depending on the nature and severity of international influence, as well as the factors identified above. The EPA considers and qualitatively weighs all evidence based on its relevance to CAA section 179B and the nature of international contributions as described in the demonstration's conceptual model. Every demonstration should include fact-specific analyses tailored to the nonattainment area in question. When a CAA section 179B demonstration shows that international contributions are larger than domestic contributions, the weight of evidence will be more compelling than if the demonstration shows domestic contributions exceeding international contributions. In contrast, when a CAA section 179B demonstration shows that international emissions have a lower contribution to ozone concentrations than domestic emissions, and/or international transport is not significantly different on local exceedance days compared to non-exceedance days, then the weight of evidence will not be supportive of a conclusion that a nonattainment area would attain or would have attained the relevant NAAQS by the statutory attainment date ''but for'' emissions emanating from outside the U.S.

The EPA also considers in evaluating a CAA section 179B demonstration what measures an air agency has implemented to control local emissions. At a minimum, states are still subject to all applicable requirements based on the requirements of that area's classification. For EPA to concur with a state's CAA section 179B retrospective demonstration, the weight of evidence should show the area could not attain with on-the-books measures and potential reductions associated with required controls for that particular NAAQS and classification that are to be implemented by the attainment date. Because CAA section 179B does not relieve an air agency of its planning or control obligations, the air agency should show that it has implemented all required emissions controls at the local level as part of its demonstration.

b. Summary of the 2015 Ozone NAAQS CAA Section 179B Demonstrations Submitted to the EPA and Proposed Actions

As part of meeting its duty to determine whether the San Antonio and Northern Wasatch Front areas attained the 2015 ozone NAAQS by the Marginal attainment date, the EPA has evaluated the CAA section 179B demonstrations submitted by Texas and Utah for these areas. The states submitted the CAA section 179B demonstrations to support claims that the San Antonio and Northern Wasatch Front nonattainment areas would have attained the 2015 ozone NAAQS by the applicable attainment date, but for emissions emanating from outside of the United States. If the EPA were to approve these demonstrations, then the EPA would not reclassify these areas from Marginal to Moderate.

After a thorough review, the EPA is proposing to disapprove the CAA section 179B demonstrations for both areas. The San Antonio, Texas, nonattainment area is a non-border area for which the submitted technical analysis and weight of evidence of multiple factors (for example, whether international contributions are large in comparison to domestic contributions) does not establish that the area would have attained but for international transport impacts. Similarly, the submitted demonstration for the Northern Wasatch Front, Utah, nonattainment area—a non-border area—does not establish that the area would have attained but for international transport impacts. The full rationale supporting each proposed disapproval is included in the related technical support documents provided in the docket for this rulemaking.

The EPA solicits comment on each of these proposed CAA section 179B demonstration disapprovals. Once again, the EPA also requests comment on its proposal to determine that the San Antonio and Northern Wasatch Front areas—as well as the other 22 nonattainment areas referenced in Section II.C. of this notice—did not attain the 2015 ozone NAAQS by the Marginal area attainment date.

D. Moderate Area SIP Revisions

Marginal nonattainment areas that the EPA has determined failed to attain the 2015 ozone NAAQS by the attainment date will be reclassified as Moderate by operation of law upon the effective date of the final reclassification rule. Each responsible state air agency must submit SIP revisions that satisfy the general air quality planning requirements under CAA section 172(c) and the ozone specific requirements for Moderate nonattainment areas under CAA section 182(b), as interpreted and described in EPA's implementing regulations for the 2015 ozone NAAQS (*see* 40 CFR 51.1300 *et seq.*). This section describes the required Moderate area submission elements, provides additional discussion of the vehicle inspection and maintenance program requirement, and proposes submission and implementation deadlines for Moderate area SIP revisions required by reclassification.

As discussed in Section II.C. of this notice, Wisconsin would not be required to submit Moderate area SIP revisions for the Door County-Revised, Wisconsin area if this proposal is finalized. As noted previously, for the Pechanga Band of Luiseño Mission Indians nonattainment area, the Pechanga Tribe would not be required to submit a Moderate area TIP revision. Tribes that are part of multi-jurisdictional nonattainment areas would also not be required to submit implementation plan revisions applicable to Moderate areas.

1. Required Submission Elements

SIP requirements that apply to Moderate areas are cumulative of CAA requirements for the Marginal

classification and include additional Moderate area requirements as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS (*see* CAA sections 172(c)(1) and 182(a) and (b), and 40 CFR 51.1300 *et seq.*). We are providing additional discussion in the following sections for these Moderate area requirements: (a) RACM and RACT and (b) Vehicle Inspection and Maintenance.

a. RACM and RACT

States with jurisdiction over all or a portion of an ozone nonattainment area classified as Moderate or higher must provide an analysis of—and adopt all—RACM, including RACT, needed for purposes of meeting RFP and expeditiously attaining the ozone NAAQS in that area. The EPA interprets the RACM provision at CAA section 172(c) to require a demonstration that the state has adopted all technologically and economically feasible measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable, and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area (*see* 80 FR 12264, 12282, March 6, 2015; and 40 CFR 51.1312(c)). For areas reclassified as Moderate, such an analysis should include an evaluation of currently available RACT for sources that emit, or have the potential to emit, 100 tons per year or more of VOC or NO_X, as well as an evaluation of RACT for all sources subject to a Control Techniques Guideline *(see* CAA sections 182(b)(2)(A–C) and 182(f)).

The EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas.[43] In addition to the independent RACT requirement, states have a statutory obligation to apply RACM and adopt such measures needed to meet RFP requirements and to demonstrate attainment as expeditiously as practicable when also considering emissions reductions associated with the implementation of RACT on sources in the area.[44] Therefore, to the extent that a state adopts new or additional control measures as RACT to meet RFP requirements or to demonstrate attainment as expeditiously as practicable, those states must include such RACT revisions with the other SIP elements due as part of the attainment plan required under CAA sections 172(c) and 182(b).

b. Vehicle Inspection and Maintenance (I/M)

Background on I/M. Motor vehicles are a major contributor of ozone precursor (VOC and NO_X) emissions. I/M programs reduce these emissions by ensuring on-road motor vehicles are maintained to meet vehicle emission standards as certified, identify excessive emissions, and assure vehicle repairs.[45]

As mentioned in the preceding section, a Basic I/M program is a required Moderate area SIP submission element for the 2015 ozone NAAQS. The applicable Basic I/M requirements for Moderate ozone nonattainment areas are described in CAA sections 182(a)(2)(B) and 182(b)(4) and further defined in the EPA's I/M regulations (40 CFR part 51, subpart S).[46] Only Moderate ozone nonattainment areas in areas with a 1990 Census-defined population of 200,000 or more (urbanized areas) are required to implement Basic I/M programs (*see* 40 CFR 51.350(a)(4)).

Areas subject to Basic I/M program requirements for the 2015 ozone NAAQS. A Basic I/M program is required for all urbanized Moderate areas under the 2015 ozone NAAQS, including for areas with and without an existing I/M program that may have been implemented to meet the CAA requirements for a previous ozone NAAQS. Most of the Marginal nonattainment areas being proposed in this action for reclassification to Moderate under the 2015 ozone NAAQS are already operating I/M programs for a variety of reasons, including being designated nonattainment and classified as Moderate or above under a prior ozone standard and/or as part of a maintenance plan for a prior NAAQS. Consistent with the I/M regulations, states with existing I/M programs would need to conduct and submit a performance standard modeling analysis as well as make any necessary program revisions as part of their Moderate area SIP submissions to ensure that I/M programs are operating at or above the Basic I/M performance standard level for the 2015 ozone NAAQS.[47] States may determine through the performance standard modeling analysis that an existing SIP-approved program would meet the performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the state could submit a SIP revision with the associated performance modeling and a written statement certifying their determination in lieu of submitting new revised regulations.[48] With the passage of time and changes in fleet mix, it is appropriate for States to confirm existing programs' compliance with the performance standard.

In addition, the EPA recognizes that there are four Marginal nonattainment areas being proposed in this action for reclassification to Moderate under the 2015 ozone NAAQS that do not currently operate an I/M program but meet the population criteria for Basic I/M programs: Cincinnati, Ohio-Kentucky; Detroit, Michigan; Louisville, Kentucky-Indiana; and San Antonio, Texas. If we finalize our action as proposed, these newly reclassified Moderate nonattainment areas would need to submit a SIP revision. Such a revision would address the Basic I/M program requirements to be fully implemented as expeditiously as

[43] *See* Memo from John Seitz, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (1995), at 5 (explaining that Subpart 2 requirements linked to the attainment demonstration are suspended by a finding that a nonattainment area is attaining but that requirements such as RACT and I/M must be met whether or not an area has attained the standard); *see also* 40 CFR 51.1318 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment).

[44] Though not directly a part of a nonattainment area RACM analysis, the EPA has interpreted CAA section 172(c)(6) to require that air agencies also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries) and must require other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. For discussion of this ''other control measures'' provision *see also* the final rule to implement the 2015 ozone NAAQS (83 FR 63015, December 6, 2018), the Phase 2 proposed rulemaking (68 FR 32829, June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623, November 29, 2005), and the final rule to implement the $PM_{2.5}$ NAAQS (81 FR 58035, August 24, 2016).

[45] *See* EPA's I/M website for a fact sheet and link to the I/M regulations at *https://www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im-regulations.*

[46] The EPA is not proposing changes to its I/M regulations in this notice; however, additional clarification in this preamble is provided to assist states with nonattainment areas subject to Basic I/M in understanding specific I/M program requirements due to being reclassified as Moderate.

[47] 40 CFR 51.372(a)(2). An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NO_X.

[48] See *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements,* 83 FR 63001–63002. Performance standard modeling is also required for Enhanced I/M programs for the 2015 ozone NAAQS in Serious and above ozone nonattainment areas for that NAAQS.

practicable but no later than the implementation deadline determined by the final action reclassifying these areas as discussed in Section II.D.2.c. of this notice.

The EPA has already established the SIP elements for meeting Basic I/M program requirements. These elements will need to be detailed in a state's I/M SIP submission; the I/M regulations at 40 CFR 51.372 address I/M SIP submissions with paragraphs (a)(1)–(8) outlining the required elements. The first required element is a schedule for the I/M program implementation and interim milestones leading to mandatory testing. This list of milestones to be scheduled in the SIP includes such things as passage of enabling statutory or other legal authority; proposal of draft regulations and promulgation of final regulations; issuance of final specifications and procedures; issuance of final Request for Proposals (if applicable); licensing or certifications of stations and inspectors; the date mandatory testing will begin for each model year to be covered by the program; etc. (*see* 40 CFR 51.372(a)(1)).

The other seven elements that the I/M SIP will need to address include a performance standard modeling analysis of the proposed I/M program; the geographic applicability of the I/M program; a detailed discussion of each of the required design elements;[49] legal authority requiring or allowing implementation of the I/M program and providing either broad or specific authority to perform all required elements of the program; legal authority for I/M program operation until such time as it is no longer necessary; implementing regulations, interagency agreements, and memoranda of understanding; and evidence of adequate funding and resources to implement all aspects of the program (*see* 40 CFR 51.372(a)(2)–(8)). Not all of these I/M program SIP elements need to be established in full prior to the due date of the I/M SIP submission (*see* Section II.D.2.a. of this notice), but rather, the I/M SIP needs to establish deadlines for certain I/M program elements leading to full implementation of the I/M program as expeditiously as practicable but in no case later than the implementation deadline determined by the final action to this proposal, as discussed in Section II.D.2.c. of this notice.

I/M and Environmental Justice. While vehicle emissions-per-mile have decreased due to advances in vehicle emission control technology, those controls can degrade over time which can lead to excess pollution in ozone nonattainment areas. I/M programs ensure that vehicles are operating according to EPA's vehicle emissions standards and adequately protecting public health. However, any Basic I/M program for the 2015 ozone NAAQS may present potential economic hardship and other concerns for low-income individuals of newly reclassified Moderate ozone nonattainment areas. Specifically, these residents might own older, high-emitting vehicles and be less able to pay for car repairs needed as the result of a failed I/M test. To address this disparity in other I/M programs, some states such as Arizona, California,[50] and Utah[51] fund vehicle repair or replacement assistance. For example, the Arizona Voluntary Vehicle Repair Program provides owners of eligible vehicles with financial assistance toward the cost of repairs after a failed emissions test. Since 2018, more than 2,700 vehicles have been repaired through this program, saving Arizona motorists more than $1.3 million and eliminating more than 560 tons of emissions.[52] The EPA believes the implementation of Basic I/M programs in communities with low-income individuals is an important issue. We encourage states that are not already providing such assistance programs to work with interested parties in their nonattainment areas to address such concerns.

Basic I/M Program Design Element Considerations and Meeting the Performance Standard. There are several program design elements described in EPA's existing I/M regulations that should be considered for Basic I/M programs.

To determine whether a given set of program design elements meets the applicable I/M performance standard, it is necessary to conduct performance standard modeling.[53] The performance standard for Basic I/M programs in areas designated nonattainment for the 2015 ozone NAAQS includes, among other things, annual inspections of light-duty vehicles in a centralized test program by conducting idle testing of 1968–2000 Model Year (MY) subject vehicles and on-board diagnostics (OBD) checks on 2001 and newer subject vehicles (*see* 40 CFR 51.352(e)). The EPA believes that this Basic I/M performance standard can be met by a state program that exempts 1995 MY and older vehicles from tailpipe testing by performing the OBD test on 1996 and newer OBD-equipped light-duty vehicles. In this case, the relatively small benefit of tailpipe idle testing is surpassed by the addition of 1996–2000 MY light-duty vehicles to the OBD testing coverage. Additional flexibilities in designing the I/M program (such as allowing newer MY exemptions, and/or permitting the testing of vehicles biennially as opposed to annually) might be realized by increasing the level of certain design elements beyond that of this Basic I/M performance standard such as the inclusion of OBD testing of light-duty trucks or increasing the Gross Vehicle Weight Range of the subject fleet.[54] The degree to which this Basic I/M performance standard allows for additional forms of flexibility will depend largely upon the local conditions within the I/M program area, such as the local fleet characteristics like age distribution and vehicle market share, and local meteorological characteristics. The EPA intends to provide technical assistance for Basic I/M programs under the 2015 ozone NAAQS separate from this rulemaking.

2. Submission and Implementation Deadlines

a. Submission Deadline for SIP Revisions

On August 3, 2018 (September 24, 2018, for the San Antonio, Texas, area), when final nonattainment designations became effective for the 2015 ozone NAAQS, states responsible for areas initially classified as Moderate were required to prepare and submit SIP revisions by deadlines relative to that effective date. For those areas, the submission deadlines ranged from 2 to 3 years after the effective date of

[49] I/M program design elements are program features that have a direct impact on the ability of the program to reduce levels of the ozone precursors, VOC, and NO_X. These design elements include test frequency (annual or biennial), waiver/compliance rate, vehicle type coverage, model year (MY) coverage, network type (centralized or decentralized), and test type (*e.g.,* idle, onboard diagnostics (OBD)).

[50] The California Bureau of Automotive Repair's Consumer Assistance Program offers eligible consumers repair assistance and vehicle retirement options to help improve air quality. For more information, *see https://www.bar.ca.gov/consumer/Consumer_Assistance_Program/.*

[51] Utah's Vehicle Repair and Replacement Assistance Program provides funding assistance to individuals whose vehicles are failing vehicle emission standards to either replace their failing vehicle with a newer, cleaner one or to repair it. For more information *see https://deq.utah.gov/air-quality/incentive-programs-aq/vehicle-repair-and-replacement-assistance-program.*

[52] For more information, *see https://www.azdeq.gov/node/4525.*

[53] *See* 40 CFR 51.372(a)(2) and 51.352.

[54] Areas that intend to use I/M emission reductions for attainment or RFP SIPs, can also consider adding the testing of light-duty trucks (or other Enhanced I/M program elements) to their I/M testing regimen to increase the emission reduction benefits of I/M, especially considering the increased fraction of light-duty trucks in the local vehicle fleet over the last two decades.

designation, depending on the SIP element required (*e.g.,* 2 years for the RACT SIP, 3 years for the attainment plan with RACM and attainment demonstration, and 3 years for a Basic I/M program SIP if required). Areas initially classified as Moderate are also required to implement RACM and RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designations, *i.e.,* January 1, 2023, with 2023 being the Moderate area attainment year.

CAA section 182(i) provides that areas reclassified under CAA section 181(b)(2) shall generally meet the requirements associated with their new classifications ''according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' The SIP submission deadlines for areas initially designated as Moderate have passed, therefore the EPA is proposing to use its discretion under CAA section 182(i) to adjust SIP submission deadlines that would otherwise apply. We recognize that the time between the anticipated effective date of reclassification and the Moderate area attainment date in 2024 (and, critically, the attainment year of 2023) is far less than the 6 years that initially designated Moderate areas have between designation and the attainment date. Given this compressed timeline, we are proposing, as discussed in more detail later, to set the SIP submission deadlines for all the various requirements for the newly reclassified Moderate areas as January 1, 2023. While not all of the ''schedules prescribed in connection with'' the various Subpart 2 requirements are the same (*e.g.,* the statute provides 3 years to submit SIPs for some requirements and 2 years for others), we think coordinating the submissions with the same deadline is necessary and appropriate in this situation given the compressed timeline and the need to achieve consistency among those submissions.

With respect to the SIP requirements for Moderate areas, the ''schedules prescribed in connection'' with those requirements are 2 years from the effective date of designation for RACT and 3 years from the effective date of designation for an attainment plan (*see* CAA sections 182(b)(1), 181(b)(2) and 182(i)). The 2-year and 3-year deadlines that applied to areas initially designated Moderate have already passed (August 3, 2021, or September 24, 2021, for San Antonio), and we do not find it appropriate to provide deadlines of 2 and 3 years from the effective date of a final action on this determination, either, as those deadlines would fall after the Moderate area attainment date of August 3, 2024. Given that attainment for these newly reclassified Moderate areas will be determined based on air quality monitoring data from the DV period of 2021–2023 (*i.e.,* 2023 is the attainment year, or the last calendar year of data prior to the attainment date), in order for any of the Moderate area controls to influence attainment by the Moderate area attainment date, they would need to be implemented by the beginning of the 2023 ozone season at the latest. We further recognize that the San Antonio, Texas, nonattainment area was designated later than the other areas being reclassified to Moderate, however, we are proposing that the SIP submission deadline for requirements associated with the Moderate area classification be due for all newly reclassified areas on January 1, 2023, in order to ensure consistency among submissions.

With respect to the SIP submission deadlines for RACT, the EPA's implementing regulations for the 2015 ozone NAAQS established a RACT SIP submission deadline for areas classified Moderate or higher of either 24 months from the reclassification effective date or a deadline established by the Administrator in the reclassification action using their discretion under CAA section 182(i) (*see* 40 CFR 51.1312(a)(2)(ii)). In the case of the potential newly reclassified Moderate areas addressed in this proposal, a RACT SIP submission deadline of 24 months after an anticipated 2022 effective date would fall in 2024, potentially near or after the applicable Moderate area attainment date of August 3, 2024 (September 24, 2024, for the San Antonio area). We believe it would be reasonable to instead align the SIP submission deadline for RACT with the proposed January 1, 2023, submission deadline for other Moderate area requirements, given the compressed timeline and the need to achieve consistency among those submissions as discussed previously. The EPA adopted this approach previously for Marginal areas reclassified to Moderate for failure to timely attain the 2008 ozone NAAQS, to achieve consistency among required SIP submissions for areas facing a similar compressed timeframe between the effective date of reclassifications and the Moderate area attainment date.[55]

Similarly, with respect to the SIP submission deadlines for I/M, we are proposing a January 1, 2023, deadline. This is consistent with the I/M regulations which provide that an I/M SIP shall be submitted no later than the deadline for submitting the area's attainment SIP.[56]

b. RACM and RACT Implementation Deadline

With respect to implementation deadlines, the EPA's implementing regulations for the 2015 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (*see* 40 CFR 51.1312(a)(3)(i)), which corresponds with the beginning of the attainment year for initially classified Moderate areas (January 1, 2023). The modeling and attainment demonstration requirements for 2015 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312 (*see* 40 CFR 51.1308(d)). The EPA's implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification (*see* 40 CFR 51.1312(a)(3)(ii)).

In the case of the potential reclassified Moderate areas addressed in this proposal, the start of the ozone season varies among states and is either January or March for potential reclassified Moderate areas addressed in this proposal (*see* 40 CFR part 58, appendix D, section 4.1, Table D–3).The EPA rejected an approach that would establish variable RACM/RACT implementation deadlines corresponding to an area's defined ozone season starting month because of the inconsistencies that such an approach would perpetuate. Instead, the EPA is proposing a consistent single

[55] ''Final Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards'' (81 FR 26697, 26705, May 4, 2016).

[56] 40 CFR 51.372(b)(2).

RACM/RACT implementation deadline for all newly reclassified Moderate areas corresponding with the beginning of the applicable attainment year, *i.e.,* January 1, 2023. This proposed deadline is the same as the single RACT implementation deadline for all areas initially classified Moderate per 40 CFR 51.1312(a)(3) and would require implementation of any identified RACM/RACT as early as possible in the attainment year to influence an area's air quality and 2021–2023 attainment DV. The proposed RACT implementation deadline would also align with the proposed SIP submission deadline of January 1, 2023, and ensure that SIPs requiring control measures needed for attainment, including RACM, would be submitted no later than when those controls are required to be implemented. A single deadline for the Moderate area SIP submissions and RACT implementation would also treat states consistently, in keeping with CAA section 182(i).

The EPA requests comment on requiring that RACM/RACT be implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.,* January 1, 2023.

c. I/M Implementation Deadline

With respect to the implementation deadline for Basic I/M programs, states wishing to use emission reductions from their newly required Basic I/M program for the 2015 ozone NAAQS would need to have such programs fully established and start testing as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.,* January 1, 2023. However, given the unique nature of I/M programs, there are many challenges, tasks, and milestones that must be met in establishing and implementing an I/M program. The EPA realizes that implementing a brand new or revised I/M program on an accelerated timeline may be difficult to achieve in practice, especially for states with no I/M programs elsewhere within their jurisdiction, so, for the states that do not intend to rely upon emission reductions from their Basic I/M program in attainment or RFP SIPs, we are proposing to allow Basic I/M programs to be fully implemented no later than 4 years after the effective date of reclassification, explained as follows.

Under CAA section 182(i), reclassified areas are generally required to meet the requirements associated with their new classification ''according to the schedules prescribed in connection with such requirements.'' The I/M regulations provide just such a prescribed schedule in stating that newly required I/M programs are to be implemented as expeditiously as practicable. The I/M regulations also allow areas newly required to implement Basic I/M up to ''4 years after the effective date of designation and classification'' to fully implement the I/M program.[57] With the effective date of this notice expected to be in 2022, the implementation deadline for Basic I/M programs for the 2015 ozone NAAQS under the proposal would be in 2026. This proposed implementation deadline is beyond the Moderate area attainment date of August 3, 2024 (or September 24, 2024, for the San Antonio area). However, by proposing such a deadline for newly reclassified Moderate areas required to implement a Basic I/M program (but not needing I/M emission reductions for attainment or RFP SIP purposes), the EPA maintains that these newly required Basic I/M programs could reasonably be implemented after the attainment year ozone season (*i.e.,* after 2023) relevant to the Moderate area attainment date if reductions from an I/M program are not necessary for an area to achieve timely attainment of the 2015 ozone NAAQS. The EPA has long taken the position that, like VOC RACT, the statutory requirement for states to implement I/M in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas (see RACT discussion above in Section II.D.1.a. of this notice).[58] Considering the numerous challenges and milestones necessary in implementing a Basic I/M program, this proposed implementation deadline of up to 4 years is reasonable.

Alternately, EPA is also seeking comment on allowing any newly reclassified areas required to implement a Basic I/M program (but not needing I/M for attainment or RFP SIP purposes) to fully implement the Basic I/M program by no later than the Moderate area attainment date of August 3, 2024 (September 24, 2024, for the San Antonio area). CAA section 182(i) also gives the EPA the discretion to adjust deadlines for reclassified areas ''to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' As discussed previously, although Basic I/M is not explicitly tied to an area's ability to achieve timely attainment, this alternate implementation deadline would more closely align with that of the other required Moderate area elements.

The EPA believes the proposed 4-year implementation deadline offers the states that will be required to implement Basic I/M due to reclassifications, if those reclassifications are finalized as proposed, the flexibility to fully implement the I/M programs on a timeline that addresses the challenges, especially for states starting new Basic I/M programs. The EPA also requests comments on aligning the I/M implementation deadline with that of the other required Moderate area elements.

III. Environmental Justice Considerations

As discussed in Section II.B of this notice, the EPA proposes to grant a request for a 1-year attainment date extension for the Uinta Basin, Utah, nonattainment area and extend the August 3, 2021, Marginal area attainment date to August 3, 2022, based on our finding that the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307 and there are no particular facts or circumstances that would compel the EPA Administrator to consider information beyond the statutory criteria. To that end, the EPA conducted an EJSCREEN analysis for the area to evaluate whether communities in the Uinta Basin area may be exposed to disproportionate pollution burdens. The results of our screening analysis did not indicate disproportionate exposure or burdens with respect to the non-ozone environmental indicators assessed in EJSCREEN.

As discussed in Section II.D.1.b of this notice, a Basic vehicle I/M program is required for all urbanized Moderate areas under the 2015 ozone NAAQS, including for areas with and without an existing I/M program that may have been implemented to meet the CAA requirements for a previous ozone NAAQS. I/M programs ensure that vehicles are operating according to EPA's vehicle emissions standards and adequately protecting public health. However, any Basic I/M program for the 2015 ozone NAAQS may present potential economic hardship and other concerns for low-income individuals of newly reclassified Moderate ozone

[57] The I/M program implementation deadline at 40 CFR 51.373(b) states: ''For areas newly required to implement Basic I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.'' A start date for I/M programs of 4 years after the effective date of designation and classification under the 8-hour ozone standard is also cited in the Basic I/M performance standard at 40 CFR 51.352(c) and (e)(2).

[58] John S. Seitz, Memo, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995, at 4.

nonattainment areas, and we encourage states that are not already providing I/M assistance programs to work with interested parties in their nonattainment areas to address such concerns.

IV. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This proposed rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action proposes to: (1) Find that certain Marginal ozone nonattainment areas listed in Table 1 failed to attain the 2015 NAAQS by the applicable attainment date; (2) identify those areas subject to reclassification as Moderate ozone nonattainment areas by operation of law upon the effective date of the reclassification notice; and (3) adjust any applicable implementation deadlines. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.[59]

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the proposed determination to deny or grant a 1-year attainment date extension do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

[59] On April 30, 2018, the OMB approved EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expired on April 30, 2021, 3 years after the approval date (*see* OMB Control Number 2060–0695 and ICR Reference Number 201801–2060–003 for EPA ICR No. 2347.03). On April 30, 2021, the OMB published the final 30-day Notice (86 FR 22959) for the ICR renewal titled ''Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)'' (*see* OMB Control Number 2060–0695 and ICR Reference No: 202104–2060–004 for EPA ICR Number 2347.04). The ICR renewal is pending OMB final approval.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified tribal areas within the nonattainment areas covered by this proposed rule, that would be potentially affected by this rulemaking. Specifically, eight of the nonattainment areas addressed in this proposal have tribes located within their boundaries: Amador, California (Jackson Rancheria of Me-Wuk Indians), Berrien County, Michigan (Pokagon Band of Potawatomi Indians), Greater Connecticut, Connecticut (Mashantucket Pequot Tribal Nation and Mohegan Indian Tribe), Northern Wasatch Front, Utah (Skull Valley Band of Goshute Indians), Phoenix-Mesa, Arizona (Fort McDowell Yavapai Nation, Gila River Indian Community of the Gila River Indian Reservation, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, and Tohono O'odham Nation), San Francisco, California (Lytton Rancheria), Uinta Basin, Utah (Ute Indian Tribe of the Uintah & Ouray Reservation), and Yuma, Arizona (Cocopah Tribe and Quechan Tribe of the Fort Yuma Indian Reservation). One of the nonattainment areas addressed in this document is a separate tribal nonattainment area (Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California).

The EPA has concluded that the proposed rule may have tribal implications for these tribes for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As noted previously, a tribe that is part of an area that is reclassified from Marginal to Moderate nonattainment is not required to submit a TIP revision to address new Moderate area requirements. However, if the EPA finalizes the determinations of failure to attain proposed in this action, the NNSR major source threshold and offset requirements would change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Severe (Section II.D.1 of this notice), including on tribal lands within these nonattainment areas. Areas that are already classified Moderate for a previous ozone NAAQS are already subject to these higher offset ratios and lower thresholds, so a reclassification to Moderate for the 2015 ozone NAAQS would have no effect on NNSR permitting requirements for tribal lands in those areas.

The EPA has communicated or intends to communicate with the potentially affected tribes located within the boundaries of the nonattainment areas addressed in this proposal, including offering government-to-government consultation, as appropriate.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income poulations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is presented in Section II.B of this action, ''Extension of Marginal Area Attainment Date,'' and summarized in Section III of this action, ''Environmental Justice Considerations,'' and the relevant documents have been placed in the public docket for this action.

With respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address EJ in these determinations. The CAA directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area attained the standard by that date. CAA section 181(b)(2)(A). Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area's design value. *Id.*

K. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[60]

The EPA is proposing findings regarding attainment of the NAAQS in nonattainment areas within 18 states located in nine of the ten EPA regions pursuant to a uniform process and standard. The EPA is also proposing to establish SIP submission and implementation deadlines for all newly reclassified areas in the identified states using a common, nationwide method. The jurisdictions that would be affected by this action, if finalized, represent a wide geographic area, and fall within several different judicial circuits.

If the Administrator takes final action on this proposal, then, in consideration of the effects of the action across the country, the EPA views this action to be ''nationally applicable'' within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this proposal, if finalized, to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[61]

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Michael Regan,

Administrator.

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BILLING CODE 6560–50–P

[60] In deciding whether to invoke the exception by making and publishing a finding that this action, if finalized, is based on a determination of nationwide scope or effect, the Administrator intends to take into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[61] In the report on the 1977 Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220407–0087]

RIN 0648–BL21

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2022 Harvest Specifications for Pacific Whiting, and 2022 Pacific Whiting Tribal Allocation

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule for the 2022 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Whiting Act of 2006 (Whiting Act), and other applicable laws. This proposed rule would establish the domestic 2022 harvest specifications for Pacific whiting including the 2022 tribal allocation for the Pacific whiting fishery, the non-tribal sector allocations, and set-asides for incidental mortality in research activities and non-groundfish fisheries. The proposed measures are intended to help prevent overfishing, achieve optimum yield, ensure that management measures are based on the best scientific information available, and provide for the implementation of tribal treaty fishing rights.

DATES: Comments on this proposed rule must be received no later than April 28, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0034 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0034 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov*

without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic Access

This proposed rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS website at *https://www.fisheries.noaa.gov* and at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, and email: *Colin.Sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule announces the coastwide whiting Total Allowable Catch (TAC) of 545,000 mt, the U.S. TAC of 402,646 mt, and proposes domestic 2022 Pacific whiting harvest specifications, including, the 2022 tribal allocation of 70,463 mt, the preliminary allocations for three non-tribal commercial whiting sectors, and set-asides for incidental mortality in research activities and non-groundfish fisheries. The tribal and non-tribal allocations for Pacific whiting, as well as set-asides, would be effective until December 31, 2022.

Pacific Whiting Agreement

The transboundary stock of Pacific whiting is managed through the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 (Agreement). The Agreement establishes bilateral management bodies to implement the terms of the Agreement, including the Joint Management Committee (JMC), which recommends the annual catch level for Pacific whiting.

In addition to the JMC, the Agreement establishes several other bilateral management bodies to set whiting catch levels: The Joint Technical Committee (JTC), which conducts the Pacific whiting stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC.

The Agreement establishes a default harvest policy of F–40 percent, which means a fishing mortality rate that would reduce the spawning biomass to 40 percent of the estimated unfished level. The Agreement also allocates 73.88 percent of the Pacific whiting TAC to the United States and 26.12 percent of the TAC to Canada. Based on recommendations from the JTC, SRG, and AP, the JMC determines the overall Pacific whiting TAC by March 25th of each year. NMFS, under the delegation of authority from the Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

2022 Stock Assessment and Scientific Review

The JTC completed a stock assessment for Pacific whiting in February 2022 (see **ADDRESSES**). The assessment was reviewed by the SRG during a four-day meeting held online on February 14–17, 2022 (see **ADDRESSES** for the report). The SRG considered the 2022 assessment report and appendices to represent the best scientific information available for Pacific hake/whiting.

The 2022 assessment model uses the same structure as the 2021 stock assessment model. The model is fit to an acoustic survey index of abundance, annual commercial catches of the transboundary Pacific whiting stock, and age composition data from an acoustic survey and commercial fisheries. Age-composition data provide information to estimate relative year class strength. Updates to the data in the 2022 assessment include: The new biomass estimate and age-composition data from the acoustic survey conducted in 2021, fishery catch and age-composition data from 2021, weight-at-age data for 2021, the addition of the age-1 index time series (1995–2021), and minor changes to pre-2021 data. Due to staffing issues, age data from 2021 were unavailable from the Canadian freezer-trawler fleet and minimally available for the shoreside fleet.

The Pacific whiting biomass is a highly cyclical and highly productive stock. Since the 1960s, it is estimated to have ranged from well below to above unfished levels. Compared to other groundfish stocks, the Pacific whiting stock has high recruitment variability, with low average recruitment levels and occasional large year-classes that often comprise much of the biomass. At the start of 2022, the Pacific whiting stock continues to be supported by multiple above average cohorts, including the 2010, 2014, 2016, and 2017 year classes which comprise 14 percent, 25 percent, 24 percent and 17 percent, respectively of the stock biomass. The 2010 year class is estimated to be the second highest recruitment in the assessment time series; the 2014 and 2016 year classes are estimated to be above average in strength; and the 2012 and 2017 year classes are about average. The assessment estimates small year classes in 2011, 2013, 2015, and 2018. The estimated biomass was relatively steady from 2017 to 2019, and then declined in 2020 and 2021 due to the 2014 and 2016 year classes moving through the growth-mortality transition during a period of high catches. Based on limited data, the 2020 cohort looks likely to be large.

At the start of 2022, the relative spawning biomass is still well above the biomass level associated with the default harvest rate (40 percent of unfished level), and is estimated to be at 69 percent of unfished levels, or 1,253,810 mt. The stock is considered at a healthy level, the estimated probability that spawning biomass at the start of 2022 is below 40 percent of unfished levels is 6.7 percent. The joint probability that the relative spawning stock biomass is both below 40 percent of unfished levels, and that fishing mortality is above the relative fishing intensity of the Agreement's F–40 percent default harvest rate is estimated to be 0 percent.

2022 Pacific Whiting Coastwide and U.S. TAC Recommendation

The AP and JMC met virtually March 1–3, 2022, to develop advice on a 2022 coastwide TAC. The AP provided its 2022 TAC recommendation to the JMC on March 02, 2022. The JMC reviewed the advice of the JTC, the SRG, and the AP, and agreed on a TAC recommendation for transmittal to the United States and Canadian Governments.

The Agreement directs the JMC to base the catch limit recommendation on the default harvest rate unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore Pacific whiting resource. After consideration of the 2022 stock assessment and other relevant scientific information, the JMC did not use the default harvest rate, and instead agreed on a more conservative approach. There were two primary reasons for choosing a TAC well below the level of F–40 percent. First, the JMC noted the increasing age of the 2010, 2014, and 2016 year classes and wished to extend access to these stocks as long as possible, which a lower TAC could accomplish. Second, there is uncertainty regarding the size of the 2020 year class. Maintaining a modest TAC for 2022 was deemed prudent by the JMC until an additional year of data is available on the size of the 2020 year

class. This conservative TAC setting process, endorsed by the AP, resulted in a TAC that is less than what it would be using the default harvest rate under the Agreement.

Under the Agreement, the U.S. TAC is 73.88 percent of the coastwide TAC. Based on the JMC's recommended coastwide TAC of 545,000 mt, the recommended 2022 U.S. TAC is 402,646 mt. This recommendation is consistent with the best available scientific information, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the United States and Canadian Governments on March 3, 2022. NMFS, under delegation of authority from the Secretary of Commerce, approved the TAC recommendation of 402,646 mt for U.S. fisheries on March 25, 2022

Tribal Allocation

The regulations at 50 CFR 660.50(d) identify the procedures for implementing the treaty rights that Pacific Coast treaty Indian tribes have to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. Tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish FMP request allocations, set-asides, or regulations specific to the tribes during the Council's biennial harvest specifications and management measures process. The regulations state that the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

NMFS allocates a portion of the U.S. TAC of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

Four Washington coastal treaty Indian tribes including the Makah Indian Tribe, Quileute Indian Tribe, Quinault Indian Nation, and the Hoh Indian Tribe (collectively, the ''Treaty Tribes''), can participate in the tribal Pacific whiting fishery. Tribal allocations of Pacific whiting have been based on discussions with the Treaty Tribes regarding their intent for those fishing years. The Hoh Tribe has not expressed an interest in participating in the Pacific whiting fishery to date. The Quileute Tribe and Quinault Indian Nation have expressed interest in beginning to participate in the Pacific whiting fishery at a future date. To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting, and has harvested Pacific whiting since 1996 using midwater trawl gear. Table 1 below provides a recent history of U.S. TACs and annual tribal allocation in metric tons (mt).

TABLE 1—U.S. TOTAL ALLOWABLE CATCH AND ANNUAL TRIBAL ALLOCATION IN METRIC TONS (MT)

Year	U.S. TAC [1]	Tribal allocation
2010	193,935 mt	49,939 mt
2011	290,903 mt	66,908 mt
2012	186,037 mt	48,556 mt
2013	269,745 mt	63,205 mt
2014	316,206 mt	55,336 mt
2015	325,072 mt	56,888 mt
2016	367,553 mt	64,322 mt
2017	441,433 mt	77,251 mt
2018	441,433 mt	77,251 mt
2019	441,433 mt	77,251 mt
2020	424,810 mt	74,342 mt
2021	369,400 mt	64,645 mt

[1] Beginning in 2012, the United States started using the term Total Allowable Catch, or TAC, based on the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting. Prior to 2012, the terms Optimal Yield (OY) and Annual Catch Limit (ACL) were used.

In 2009, NMFS, the States of Washington and Oregon, and the Treaty Tribes started a process to determine the long-term tribal allocation for Pacific whiting. However, they have not yet determined a long-term allocation. This rule proposes the 2022 tribal allocation of Pacific whiting. This allocation does not represent a long-term allocation and is not intended to set precedent for future allocations.

In exchanges between NMFS and the Treaty Tribes during August 2021, the Makah Tribe indicated their intent to participate in the tribal Pacific whiting fishery in 2022 and requested 17.5 percent of the U.S. TAC. The Quinault Indian Nation, Quileute Indian Tribe, and Hoh Indian Tribe informed NMFS in September 2021 that they will not participate in the 2022 fishery. NMFS proposes a tribal allocation that accommodates the tribal request, specifically 17.5 percent of the U.S. TAC. The proposed 2022 U.S. TAC is 402,646 mt, and therefore the proposed 2022 tribal allocation is 70,463 mt. NMFS has determined that the current scientific information regarding the distribution and abundance of the coastal Pacific whiting stock indicates the 17.5 percent is within the range of the tribal treaty right to Pacific whiting.

Non-Tribal Research and Bycatch Set-Asides

The U.S. non-tribal whiting fishery is managed under the Council's Pacific Coast Groundfish FMP. Each year, the Council recommends a set-aside of Pacific whiting to accommodate incidental mortality of the fish in research activities and non-groundfish fisheries based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. At its November 2021 meeting, the Council recommended an incidental mortality set-aside of 750 mt for 2022. This set-aside is unchanged from the 750 mt set-aside amount for incidental mortality in 2021. The 750 mt recommendation, however, reflects the recent average mortality that has declined from 942 mt in 2014–2016 to 216 mt in 2017–2019. This rule proposes the Council's recommendations.

Non-Tribal Harvest Guidelines and Allocations

In addition to the tribal allocation, this proposed rule establishes the fishery harvest guideline (HG), also called the non-tribal allocation. The proposed 2022 fishery HG for Pacific whiting is 331,433 mt. This amount was determined by deducting the 70,463 mt tribal allocation and the 750 mt allocation for scientific research catch and fishing mortality in non-groundfish fisheries from the U.S. TAC of 402,646 mt. The regulations further allocate the fishery HG among the three non-tribal sectors of the Pacific whiting fishery: The catcher/processor (C/P) Co-op Program, the Mothership (MS) Co-op Program, and the Shorebased Individual Fishing Quota (IFQ) Program. The C/P Co-op Program is allocated 34 percent (112,687 mt for 2022), the MS Co-op Program is allocated 24 percent (79,544 mt for 2022), and the Shorebased IFQ Program is allocated 42 percent (139,202 mt for 2022). The fishery south of 42° N lat. may not take more than 6,960 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 15, the start of the primary Pacific whiting season north of 42° N lat.

TABLE 2—2022 PROPOSED PACIFIC WHITING ALLOCATIONS IN METRIC TONS

Sector	2022 Pacific whiting allocation (mt)
Tribal	70,463
Catcher/Processor (C/P) Co-op Program	112,687
Mothership (MS) Co-op Program	79,544
Shorebased IFQ Program	139,202

This proposed rule would be implemented under the statutory and regulatory authority of section 305(d) of the Magnuson-Stevens Act, the Pacific Whiting Act of 2006, the regulations governing the groundfish fishery at 50

CFR 660.5–660.360, and other applicable laws. Additionally, with this proposed rule, NMFS, would ensure that the fishery is managed in a manner consistent with treaty rights of four Treaty Tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. *United States* v. *Washington,* 384 F. Supp. 313 (W.D. 1974).

Classification

NMFS notes that the public comment period for this proposed rule is 15 days. Finalizing the Pacific whiting harvest specifications close to the start of the Pacific whiting fishing season on May 15th provides the industry with more time to plan and execute the fishery and gives them earlier access to the finalized allocations of Pacific whiting. Given the considerably short timeframe between the JMC meeting in early March and the start of the primary whiting season on May 15, NMFS has determined that a 15-day comment period best balances the interest in allowing the public adequate time to comment on the proposed measures while implementing the management measures, including the finalizing Pacific whiting allocations, in a timely manner.

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making its final determination, NMFS will take into account the complete record, including comments received during the comment period.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the Pacific Coast Groundfish FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish FMP request allocations or regulations specific to the Tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.50(d) further state, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus. The tribal management measures in this proposed rule have been developed following these procedures.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

A range of potential total harvest levels for Pacific whiting have been considered under the Final Environmental Impact Statement for Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods thereafter (2015/16 FEIS) and in the Environmental Assessment for Harvest Specifications and Management Measures for 2021–2022 and Biennial Periods Thereafter and is available from NMFS (see **ADDRESSES**). The 2015/16 FEIS examined the harvest specifications and management measures for 2015–16 and 10-year projections for routinely adjusted harvest specifications and management measures. The 10-year projections were produced to evaluate the impacts of the ongoing implementation of harvest specifications and management measures and to evaluate the impacts of the routine adjustments that are the main component of each biennial cycle. The EA for the 2021–22 cycle tiers from the 2015/16 FEIS and focuses on the harvest specifications and management measures that were not within the scope of the 10-year projections in the 2015/16 FEIS.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action is contained in the **SUMMARY** section and at the beginning of the **SUPPLEMENTARY INFORMATION** section of the preamble. A summary of the IRFA follows. Copies of the IRFA are available from NMFS (See **ADDRESSES**).

Under the RFA, the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for entities involved in the fishing industry that qualify as small businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts, not in excess of $11 million for all its affiliated operations worldwide (see 80 FR 81194, December 29, 2015). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. Effective February 26, 2016, a seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide (See NAICS 311710 at 81 FR 4469; January 26, 2016). For purposes of rulemaking, NMFS is also applying the seafood processor standard to catcher processors because whiting C/Ps earn the majority of the revenue from processed seafood product.

Description and Estimate of the Number of Small Entities to Which the Rule Applies, and Estimate of Economic Impacts by Entity Size and Industry

This proposed rule affect how Pacific whiting is allocated to the following sectors/programs: Tribal, Shorebased IFQ Program Trawl Fishery, MS Co-op Program Whiting At-sea Trawl Fishery, and C/P Co-op Program Whiting At-sea Trawl Fishery. The amount of Pacific whiting allocated to these sectors is based on the U.S. TAC, which is developed and approved through the process set out in the Agreement between the U.S. and Canada, and the Whiting Treaty Act.

We expect one tribal entity to fish for Pacific whiting in 2022. Tribes are not considered small entities for the purposes of RFA. Impacts to tribes are nevertheless considered in this analysis.

As of January 2022, the Shorebased IFQ Program is composed of 164 Quota Share permits/accounts (134 of which were allocated whiting quota pounds), and 35 first receivers, one of which is designated as whiting-only receivers and 11 that may receive both whiting and non-whiting.

These regulations also directly affect participants in the MS Co-op Program, a general term to describe the limited access program that applies to eligible harvesters and processors in the MS sector of the Pacific whiting at-sea trawl fishery. This program consists of six MS processor permits, and a catcher vessel fleet currently composed of a single co-op, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments).

These regulations also directly affect the C/P Co-op Program, composed of 10

C/P endorsed permits owned by three companies that have formed a single coop. These co-ops are considered large entities from several perspectives; they have participants that are large entities, and have in total more than 750 employees worldwide including affiliates.

Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on a review of the Small Business Administration size criteria, permit applicants are asked if they considered themselves a ''small'' business, and they are asked to provide detailed ownership information. Data on employment worldwide, including affiliates, are not available for these companies, which generally operate in Alaska as well as the West Coast and may have operations in other countries as well. NMFS has limited entry permit holders self-report size status. For 2021, all 10 C/P permits reported they are not small businesses, as did 8 mothership catcher vessels. There is substantial, but not complete overlap between permit ownership and vessel ownership so there may be a small number of additional small entity vessel owners who will be impacted by this rule. After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered ''small'' businesses.

This rule will allocate Pacific whiting between tribal and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries consist of a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests may be delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportionment process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, in 2021 NMFS reapportioned 34,645 mt of the original 64,645 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year. The reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. The revised Pacific whiting allocations for 2021 following the reapportionment were: Tribal 30,000 mt, C/P Co-op 115,141 mt; MS Co-op 81,275 mt; and Shorebased IFQ Program 142,232 mt.

The prices for Pacific whiting are largely determined by the world market because most of the Pacific whiting harvested in the United States is exported. The U.S. Pacific whiting TAC is highly variable, as have subsequent harvests and ex-vessel revenues. For the years 2016 to 2020, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 303,782 mt annually. The 2021 U.S. non-tribal fishery had a Pacific whiting catch of approximately 268,926 mt, and the tribal fishery landed less than 3,000 mt.

Impacts to the U.S. non-tribal fishery are measured with an estimate of ex-vessel revenue. The proposed coastwide TAC of 545,000 mt would result in an U.S. TAC of 402,646 mt and, after deduction of the tribal allocation and the incidental catch set-aside, a U.S. non-tribal harvest guideline of 331,433 mt. Using the 2021 weighted-average non-tribal price per metric ton (*e.g.* $221 per metric ton), the proposed TAC is estimated to result in an ex-vessel revenue of $73.3 million for the U.S. non-tribal fishing fleet.

Impacts to tribal catcher vessels who elect to participate in the tribal fishery are measured with an estimate of ex-vessel revenue. In lieu of more complete information on tribal deliveries, total ex-vessel revenue is estimated with the 2021 average ex-vessel price of Pacific whiting, which was $221.15 per mt. At that price, the proposed 2022 tribal allocation of 70,463 mt would have an ex-vessel value of $15.58 million.

A Description of any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

For the allocations to the non-tribal commercial sectors the Pacific whiting tribal allocation, and set-asides for research and incidental mortality NMFS considered two alternatives: ''No Action'' and the ''Proposed Action.''

Under the no action alternative, NMFS would not implement allocations to the non-tribal sectors based on the JMC recommended U.S. TAC, which would not fulfill NMFS' responsibility to manage the U.S. fishery. This is contrary to the Whiting Act and Agreement, which requires sustainable management of the Pacific whiting resource, therefore this alternative received no further consideration.

Under the no action alternative, NMFS would not implement the set-aside amount of 750 mt recommended by the Council. Not implementing set-asides of the US whiting TAC would mean incidental mortality of the fish in research activities and non-groundfish fisheries would not be accommodated. This would be inconsistent with the Council's recommendation, the Pacific Groundfish Fishery Management Plan, the regulations setting the framework governing the groundfish fishery, and NMFS' responsibility to manage the fishery. Therefore the no action alternative received no further consideration.

NMFS did not consider a broader range of alternatives to the proposed tribal allocation because the tribal allocation is a percentage of the U.S. TAC and is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for Pacific whiting. Under the Proposed Action alternative, NMFS proposes to set the tribal allocation percentage at 17.5 percent, as requested by the Tribes. This would yield a tribal allocation of 70,463 mt for 2022. Consideration of a percentage lower than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the Tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery.

Under the no action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no action alternative would result in no allocation of Pacific whiting to the tribal sector in 2022, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the Tribes' treaty rights. Given that there is a tribal request for allocation in 2022, this alternative received no further consideration.

Regulatory Flexibility Act Determination of No Significant Impact

NMFS determined this proposed rule would not adversely affect small entities. The reapportioning process allows unharvested tribal allocations of Pacific whiting, fished by small entities, to be fished by the non-tribal fleets, benefitting both large and small entities.

NMFS has prepared an IRFA and is requesting comments on this conclusion. See **ADDRESSES**.

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

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: April 7, 2022.

Carrie Robinson,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2022 is 70,463 mt.

* * * * *

■ 3. Revise Table 2a to part 660, subpart C, to read as follows:

TABLE 2a TO PART 660, SUBPART C—2022, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE OVERFISHED

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
YELLOWEYE ROCKFISH [c]	Coastwide	98	83	51	42.2
Arrowtooth Flounder [d]	Coastwide	11,764	8,458	8,458	6,362.9
Big Skate [e]	Coastwide	1,606	1,389	1,389	1,331.7
Black Rockfish [f]	California (S of 42° N lat.)	373	341	341	338.7
Black Rockfish [g]	Washington (N of 46°16′ N lat.)	319	291	291	272.9
Bocaccio [h]	S of 40°10′ N lat	1,870	1,724	1,724	1,676.2
Cabezon [i]	California (S of 42° N lat.)	210	195	195	193.7
California Scorpionfish [j]	S of 34°27′ N lat	303	275	275	271.1
Canary Rockfish [k]	Coastwide	1,432	1,307	1,307	1,237.6
Chilipepper [l]	S of 40°10′ N lat	2,474	2,259	2,259	2,161.3
Cowcod [m]	S of 40°10′ N lat	113	82	82	70.8
Cowcod	(Conception)	94	70	NA	NA
Cowcod	(Monterey)	19	12	NA	NA
Darkblotched Rockfish [n]	Coastwide	901	831	831	811.9
Dover Sole [o]	Coastwide	87,540	78,436	50,000	48,402.8
English Sole [p]	Coastwide	11,127	9,101	9,101	8,850.4
Lingcod [q]	N of 40°10′ N lat	5,395	4,974	4,958	4,679.6
Lingcod [r]	S of 40°10′ N lat	1,334	1,230	1,172	1,159
Longnose Skate [s]	Coastwide	2,036	1,761	1,761	1,509.6
Longspine Thornyhead [t]	N of 34°27′ N lat	4,838	3,227	2,452	2,398.3
Longspine Thornyhead [u]	S of 34°27′ N lat			774	771.8
Pacific Cod [v]	Coastwide	3,200	1,926	1,600	1,093.9
Pacific Ocean Perch [w]	N of 40°10′ N lat	4,371	3,711	3,711	3,686.3
Pacific Whiting [x]	Coastwide	715,643	x/	x/	331,433/
Petrale Sole [y]	Coastwide	3,936	3,660	3,660	3,272.5
Sablefish [z]	N of 36° N lat	9,005	8,375	6,566	See Table 1c
Sablefish [aa]	S of 36° N lat			1,809	1,781.6
Shortspine Thornyhead [bb]	N of 34°27′ N lat	3,194	2,130	1,393	1,314.6
Shortspine Thornyhead [cc]	S of 34°27′ N lat			737	730.3
Spiny Dogfish [dd]	Coastwide	2,469	1,585	1,585	1,241.0
Splitnose [ee]	S of 40°10′ N lat	1,837	1,630	1,630	1,611.6
Starry Flounder [ff]	Coastwide	652	392	392	343.6
Widow Rockfish [gg]	Coastwide	14,826	13,788	13,788	13,539.7
Yellowtail Rockfish [hh]	N of 40°10′ N lat	6,324	5,831	5,831	4,793.5
Stock Complexes					
Blue/Deacon/Black Rockfish [ii]	Oregon	672	600	600	597.7
Cabezon/Kelp Greenling [jj]	Washington	22	17	17	15
Cabezon/Kelp Greenling [kk]	Oregon	208	190	190	189.8
Nearshore Rockfish North [ll]	N of 40°10′ N lat	93	77	77	73.9
Nearshore Rockfish South [mm]	S of 40°10′ N lat	1,233	1,011	1,010	1,005.6
Other Fish [nn]	Coastwide	286	223	223	201.7
Other Flatfish [oo]	Coastwide	7,808	4,838	4,838	4,617.1
Shelf Rockfish North [pp]	N of 40°10′ N lat	1,821	1,450	1,450	1,377.6
Shelf Rockfish South [qq]	S of 40°10′ N lat	1,832	1,429	1,428	1,295.2
Slope Rockfish North [rr]	N of 40°10′ N lat	1,842	1,568	1,568	1,502.1

TABLE 2a TO PART 660, SUBPART C—2022, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES (WEIGHTS IN METRIC TONS). CAPITALIZED STOCKS ARE OVERFISHED—Continued

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Slope Rockfish South [ss]	S of 40°10′ N lat	871	705	705	666.1

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Yelloweye rockfish. The 51 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 8.85 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP catch (0.24 mt), research (2.92 mt), and the incidental open access fishery (0.69 mt) resulting in a fishery HG of 42.2 mt. The non-trawl HG is 38.8 mt. The combined non-nearshore/nearshore HG is 8.1 mt. Recreational HGs are: 9.9 mt (Washington); 9 mt (Oregon); and 11.7 mt (California). In addition, the nontrawl ACT is 30.4 mt and the combined non-nearshore/nearshore ACT is 6.3 mt. Recreational ACTs are: 7.8 mt (Washington), 7.1 (Oregon), and 9.2 mt (California).

[d] Arrowtooth flounder. 2,095.08 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), EFP fishing (0.1 mt), research (12.98 mt) and incidental open access (41 mt), resulting in a fishery HG of 6,362.9 mt.

[e] Big skate. 57.31 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), EFP fishing (0.1 mt), and research catch (5.49 mt), and incidental open access (36.72 mt), resulting in a fishery HG of 1,331.7 mt.

[f] Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research (0.08 mt), and incidental open access (1.18 mt), resulting in a fishery HG of 338.7 mt.

[g] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 272.9 mt.

[h] Bocaccio south of 40°10′ N lat. The stock is managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 47.82 mt is deducted from the ACL to accommodate EFP catch (40 mt), research (5.6 mt), and incidental open access (2.22 mt), resulting in a fishery HG of 1,676.2 mt. The 2022 combined allocation to the nearshore and non-nearshore fishery is 315.7 mt. The California recreational fishery south of 40°10′ N lat. has an HG of 706.1 mt.

[i] Cabezon (California). 1.28 mt is deducted from the ACL to accommodate EFP (1 mt), research (0.02 mt), and incidental open access fishery (0.26 mt), resulting in a fishery HG of 193.7 mt.

[j] California scorpionfish south of 34°27′ N lat. 3.89 mt is deducted from the ACL to accommodate research (0.18 mt) and the incidental open access fishery (3.71 mt), resulting in a fishery HG of 271.1 mt.

[k] Canary rockfish. 69.39 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP catch (8 mt), and research catch (10.08 mt), and the incidental open access fishery (1.31 mt), resulting in a fishery HG of 1,237.6 mt. The combined nearshore/non-nearshore HG is 123.5 mt. Recreational HGs are: 42.2 mt (Washington); 63.5 mt (Oregon); and 113.9 mt (California).

[l] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research (14.04 mt), the incidental open access fishery (13.66 mt), resulting in a fishery HG of 2,161.3 mt.

[m] Cowcod south of 40°10′ N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research (10 mt), and incidental open access (0.17 mt), resulting in a fishery harvest guideline of 70.83 mt. A single ACT of 50 mt is being set for the Conception and Monterey areas combined.

[n] Darkblotched rockfish. 19.06 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), EFP catch (0.6 mt), and research catch (8.46 mt), and the incidental open access fishery (9.8 mt) resulting in a fishery HG of 811.9 mt.

[o] Dover sole. 1,597.21 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), EFP fishing (0.1 mt), research (50.84 mt), and incidental open access (49.27 mt), resulting in a fishery HG of 48,402.8 mt.

[p] English sole. 250.63 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (0.1 mt), research (8 mt), and the incidental open access fishery (42.52 mt), resulting in a fishery HG of 8,850.4 mt.

[q] Lingcod north of 40°10′ N lat. 278.38 mt is deducted from the ACL for the Tribal fishery (250 mt), EFP catch (0.1 mt), research (16.6 mt), and the incidental open access fishery (11.68 mt) resulting in a fishery HG of 4,679.6 mt.

[r] Lingcod south of 40°10′ N lat. 13 mt is deducted from the ACL to accommodate EFP catch (1.5 mt), research (3.19 mt), and incidental open access fishery (8.31 mt), resulting in a fishery HG of 1,159 mt.

[s] Longnose skate. 251.40 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), EFP catch (0.1 mt), and research catch (12.46 mt), and incidental open access fishery (18.84 mt), resulting in a fishery HG of 1,509.6 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and the incidental open access fishery (6.22 mt), resulting in a fishery HG of 2,398.3 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and the incidental open access fishery (0.83 mt), resulting in a fishery HG of 771.8mt.

[v] Pacific cod. 506.1 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), EFP fishing (0.1 mt), research catch (5.47 mt), and the incidental open access fishery (0.53 mt), resulting in a fishery HG of 1,093.9 mt.

[w] Pacific ocean perch north of 40°10′ N lat. 24.73 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), EFP fishing (0.1 mt), research catch (5.39 mt), and the incidental open access fishery (10.04 mt), resulting in a fishery HG of 3,686.2 mt.

[x] The 2022 OFL of 715,643 mt is based on the 2022 assessment with an F40 percent of FMSY proxy. The 2022 coastwide Total Allowable Catch (TAC) is 545,000 mt. The U.S. TAC is 73.88 percent of the coastwide TAC. The 2022 U.S. TAC is 402,646 mt. From the U.S. TAC, 70,463 mt is deducted to accommodate the Tribal fishery, and 750 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a 2022 fishery HG of 331,433 mt. The TAC for Pacific whiting is established under the provisions of the Agreement with Canada on Pacific Hake/Whiting and the Pacific Whiting Act of 2006, 16 U.S.C. 7001–7010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

[y] Petrale sole. 387.54 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP catch (0.1 mt), research (24.14 mt), and the incidental open access fishery (13.3 mt), resulting in a fishery HG of 3,272.5 mt.

[z] Sablefish north of 36° N lat. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N lat., using a rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.5 percent apportioned south of 36° N lat. The northern ACL is 6,566 mt and is reduced by 656.6 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 656.6 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 1,809 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research (2.40 mt) and the incidental open access fishery (25 mt), resulting in a fishery HG of 1,781.6 mt.

[bb] Shortspine thornyhead north of 34°27′ N lat. 78.4 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP catch (0.1 mt), and research catch (10.48 mt), and the incidental open access fishery (17.82 mt), resulting in a fishery HG of 1,314.6 mt for the area north of 34°27′ N lat.

[cc] Shortspine thornyhead south of 34°27′ N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and the incidental open access fishery (6 mt), resulting in a fishery HG of 730.3 mt for the area south of 34°27′ N lat.

[dd] Spiny dogfish. 344 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP catch (1.1 mt), research (34.27 mt), and the incidental open access fishery (33.63 mt), resulting in a fishery HG of 1,241 mt.

[ee] Splitnose rockfish south of 40°10′ N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N lat. 18.42 mt is deducted from the ACL to accommodate EFP catch (1.5 mt), research (11.17 mt), and the incidental open access fishery (5.75 mt), resulting in a fishery HG of 1,611.6 mt.

[ff] Starry flounder. 48.38 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research (0.57 mt), and the incidental open access fishery (45.71 mt), resulting in a fishery HG of 343.6 mt.

[gg] Widow rockfish. 248.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP catch (28 mt), research (17.27 mt), and the incidental open access fishery (3.05 mt), resulting in a fishery HG of 13,539.7 mt.

[hh] Yellowtail rockfish north of 40°10′ N lat. 1,037.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), EFP catch (10 mt), research (20.55 mt), and the incidental open access fishery (7 mt), resulting in a fishery HG of 4,793.5 mt.

[ii] Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 2.32 mt is deducted from the ACL to accommodate the EFP catch (0.5 mt), research (0.08 mt), and the incidental open access fishery (1.74 mt), resulting in a fishery HG of 597.7 mt.

[jj] Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, therefore the fishery HG is 15 mt.

[kk] Cabezon/kelp greenling (Oregon). 0.21 mt is deducted from the ACL to accommodate EFP catch (0.1 mt), research (0.05 mt), and the incidental open access fishery (0.06 mt), resulting in a fishery HG of 189.8 mt.

[ll] Nearshore Rockfish north of 40°10′ N lat. 3.08 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP catch (0.5 mt), research (0.47 mt), and the incidental open access fishery (0.61 mt), resulting in a fishery HG of 73.9 mt. State-specific HGs are 17.7 mt (Washington), 22.2 mt (Oregon), and 37.4 mt (California).

[mm] Nearshore Rockfish south of 40°10′ N lat. 4.42 mt is deducted from the ACL to accommodate research catch (2.68 mt) and the incidental open access fishery (1.74 mt), resulting in a fishery HG of 1,005.6 mt.

[nn] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.34 mt is deducted from the ACL to accommodate EFP catch (0.1 mt), research (6.29 mt), and the incidental open access fishery (14.95 mt), resulting in a fishery HG of 201.7 mt.

[oo] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.89 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), EFP catch (0.1 mt), research (23.63 mt), and the incidental open access fishery (137.16 mt), resulting in a fishery HG of 4,617.1 mt.

[pp] Shelf Rockfish north of 40°10′ N lat. 72.44 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), EFP catch (1.5 mt), research (15.32 mt), and the incidental open access fishery (25.62 mt), resulting in a fishery HG of 1,377.6 mt.

[qq] Shelf Rockfish south of 40°10′ N lat. 132.77 mt is deducted from the ACL to accommodate EFP catch (50 mt), research catch (15.1 mt), and the incidental open access fishery (67.67 mt) resulting in a fishery HG of 1,295.2 mt.

[rr] Slope Rockfish north of 40°10′ N lat. 65.89 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), EFP catch (1.5 mt), and research (10.51 mt), and the incidental open access fishery (18.88 mt), resulting in a fishery HG of 1,502.1 mt.

[ss] Slope Rockfish south of 40°10′ N lat. 38.94 mt is deducted from the ACL to accommodate EFP catch (1 mt), and research (18.21 mt), and the incidental open access fishery (19.73 mt), resulting in a fishery HG of 666.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 174 mt.

■ 4. Revise Table 2b to part 660, subpart C, to read as follows:

TABLE 2b TO PART 660, SUBPART C—2022, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT [a b]	Trawl		Non-Trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH [a]	Coastwide	42.2	8	3.4	92	38.8
Arrowtooth flounder	Coastwide	6,362.9	95	6,044.8	5	318.1
Big skate [a]	Coastwide	1,331.7	95	1,265.1	5	66.6
Bocaccio [a]	S of 40°10′ N lat	1,676.2	39.04	654.4	60.96	1,021.8
Canary rockfish [a]	Coastwide	1,237.6	72.281	894.6	27.719	343.1
Chilipepper rockfish	S of 40°10′ N lat	2,161.3	75	1,621	25	540.3
Cowcod [a]	S of 40°10′ N lat	50	36	18	64	32
Darkblotched rockfish	Coastwide	811.9	95	771.3	5	40.6
Dover sole	Coastwide	4,8402.8	95	45,982.7	5	2,420.1
English sole	Coastwide	8,850.4	95	8,407.8	5	442.5
Lingcod	N of 40′10° N lat	4,679.6	45	2,105.8	55	2,573.8
Lingcod [a]	S of 40′10° N lat	1,159	40	463.6	60	695.4
Longnose skate [a]	Coastwide	1,509.6	90	1,358.6	10	151
Longspine thornyhead	N of 34°27′ N lat	2,398.3	95	2,278.4	5	119.9
Pacific cod	Coastwide	1,093.9	95	1,039.2	5	54.7
Pacific ocean perch	N of 40°10′ N lat	3,686.3	95	3,502	5	184.3
Pacific whiting [c]	Coastwide	331,443	100	331, 443	0	0
Petrale sole [a]	Coastwide	3,272.5		3,242.5		30
Sablefish	N of 36° N lat	NA	See Table 1c			
Sablefish	S of 36° N lat	1,781.6	42	748.3	58	1,033.3
Shortspine thornyhead	N of 34°27′ N lat	1,314.6	95	1,248.9	5	65.7
Shortspine thornyhead	S of 34°27′ N lat	730.3		50		680.3
Splitnose rockfish	S of 40°10′ N lat	1,611.6	95	1,531	5	80.6
Starry flounder	Coastwide	343.6	50	171.8	50	171.8
Widow rockfish [a]	Coastwide	13,539.7		13,139.7		400
Yellowtail rockfish	N of 40°10′ N lat	4,783.5	88	4,209.5	12	574
Other Flatfish	Coastwide	4,617.1	90	4,155.4	10	461.7
Shelf Rockfish [a]	N of 40°10′ N lat	1,377.6	60.2	829.3	39.8	548.3
Shelf Rockfish [a]	S of 40°10′ N lat	1,295.2	12.2	158	87.8	1,137.2
Slope Rockfish	N of 40°10′ N lat	1,502.1	81	1,216.7	19	285.4

TABLE 2b TO PART 660, SUBPART C—2022, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP—Continued

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT [a b]	Trawl		Non-Trawl	
			%	Mt	%	Mt
Slope Rockfish [a]	S of 40°10′ N lat	666.1		523.9		142.2

[a] Allocations decided through the biennial specification process.
[b] The cowcod fishery harvest guideline is further reduced to an ACT of 50 mt.
[c] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

■ 5. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) *Shorebased trawl allocations.* For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)

IFQ species	Area	2021 shorebased trawl allocation (mt)	2022 shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	3.3	3.4
Arrowtooth flounder	Coastwide	7,376.02	5,974.77
Bocaccio	South of 40°10′ N lat	663.75	654.38
Canary rockfish	Coastwide	880.96	858.56
Chilipepper	South of 40°10′ N lat	1,695.2	1,621
Cowcod	South of 40°10′ N lat	18	18
Darkblotched rockfish	Coastwide	743.39	694.94
Dover sole	Coastwide	45,972.65	45,972.65
English sole	Coastwide	8,478.2	8,407.9
Lingcod	North of 40°10′ N lat	2,275.78	2,090.83
Lingcod	South of 40°10′ N lat	435.6	463.6
Longspine thornyhead	North of 34°27′ N lat	2,451.28	2,278.38
Pacific cod	Coastwide	1,039.21	1,039.21
Pacific halibut (IBQ)	North of 40°10′ N lat	69.6	69.6
Pacific ocean perch	North of 40°10′ N lat	3,337.74	3,201.94
Pacific whiting	Coastwide	127,682	139,202
Petrale sole	Coastwide	3,692.9	3,237.5
Sablefish	North of 36° N lat	3,139.59	2,985.42
Sablefish	South of 36° N lat	786	748
Shortspine thornyhead	North of 34°27′ N lat	1,212.12	1,178.87
Shortspine thornyhead	South of 34°27′ N lat	50	50
Splitnose rockfish	South of 40°10′ N lat	1,565.20	1,531.00
Starry flounder	Coastwide	171.8	171.8
Widow rockfish	Coastwide	13,600.68	12,663.68
Yellowtail rockfish	North of 40°10′ N lat	4,091.13	3,898.4
Other Flatfish complex	Coastwide	4,088.00	4,120.40
Shelf Rockfish complex	North of 40°10′ N lat	831.07	794.56
Shelf Rockfish complex	South of 40°10′ N lat	159.24	158.02
Slope Rockfish complex	North of 40°10′ N lat	938.58	916.71
Slope Rockfish complex	South of 40°10′ N lat	526.4	523.9

* * * * *

[FR Doc. 2022–07839 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 71
Wednesday, April 13, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

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 that the Nebraska Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Thursday, May 12, 2022 at 12:00 p.m.–1:00 p.m. Central time. The purpose for the meeting is to discuss and to begin brainstorming potential civil rights topics for their first study of the 2021–2025 term.

DATES: The meeting will take place on Thursday, May 12, 2022, from 12:00 p.m.–1:00 p.m. Central Time.

Online Regisration (Audio/Visual): https://civilrights.webex.com/civilrights/j.php?MTID=mb43841e7c47881517384710f9329616c

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2760 419 4906.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing 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 also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov*. Persons interested in the work of this Committee are advised to go to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or email address.

Agenda

I. Welcome and Roll Call
II. Vice-Chair's Comments
III. Discuss Civil Rights Topics
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: April 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–07927 Filed 4–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maine Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting date.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Maine Advisory Committee. The meeting scheduled for Wednesday, May 4, 2022, at 12:00 p.m. (ET) is cancelled. The notice is in the **Federal Register** of Thursday, March 3, 2022, in FR Doc. 2022–04438, in the first of page 12078 and the first and second columns of page 12079.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, (202) 809–9618, *mtrachtenberg@usccr.gov.*

Dated: April 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–07923 Filed 4–12–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning 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 a meeting of the Maryland Advisory Committee to the Commission will convene by WebEx virtual platform and conference call on Tuesday, April 26, 2022, at 12:00 p.m. ET, to continue plan the release of the Committee's report on water accessibility and affordability in Maryland.

DATES: Tuesday, April 26, 2022; 12:00 p.m. ET.

Public WEBEX Conference Link (video and audio): https://tinyurl.com/ykdjh8tf

If Phone Only: 1–800–360–9505; Access code: 2763 671 2587#

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–381–8915.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request additional accommodations, please email *bdelaviez@usccr.gov* at least 10 days prior to the meeting.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days

after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda

April 26, 2022 (Tuesday); 12:00 p.m. ET

- Rollcall
- Stage Gate 5—Post-Report Gate
- Affordability/Accessibility
- Open Comment
- Adjournment

Dated: April 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–07924 Filed 4–12–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: 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 a meeting of the Tennessee Advisory Committee to the Commission will hold a virtual debrief via Webex at 12:00 p.m. (CST) on Monday, May 2, 2022, web briefing on Voting and Civil Rights in Tennessee.

DATES: The meeting will be held on: Monday, May 2, 2022 12:00 p.m. CT.

Join from the meeting link *https://civilrights.webex.com/civilrights/j.php?MTID=m1136698f233aff8bee3aab908d01ad8a.*

800–360–9505 USA Toll Free; Access Code: 2763 530 6446 #.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

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 within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda:

Monday, May 2, 2022; 12:00 p.m. (CT)

1. Welcome & Roll Call
2. Testimony Debrief
3. Next Steps
4. Public Comment
5. Next Steps
6. Adjourn

Dated: April 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–07926 Filed 4–12–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 Delaware Advisory Committee to the Commission will hold virtual meetings on the first Wednesdays of each month beginning at 1:00 p.m. and ending at approximately 2:00 p.m. ET (may end sooner than 2:00 p.m. if business concludes) as follows: May 4, 2022; June 1, 2022; July 6, 2022; August 3, 2022; and September 7, 2022. The purpose of the meetings is for discussion of report progression on the topic of impact of COVID 19 and health disparities on people of color in Delaware. Committee votes may be taken.

DATES: 5/4/22, 6/1/22, 7/6/22, 8/3/22 and 9/7/22; 1:00 p.m. ET

The access information for all meetings is:

- *To join by web conference: https://tinyurl.com/bdftw6db*
- To join by phone only, dial 1–800–360–9505; Access code: 2760 799 4674#

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the Webex links above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for each meeting.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Ivy David at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesdays at 1:00 p.m. (ET): 5/4/22, 6/1/22, 7/6/22, 8/3/22 and 9/7/22

I. Welcome and Roll Call
II. Project Planning and Report Discussion
III. Other Business
IV. Next Planning Meeting
V. Public Comments

VI. Adjourn

Dated: April 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–07921 Filed 4–12–22; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

National Advisory Committee on Racial, Ethnic, and Other Populations; Charter Renewal

AGENCY: Census Bureau, U.S. Department of Commerce.

ACTION: Renewal of the Census Bureau National Advisory Committee charter.

SUMMARY: The Census Bureau is publishing this notice to announce the renewal of the National Advisory Committee on Racial, Ethnic, and Other Populations (Committee or NAC). The purpose of the Committee is to provide advice to the Director of the Census Bureau on the full range of Census Bureau programs and activities, including the decennial census, demographic and economic statistical programs, field operations, and information technology. Additional information concerning the Committee can be found by visiting the Committee's website at: *http://www.census.gov/cac.*

FOR FURTHER INFORMATION CONTACT: Shana J. Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

In accordance to the Federal Advisory Committee Act (FACA), the Secretary of the Department of Commerce (Secretary) intends to renew the NAC. The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Census Bureau. The NAC will operate under the provisions of FACA and will report to the Secretary of the Department of Commerce through the Director of the Census Bureau. The Census Bureau's NAC will advise the Director of the Census Bureau on the full range of Census Bureau programs and activities.

Objectives and Duties

1. The Committee advises the Director of the Census Bureau (the Director) on the full range of economic, housing, demographic, socioeconomic, linguistic, technological, methodological, geographic, behavioral, and operational variables affecting the cost, accuracy, and implementation of Census Bureau programs and surveys, including the decennial census.

2. The Committee advises the Census Bureau on the identification of new strategies for improved census operations, and survey and data collection methods, including identifying cost efficient ways to increase response rates.

3. The Committee provides guidance on census policies, research and methodology, tests, operations, communications/messaging, and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs.

4. The Committee reviews and provides formal recommendations and feedback on working papers, reports, and other documents related to the design and implementation of Census Bureau programs and surveys.

5. In providing insight, perspectives, and expertise on the full spectrum of Census Bureau surveys and programs, the Committee examines such areas as hidden households, language barriers, students and youth, aging populations, American Indian and Alaska Native tribal considerations, new immigrant populations, populations affected by natural disasters, highly mobile and migrant populations, complex households, poverty, race/ethnic distribution, privacy and confidentiality, rural populations and businesses, individuals and households with limited access to information and communications technologies, the dynamic nature of new businesses, minority ownership of businesses, as well as other concerns impacting Census Bureau survey design and implementation.

6. The Committee uses formal advisory committee meetings, webinars, web conferences, working groups, and other methods to accomplish its goals, consistent with the requirements of the FACA. The Committee will consult with regional office staff to help identify regional, local, tribal and grass roots issues, trends and perspectives related to Census Bureau surveys and programs.

7. The Committee will function solely as an advisory body and shall fully comply with the provisions of FACA.

Membership

1. The Committee consists of up to 32 members who serve at the discretion of the Director.

2. The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of census programs and/or activities.

3. The Committee aims to include members from diverse backgrounds, including state, local and tribal governments; academia; research, national and community-based organizations; and labor unions and the private sector.

4. Members will serve as Special Government Employees (SGEs). SGEs will be subject to the ethics rules applicable to SGEs. Members will be individually advised of the capacity in which they will serve through their appointment letters.

5. SGEs will be selected from academia, public and private enterprise, and nonprofit organizations, which are further diversified by business type or industry, geography, and other factors.

6. Membership is open to persons who are not seated on other Census Bureau stakeholder entities (*i.e.,* State Data Centers, Census Information Centers, Federal State Cooperative on Populations Estimates Program, other Census Advisory Committees, etc.). People who have already served one full-term on a Census Bureau Advisory Committee may not serve on any other Census Bureau Advisory Committee for three years from the termination of previous service. No employee of the federal government can serve as a member of the Committee.

7. Members will serve for a three-year term. All members will be reevaluated at the conclusion of their initial term term with the prospect of renewal, pending Committee needs. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for a second three-year term at the discretion of the Director.

8. Members will be selected on a standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Census Bureau will convene two NAC meetings per year, budget and environmental conditions permitting, but additional meetings may be held as deemed necessary by the Census Bureau Director or Designated Federal Officer. Committee meetings are open to the public in accordance with FACA.

3. Members must be able to actively participate in the tasks of the Committee, including, but not limited to, regular meeting attendance, Committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special committee activities.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Robert L. Santos,

Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: April 7, 2022.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–07820 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–81–2021]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona, Authorization of Production Activity Chang Chun (Arizona) LLC (Specialty Chemicals for Microchip Production), Casa Grande, Arizona

On December 9, 2021, Chang Chun (Arizona) LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 75, in Casa Grande, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 72576, December 22, 2021). On April 8, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: April 8, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–07905 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–12–2022]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina, Notification of Proposed Production Activity, Swafford Warehousing, Inc. (Medical Kits), Greer, South Carolina

The South Carolina State Ports Authority, grantee of FTZ 38, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Swafford Warehousing, Inc., located in Greer, South Carolina under FTZ 38. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on April 5, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status component described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material/component would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The applicant is proposing to include foreign-status prep razors (disposable, plastic handle with steel blades, used for surgery preparation) (duty free). The request indicates the component is subject to duties under section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 23, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: April 7, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–07862 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council; Charter Renewal

AGENCY: SelectUSA, International Trade Administration, Global Markets, U.S. Department of Commerce.

ACTION: Notice of renewal of the United States Investment Advisory Council.

SUMMARY: On April 6, 2022, the Department of Commerce Acting Chief Financial Officer and Assistant Secretary for Administration renewed the charter for the United States Investment Advisory Council (Council). The Council is a federal advisory committee pursuant to the Federal Advisory Committee Act.

DATES: The Council charter was renewed April 6, 2022 on and will expire on April 6, 2024.

ADDRESSES: Please contact *IAC@trade.gov* with any questions.

FOR FURTHER INFORMATION CONTACT: Rachel David, SelectUSA, U.S. Department of Commerce; telephone: (202) 302–6858; email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The United States Investment Advisory Council (Council) was established by the Secretary of Commerce (Secretary) pursuant to duties imposed by 15 U.S.C. 1512 upon the Department and in compliance with the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. App.

The Council functions solely as an advisory committee in accordance with the provisions of FACA. In particular, the Council advises the Secretary on government policies and programs that affect businesses engaging in foreign direct investment (FDI), the expansion of domestic operations, or the transferring of operations to the United States from overseas. The Council identifies and recommends programs and policies to help the United States attract and retain business investment and recommends ways to support the United States in remaining the world's preeminent investment destination. The Council acts as a liaison among the stakeholders represented by the membership and provides a forum for the stakeholders to provide feedback on current and emerging issues regarding FDI and business expansion.

The Council reports to the Secretary of Commerce on its activities and recommendations regarding FDI and business investment. In creating its reports, the Council is to survey and evaluate the investment and investment-facilitating activities of stakeholders, identify and examine specific problems facing potential business investors, and examine the needs of stakeholders to inform the Council's efforts. The Council is to recommend specific solutions to the problems and needs that it identifies.

Each member is to be appointed for a term of two years and serves at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the Council and his/her knowledge and advice is still needed.

The Council consists of no more than forty (40) members appointed by the Secretary. Members are to represent companies and organizations investing, seeking to invest, seeking foreign investors, or facilitating investment across many sectors, including but not limited to:

- U.S.-incorporated companies that are majority-owned by foreign companies or by a foreign individual or individuals, or that generate significant foreign direct investment (*e.g.,* through their supply chains);
- Companies or entities whose business includes FDI-related activities or the facilitation of FDI; and
- U.S. incorporated companies, regardless of ownership, that are considering expanding their operations in the United States or transferring to the United States operations that are currently being conducted overseas;
- Economic development organizations and other U.S. governmental and non-governmental organizations and associations whose missions or activities include the promotion or facilitation of business investment and/or FDI.

All members must be a U.S. citizen or permanent resident. Members shall be selected based on their ability to carry out the objectives of the Council, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the Council is balanced in terms of points of view, industry sector or subsector, and organizational type. Members shall also represent a broad range of products and services and shall be drawn from large, medium, and small enterprises, private-sector organizations that have invested or are considering investing in the United States, and other investment-related entities, including non-governmental organizations, associations, and economic development organizations.

For members selected on the basis of their involvement in FDI and FDI-related activities, the Council should also be balanced in terms of the geographic sources and destinations of the FDI and the volume and nature of FDI involved. For members selected on the basis of their interest in expanding their operations in, or transferring operations to the United States, the Council should also be balanced in terms of the size and nature of the operations under consideration for expansion or transfer.

In selecting members, priority may be given to the selection of executives, *i.e.,* Chief Executive Officer, Executive Chairperson, President, or an officer with a comparable level of responsibility.

Members serve in a representative capacity, representing the views and interests of their sponsoring entity and those of their particular sector (if applicable), and they are, therefore, not Special Government Employees. Members will receive no compensation for their participation and will not be reimbursed for travel expenses related to Council activities. Appointments to the Council shall be made without regard to political affiliation. All members must be a U.S. national.

The Secretary designates a Chair and Vice Chair from among the members. The Council will meet a minimum of two times a year, to the extent practical, with additional meetings called at the discretion of the Secretary or his/her designee. Meetings will be held in Washington, DC or elsewhere in the United States, or by teleconference, as feasible. Members are expected to attend a majority of Council meetings.

Note: A request for applications was posted in a **Federal Register** Notice on May 7, 2021 (86 FR 26696). If you applied in response to that notice, you application remains valid and is in the review process.

William Burwell,

Deputy Executive Director SelectUSA.

[FR Doc. 2022–07837 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–855, A–570–024, A–533–861, A–523–810]

Polyethylene Terephthalate Resin From Canada, the People's Republic of China, India, and the Sultanate of Oman: Continuation of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on polyethylene terephthalate (PET) resin from Canada, the People's Republic of China (China), India, and the Sultanate of Oman (Oman) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2016, Commerce published in the **Federal Register** the AD orders on PET resin from Canada, China, India, and Oman.[1] On April 1, 2021, Commerce initiated,[2] and the ITC instituted,[3] sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins

[1] *See Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman: Amended Final Affirmative Antidumping Determination (Sultanate of Oman) and Antidumping Duty Orders,* 81 FR 27979 (May 6, 2016) (*Orders*).

[2] *See Institution of Five-Year (Sunset) Reviews,* 86 FR 17197 (April 1, 2021).

[3] *See Polyethylene Terephthalate (PET) Resin from Canada, China, India, and Oman; Institution of a Five-Year Reviews,* 86 FR 17197 (April 1, 2021).

of dumping rates likely to prevail should these *Orders* be revoked.[4]

On April 4, 2022, the ITC published its determination that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.[5]

Scope of the Orders

The merchandise covered by the *Orders* is PET resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to the *Orders* is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO, which may be subject to sanctions.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: April 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–07863 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Polyethylene Terephthalate Resin from Canada, China, India, and Oman: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders,* 86 FR 41009 (July 30, 2021), and accompanying Issues and Decision Memorandum.

[5] *See Polyethylene Terephthalate (PET) Resin from Canada, China, India, and Oman; Determinations, Inv. Nos. 701–TA–531–532 and 731–TA–1270–1273 (First Review),* 87 FR 19531 (April 4, 2022); *see also* USITC Pub. 5298 (March 2022).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB926]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Survey Working Group via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, May 3, 2022 at 9 a.m. Webinar registration URL information *https://attendee.gototraining.com/r/6602987760005126145.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Survey Working Group (SSWG) will meet to review progress updates to address the Terms of Reference (TORs): Methods and analyses identified to address TORs, including timelines for completion, and SSWG sub-groups activities. Other business may be discussed, as necessary.

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 these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: April 8, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–07930 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB935]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will meet with the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Program Policy Board.

DATES: The meeting will be held on Thursday May 5, 2022, from 11:30 a.m. to 12:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: This meeting will be conducted in a hybrid format, with options for both in person and webinar participation. The meeting will be held at the Westin Crystal City, 1800 S. Eads Street, Arlington, VA 22202; telephone: (800) 937–8461. Webinar registration details will be available on the Council's website at *www.mafmc.org/meetings.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Program Policy Board will receive a progress update on a draft framework action and addenda which considers a harvest control rule method for setting recreational bag, size, and season limits for summer flounder, scup, back sea bass, and bluefish. Background materials will be posted to *www.mafmc.org/meetings.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: April 8, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–07929 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB938]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team will hold one public meeting.

DATES: The meeting will be held Wednesday, May 4, 2022, from 10 a.m. to 4 p.m. Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The primary purpose of this online meeting is to discuss and potentially develop work products for the Pacific Council's June 2022 meeting. Topics will include the scope of Phase 2 of the essential fish habitat review and the Central Subpopulation of Northern Anchovy stock assessment. Other items on the Pacific Council's June agenda may be discussed as well. The meeting agenda will be available on the Pacific Council's website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: April 8, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–07928 Filed 4–12–22; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0038]

Agency Information Collection Activities; Proposed Collection; Comment Request; Third Party Testing of Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of a collection of information for Third Party Testing of Children's Products, approved previously under OMB Control No. 3041–0159. The CPSC will consider all comments received in response to this notice, before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by June 13, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0038, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail

(email), except through *https://www.regulations.gov.* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you can email such submissions to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2010–0038, into the ''Search'' box, and follow the prompts. A copy of the revised ''Supporting Statement'' for this 2022 renewal of the burden estimate is available at: *http://www.regulations.gov* under Docket No. CPSC–2010–0038, Supporting and Related Material.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Third Party Testing of Children's Products.

OMB Number: 3041–0159.

Type of Review: Renewal of collection of information for third party testing of children's products, which includes: (1) Previously approved burden for marking and labeling of certain durable infant and toddler products; (2) the labeling and recordkeeping requirements (not covered by the Commission's third party testing rule at 16 CFR part 1107) set forth in the rule establishing requirements for electrically operated toys or other electrically operated articles intended for children (16 CFR part 1505) (electrically operated toys and other articles rule); and (3) recordkeeping and labeling requirements set forth in the ban on articles known as ''baby bouncers'' or ''walker-jumpers'' (baby bouncer/walker-jumper rule, 16 CFR 1500.18(a)(6) and 1500.86(a)(4)), or similar articles that are not covered by the safety standard for infant walkers (16 CFR part 1216) and that also are not covered by the third party testing rule or any other rule issued under section 104 of the Consumer Product Safety Improvement Act.

General Description of Collection

Testing and Certification: On November 8, 2011, the Commission issued two rules for implementing third party testing and certification of children's products, as required by section 14 of the Consumer Product Safety Act (CPSA):

- *Testing and Labeling Pertaining to Product Certification* (76 FR 69482, codified at 16 CFR part 1107; the testing rule); and
- *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification to Meet Testing and Certification Requirements* (76 FR 69547, codified at 16 CFR part 1109; the component part rule).

The testing rule establishes requirements for manufacturers to conduct initial third party testing and certification of children's products, testing when there has been a material change in the product, continuing testing (periodic testing), and guarding against undue influence. A final rule on *Representative Samples for Periodic Testing of Children's Products* (77 FR 72205, Dec. 5, 2012) amended the testing rule to require that representative samples be selected for periodic testing of children's products.

The component part rule is a companion to the testing rule that is intended to reduce third party testing burdens, by providing all parties involved in the required testing and certifying of children's products the flexibility to conduct or rely upon testing where testing is the easiest and least expensive to accomplish. Certification of a children's product can be based upon one or more of the following: (a) Component part testing; (b) component part certification; (c) another party's finished product testing; or (d) another party's finished product certification.

Section 1107.26 of the testing rule states the records required for testing and selecting representative samples. 16 CFR 1107.26. Required records include a certificate, and records documenting third party testing and related sampling plans. These requirements largely overlap the recordkeeping requirements in the component part rule, codified at 16 CFR 1109.5(g). Duplicate recordkeeping is not required; records need to be created and maintained only once to meet the applicable recordkeeping requirements. The component part rule also requires records that enable tracing a product or component back to the entity that had a product tested for compliance; the rule also requires attestations of due care to ensure test result integrity.

Section 104 Rules: The Commission has issued 26 rules for durable infant and toddler products under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (section 104 rules). The Section 104 rules that have been issued, to date, appear in Table 1. Each section 104 rule contains requirements for marking, labeling, and instructional literature:

- Each product and the shipping container must have a permanent label or marking that identifies the name and address (city, state, and zip code) of the manufacturer, distributor, or seller.
- A permanent code mark or other product identification shall be provided on the product and its package or shipping container, if multiple packaging is used. The code will identify the date (month and year) of manufacture and permit future identification of any given model.

Each standard also requires products to include easy-to-read and understand instructions regarding assembly, maintenance, cleaning, use, and adjustments, where applicable. *See, e.g.,* sections 8 (marking and labeling) and 9 (instructional literature) of every ASTM voluntary standard incorporated by reference into a CPSC mandatory standard, as listed in Table 1.

OMB has assigned control numbers for the estimated burden to comply with marking and labeling requirements in each section 104 rule. With this renewal, CPSC is moving the marking and labeling burden requirements for four additional section 104 rules that have been issued since the last renewal in 2019, into the collection of information for Third Party Testing of Children's Products (bold font in Table 1). The paperwork burdens associated with the section 104 rules are appropriately included in the collection for Third Party Testing of Children's Products because all the section 104 products are also required to be third party tested. Having all of the burden

hours under one collection for children's products provides one OMB control number and eases the administrative burden of renewing multiple collections. CPSC will discontinue using the OMB control numbers currently assigned to individual section 104 rules. The discontinued OMB control numbers are listed in Table 1.

Electrically Operated Toys and Other Articles: The requirements for electrically operated toys and other electrically operated articles intended for use by children are set forth in 16 CFR part 1505. The regulation establishes certain criteria to use in determining whether electrically operated toys and other electrically operated children's products are banned and requires that certain warning and identification labeling be included on both the product and the packaging. The regulation also requires that manufacturers establish a quality assurance program to assure compliance and to keep records pertaining to the quality assurance program. Additionally, manufacturers or importers must keep records of the sale and distribution of the products.

Baby-Bouncer/Walker-Jumper Rule: The requirements for baby bouncers, baby walkers, and similar articles that are not covered by 16 CFR part 1216 (Safety Standard for Infant Walkers) are set forth under 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These regulations establish criteria to use in determining whether certain baby-bouncers, walker-jumpers, or similar products are banned. The regulation requires that each product be labeled with information that will permit future identification by the manufacturer of the particular model of bouncer or walker-jumper. In addition, manufacturers must maintain records of sale, distribution, and results of tests and inspections for 3 years and make such records available to CPSC, upon request. Products covered under this regulation are not duplicative of an existing section 104 rule.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of children's products subject to a children's product safety rule.

Estimated Number of Respondents:

Testing and Certification: Recordkeeping requirements in parts 1107 and 1109 apply to all manufacturers or importers of children's products that are covered by one or more children's product safety rules promulgated and/or enforced by the CPSC. To estimate the number of respondents, we reviewed every industry category in the NAICS and selected industry categories that included firms that could manufacture or sell such children's products. Using data from the U.S. Census Bureau, we determined that there are more than 20,000 manufacturers, almost 85,000 wholesalers, and about 263,000 retailers in these categories. However, not all of the firms in these categories manufacture or import children's products that are covered by children's product safety rules. Therefore, these numbers would constitute a high estimate of the number of firms that are subject to the recordkeeping requirements. Accordingly, when calculating the recordkeeping burden, CPSC relies on estimates of the number of children's products that are manufactured or imported. We estimate that approximately 311,400 non-apparel children's products and approximately 1.2 million children's apparel and footwear products are covered by the rules.

Section 104 Rules: Table 1 summarizes the section 104 rules for durable infant or toddler products subject to the marking and labeling requirement that have been or are now being moved into OMB control number 3041–0159. Table 1 contains the estimated number of manufacturers and models and the total respondent hours. The four new section 104 rules being moved into this information collection are shown in bold text.

TABLE 1—ESTIMATED BURDEN FOR MARKING AND LABELING IN SECTION 104 RULES

Discontinued OMB Control No.	16 CFR part	Description	Mfrs.	Models	Total respondent hours
3041–0145	1215	Safety Standard for Infant Bath Seats	12	2	24
3041–0141	1216	Safety Standard for Infant Walkers	19	4	76
3041–0150	1217	Safety Standard for Toddler Beds	111	10	1,110
3041–0157	1218	Safety Standard for Bassinets and Cradles	72	4	288
3041–0147	1219	Safety Standard for Full-Size Cribs	80	13	1,040
3041–0147	1220	Safety Standard for Non-Full-Size Cribs	39	2	78
3041–0152	1221	Safety Standard for Play Yards	34	4	136
3041–0160	1222	Safety Standard for Infant Bedside Sleepers	13	2	26
3041–0155	1223	Safety Standard for Swings	6	8	48
3041–0149	1224	Safety Standard for Portable Bedrails	18	2	36
3041–0158	1225	Safety Standard for Hand-Held Infant Carriers	78	2	156
3041–0162	1226	Safety Standard for Soft Infant and Toddler Carriers	44	3	132
3041–0164	1227	Safety Standard for Carriages and Strollers	100	7	700
3041–0167	1228	Safety Standard for Sling Carriers	1,000	2	*8,500
3041–0174	1229	Safety Standard for Infant Bouncer Seats	26	4	104
3041–0166	1230	Safety Standard for Frame Child Carriers	14	3	42
3041–0173	1231	Safety Standard for High Chairs	83	3	249
3041–0172	1232	Safety Standard for Children's Folding Chairs and Stools.	17	2	34
3041–0170	1233	Safety Standard for Hook-On-Chairs	7	1	7
3041–0171	1234	Safety Standard for Infant Bath Tubs	27	2	54
3041–0175	1235	Safety Standard for Baby Changing Products	141	6	846
	1236	**Safety Standard for Infant Sleep Products**	**1,325**	**6,528**	***68,650**
3041–0178	1237	Safety Standard for Booster Seats	52	2	104
3041–0179	**1238**	**Safety Standard for Stationary Activity Centers**	**11**	**4**	**44**
3041–0182	**1239**	**Safety Standard for Gates and Enclosures**	*127*	*3.6*	***9,496**
3041–0185	**1241**	**Safety Standard for Crib Mattresses**	**38**	**10**	**380**

TABLE 1—ESTIMATED BURDEN FOR MARKING AND LABELING IN SECTION 104 RULES—Continued

Discontinued OMB Control No.	16 CFR part	Description	Mfrs.	Models	Total respondent hours
Total Burden Hours.	.....	.....	.....	.....	92,280

* Includes additional hours for instructional literature.
* Includes 6,500 hours for instructional literature.
** Includes 60,000 hours for instructional literature.
*** Includes 8,000 hours for instructional literature. The total estimated burden associated with labels is 1,416 hours. Eighty small firms produce 2 models, while an additional 37 entities are estimated to produce 8 models. Therefore, the 127 entities produce, on average, 3.6 models.

Electrically Operated Toys and Other Articles Rule: CPSC staff estimates that about 40 manufacturers and importers are subject to this regulation.

Baby-Bouncer/Walker-Jumper Rule: CPSC staff estimates that about six firms are subject to the testing and recordkeeping requirements of this regulation.

Estimated Time per Response:

Testing and Certification: Based on the comments we received on the proposed testing rule, we revised the estimated number of children's products that are affected, as well as the hourly recordkeeping burden estimate. We estimate that approximately 311,400 non-apparel children's products are covered by the rule and that an average of 5 hours per year will be needed for the recordkeeping associated with these products. We also estimate that there are approximately 1.2 million children's apparel and footwear products, for which an average of 3 hours of recordkeeping will be required per year. Manufacturers that are required to conduct periodic testing have an additional recordkeeping burden estimated at 4 hours per representative sampling plan.

Section 104 Rules: Each section 104 rule contains a similar analysis for marking and labeling that estimates the time to make any necessary changes to marking and labeling requirements at 1 hour per model. Some section 104 rules also contain requirements for instructional literature, and we have included estimates for instructional literature in this analysis, where required.

Electrically Operated Toys and Other Articles: Products subject to this regulation are also subject to the requirements of the testing rule. Therefore, the burden of any duplicative recordkeeping requirements will not be reported here, as they were in the cancelled information collection, to avoid double-counting the burden. CPSC staff estimates that the additional burden imposed by this regulation over that imposed by the testing rule, is 30 minutes per product, to maintain sales and distribution records for 3 years, and 1 hour to make labeling changes per model.

Baby-Bouncer/Walker-Jumpers CPSC staff estimates that firms will spend 1 hour per model on recordkeeping requirements, and 1 hour per model on labeling requirements.

Total Estimated Annual Burden:

Testing and Certification: The total estimated annual burden for recordkeeping associated with the testing rule is 5.2 million hours ((311,400 non-apparel children's products × 5 hours per non-apparel children's product) + (1,200,000 children's apparel products × 3 hours per children's apparel product) = 1.6 million hours + 3.6 million hours, or a total of 5.2 million hours). Next, we describe the potential additional annual burden associated with use of a representative sampling plan and component part testing.

Representative Sampling Plans for Periodic Testing: We estimate that if each product line averages 50 individual models or styles, then a total of 30,000 individual representative sampling plans (1.5 million children's products ÷ 50 models or styles) would need to be developed and documented. This would require 120,000 hours (30,000 plans × 4 hours per plan). If each product line averages 10 individual models or styles, then a total of 150,000 different representative sampling plans (1.5 million children's products ÷ 10 models or styles) would need to be documented. This would require 600,000 hours (150,000 plans × 4 hours per plan). Accordingly, the requirement to document the basis for selecting representative samples could increase the estimated annual burden by up to 600,000 hours.

Component Part Testing: The component part rule shifts some testing costs and some recordkeeping costs to suppliers of component parts and finished products because some testing will be performed by these parties, rather than by the finished product certifiers (manufacturers and importers). Even if a finished product certifier can rely entirely on component part and finished product suppliers for all required testing, however, the finished product supplier will still have some recordkeeping burden to create and maintain a finished product certificate. Therefore, although the component part testing rule may reduce the total cost of the testing required by the testing and certification rule, the rule increases the estimated annual recordkeeping burden for those who choose to use component part testing.

Because we do not know how many companies participate in component part testing and supply test reports or certifications to other certifiers in the supply chain, we have no concrete data to estimate the recordkeeping and third party disclosure requirements in the component part rule. Likewise, no clear method exists for estimating the number of finished product certifiers who conduct their own component part testing. In the component part rulemaking, we suggested that the recordkeeping burden for the component part testing rule could amount to 10 percent of the burden estimated for the testing and labeling rule. 76 FR 69546, 69579 (Nov. 8, 2011). Currently, we have no basis to change this estimate.

In addition to recordkeeping, the component part rule requires third party disclosure of test reports and certificates, if any, to a certifier who intends to rely on such documents to issue its own certificate. Without data, allocation of burden estimation between the recordkeeping and third party disclosure requirements is difficult. However, based on our previous analysis, we continue to estimate that creating and maintaining records accounts for approximately 90 percent of the burden, while the third party disclosure burden is much less, approximately 10 percent. Therefore, if we continue to use the estimate that component part testing will amount to about 10 percent of the burden estimated for the testing rule, then the

hour burden of the component part rule is estimated to be about 520,000 hours total annually (10% of 5.2 million hours); allocating 468,000 hours for recordkeeping and 52,000 hours for third party disclosure.

Section 104 Rules: The burden for marking and labeling for each section 104 rule is provided in Table 1. The estimated total number of respondent hours is 92,280.

Electrically Operated Toys and Other Articles Rule: Assuming each of the 40 firms produces 10 new models per year, the estimated annual burden is 200 hours for recordkeeping (40 firms × .5 hour × 10 models) and 400 hours for labeling changes (40 firms × 1 hour × 10 models), for a total estimated annual burden of 600 hours.

Baby-Bouncer/Walker-Jumper Rule: Firms are expected to test, on average, four new models per year. Accordingly, the estimated annual burden is 12 hours on recordkeeping (6 firms × 1 hour × 2 models), and 12 hours on labeling (6 firms × 1 hour × 2 models), for a total estimated annual burden of 24 hours per year.

Request for Comments

The CPSC solicits written comments from all interested persons about the proposed renewal of this collection of information. The CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–07894 Filed 4–12–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE)

AGENCY: U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: Notice of this meeting is required by the Federal Advisory Committee Act (FACA) and is intended to notify members of the public of an upcoming NACIE open meeting.

DATES: The NACIE open virtual meeting will be held on April 26, 2022 from 1–4:30 p.m. (EDT) and April 27, 2022 from 1–4:30 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Donna Sabis-Burns, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: 202–213–9014, Email: *Donna.Sabis-Burns@ed.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: NACIE is authorized by Section 6141 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The work of the Council was expanded per Executive Order 14049. NACIE is established within the U.S. Department of Education to advise the Secretary of Education, the Secretary of Interior, the Secretary of Labor, and the White House Initiative on Advancing Educational Equity, Excellence and Economic Opportunity and Strengthening Tribal Colleges and Universities (Initiative) as well as the co-chairs of the Initiative (Secretaries of Education Interior and Labor) on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary of Education has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults, including any program established under Title VI, Part A of the ESEA. In accordance with Section 3 of Executive Order 14049, NACIE submits to the Congress each year a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

Meeting Agenda: The purpose of this meeting is to convene NACIE to conduct the following business: (1) Participate in a dialogue with Biden-Harris Administration Officials, (2) convene a roundtable with White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities Education staff, (3) conduct an overview of the development of NACIE's Fiscal Year 2022 Annual Report to Congress, and (4) conduct an overview and seek recommendations on the activities of the Office of Indian Education.

Instructions for Accessing the Meeting: Members of the public may access the NACIE meeting via teleconference and the web. Up to 350 lines will be available on a first come, first serve basis. The dial-in listen only phone number for the meeting is 1–669–254–5252, Meeting ID: 161 715 5166. The web link to register to access the meeting via *Zoom.gov* is *https://www.zoomgov.com/meeting/register/vJIscOitqzosHKp-LOrXrTwxnv21QhOOmu0*.

Public Comment: Members of the public interested in submitting written comments may do so via email to Donna Sabis-Burns at *donna.sabis-burns@ed.gov*. Please note, written comments should pertain to the work of NACIE.

Reasonable Accommodations: The teleconference meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice not later than April 21, 2022. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official open meeting report of this meeting on the OESE website at: *https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/* 21 days after the meeting. Pursuant to the FACA, the public may also inspect NACIE records at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. Eastern Time. Please email Donna Sabis-Burns at *Donna.Sabis-Burns@ed.gov* to schedule an appointment.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. 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 Adobe Portable Document

Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may 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.

Authority: Section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 7471).

Mark Washington,

Deputy Assistant Secretary for Administration, Office of Elementary and Secondary Education.

[FR Doc. 2022–07849 Filed 4–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site-Specific Advisory Board (EM SSAB or Board) will be renewed for a two-year period beginning April 8, 2022.

FOR FURTHER INFORMATION CONTACT: Kelly Snyder, EM SSAB Designated Federal Officer, by Phone: (702) 918–6715 or Email: *kelly.snyder@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The Board provides the Assistant Secretary for Environmental Management (EM) with information, advice, and recommendations concerning issues affecting the EM program at various sites. These site-specific issues include, but are not limited to, clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship; and risk assessment and communications.

Additionally, the renewal of the Board has been determined to be essential to conduct DOE's business and to be in the public interest in connection with the performance of duties imposed on the DOE by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

Signing Authority

This document of the Department of Energy was signed on April 8, 2022, by Miles Fernandez, Acting Committee Management Officer, 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 April 8, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–07936 Filed 4–12–22; 8:45 am]

BILLING CODE 6450–01–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: EG22–86–000.
Applicants: Brazoria County Solar Project LLC.
Description: Self-Certification of EG or FC of Brazoria County Solar Project LLC.
Filed Date: 4/6/22.
Accession Number: 20220406–5220.
Comment Date: 5 p.m. ET 4/27/22.

Docket Numbers: EG22–87–000.
Applicants: Castle Gap Wind Power, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Castle Gap Wind Power, LLC.
Filed Date: 4/6/22.
Accession Number: 20220406–5221.
Comment Date: 5 p.m. ET 4/27/22.

Docket Numbers: EG22–88–000.
Applicants: Lantana Wind Power, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lantana Wind Power, LLC.
Filed Date: 4/6/22.
Accession Number: 20220406–5222.
Comment Date: 5 p.m. ET 4/27/22.

Docket Numbers: EG22–89–000.
Applicants: Bluebonnet Wind Power, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Bluebonnet Wind Power, LLC.
Filed Date: 4/6/22.
Accession Number: 20220406–5223.
Comment Date: 5 p.m. ET 4/27/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–49–000.
Applicants: Allegheny Electric Cooperative, Inc.
Description: Application for Partial Waiver of Certain PURPA Obligations of Allegheny Electric Cooperative, Inc. and its Cooperative Members.
Filed Date: 4/4/22.
Accession Number: 20220404–5326.
Comment Date: 5 p.m. ET 4/25/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2374–015.
Applicants: Puget Sound Energy, Inc.
Description: Notice of Change in Status of Puget Sound Energy Inc.
Filed Date: 4/4/22.
Accession Number: 20220404–5330.
Comment Date: 5 p.m. ET 4/25/22.

Docket Numbers: ER15–734–002; ER16–2290–003.
Applicants: Spartan Renewable Energy, Inc., Wolverine Power Supply Cooperative, Inc.
Description: Notice of Non-Material Change in Status of Wolverine Power Supply Cooperative, Inc., et al.
Filed Date: 4/6/22.
Accession Number: 20220406–5251.
Comment Date: 5 p.m. ET 4/27/22.

Docket Numbers: ER17–215–000; EL14–12–002.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy, South Mississippi Electric Power Association, Association of Businesses Advocating Tariff Equity, et al. v. Midcontinent Independent System Operator, Inc., et al.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Compliance Refund Report to be effective N/A.
Filed Date: 4/1/22.
Accession Number: 20220401–5611.
Comment Date: 5 p.m. ET 4/22/22.

Docket Numbers: ER18–397–002; ER18–398–002.

Applicants: SunE Beacon Site 5 LLC, SunE Beacon Site 2 LLC.
Description: Notice of Non-Material Change in Status of SunE Beacon Site 2 LLC, et al.
Filed Date: 4/5/22.
Accession Number: 20220405–5205.
Comment Date: 5 p.m. ET 4/26/22.

Docket Numbers: ER20–686–007.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Compliance filing: Amendment to Compliance Filing—OATT Settlement to be effective 3/26/2020.
Filed Date: 4/7/22.
Accession Number: 20220407–5020.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER21–330–003.
Applicants: Specialty Products US, LLC.
Description: Notice of Change in Status of Specialty Products US, LLC.
Filed Date: 4/5/22.
Accession Number: 20220405–5204.
Comment Date: 5 p.m. ET 4/26/22.

Docket Numbers: ER22–1008–001.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: AEPTX-ETT (Salvare) FDA Request to Defer Action to be effective 12/31/9998.
Filed Date: 4/7/22.
Accession Number: 20220407–5140.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1591–000.
Applicants: Starion Energy NY, Inc.
Description: Notice of Cancellation of Market Based Rate Tariff of Starion Energy NY, Inc.
Filed Date: 4/5/22.
Accession Number: 20220405–5206.
Comment Date: 5 p.m. ET 4/26/22.

Docket Numbers: ER22–1592–000.
Applicants: Starion Energy Inc.
Description: Notice of Cancellation of Market Based Rate Tariff of Starion Energy Inc.
Filed Date: 4/5/22.
Accession Number: 20220405–5207.
Comment Date: 5 p.m. ET 4/26/22.
Docket Numbers: ER22–1593–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Lunis Creek Solar Project 1st A&R Generation Interconnection Agreement to be effective 3/28/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5022.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1594–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Rayos Del Sol (Vancourt) 2nd A&R Generation Interconnection Agreement to be effective 3/28/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5028.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1595–000.
Applicants: GenOn Florida, LP.
Description: Tariff Amendment: Notice of Cancellation to be effective 4/8/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5031.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1596–000.
Applicants: Koch Energy Services, LLC.
Description: Tariff Amendment: Notice of Cancellation of MBR Tariff to be effective 6/7/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5090.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1597–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6395; Queue No. AG1–251 to be effective 3/8/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5095.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1598–000.
Applicants: Constellation Generation Supply, LLC.
Description: Tariff Amendment: Notice of Cancellation to be effective 4/8/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5104.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1599–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–ETT (Salvare) Facilities Development Agreement to be effective 12/31/9998.
Filed Date: 4/7/22.
Accession Number: 20220407–5120.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1600–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL and City of Blountstown NITSA & NOA to be effective 5/1/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5123.
Comment Date: 5 p.m. ET 4/28/22.

Docket Numbers: ER22–1601–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Revised Attachment H–1 (Additional Update Form 1 Source References 2022) to be effective 4/8/2022.
Filed Date: 4/7/22.
Accession Number: 20220407–5164.
Comment Date: 5 p.m. ET 4/28/22.

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: April 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–07875 Filed 4–12–22; 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: RP22–786–000.
Applicants: Dominion Energy Questar Pipeline, LLC.
Description: § 4(d) Rate Filing: Change of Company Name to be effective 4/1/2022.
Filed Date: 4/1/22.
Accession Number: 20220401–5012.
Comment Date: 5 p.m. ET 4/13/22.

Docket Numbers: RP22–787–000.
Applicants: White River Hub, LLC.
Description: § 4(d) Rate Filing: Name Change Filing to be effective 4/1/2022.
Filed Date: 4/1/22.
Accession Number: 20220401–5013.
Comment Date: 5 p.m. ET 4/13/22.

Docket Numbers: RP22–812–000.
Applicants: Adelphia Gateway, LLC.
Description: § 4(d) Rate Filing: Adelphia Negotiated Rate statement April 2022 to be effective 4/8/2022.
Filed Date: 4/6/22.
Accession Number: 20220406–5183.
Comment Date: 5 p.m. ET 4/18/22.

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: April 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–07874 Filed 4–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1576–000]

WPL North Rock Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of WPL North Rock Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 27, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–07877 Filed 4–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1578–000]

WPL Wood County Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of WPL Wood County Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 27, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–07876 Filed 4–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1575–000]

WPL Crawfish River Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of WPL Crawfish River Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 27, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–07878 Filed 4–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1574–000]

WPL Bear Creek Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of WPL Bear Creek Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 27, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–07880 Filed 4–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Rate Order No. WAPA–204

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Boulder Canyon Project formula rates for electric service and proposed fiscal year 2023 base charge and rates.

SUMMARY: The Desert Southwest Region (DSW) of the Western Area Power Administration (WAPA) is proposing to renew the Boulder Canyon Project (BCP) formula rates for electric service and to

calculate the fiscal year (FY) 2023 base charge and rates under proposed Rate Schedule BCP–F11. The existing formula rates under Rate Schedule BCP–F10 and the current base charge and rates expire on September 30, 2022. The proposed formula rates under Rate Schedule BCP–F11 would be effective October 1, 2022 through September 30, 2027. WAPA proposes no changes to the existing formula rates, which are set forth in the governing terms of the BCP Electric Service Contract (ESC). The FY 2023 proposed base charge for BCP electric service is projected to increase from $67.4 million in FY 2022 to $69.9 million in FY 2023, a 3.7 percent increase. The change is primarily the result of cost increases in Bureau of Reclamation's (Reclamation) Operations and Maintenance (O&M) and visitor services expenses. Publication of this **Federal Register** notice will initiate the public process to put into place the proposed formula rates for electric service and the proposed FY 2023 base charge and rates.

DATES: A consultation and comment period begins today and will end July 12, 2022. DSW will present a detailed explanation of the proposed formula rates for electric service and the proposed FY 2023 base charge and rates at a public information forum that will be held on May 13, 2022, from 10 a.m. to 12 p.m. Mountain Standard Time. DSW will also host a public comment forum that will be held on June 13, 2022, from 10 a.m. to 12 p.m. Mountain Standard Time. DSW will conduct both the public information forum and the public comment forum via Webex. Instructions for participating in the forums will be posted on DSW's website at least 14 days prior to the public information and comment forums at: *www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.* DSW will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rates and calculated base charge and rates should be sent to: Scott R. Lund, Acting Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, or *dswpwrmrk@wapa.gov.* DSW will post information concerning the rate process and written comments received to its website at: *www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

FOR FURTHER INFORMATION CONTACT: Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, (602) 605–2565, or *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION: Hoover Dam,[1] authorized by the Boulder Canyon Project Act of 1928, as amended (43 U.S.C. 617 *et seq.*), sits on the Colorado River along the Arizona-Nevada border. The Hoover Dam power plant has 19 generating units (two for plant use) and an installed capacity of 2,078.8 megawatts (4,800 kilowatts for plant use). In collaboration with Reclamation, WAPA markets and delivers hydropower from the Hoover Dam power plant through high-voltage transmission lines and substations to Arizona, Southern California, and Southern Nevada.

On June 6, 2018, FERC approved and confirmed Rate Schedule BCP–F10, under Rate Order No. WAPA–178, on a final basis through September 30, 2022.[2] Rate Schedule BCP–F10 and the BCP ESC require WAPA to calculate the annual base charge and rates for the next fiscal year before October 1 of each year based on formulas that are set for a five-year period. Rate Schedule BCP–F10 expires on September 30, 2022. Consistent with the formulas set forth in the BCP ESC, WAPA is proposing to renew the formula rates for electric service under Rate Schedule BCP–F11, which would be effective October 1, 2022, through September 30, 2027. The formula rates will continue to provide sufficient revenue to recover all annual costs, including interest expense.

Pursuant to proposed Rate Schedule BCP–F11, the formula-based methodology for BCP calculates an annual base charge rather than a unit rate for Hoover Dam hydropower. The base charge recovers an annual revenue requirement that includes projected costs of investment repayment, interest, operations, maintenance, replacements, payments to States, and Hoover Dam visitor services. Non-power revenue projections such as water sales, Hoover Dam visitor revenue, ancillary services, and late fees help offset these projected costs. Hoover power customers are billed a percentage of the base charge in proportion to their power allocation. Unit rates are calculated for comparative purposes but are not used to determine the charges for service.

COMPARISON OF BASE CHARGE AND RATES

	FY 2022	FY 2023	Amount change	Percent change
Base Charge ($)	$67,355,778	$69,861,560	$2,505,782	3.7
Composite Rate (mills/kWh)	20.63	22.51	1.88	9.1
Energy Rate (mills/kWh)	10.32	11.25	.93	9.0
Capacity Rate ($/kW-Mo)	$2.03	$2.24	0.21	10.3

While the proposed formula rates are unchanged from FY 2022, the proposed FY 2023 base charge for BCP electric service is projected to increase from $67.4 million in FY 2022 to $69.9 million in FY 2023, a 3.7 percent increase.

Reclamation's FY 2023 budget is increasing $3.2 million from $81.7 million to $84.9 million, a 3.9 percent increase from FY 2022. Reflected in this budget, operations and maintenance (O&M) costs are increasing $3.4 million primarily due to a higher overhead rate for salaries attributed to a reorganization and increased staffing needs to improve cybersecurity; an increase in services for IT support and equipment; trash disposal contract costs; fabrication of elevator doors; ammunition for security forces; and anticipated costs for the Workman's Compensation Program. Visitor services costs are increasing by $490,000 due to higher projected contract costs for janitorial, memorabilia, ticketing, and trash disposal services. The increase for Reclamation is offset by a $790,000 decrease in replacement costs primarily due to Relamation's effort to level

[1] Hoover Dam was known as Boulder Dam from 1933 to 1947, but was renamed Hoover Dam by an April 30, 1947, joint resolution of Congress. *See* Act of April 30, 1947, H.J. Res. 140, ch. 46, 61 Stat. 56–57.

[2] Order Confirming and Approving Rate Schedule on a Final Basis, FERC Docket No. EF18–1–000, 163 FERC ¶ 62,154 (2018).

extraordinary maintenance project expenses. This results in reduced annual costs for the control center renovation project and the replacement of the A9 wicket gates, visitors center escalator, and wastewater treatment facility.

WAPA's FY 2023 budget is decreasing $438,000 from $9.2 million to $8.7 million, a 4.8 percent decrease from FY 2022. Reflected in this budget, WAPA's O&M costs are decreasing by $842,000 due to a shift from O&M to capital work. The decreasing O&M costs are offset primarily by a $380,000 increase in WAPA's replacement budget for breaker and relay replacements in the Mead 69-kV yard.

Costs for Reclamation and WAPA are offset by a slight increase of $68,000 in non-power revenue projections, due to a higher estimate for ancillary services revenues. Prior year carryover is projected to be $2.8 million, a $186,000 increase from FY 2022.

The composite rate is increasing 9.1 percent; the energy rate is increasing 9 percent; and the capacity rate is increasing 10.3 percent from FY 2022. These unit rate calculations use forecasted energy and capacity values, which have been decreasing due to the ongoing drought in the Lower Colorado River Basin. Forecasted energy and capacity values may be updated when determining the final base charge and rates if hydrological conditions change. With the uncertainty of hydrological conditions, Reclamation and WAPA will work with customers to develop a threshold for prompt consultation should hydrological conditions worsen after the base charge is placed into effect.

WAPA's proposed base charge and rates for FY 2023, which would be effective October 1, 2022, are preliminary and subject to change based on modifications to forecasts before publication of the final base charge and rates.

Legal Authority

Department of Energy (DOE) procedures for public participation in power and transmission rate adjustments are set forth in 10 CFR part 903. Additional requirements and procedures for promulgating the BCP base charge are set forth in 10 CFR part 904. WAPA's proposals to renew the formula rates under BCP–F11 and calculate the base charge and rates for FY 2023 constitute a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10 CFR 903.15, 10 CFR 903.16, and 10 CFR 904.7(e), DSW will hold public information and public comment forums for this rate adjustment. DSW will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposals as appropriate. The formula rates and FY 2023 base charge and rates will then be approved on a provisional basis.

WAPA is establishing rates for BCP electric service in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152). This provision transferred to, and vested in, the Secretary of Energy certain functions of the Secretary of the Interior, along with the power marketing functions of Reclamation. Those functions include actions that specifically apply to the BCP.

Pursuant to the BCP ESC, the renewed rate methodology under BCP–F11 and calculated rates for FY 2023 shall become effective, provisionally, upon approval by the Deputy Secretary of Energy subject to final approval by FERC. Under the DOE Organization Act, the Secretary of Energy holds plenary authority over DOE affairs with respect to the Power Marketing Administrations, and the Secretary of Energy may therefore exercise the Deputy Secretary's contractual authority in this context. By Delegation Order No. S1–DEL–S4–2021–2, effective December 8, 2021, the Secretary of Energy delegated to the Under Secretary for Science (and Energy) the authority vested in the Secretary with respect to WAPA. By Redelegation Order No. S4–DEL–OE1–2021–2, also effective December 8, 2021, the Under Secretary for Science (and Energy) redelegated the same authority to the Assistant Secretary for Electricity. Based upon the governing terms of the existing BCP ESC, the Assistant Secretary for Electricity will provisionally approve the formula rates and FY 2023 base charge and rates for BCP electric service, subject to final approval by FERC.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that DSW initiates or uses to develop the proposed formula rates for electric service and the base charge and rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona. Many of these documents and supporting information are also available on WAPA's website at *www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this proposed action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR 1021.410: B4.3 (Electric power marketing rate changes) and B4.4 (Power marketing services and activities). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.[3] Specifically, WAPA has determined that this rulemaking is consistent with activities identified in B4, Categorical Exclusions Applicable to Specific Agency Actions (see 10 CFR part 1021, appendix B to subpart D, part B4). A copy of the categorical exclusion determination is available on WAPA's website at *https://www.wapa.gov/regions/DSW/Environment/Pages/environment.aspx.*

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on March 31, 2022, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 April 8, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–07864 Filed 4–12–22; 8:45 am]

BILLING CODE 6450–01–P

[3] The determination was done in compliance with NEPA (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9744–01–OA; EPA–HQ–OA–2022–0050]

White House Environmental Justice Advisory Council; Notification of Virtual Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the White House Environmental Justice Advisory Council (WHEJAC) will meet on the dates and times described below. The meeting is open to the public. Members of the public are encouraged to provide comments relevant to Federal disaster preparedness and relief and community resilience. For additional information about registering to attend the meetings or to provide public comment, please see ''Registration'' under **SUPPLEMENTARY INFORMATION**. Pre-registration is required.

DATES: The WHEJAC will hold a virtual public meeting on Wednesday, May 11, 2022, and Thursday, May 12, 2022, from approximately 3:00 p.m.–7:30 p.m., Eastern Time each day. A public comment period relevant to Federal disaster preparedness and relief and community resilience will be considered by the WHEJAC during the meeting on May 11, 2022. (See **SUPPLEMENTARY INFORMATION**) Members of the public who wish to participate during the public comment period must pre-register by 11:59 p.m., Eastern Time, May 4, 2022.

FOR FURTHER INFORMATION CONTACT: Karen L. Martin, WHEJAC Designated Federal Officer, U.S. EPA; email: *whejac@epa.gov;* telephone: (202) 564–0203. Additional information about the WHEJAC is available at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The meeting discussion will focus on climate resilience, the beta version of the Climate and Economic Justice Screening Tool and WHEJAC draft recommendations on the implementation of the Justice40 Initiative.

The Charter of the WHEJAC states that the advisory committee will provide independent advice and recommendations to the Chair of the Council on Environmental Quality (CEQ) and to the White House Environmental Justice Interagency Council (IAC). The WHEJAC will provide advice and recommendations about broad cross-cutting issues, related but not limited to, issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health, and racial inequity. The WHEJAC's efforts will include a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

Registration: Individual registration is required for the virtual public meeting. Information on how to register is located at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.* Registration for the meeting is available through the scheduled end time of the meeting. Registration to speak during the public comment period will close 11:59 p.m., Eastern Time, on May 4, 2022. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments at the time of registration.

A. Public Comment

The WHEJAC is interested in receiving public comments relevant to Federal disaster preparedness and relief and community resilience. The WHEJAC is seeking comments on the following questions:

(1.) What type of support is needed for disadvantage communities to participate in Federal disaster preparedness or relief programs? (2.) How can Federal disaster relief and aid programs better serve disadvantaged communities that have historically received fewer Federal benefits? (3.) What process steps and information would help eliminate these disparities? (4.) What steps can Federal agencies and the White House take to reduce disparities in climate change impacts for communities, including, but not limited to risks from, extreme heat, flood, wildfire, drought, and coastal challenges? Every effort will be made to hear from as many registered public commenters during the time specified on the agenda. Individuals or groups providing remarks during the public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments and recommendations on what you want the WHEJAC to advise CEQ and IAC to do regarding climate Federal disaster preparedness and relief and community resilience. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1.) by creating comments in the Docket ID No. EPA–HQ–OA–2022–0050 at *https://www.regulations.gov,* (2.) by using the webform at *https://www.epa.gov/environmentaljustice/forms/white-house-environmental-justice-advisory-council-whejac-public-comment,* and (3.) by sending comments via email to *wheja@epa.gov.* Written comments can be submitted through May 25, 2022.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, via email at *whejac@epa.gov* or contact by phone at (202) 564–0203. To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Director for the Office of Environmental Justice.

[FR Doc. 2022–07867 Filed 4–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9715–01–R6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for ExxonMobil Corp, Baytown Chemical Plant, Harris County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated March 18, 2022, granting in part and denying in part a Petition dated September 30, 2020 from the Environmental Integrity Project, Sierra Club, and Texas Campaign for the Environment. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on

Environmental Quality (TCEQ) to ExxonMobil Corp. for its Baytown Chemical Plant located in Harris County, Texas.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office is currently closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database*.

FOR FURTHER INFORMATION CONTACT: Aimee Wilson, EPA Region 6 Office, Air Permits Section, (214) 665–7596, *wilson.aimee@epa.gov*.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project, Sierra Club, and Texas Campaign for the Environment dated September 30, 2020, requesting that the EPA object to the issuance of operating permit no. O2269, issued by TCEQ to the Baytown Chemical Plant in Harris County, Texas. The Petition claims the TCEQ Executive Director failed to adjust ExxonMobil's Plantwide Applicability Limits (PAL) for NOx and VOC downward to account for Harris County's recent designation as a serious Ozone nonattainment area and the revised proposed permit improperly incorporates a Major NSR permit by reference, fails to assure compliance with the PAL, fails to establish a compliance schedule for ExxonMobil to comply with its commitment to obtain a SIP-approved Chapter 116, Subchapter B permit for units and emissions authorized by state-only flexible permit No. 20211/PAL16, improperly incorporates confidential permit terms, and fails to specify monitoring, testing, and recordkeeping requirements sufficient to assure compliance with applicable requirements for projects authorized by permits by rule (PBR).

On March 18, 2022, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for EPA's decision.

Dated: April 4, 2022.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2022–07823 Filed 4–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9718–01–OA]

Request for Nominations for the Science Advisory Board IRIS Hexavalent Chromium (Cr(VI)) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a Panel to review the draft EPA Integrated Risk Information System (IRIS) Toxicological Review of Hexavalent Chromium (Cr(VI)). EPA's draft assessment includes a hazard identification analysis, which summarizes the chemical properties, toxicokinetics, and health effects associated exposure, and dose-response analysis, which characterizes the quantitative relationship between chemical exposure and each credible health hazard. These quantitative relationships are then used to derive cancer and non-cancer toxicity values (*e.g.,* inhalation unit risk, oral slope factor, reference concentration, reference dose). The SAB Hexavalent Chromium Review Panel will consider whether the conclusions found in the EPA's draft assessment are clearly presented and scientifically supported. The Panel will also be asked to provide recommendations on how the assessment may be strengthened.

DATES: Nominations should be submitted by May 4, 2022 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board via telephone/voice mail (202) 564–2057, or email at *shallal.suhair@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2) and related regulations. The SAB Staff Office is forming an expert panel, the SAB Hexavalent Chromium Review Panel, under the auspices of the Chartered SAB. The SAB Hexavalent Chromium Review Panel will provide advice through the chartered SAB. The SAB and the SAB Hexavalent Chromium Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Hexavalent Chromium Review Panel will conduct a review of the draft EPA IRIS Toxicological Review of Hexavalent Chromium. EPA's draft assessment includes a hazard identification analysis, which summarizes the chemical properties, toxicokinetics, and health effects associated exposure, and dose-response analysis, which characterizes the quantitative relationship between chemical exposure and each credible health hazard. These quantitative relationships are then used to derive cancer and non-cancer toxicity values (*e.g.,* inhalation unit risk, oral slope factor, reference concentration, reference dose). The SAB Hexavalent Chromium Review Panel will consider whether the conclusions found in the EPA's draft assessment are clearly presented and scientifically supported. The Panel will also be asked to provide recommendations on how the assessment may be strengthened.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in the following disciplines: *Toxicology, specifically inhalation toxicology/dosimetry, hepatic nephrological, genetic toxicology; epidemiology; systematic review; physiologically-based pharmacokinetic (PBPK) modeling; carcinogenesis,*

including gastrointestinal; risk assessment; and dose response analysis.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB Panel. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form on the SAB website at *https://sab.epa.gov* (see the ''Public Input on Membership'' list under ''Committees, Panels, and Membership''). To be considered, nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability, or ethnicity. Nominations should be submitted in time to arrive no later than May 4, 2022. The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SAB Staff Office and will be asked to provide a recent curriculum vitae and a narrative biographical summary that includes: Current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB website, should contact the DFO at the contact information noted above. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates for the Panel on the SAB website at *https://sab.epa.gov.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the Lists of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3110–48). This confidential form is required and allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the SAB website at *https://sab.epa.gov.* This form should not be submitted as part of a nomination.

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB website at *https://sab.epa.gov.*

Thomas Brennan,

Director, Science Advisory Board Staff Office.

[FR Doc. 2022–07943 Filed 4–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–11]

Notice of Filing of Complaint and Assignment; Aeneas Exporting LLC, *Complainant* v. Honeybee International Inc., and All America Shipping, Respondent

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Aeneas Exporting LLC, hereinafter ''Complainant'', against Honeybee International Inc. and All America Shipping, hereinafter ''Respondents''. Complainant alleges that Respondents are California corporations and an ocean common carrier, non-vessel-operating common carrier, ocean freight forwarder, and ocean transportation intermediary.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c) and 41104(a)(3), 46 CFR 545.4, and ''Fraud and Coercion'' regarding the receipt, handling, storing, and delivery of vehicles and assessment of charges and fees. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-11/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by April 10, 2023, and the final decision of the Commission shall be issued by October 24, 2023.

Served: April 8, 2022.

William Cody,

Secretary.

[FR Doc. 2022–07870 Filed 4–12–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

National Shipper Advisory Committee April 2022 Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the National Shipper Advisory Commission (NSAC), pursuant to the Federal Advisory Committee Act.

DATES: The Committee will meet in-person at the Federal Maritime Commission on April 27, 2022, from 1:00 p.m. until 4:00 p.m. Eastern Time. Please note that this meeting may adjourn early if the Committee has completed its business.

ADDRESSES: The meeting will be held in the Federal Maritime Commission Hearing Room, located on the first floor at 800 North Capitol St. NW, Washington, DC 20573. The meeting will also stream live via a link on the Federal Maritime Commission's website, *www.fmc.gov.*

This meeting is open to the public. Requests to register to attend the meeting in-person should be submitted to *nsac@fmc.gov* and contain ''REGISTER FOR NSAC MEETING'' in the subject line. The deadline for members of the public to register to attend the meeting in-person is Friday,

April 22, at 5 p.m. Eastern Time. Members of the public are encouraged to submit registration requests via email in advance of the deadline. Seating for members of the public is limited and will be available on a first-come, first-served basis for those who register in advance. We will note when the limit of in-person attendees has been reached. If you have accessibility concerns and require assistance, contact *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Richmond, Designated Federal Officer of the National Shipper Advisory Committee, phone: (202) 523–5810; email: *drichmond@fmc.gov.*

SUPPLEMENTARY INFORMATION: *Background:* The National Shipper Advisory Committee is a federal advisory committee. It operates under the provisions of the Federal Advisory Committee Act, 5 U.S.C. app., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal Year 2021 became law. Public Law 116–283, section 8604, 134 stat. 3388 (2021). The Committee will provide information, insight, and expertise pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee will advise the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee will hear from Commissioner Bentzel for an update on the Maritime Transportation Data Initiative. They will also receive updates from each of its subcommittees. The Committee will receive proposals for recommendations to the Federal Maritime Commission and may vote on these recommendations. These recommendations will also be available for the public to view in advance of the meeting on the NSAC's website, *https://www.fmc.gov/industry-oversight/national-shipper-advisory-committee/.*

Public Comments: Members of the public may submit written comments to NSAC at any time. Comments should be addressed to NSAC, c/o Dylan Richmond, Federal Maritime Commission, 800 North Capitol St NW, Washington, DC 20573 or *nsac@fmc.gov.*

The Committee will also take public comment at its meeting. If attending the meeting and providing comments, please note that in the registration request. Comments are most helpful if they address the Committee's objectives or their proposed recommendations. Comments at the meeting will be limited to 3 minutes each.

A copy of all meeting documentation, including meeting minutes, will be available at *www.fmc.gov* following the meeting.

By the Commission.

Dated: April 8, 2022.

William Cody,

Secretary.

[FR Doc. 2022–07896 Filed 4–12–22; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10680 and CMS–10692]

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 June 13, 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–10680 Electronic Visit Verification Compliance Survey

CMS–10692 Home and Community Based Services (HCBS) Incident Management Survey

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. *Title of Information Collection:* Electronic Visit Verification Compliance

Survey; *Type of Information Collection Request:* Extension without change of a currently approved collection; *Use:* The web-based survey will allow states to self-report their progress in implementing electronic visit verification (EVV) for personal care services (PCS) and home health care services (HHCS), as required by section 1903(l) of the Social Security Act. CMS will use the survey data to assess states' compliance with section 1903(l) of the Act and levy Federal Medical Assistance Percentage (FMAP) reductions where necessary as required by 1903(l) of the Act.

The survey will be disseminated to all 51 state Medicaid agencies (including the District of Columbia) and the Medicaid agencies of five US territories. States will be required to complete the survey in order to demonstrate that they are complaint with Section 1903(l) of the Act by reporting on their EVV implementation status for PCS provided under sections 1905(a)(24), 1915(c), 1915(i), 1915(j), 1915(k), and Section 1115 of the Act; and HHCS provided under 1905(a)(7) of the Act or under a demonstration project or waiver (*e.g.,* 1915(c) or 1115 of the Act).

The survey will be a live form, meaning states will have the ability to update their 1903(l) compliance status on a continuous basis. As FMAP reductions are assigned quarterly per 1903(l) of the Act, states who are not in compliance will be asked to review their survey information on a quarterly basis to ensure it is up-to-date and to update their survey responses as needed until they come into compliance. *Form Number:* CMS–10680 (OMB control number: 0938–1360); *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Number of Responses:* 336; *Total Annual Hours:* 504. (For questions regarding this collection contact Ryan Shannahan at 410–786–0295.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Home and Community Based Services (HCBS) Incident Management Survey; *Use:* The Survey will be disseminated to all 51 state Medicaid agencies (including the District of Columbia) to assess incident management systems in 1915(c) waivers. States will be surveyed to identify methods and promising practices for identifying, reporting, tracking, and resolving incidents of abuse, neglect, and exploitation. The survey results will also be used to review the strengths and weaknesses of each state's incident management system and will inform guidance to help ensure compliance with sections 1902(a)(30(A) and 1915(c)(2)(A) of the Social Security Act. *Form Number:* CMS–10692 (OMB control number: 0938–1362); *Frequency:* Once and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 102; *Total Annual Hours:* 153. (For policy questions regarding this collection contact Ryan Shannahan at 410–786–0295.)

3.

Dated: April 8, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–07917 Filed 4–12–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Information: Technical Assistance Needs and Priorities on Implementation and Coordination of Early Childhood Development Programs in American Indian and Alaska Native Communities; Correction

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice; correction.

SUMMARY: The Administration for Children and Families published a document in the **Federal Register** of March 22, 2022 concerning a request for information on technical assistance needs and priorities on implementation and coordination of early childhood development programs in American Indian and Alaska Native communities. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Moushumi Beltangady at *Moushumi.beltangady@acf.hhs.gov* or 202–260–3613.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 22, 2022, in FR Doc. 2022–05962 (Vol. 87, No. 55) on page 16195, in the first column, final line, correct the **DATES** caption to read:

DATES: Send comments on or before May 20, 2022.

Kathleen D. Hamm,

Deputy Assistant Secretary for Early Childhood Development, Administration for Children and Families, U.S. Department of Health and Human Services.

[FR Doc. 2022–07840 Filed 4–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0529]

Secura Bio, Inc.; Withdrawal of Approval of Relapsed or Refractory Follicular Lymphoma Indication for COPIKTRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is withdrawing approval of the relapsed or refractory follicular lymphoma indication for COPIKTRA (duvelisib) Capsules, approved under new drug application 211155, held by Secura Bio, Inc., 1995 Village Center Circle, Suite 128, Las Vegas, NV 89134. Secura Bio, Inc. voluntarily requested that the Agency withdraw approval of this indication and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA approved COPIKTRA (duvelisib) Capsules for the treatment of adult patients with relapsed or refractory follicular lymphoma after at least two prior systemic therapies (the follicular lymphoma indication) on September 24, 2018, under the Agency's accelerated approval regulations, 21 CFR part 314, subpart H. As a condition of accelerated approval of COPIKTRA (duvelisib) Capsules for follicular lymphoma, the applicant was required to conduct a postmarketing trial to verify the clinical benefit of duvelisib for follicular lymphoma.

On November 22, 2021, FDA met with Secura Bio, Inc., to discuss the company's inability to conduct a

clinical trial to verify clinical benefit of duvelisib in follicular lymphoma. Because the confirmatory trial was not underway and would not be conducted, the Agency recommended withdrawal of approval of the follicular lymphoma indication pursuant to § 314.150(d) (21 CFR 314.150(d)). On November 24, 2021, Secura Bio, Inc. submitted a letter requesting withdrawal of approval of the follicular lymphoma indication for COPIKTRA (duvelisib) Capsules and waiving its opportunity for hearing.

Therefore, under § 314.150(d), approval of the follicular lymphoma indication for COPIKTRA (duvelisib) Capsules is withdrawn effective April 13, 2022. Withdrawal of approval of the follicular lymphoma indication does not affect any other approved indication for COPIKTRA.

Dated: April 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–07931 Filed 4–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0603 and FDA–2021–D–0604]

Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of two final device-specific guidance documents for the Safety and Performance Based Pathway—specifically, ''Denture Base Resins—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff'' and ''Facet Screw Systems—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff.'' The device-specific guidances identified in this notice were developed in accordance with the final guidance entitled ''Safety and Performance Based Pathway.''

DATES: The announcement of the guidance is published in the **Federal Register** on April 13, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0603 for ''Denture Base Resins—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff'' or Docket No. FDA–2021–D–0604 for ''Facet Screw Systems—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Denture Base Resins—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff'' or ''Facet Screw Systems—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff'' to the Office of Policy, Center for Devices

and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jason Ryans, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993–0002, 301–796–4908.

SUPPLEMENTARY INFORMATION:

I. Background

These device-specific guidance documents provide performance criteria for premarket notification (510(k)) submissions to support the optional Safety and Performance Based Pathway, as described in the guidance entitled ''Safety and Performance Based Pathway.'' [1] As described in that guidance, substantial equivalence is rooted in comparisons between new devices and predicate devices. However, the Federal Food, Drug, and Cosmetic Act does not preclude FDA from using performance criteria to facilitate this comparison. If a legally marketed device performs at certain levels relevant to its safety and effectiveness, and a new device meets those levels of performance for the same characteristics, FDA could find the new device as safe and effective as the legally marketed device. Instead of reviewing data from direct comparison testing between the two devices, FDA could support a finding of substantial equivalence with data demonstrating the new device meets the level of performance of an appropriate predicate device(s). Under this optional Safety and Performance Based Pathway, a submitter could satisfy the requirement to compare its device with a legally marketed device by, among other things, independently demonstrating that the device's performance meets performance criteria as established in the above-listed guidances, rather than using direct predicate comparison testing for some of the performance characteristics.

A notice of availability of the draft guidances ''Denture Base Resins'' and ''Facet Screw Systems'' appeared in the **Federal Register** of August 30, 2021 (86 FR 48430). FDA considered comments received on the ''Denture Base Resins'' and revised the guidance as appropriate by clarifying what information should be included in premarket submissions for denture resins that are additively manufactured. There were no comments received for the ''Facet Screw Systems'' guidance.

These guidance documents are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance documents represent the current thinking of FDA on performance criteria for ''Denture Base Resins'' and ''Facet Screw Systems.'' They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of either ''Denture Base Resins—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff (document number 20001)'' or ''Facet Screw Systems—Performance Criteria for Safety and Performance Based Pathway; Guidance for Industry and Food and Drug Administration Staff (document number 21001)'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While these guidance documents contain no new collection of information, they do refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for these guidance documents. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions; Pre-submissions.	0910–0756

Dated: April 8, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–07934 Filed 4–12–22; 8:45 am]

BILLING CODE 4164–01–P

[1] Available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/safety-and-performance-based-pathway.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–1354]

Determination That TOTECT (Dexrazoxane Hydrochloride) for Injection, 500 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that TOTECT (dexrazoxane hydrochloride) for injection, 500 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product, as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Sungjoon Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6216, Silver Spring, MD 20993–0002, 240–402–9674, *Sungjoon.Chi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) Has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, is the subject of NDA 022025, held by Clinigen, Inc., and initially approved on September 6, 2007. TOTECT is a cytoprotective agent indicated for the treatment of extravasation resulting from intravenous anthracycline chemotherapy and for reducing the incidence and severity of cardiomyopathy associated with doxorubicin administration in women with metastatic breast cancer who have received a cumulative doxorubicin dose of 300 mg/square meter and who will continue to receive doxorubicin therapy to maintain tumor control.

In a letter dated May 11, 2021, Clinigen, Inc., notified FDA that TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the ''Orange Book.''

Cardinal Health Regulatory Sciences submitted a citizen petition dated December 23, 2021 (Docket No. FDA–2021–P–1354), under 21 CFR 10.30, requesting that the Agency determine whether TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TOTECT (dexrazoxane hydrochloride) for injection, 500 mg, in the ''Discontinued Drug Product List'' section of the ''Orange Book.'' The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–07942 Filed 4–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, May 10, 2022, 11:00 a.m. to May 11, 2022, 3:00 p.m., National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817, which was published in the **Federal Register** on March 30, 2022, FR Doc. No. 2022–06714, 87 FR 18374.

This notice is being amended to change the start and end times of the open session on May 10, 2022, from 12:45 p.m. to 12:30 p.m. and from 5:00 p.m. to 5:30 p.m. As such the May 10, 2022, open session will now be held from 12:30 p.m. to 5:30 p.m. The meeting is partially closed to the public.

Dated: April 8, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–07910 Filed 4–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Chris Kornak at 240–627–3705 or *chris.kornak@nih.gov*. Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Humanized Murine Monoclonal Antibodies That Neutralize Type-1 Interferon (IFN) Activity

Description of Technology

Interferons (IFNs) are a family of cytokines that function in response to an immune challenge such as a viral or bacterial infection. Type I IFNs are produced by immune cells (predominantly monocytes and dendritic cells) as well as fibroblasts and signal through a specific cell surface receptor complex (IFNAR) that consist of IFNAR1 and IFNAR2 chains. Type-I IFNs exert several common effects including antiviral, antiproliferative, and immunomodulatory activities. However, Type I IFNs also have pro-inflammatory effects, especially in the presence of TNF-α. Therefore, neutralizing the pro-inflammatory effect of Type I interferon could have wide clinical applications in autoimmune diseases like SLE, or in acute and chronic viral diseases like SARS–CoV–2, HIV or HCV infection, respectively, in which IFN-induced inflammation may be detrimental.

Scientists at the National Institute of Allergy and Infectious Diseases (NIAID) have developed two anti-IFN receptor 2 (IFNAR2) antibodies, B7 and A10, that are effective *in vitro* at neutralizing Type I IFN activities. The antibodies are comprised of two heavy chains and two light chains of amino acids. Both antibodies are able to bind to the extracellular domain of IFNAR2, Type I IFN receptor subunit 2, thus suppressing IFN signaling.

Because there are no potent IFNAR2 antibodies for therapies commercially available at this time, these antibodies are a novel therapeutic tool that could be used exclusively or in combination to treat chronic inflammatory diseases (like autoimmune disorders such as SLE) in which sustained IFN production may lead to both systemic and specific organ dysfunctions or chronic viral diseases (such as HIV, HCV) in which sustained IFN production has deleterious effects on immunologic function.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

Therapeutics for the treatment of chronic inflammatory conditions:

- In chronic inflammatory diseases (*e.g.,* autoimmune disorders such as SLE).
- In chronic viral diseases (such as HIV, HCV infection).
- In acute viral or inflammatory diseases (*e.g.,* SARS–CoV–2).

Development Stage

- Pre-clinical.

Inventors: Paolo Lusso, M.D. Ph.D., Hana Schmeisser, Ph.D., Kathryn C. Zoon, Ph.D., Qingbo, Liu, Ph.D., all of NIAID.

Publications:

A.N. Morrow, H. Schmeisser, T. Tsuno, K.C. Zoon. A novel role for IFN-stimulated gene factor 3II in IFN-γ induction of antiviral activity in human cells. *J Immunol* 186: 1685–93, 2011.

C.A. Balinsky, H. Schmeisser, S. Ganesan, K. Singh, T.C. Pierson, K.C. Zoon. Nucleolin interacts with the dengue virus capsid protein and plays a role in formation of infectious virus particles. *J Virol* 87: 13094–106, 2013.

H. Schmeisser, S.B. Fey, J. Horowitz, E.R. Fischer, C.A. Balinsky, K. Miyake, J. Bekisz, A.L. Snow, K.C. Zoon. Type I interferons induce autophagy in certain human cancer cell lines. *Autophagy* 9: 683–96, 2013.

L.A. Zaritsky, J.R. Bedsaul, K.C. Zoon. Virus multiplicity of infection affects type I interferon subtype induction profiles and interferon-stimulated genes. *J Virol* 89 (22): 11534–48, 2015.

C.A. Balinsky, H. Schmeisser, A.I. Wells, S. Ganesan, T. Jin, K. Singh, K.C. Zoon. IRAV (FLJ112886), an interferon stimulated gene with antiviral activity against Dengue Virus, interacts with MOV 10. *J Virol* 14: 91(5), e01606–16, 2017.

A.W.T. Chiang, S. Li, B.P. Kellman, G. Chattopadhyay, Y. Zhang, Ch. Ch. Kuo, J.M. Gutierrez, F, Ghazi, H. Schmeisser, P. Ménard, S.P. Bjørn, B.G. Voldborg, A.S. Rosenberg, M. Puig, Nathan E. Lewis. Combating viral contaminants in CHO cells by engineering innate immunity. *Sci Rep 9* (1), 8827, 2019.

Intellectual Property: HHS Reference No. E–220–2020–0; U.S. provisional application No. 63/094,572 filed on 10/21/2020 and PCT application PCT/US2021/056067.

Licensing Contact: To license this technology, please contact Chris Kornak 240–627–3705 or *chris.kornak@nih.gov,* and reference E–220–2020.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Chris Kornak at 240–627–3705 or *chris.kornak@nih.gov*.

Dated: April 8, 2022.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2022–07892 Filed 4–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development of Diagnostic for Imaging and Early Detection of Pancreatic Cancer and Pre-Cancerous Lesions by Targeting the Cholecystokinin-B Receptor

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive, sublicensable, patent license to Georgetown University ''Georgetown'', a private university located in Washington DC, to its rights to the invention embodied in the Patents and Patent Applications listed in the Supplementary Information section of this notice.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before April 28, 2022 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Whitney Hastings, Ph.D., Senior Technology Transfer Manager at *whitney.hastings2@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

United States Provisional Patent Application No. 63/030,815, filed May 27, 2020, entitled ''TARGETING THE CHOLECYSTOKININ–B RECEPTOR FOR IMAGING AND EARLY DETECTION OF PANCREATIC CANCER AND PRE–CANCEROUS LESIONS,'' [HHS Ref. No. E—184–2020–0].

The patent rights in these inventions have been assigned to the Government of the United States of America and Georgetown University. The prospective patent license will be for the purpose of consolidating the patent rights to Georgetown, the co-owner of said rights, for commercial development and marketing. Consolidation of these co-owned rights is intended to expedite development of the invention, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200–212.

The prospective patent license will be worldwide, exclusive, and may be limited to those fields of use commensurate in scope with the patent rights. It will be sublicensable, and any sublicenses granted by Georgetown will be subject to the provisions of 37 CFR part 401 and 404.

This technology discloses a method of detecting the presence of a pancreatic intraepithelial neoplasia lesion *in vivo* via administering to the subject a construct, or a pharmaceutically acceptable salt thereof, wherein the construct is comprised of siRNA-polymer nanoparticle complex that selectively bind to cholecystokinin-B receptors. The nanoparticle can be conjugated with a fluorophore or radioactive molecule (*e.g.,* technetium). In conjunction with an imaging device, the polyplex nanoparticle could be used to detect the presence of precancerous pancreatic intraepithelial neoplasia (PanIN) lesions.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 7, 2022.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2022–07866 Filed 4–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH HEAL Initiative: Preventing Opioid Misuse and Co-Occurring Conditions by Intervening on Social Determinants.

Date: May 13, 2022.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–07868 Filed 4–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0160]

National Merchant Marine Personnel Advisory Committee Meeting; May 2022 Teleconference

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee teleconference meeting.

SUMMARY: The National Merchant Marine Personnel Advisory Committee (Committee) will meet via teleconference to discuss issues relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners.

DATES:

Meeting: The National Merchant Marine Personnel Advisory Committee will meet by teleconference on Tuesday, May 3, 2022, from 10:00 a.m. until 4:30 p.m. (Eastern Daylight Time). The teleconference may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the teleconference, submit your written comments no later than April 19, 2022.

ADDRESSES: To join the teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on April 19, 2022, to obtain the needed information. The number of individuals on a teleconference line is limited and will

be available on a first-come, first served basis.

Instructions: You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than April 19, 2022. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the words ''Department of Homeland Security'' and the docket number [USCG–2022–0160]. Comments received will be posted without alteration at *https://www.regulations.gov,* including any personal information 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). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mrs. Megan Johns Henry, Alternate Designated Federal Officer of the National Merchant Marine Personnel Advisory Committee, telephone (202) 372–1255, or email *megan.c.johns@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. Appendix). The National Merchant Marine Personnel Advisory Committee is authorized by section 601 of the *Frank LoBiondo Act of 2018* and is codified in 46 U.S.C. 15103, and makes recommendations to the Secretary of Homeland Security through the Commandant, U.S. Coast Guard on matters relating to personnel in the United States Merchant Marine including the training, qualifications, certification, documentation, and fitness of mariners.

Agenda

The National Merchant Marine Personnel Advisory Committee will meet on Tuesday, May 3, 2022 to review and discuss recommendations, as appropriate on the following topics:

The agenda for the May 3, 2022, meeting is as follows:

(1) Introduction.

(2) Designated Federal Officer Remarks.

(3) Roll call of Committee members and determination of a quorum.

(4) Remarks from U.S. Coast Guard Leadership and Swearing-in of new Committee member.

(5) Acceptance of Meeting 1 Minutes.

(6) Introduction of New Tasks.

(7) Presentation from the Office of Merchant Mariner Credentialing.

(8) Presentation from the National Maritime Center.

(9) Reports on Subcommittees and Discussion of Subcommittee recommendations.

The Committee will review the information presented on each of the following issues and deliberate on recommendations presented by the Subcommittees, approve/formulate recommendations and close any completed tasks. Official action on these recommendations may be taken:

(a) Task Statement 21–1, Review of IMO Model Courses Being Validated by the IMO HTW Subcommittee;

(b) Task Statement 21–2, Communication Between External Stakeholders and the Mariner Credentialing Program;

(c) Task Statement 21–3, Military Education, Training and Assessment for STCW and National Mariner Endorsements;

(d) Task Statement 21–4, STCW Convention and Code Review;

(e) Task Statement 21–5, Review of Merchant Mariner Rating and Officer Endorsement Job Task Analyses;

(f) Task Statement 21–6, Sea Service for Merchant Mariner Credential Endorsements;

(g) Task Statement 21–8, Remote Operators of Maritime Autonomous Surface Ships; and

(h) Task Statement 21–9, Sexual Harassment and Sexual Assault-Prevention and Culture Change in the Merchant Marine.

(10) Public comment period.

(11) Closing remarks.

(12) Adjournment of meeting.

A copy of all meeting documentation will be available at: *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-marine-personnel-advisory-committee-(nmerpac)* by April 19, 2022. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: April 7, 2022.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2022–07828 Filed 4–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0013; OMB No. 1660–0061]

Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Assistance to Individuals and Households Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Federal Emergency Management Agency's (FEMA's) Individuals and Households Program, providing financial assistance to individuals whose primary residences were destroyed as a result of a Presidentially-declared disaster.

DATES: Comments must be submitted on or before June 13, 2022.

ADDRESSES: To avoid duplicate submissions to the docket, please only submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0013. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate by telephone at (540) 686–3602 or email at *Brian.Thompson6@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The *Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288,* as amended, is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a federally declared disaster. Regulations in *44 CFR 206.110—Federal Assistance to Individuals and Households* (IHP) implements the policy and procedures set forth in Section 408 of the *Stafford Act, 42 U.S.C. 5174,* as amended. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses and serious needs, and are unable to meet such expenses or needs through other means.

Collection of Information

Title: Federal Assistance to Individuals and Households Program.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0061.

FEMA Forms: FEMA Form FF–104–FY–21–114 (formerly 010–0–11), Individuals and Households Program (IHP)—Other Needs Assistance Administrative Option Selection; Development of State/Tribal Administrative Plan (SAP) for Other Needs Provision of IHP; FEMA Form FF–104–FY–21–115 (English) (formerly 010–0–12), Individuals and Households Program Application for Continued Temporary Housing Assistance; FEMA Form FF–104–FY–21–115–A (Spanish) (formerly 010–0–12S), Programa de Individuos y Familias Solicitud Para Continuar La Asistencia de Vivienda Temporera; Request for Approval of Late Registration; Appeal of Program Decision; FEMA Form FF–104–FY–21–116 (English) (formerly 009–0–95), Request for Advance Disaster Assistance; FEMA Form FF–104–FY–21–116–A (Spanish) (formerly 009–0–95S), Solicitud de Adelanto de la Asistencia por Desastre; FEMA Form FF–104–FY–21–117 (English) (formerly 009–0–96), Request to Stop Payment and Reissue Disaster Assistance Check; FEMA Form FF–104–FY–21–117–A (Spanish) (formerly 009–0–96S), Solicitud para Detener el Pago y Reemitir el Cheque de Asistencia por Desastre; FEMA Form FF–104–FY–21–118—(English) (formerly 140–003d-1S), Authorization for the Release of Information Under the Privacy Act; FEMA Form FF–104–FY–21–118–A—(Spanish) (formerly 140–003d-1S), Autorización para la Divulgación de Información bajo el Acta de Privacidad.

Abstract: This information collection provides disaster survivors the opportunity to request approval of late applications, continued temporary housing assistance, request advance disaster assistance, stop payments not received in order to be reissued funds, and to appeal program decisions. This collection also allows for the establishment of an annual agreement between FEMA and states, territories, and tribal governments regarding how the Other Needs Assistance provision of IHP will be administered: By FEMA, by the state, territory, or tribal government, or jointly. This collection allows survivors to provide additional information after the initial disaster assistance registration period in support of their applications for assistance from FEMA's IHP. If the information in this collection is not collected, a delay in assistance provided to disaster survivors would occur.

Affected Public: Individuals or households, State, local or Tribal government.

Estimated Number of Respondents: 67,785.

Estimated Number of Responses: 112,089.

Estimated Total Annual Burden Hours: 98,609.

Estimated Total Annual Respondent Cost: $3,906,709.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $1,109,953.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–07889 Filed 4–12–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0023; OMB No. 1660–0146]

Agency Information Collection Activities: Proposed Collection; Comment Request; Post Disaster Survivor Preparedness Research Survey

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and

the actual data collection instruments FEMA will use. This notice seeks comments concerning a collection to obtain information from recent disaster survivors while they have current memories of their experience to better provide necessary direction, coordination, and guidance for emergency preparedness for the protection of life and property in the United States from hazards.

DATES: Comments must be submitted on or before May 13, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Christi Collins, Individual and Community Preparedness Branch Chief, Federal Emergency Management Agency, at (202) 646–2500 or *FEMA-Prepare@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Stafford Act, Title VI, Emergency Preparedness identifies the purpose of emergency preparedness for the protection of life and property in the United States from hazards. 42 U.S.C. 5195. It directs that the Federal Government provide necessary direction, coordination, and guidance as authorized for a comprehensive emergency preparedness system for all hazards. *Id.* The definition of emergency preparedness includes all activities and measures designed or undertaken to prepare or minimize the effects of a hazard upon the civilian population. 42 U.S.C. 5195a(3). The conduct of research is among the measures to be undertaken in preparation for hazards. *See Id.*

This proposed information collection previously published in the **Federal Register** on October 13, 2021, at 86 FR 56976 with a 60 day public comment period. One public comment was received, but is not germane to this collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Post Disaster Survivor Preparedness Research Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0146.

FEMA Forms: FEMA Form FF–008–FY–21–112 (formerly FEMA Form 519–0–54), Post Disaster Survivor Preparedness Research: Instruments.

Abstract: The economic and human toll of major disasters in the United States is increasing and historically underserved communities are disproportionately impacted. Poverty, race, limited English proficiency, age, and other demographic, cultural, and socio-economic variables can significantly inhibit people's ability to take steps to prepare. To reverse this trend, emergency managers must ensure historically undeserved communities receive critical information that helps each person take steps to prepare themselves, their families, and their communities. To achieve equity in opportunities to prepare for disasters, FEMA proposes a series of qualitative focus groups, cognitive interviews, and targeted surveys to better understand individual experiences within historically underserved communities during recent disasters. FEMA Form FF–008–FY–21–112 (formerly FEMA Form 519–0–54) is a combined instrument that contains the script and question bank for conducting the focus groups, cognitive interviews, and surveys.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,120 respondents.

Estimated Number of Responses: 3,120 responses.

Estimated Total Annual Burden Hours: 650.

Estimated Total Annual Respondent Cost: $25,513.

Estimated Respondents' Operation and Maintenance Costs: $0.00.

Estimated Respondents' Capital and Start-Up Costs: $0.00.

Estimated Total Annual Cost to the Federal Government: $188,267.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–07890 Filed 4–12–22; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0027; OMB No. 1660–NW141]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Business Emergency Operation Center (NBEOC) Membership Agreement Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA). In accordance with the PRA, this notice seeks comments concerning FEMA's compilation and information sharing leveraging the National Business Emergency Operation Center (NBEOC) stakeholder listing. FEMA seeks to voluntarily continue the standing practice of collecting entity specific information for dissemination during an event to assist in response/recovery operations.

DATES: Comments must be submitted on or before May 13, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*

PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Mr. Donald J. Odell, Operations and Insight Management Branch Chief, Office of Business Industry, and Infrastructure Integration (OB3I), (202) 258–2076 or *Donald.Odell@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is requesting the information written on this form to establish your identity and your consent to disclose the information provided on the National Business Emergency Operations Center Membership Agreement form under the form's ''NBEOC contact information'' section, to all NBEOC members and participants of NBEOC meetings or events. Written consent is requested pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(b). The program for which this form may be used is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, 42 U.S.C. 5121–5207; The Homeland Security Act of 2002, 6 U.S.C. 311–321j; 44 CFR 206.2(a)(27); the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193); and Exec. Order No. 13411, Improving Assistance for Disaster Victims.

Information collected is as follows: Entity Name, Entity Representative, Duty Title, Work Phone, Work email, Your full name, Current Address, Place of Birth, Date of Birth, and Signature.

FEMA may externally share the information you provide as generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, the ''routine uses'' published in DHS/ALL–002 Department of Homeland Security Mailing and Other Lists System 73 FR 71659 (November 25, 2008), and as authorized by your written consent. The information provided to FEMA regarding you and your entity may be subject to release under the Freedom of Information Act (5 U.S.C. 552). A complete list of the routine uses can be found in the system of records notice DHS/ALL–002 Department of Homeland Security Mailing and Other Lists System 73 FR 71659 (November 25, 2008). The Department's full list of systems of record notices can be found on the Department's website at *http://www.dhs.gov/system-records-notices-sorns.*

This proposed information collection previously published in the **Federal Register** on November 10, 2021, at 86 FR 62558 with a 60-day public comment period. One comment was received and it was concluded that it was not germane to the collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: National Business Emergency Operation Center (NBEOC) Membership Agreement Form.

Type of Information Collection: Existing collection in use without an OMB control number.

OMB Number: 1660–NW141.

FEMA Forms: FEMA Form FF–145–FY–21–101, National Business Emergency Operation Center (NBEOC) Membership Agreement Form.

Abstract: FEMA's NBEOC collects this data for the primary purpose of maintaining a private sector stakeholder roster and mailing list for information dissemination, outreach, and coordination. FEMA leverages this information to engage stakeholders to coordinate disaster response operations, garner donations, and gain situational awareness around private sector actions that will help inform FEMA Leadership and assist evidence-based decision making.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 232.

Estimated Number of Responses: 232.

Estimated Total Annual Burden Hours: 116.

Estimated Total Annual Respondent Cost: $6,817.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $7,165.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–07888 Filed 4–12–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–15]

60-Day Notice of Proposed Information Collection: Rent Schedule—Low Income Housing OMB Control No.: 2502–0012

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 13, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Rent Schedule—Low Rent Housing.

OMB Approval Number: 2502–0012.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–92458.

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that tenant rents are applied in accordance with HUD administrative procedures.

Respondents: Owners and managers of subsidized low income housing projects.

Estimated Number of Respondents: 2,446.

Estimated Number of Responses: 2,446.

Frequency of Response: Annually, or on occasion.

Average Hours per Response: 5.33.

Total Estimated Burden: 13,037.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Janet M. Golrick,

Acting, Chief of Staff for the Office of Housing—Federal Housing Administration.

[FR Doc. 2022–07913 Filed 4–12–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6311–N–01]

Announcement of Funding Awards

AGENCY: Office of Chief Financial Officer, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Department of Housing and Urban Development (HUD) Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for additional funding under the Notices of Funding Opportunity (NOFOs) and Notices for the following programs: FY2020 and FY2021 HUD Community Compass Technical Assistance and Capacity Building Program, FY2021 HOPWA Permanent Supportive Renewal and Replacement Grant, FY2020 Section 4 Capacity Building Program, FY 2021 Veterans Housing Rehabilitation and Modification Pilot Program, FY2021 Fair Housing Initiatives Program (FHIP)—Education and Outreach Initiative (EOI), FY 2021 Fair Housing Initiatives Program (FHIP)—Fair Housing Organizations Initiative (FHOI), FY2021 Fair Housing Initiatives Program (FHIP)—Private Enforcement Initiative (PEI), FY 2021 Fair Housing Initiatives Program (FHIP) Education and Outreach Initiative—Tester Training (EOI–TT), FY2021 Healthy Homes Weatherization Cooperation Demonstration, FY2021 Lead Technical Studies, FY 2021 Health Homes Technical Studies, FY2020 Choice Neighborhoods Implementation Grants, FY2020 HOPE VI Main Street, FY 2020 Housing Related Hazards, FY 2021 Emergency Safety and Security, FY 2021 Emergency and Natural Disaster Receivership, FY2021 Emergency and Natural Disaster, PIH Notice 2021–09 Tribal VASH Supportive Housing Renewal Funding (fiscal year 2017 appropriated funds), FY2020 Indian Housing Block Grant Competitive Program, FY2020 Tribal VASH Supportive Housing Expansion (fiscal year 2015 appropriated funds), FY2020 Jobs Plus Initiative, and FY2020 Resident Opportunity & Efficiency Service Coordinator (ROSS–SC) Grant Program.

Contact: Office of the Chief Financial Officer (Systems), Grants Management and Oversight at *AskGMO@hud.gov* or the contact person listed in each appendix.

SUPPLEMENTARY INFORMATION: HUD posted FY2020 and FY2021 HUD Community Compass Technical Assistance and Capacity Building Program on *grants.gov* July 23, 2020, (FR–6400–N–06; Round 2). The competition closed on September 23, 2020. HUD rated and selected for funding based on selection criteria contained in the NOFO. This round of the competition awarded $70,741,000 to 18 recipients for services to grantees and other customers of HUD's mission-critical programs by using all or part of the following sources: (1) The Further Consolidated Appropriations Act, 2020 Public Law 116–94, which includes funding for technical assistance for grantees in the Office of Community Planning and Development; Office of Public and Indian Housing for PHA Receivership and Native American Programs; Office of Fair Housing and Equal Opportunity; and Office of Policy Development and Research (which is used for Departmental TA priorities and grantees); and (2) the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 2020 (Pub. L. 116–136), which includes funding for recipients impacted by the coronavirus pandemic; and (3) the American Rescue Plan, 2021 (Pub. L. 117–2), which provides funding for technical assistance grants to eligible grantees implementing a rental assistance program using HUD funding; and (4) the Treasury Emergency Rental Assistance Programs, 2021 (Pub. L. 116–260), which HUD was authorized to award through an Interservice Support Agreement with Treasury to facilitate technical assistance to eligible grantees of the Emergency Rental Assistance 1 Program.

HUD posted Procedural Guidance for Fiscal Year 2021 HOPWA Permanent Supportive Renewal and Replacement Grant Applications Notice on *HUD.gov* April 14, 2021, (Notice CPD–21–04). The period for grantees with eligible expiring HOPWA permanent supportive housing grants to apply for renewal or replacement grants closed on May 28,

2021. Based on the criteria described in the Notice, HUD awarded $27,068,517 in renewal or replacement grants to 24 recipients to provide permanent supportive housing as the primary grant activity to HOPWA-eligible clients.

HUD posted FY2020 Section 4 Capacity Building Program on *grants.gov* March 10, 2021, (FR–6400–N–07). The competition closed on May 11, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $36,000,000 to 3 recipients to enhance the capacity and ability of Community Development Corporations (CDCs) and Community Housing Development Organizations (CHDOs) to carry out affordable housing and community development activities that benefit low- and moderate-income families and persons.

HUD posted FY 2021 Veterans Housing Rehabilitation and Modification Pilot Program on *grants.gov* April 27, 2021, (FR–6500–N–39). The competition closed on July 30, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $3,000,000 in grants of $1 million each to 3 nonprofit organizations that provide nationwide or statewide programs which primarily serve low-income individual and/or veterans. The grants may be used to modify or rehabilitate the primary residences of veterans who are low-income and living with disabilities, which may include installing wheelchair ramps, widening exterior and interior doors, reconfiguring, and reequipping bathrooms, or adding a bedroom or bathroom for the veteran.

HUD posted FY 2021 Fair Housing Initiatives Program (FHIP)—Education and Outreach Initiative (EOI) Program on *grants.gov* April 27, 2021 (FR–6500–N–21A). The competition closed on June 14, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $10,281,105.87 to 77 recipients to develop, implement, carry out, and coordinate education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of the Fair Housing Act. Under the EOI NOFO, eligible funding activities may include but are not limited to developing educational advertising campaigns, developing, and distributing material, and conducting educational activities that inform people of their rights and responsibilities under the Fair Housing Act.

HUD posted FY 2021 Fair Housing Initiatives Program (FHIP)—Fair Housing Organizations Initiative Program on *grants.gov* April 27, 2021 (FR–6500–N–21B). The competition closed on June 14, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $2,156,183 to 10 recipients of non-profit fair housing organizations to build their capacity and effectiveness to conduct enforcement related activities eligible for funding including but not limited to: (1) Adding an enforcement staff and enforcement-related activities (*e.g.,* to an existing fair housing education organization); and (2) expanding testing expertise and experience.

HUD posted FY 2021 Fair Housing Initiatives Program (FHIP)—Private Enforcement Initiative Program on *grants.gov* April 28, 2021 (FR–6500–N–21C). The competition closed on June 14, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $34,556,620.66 to 93 recipients. These private, non-profit fair housing enforcement organizations meet statutory requirements to conduct testing, investigate violations and obtain enforcement of the rights granted under the Fair Housing Act or State or local laws that are substantially equivalent to the rights and remedies provided in the Fair Housing Act.

HUD posted FY 2021 Fair Housing Initiatives Program (FHIP)—Education and Outreach Initiative—Tester Training Program on *grants.gov* April 28, 2021, (FR–6500–N–71A). The competition closed on June 14, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $499,149 to 1 recipient to conduct fair housing testing in local communities across the country. Fair housing testing refers to the use of testers who, without any bona fide intent to rent or purchase property, pose as prospective renters or buyers of real estate for the purpose of determining whether housing providers and others are complying with the federal Fair Housing Act.

HUD posted FY2021 Healthy Homes and Weatherization Cooperation Demonstration Program on *grants.gov* July 19, 2021, (FR–6500–N–62). The competition closed on August 17, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $5,000,000 to 5 recipients to provide housing interventions in lower income households that are conducted jointly through the coordination of HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH)-funded Lead Hazard Control/Healthy Homes programs and Weatherization Assistance Program (WAP) grantees or sub-grantees funded by the Department of Energy (DOE) to determine whether this coordinated delivery of services achieves cost effectiveness and better outcomes, including resident health, in improving the safety and energy efficiency of homes.

HUD posted FY2021 Lead Technical Studies Grant Program on *grants.gov* May 20, 2021, (FR–6500–N–15). The competition closed on June 21, 2021 (Pre-Application) and August 16, 2021 (Full Application). HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $4,106,924 to 6 recipients to gain knowledge to improve the efficacy and cost-effectiveness of methods for evaluation and control of residential lead-based paint hazards.

HUD posted FY2021 Healthy Homes Technical Studies Grant Program on *grants.gov* May 20, 2021, (FR–6500–N–15). The competition closed on June 21, 2021 (Pre-Application) and August 16, 2021 (Full Application). HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $6,585,281 to 7 recipients to advance the recognition and control of priority residential health and safety hazards and more closely examine the link between housing and health.

HUD posted FY2020 Choice Neighborhoods Implementation Grants Program on *grants.gov* August 24, 2020, (FR–6400–N–34). The competition closed on December 16, 2020. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $160,000,000 to 5 recipients to redevelop severely distressed public and HUD-assisted housing. Grantees leverage significant public and private dollars to support locally driven strategies that address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation. Local leaders, residents, and stakeholders, such as public housing authorities, cities, schools, police, business owners, nonprofits, and private developers, come together to create and implement a plan that revitalizes distressed HUD housing and addresses the challenges in the surrounding neighborhood.

HUD posted FY2020 HOPE VI Main Street Program on *grants.gov* October 29, 2020 (FR–6400–N–03). The competition closed on January 19, 2020. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded

$1,500,000 to 3 recipients to provide grants to small communities to assist in the renovation of an historic or traditional central business district or ''Main Street'' area by replacing unused, obsolete, commercial space in buildings with affordable housing units.

HUD posted FY 2020 Housing Related Hazards on *grants.gov* March 24, 2021, (FR–6400–N–68). The competition closed on May 25, 2021. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $20,000,000 to 17 recipients to assist PHAs to identify and eliminate housing-related hazards in public housing such as mold, carbon monoxide, pest infestation, radon, fire hazards and other housing hazards.

HUD posted FY 2021 Emergency Safety and Security on *grants.gov* September 17, 2020, (PIH Notice 2020–25). The competition closed on June 2, 2021. HUD rated and selected for funding based on selection criteria contained in the notice. This competition awarded $10,000,000 to 55 recipients to support public housing authorities as they address the safety of public housing residents. These grants may be used to install, repair, or replace capital needs items including security systems/surveillance cameras, fencing, lighting systems, emergency alarm systems, window bars, deadbolt locks and doors.

HUD posted FY 2021 Emergency and Natural Disaster Receivership appropriations of $45,000,000 to 3 recipients to address crime and drug-related activity as well as needs resulting from unforeseen or unpreventable emergencies and natural disasters excluding Presidentially declared emergencies and natural disasters under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 *et seq.*), occurring in fiscal year 2021 (October 1, 2020–September 30, 2021). Eligible emergency capital needs include repair or restoration as a result of significant property destruction resulting from a non-Presidentially declared natural disaster; mitigation of emergency conditions such as elevator failure, boiler failure, water intrusion causing mold growth, sewer line failure, severe electrical problems, lead-based paint hazards, carbon monoxide and radon hazards, and local building code violations; and safety and security needs. Examples of emergency capital needs requiring measures to address safety and security include, but are not limited to, security lighting, alarm systems, and fencing.

HUD posted FY 2021 Emergency and Natural Disaster appropriations of $4,203,684,00 to 7 recipients to address crime and drug-related activity as well as needs resulting from unforeseen or unpreventable emergencies and natural disasters excluding Presidentially declared emergencies and natural disasters under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 *et seq.*), occurring in fiscal year 2021 (October 1, 2020–September 30, 2021).

HUD posted PIH Notice 2021–09 Tribal HUD–VA Supportive Housing (Tribal HUD–VASH) Renewal Funding Grant Program on *grants.gov* March 12, 2021 (PIH-Notice 2021–09). The application window for renewal funding closed on May 14, 2021. Pursuant to the authority provided by the Consolidated Appropriations Act, 2018, Public Law 115–141 and Consolidated Appropriations Act, 2019 Public Law 116–6 (''Appropriations Acts''), HUD awarded $3,377,062 for the renewal of rental assistance and associated administrative fees to 26 eligible Tribal HUD–VASH recipients initially funded with appropriated funds from Fiscal Year 2015.

HUD posted FY2020 Indian Housing Block Grant on *grants.gov* August 24, 2020 (FR–6400–N–48). The competition closed on December 10, 2020. HUD rated and selected applications for funding based on selection criteria contained in the NOFO. This competition awarded $91,013,382 to 24 recipients.

HUD posted FY2020 Tribal HUD–VASH Expansion on *grants.gov* January 15, 2021 (FR–6400–N–73). The competition closed on April 15, 2021. HUD rated and selected applications for funding based on selection criteria contained in the NOFO. This competition awarded $1,021,818 to 5 recipients to provide housing assistance and supportive services to Native American Veterans who are homeless or at risk of homelessness.

HUD posted FY2020 Jobs Plus Initiative on *grants.gov* August 25, 2020 (FR–6400–N–14). The competition closed on December 01, 2020. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $28,279,543 to 12 recipients to develop locally based, job-driven approaches that increase earnings and advance employment outcomes through work readiness, employer linkages, job placement, educational advancement, technology skills, and financial literacy for residents of public housing. The place-based Jobs Plus program addresses poverty among public housing residents by incentivizing and enabling employment through earned income disregards for working residents and a set of services designed to support work including employer linkages, job placement and counseling, educational advancement, and financial counseling.

HUD posted FY2020 Resident Opportunity & Efficiency Service Coordinator (ROSS–SC) Grant Program on *grants.gov* August 18, 2020 (FR–6400–N–05). The competition closed on November 19, 2020. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded $37,699,255 to 147 recipients to assist residents of Public and Indian Housing make progress towards economic self-sufficiency. HUD provides ROSS–SC grant funding to Public Housing Authorities, tribes, resident associations, and eligible nonprofits to hire a Service Coordinator who assesses the needs of Public and Indian housing residents and links them to supportive services that enable participants to move along a continuum towards economic independence and stability.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545(a)(4)(C)), the Department is publishing the awardees and the amounts of the awards in Appendices A–V of this document.

Dorthera Yorkshire,

Director, Grants Management and Oversight, Office of the Chief Financial Officer.

Appendix A

FY20208 and FY2021 HUD Community Compass Technical Assistance and Capacity Building Program (FR–6400–FA–06)

Contact: Stephanie V. Stone (202) 402–7418.

Legal name	Street address	City	State	Zip code	FY20 P.L. 116–94 funding total	FY20 P.L. 116–136 funding total	FY21 P.L. 117–2 funding total	FY21 P.L. 116–260 funding total	Total per provider
ICF Incorporated, L.L.C	9300 Lee Highway	Fairfax	VA	22031	$6,364,000.00	$2,618,000.00	$3,000,000.00	$	$11,982,000.00
Technical Assistance Collaborative	15 Court Square, 11th FL	Boston	MA	2108	3,091,000.00	2,163,000.00	4,600,000.00		9,854,000.00
Cloudburst Consulting Group, Inc	8400 Corporate Drive, Ste 550	Landover	MD	20785	1,875,000.00	2,795,000.00	500,000.00		5,170,000.00
Corporation for Supportive Housing	61 Broadway, Ste. 2300	New York	NY	10006	3,258,000.00	3,895,000.00	3,600,000.00		10,753,000.00
Collaborative Solutions, Inc	P.O. Box 130159	Birmingham	AL	35213	1,008,000.00		500,000.00		1,508,000.00
FirstPic, Inc.	2614 Chapel Lake	Gambrills	MD	21054			5,000,000.00	500,000.00	5,500,000.00
Local Initiatives Support Corporation	28 Liberty Street, Fl 34	New York	NY	10005			1,500,000.00	750,000.00	2,250,000.00
Econometrica, Inc. [1]	7475 Wisconsin Ave., Ste. 1000	Bethesda	MD	20814	125,000.00		800,000.00		925,000.00
Homebase/The Center for Common Concerns.	870 Market Street, Ste. 1128	San Francisco	CA	94102	1,860,000.00	1,301,000.00	2,500,000.00	500,000.00	6,161,000.00
TDA Consulting, Inc.	1110 Harvest Canyon	San Antonio	TX	78258	487,000.00	1,052,000.00	800,000.00	750,000.00	3,089,000.00
CVR Associates, Inc. [2]	2309 S MacDill Ave., Ste. 200	Tampa	FL	33629	590,000.00			500,000.00	1,090,000.00
Du & Associates, Inc	4350 E West Highway, Ste. 310	Bethesda	MD	20814	460,000.00				460,000.00
Association of Alaska Housing Authorities.	4300 Boniface Parkway	Anchorage	AK	99504			700,000.00		700,000.00
Abt Associates, Inc	6130 Executive Blvd	Rockville	MD	20852	3,763,000.00	3,026,000.00	1,000,000.00		7,789,000.00
The Partnership Center, Ltd	2134 Alpine Place	Cincinnati	OH	45206	360,000.00	400,000.00			760,000.00
Enterprise Community Partners, Inc	70 Corporate Center 11000 Broken Land Parkway	Columbia	MD	21044			1,500,000.00		1,500,000.00
Corporate F.A.C.T.S., Inc	51248 Plymouth Valley Drive	Plymouth	MI	48170		250,000.00			250,000.00
National American Indian Housing Council.	122 C Street NW, Ste. 350	Washington	DC	20001			1,000,000.00		1,000,000.00
Totals:					23,241,000.00	17,500,000.00	27,000,000.00	3,000,000.00	70,741,000.00

[1] The previous award notice listed CGI Federal as receiving $250,000 under FY20 P.L. 116–94. CGI Federal did not accept the funds. $125,000 of the funds were re-obligated to Econometrica, Inc.

[2] The previous award notice listed CGI Federal as receiving $250,000 under FY20 P.L. 116–94. CGI Federal did not accept the funds. $125,000 of funds were re-obligated to CVR Associates, Inc. and is included in the total award noted.

Appendix B

Procedural Guidance for Fiscal Year 2021 HOPWA Permanent Supportive Renewal and Replacement Grant Applications Notice

Contact: Claire Donze
Claire.L.Donze@hud.gov, 202–402–2365

Organization	Address	City	State	Zip code	Amount
AIDS Foundation of Chicago	200 W. Monroe St., Suite 1150	Chicago	IL	60606	$1,458,870.00
AIDS Resource Center of Wisconsin d/b/a Vivent Health.	820 N. Plankinton Ave	Milwaukee	WI	53203–1802	1,263,091.00
Bailey House, Inc	1751 Park Ave., 3rd Floor	New York	NY	10035–2811	1,039,365.00
Bailey House, Inc	81 Willoughby Street, 2nd Floor	Brooklyn	NY	11201–5232	1,326,555.00
Burlington Housing Authority	65 Main Street, Suite 101	Burlington	VT	05401–8408	383,875.00
Cass Community Social Services, Inc.	11745 Rosa Parks Blvd	Detroit	MI	48206–1269	1,350,186.00
Chicago House and Social Service Agency.	2229 S Michigan Ave., Suite 304.	Chicago	IL	60616–2102	1,277,394.00
City of Chicago	300 South State Street, Suite 200.	Chicago	IL	60604–3946	1,494,847.00
Community Healthlink, Inc	72 Jaques Avenue	Worcester	MA	01610	838,159.00
Fenway Community Health Center.	1340 Boyslton Street	Boston	MA	02215–4302	1,398,936.00
Frannie Peabody Center	30 Danforth Street, Suite 311	Portland	ME	04101–4574	1,042,130.00
Frannie Peabody Center	30 Danforth Street, Suite 311	Portland	ME	04101–4574	1,310,348.00
Gregory House Programs	200 N. Vineyard Blvd. Suite A310.	Honolulu	HI	96817–3950	1,391,903.00
Interfaith Residence dba Doorways.	4385 Maryland Ave	Saint Louis	IL	63108–2703	971,945.00
Interfaith Residence dba Doorways.	4385 Maryland Ave	Saint Louis	MO	63108–2703	1,117,255.00
Lutheran Social Services of Northern California.	1465 Civic Court, Building D, Suite 810.	Concord	CA	94520–5296	1,276,936.00
Ministry of Caring, Inc	115 E 14th Street	Wilmington	DE	19801	791,010.00
New Jersey Department of health.	55 North Willow Street	Trenton	NJ	08608–1203	1,235,823.00
State of Alaska	P.O. Box 101020, 4300 Boniface Pkwy.	Anchorage	AK	99510–1020	773,309.00
State of Montana	1400 Carter Dr	Helena	MT	59601–6400	1,493,525.00
State of New Hampshire	129 Pleasant Street	Concord	NH		974,100.00
The Salvation Army, a California Corporation.	16941 Keegan Avenue	Carson	CA	90746–1307	1,063,476.00
Washington State Department of Health.	101 Israel Road	Tumwater	WA	98501	1,222,025.00
Wyoming Department of Health	122 West 25th St., 3rd Floor West.	Cheyenne	WY	82002–3004	573,454.00
Total					27,068,517.00

Appendix C

FY2020 Section 4 Capacity Building Program (FR–6400–FA–07)

Contact: Anupama Abhyankar 202–402–3981

Organization name	Street address or P.O. Box	City	State	Zip code	Award amount
Enterprise Community Partners Inc.	1100 Broken Land Parkway, Suite 700.	Columbia	MD	21044	$14,253,912.00
Local Initiatives Support Corporation (LISC).	28 Liberty, 33rd floor	New York	NY	11201	13,647,363.00
Habitat for Humanity International.	322 West Lamar	Americus	GA	31709	8,098,725.00
Total					36,000,000.00

Appendix D

FY2021 Veterans Housing Rehabilitation and Modification Pilot Program (VHRMP) (FR–6500–FA–39)

Contact: Jackie L. Williams, Ph.D., Director, Office of Rural Housing and Economic Development, 877–787–2526.

Organization	Address	City	State	Zip code	Amount
Habitat for Humanity International.	322 West Lamar Street	Americus	GA	31709	$1,000,000
Habitat for Humanity Michigan	618 South Creyts Road, Suite A.	Lansing	MI	48917	1,000,000
Rebuilding Together, Inc	999 North Capitol Street NE, Suite 701.	Washington	DC	20002	1,000,000
Total					3,000,000

Appendix E

FY 2021 Fair Housing Initiatives Program (FHIP)—Education and Outreach Initiative (FR–6500–N–21A)

Contact: Stephanie Waller (202) 402–6938.

Legal name	Address	City	State	Zip code	Amount
Lexington Fair Housing Council, Inc.	207 E Reynolds Rd. Suite 130	Lexington	KY	40517	$78,401.00
Hampton Roads Community Action Program Inc.	2410 Wickham Avenue	Newport News	VA	23607	91,270.66
Greenville County Human Relations Commission.	301 University Ridge, Suite 1600.	Greenville	SC	29601	124,000.00
Idaho Legal Aid Services, Inc.	1447 S Tyrell Lane	Boise	ID	83706	124,445.00
The Board of Trustees of the University of Illinois.	809 S. Marshfield Avenue, MB 502, M/C 551.	Chicago	IL	60612	124,822.00
Tabor Community Services, Inc	308 E King Street	Lancaster	PA	17602	124,902.00
Intermountain Fair Housing Council, Inc.	4696 W Overland Rd., Suite 140.	Boise	ID	83705	124,955.00
Silver State Fair Housing Council.	110 W Arroyo Street, Suite A	Reno	NV	89509	124,999.00
Alaska Legal Services Corporation.	1016 W 6th Avenue, Suite 200.	Anchorage	AK	99501	125,000.00
Mobile Fair Housing Center	602 Bel Air Boulevard, Suite 7	Mobile	AL	36606	125,000.00
Sonora Environmental Research Institute, Inc.	3202 E Grant Rd	Tucson	AZ	85716	125,000.00
Southwest Fair Housing Council.	177 N Church Ave, Suite 1104	Tucson	AZ	85701	125,000.00
California Rural Legal Assistance, Inc.	1430 Franklin Street, Suite 103.	Oakland	CA	94612	125,000.00
CSA San Diego County	327 Van Houten Avenue	El Cajon	CA	92020	125,000.00
Fair Housing Council of Riverside County, Inc.	P.O. Box 1068	Riverside	CA	92502	125,000.00
Fair Housing Foundation	3605 Long Beach Blvd. Ste. 302.	Long Beach	CA	90807	125,000.00
Inland Fair Housing and Mediation Board.	1500 S Haven Avenue, Suite 100.	Ontario	CA	91761	125,000.00
Legal Aid Society of San Diego, Inc.	110 South Euclid Avenue	San Diego	CA	92114	125,000.00
Mental Health Advocacy Services, Inc.	3255 Wilshire Blvd., Suite 902	Los Angeles	CA	90010	125,000.00
Orange County Fair Housing Council, Inc.	2021 E. 4th Street, Suite 122	Santa Ana	CA	92705	125,000.00
Southern California Housing Rights Center.	3255 Wilshire Blvd. Suite 1150.	Los Angeles	CA	90010	125,000.00
Fair Housing Advocates of Northern California.	1314 Lincoln Ave, Ste. A	San Rafael	CA	94901	125,000.00
Bridgeport Neighborhood Trust	570 State Street	Bridgeport	CT	06604	125,000.00
Open Communities Alliance	75 Charter Oak Avenue, Suite 1–200.	Hartford	CT	06106	125,000.00

Legal name	Address	City	State	Zip code	Amount
Connecticut Fair Housing Center.	60 Popieluszko Court	Hartford	CT	06106	125,000.00
Housing Counseling Services	2410 17th Street, NW Suite 100.	Washington	DC	20009	125,000
Equal Rights Center	820 First St. NE, LL160	Washington	DC	20002	125,000.00
Pathways to Success, Inc	31 The Circle, Suite 1	Georgetown	DE	19947	125,000.00
City of Tampa	306 E Jackson St	Tampa	FL	33602	125,000.00
Florida Legal Services, Inc	P.O. Box 533986	Orlando	FL	32853	125,000.00
Housing Opportunities Project for Excellence (HOPE), Inc.	11501 NW 2nd Avenue	Miami	FL	33168	125,000.00
Jacksonville Area Legal Aid, Inc.	126 W Adams St	Jacksonville	FL	32202	125,000.00
Legal Aid Society of Palm Beach County, Inc.	423 Fern Street Suite 200	West Palm Beach	FL	33401	125,000.00
Veterans Center Incorporated	8060 Webb Road, Unit 741202.	Riverdale	GA	30274	125,000.00
Open Communities	1880 Oak Ave, Suite 301	Evanston	IL	60201	125,000.00
South Suburban Housing Center.	18220 Harwood Avenue, Suite 1.	Homewood	IL	60430	125,000.00
H.O.P.E. Inc d/b/a HOPE Fair Housing Center.	202 W Willow Ave. Suite 203	Wheaton	IL	60187	125,000.00
HCP of Illinois, Inc	228 S Wabash Ave., FL 5	Chicago	IL	60604	125,000.00
Fair Housing Center of Central Indiana, Inc.	445 N Pennsylvania St. Suite 811.	Indianapolis	IN	46204	125,000.00
Louisiana Fair Housing Action Center, Inc.	1340 Poydras Street, Suite 710.	New Orleans	LA	70112	125,000.00
Suffolk University	8 Ashburton Place	Boston	MA	02108	125,000.00
Way Finders, Inc	1780 Main Street	Springfield	MA	01103	125,000.00
Community Teamwork Inc	155 Merrimack St	Lowell	MA	01852	125,000.00
Fair Housing Center of Southeastern Michigan.	301 W Michigan Avenue, Suite 321.	Ypsilanti	MI	48197	125,000.00
Legal Services of Eastern Michigan.	436 S Saginaw Street, Suite 101.	Flint	MI	48502	125,000.00
Fair Housing Center of West Michigan.	20 Hall Street SE	Grand Rapids	MI	49507	125,000.00
Metropolitan St. Louis Equal Housing and Opportunity Council.	1027 S Vandeventer Ave., 6th Floor.	St. Louis	MO	63110	125,000.00
Mississippi Center for Justice	5 Old River Place, Suite 203	Jackson	MS	39202	125,000.00
Legal Aid of North Carolina, Inc.	224 S. Dawson St.	Raleigh	NC	27601	125,000.00
High Plains Fair Housing Center.	406 Demers Road	Grand Forks	ND	58201	125,000.00
City of Lincoln, Nebraska	555 South 10th Street	Lincoln	NE	68508	125,000.00
New Hampshire Legal Assistance.	117 North State Street	Concord	NH	03301	122,526.00
Fair Housing Council of Northern New Jersey.	131 Main Street, Suite 140	Hackensack		07601	125,000.00
Citizen Action of New Jersey	625 Broad Street, Suite 270	Newark	NJ	07102	125,000.00
CNY Fair Housing, Inc	731 James Street, Suite 200	Syracuse	NY	13203	125,000.00
Housing Opportunities Made Equal, Inc.	1542 Main Street	Buffalo	NY	14209	125,000.00
Legal Assistance of Western New York, Inc.	361 South Main	Geneva	NY	14456	125,000.00
City of White Plains	70 Church Street	White Plains	NY	10601	125,000.00
Fair Housing Opportunities, Inc. dba The Fair Housing Center.	326 N Erie St.	Toledo	OH	43604	125,000.00
Fair Housing Resource Center, Inc.	1100 Mentor Avenue	Painesville	OH	44077	125,000.00
Housing Research & Advocacy Center.	2728 Euclid Ave., Suite 200	Cleveland	OH	44115	125,000.00
Miami Valley Fair Housing Center, Inc.	505 Riverside Drive	Dayton	OH	45405	125,000.00
Fair Housing Contact Service, Inc.	441 Wolf Ledges Parkway, Suite 200.	Akron	OH	44311	125,000.00
Fair Housing Council of Oregon.	1221 SW Yamhill St #305	Portland	OR	97205	125,000.00
Fair Housing Rights Center in Southeastern Pennsylvania.	444 N 3rd Street, Suite 110	Philadelphia	PA	19123	125,000.00
Southwestern Pennsylvania Legal Services, Inc.	10 West Cherry Avenue	Washington	PA	15301	125,000.00
Fair Housing Council of Suburban Philadelphia, Inc.	550 Pinetown Road, Suite 460	Fort Washington	PA	19034	125,000.00

Legal name	Address	City	State	Zip code	Amount
Charleston Trident Urban League.	1064 Gardner Road Suite 307	Charleston	SC	29407	125,000.00
Housing Opportunities Made Equal of Virginia, Inc.	626 East Broad Street, Suite 400.	Richmond	VA	23219	125,000.00
Champlain Valley Office of Economic Opportunity, Inc.	255 South Champlain St., Suite 9.	Burlington	VT	05401	125,000.00
Vermont Legal Aid, Inc	264 N Winooski Ave	Burlington	VT	05401	125,000.00
Northwest Fair Housing Alliance.	35 W Main, Suite 250	Spokane	WA	99201	125,000.00
Fair Housing Center of Washington.	1517 Fawcett Avenue, Suite 250.	Tacoma	WA	98402	125,000.00
Metropolitan Milwaukee Fair Housing Council.	759 North Milwaukee Street, Suite 500.	Milwaukee	WI	53202	125,000.00
West Virginia Coalition to End Homelessness.	110 Cambridge Place	Bridgeport	WV	26416	125,000.00
National Fair Housing Alliance	1331 Pennsylvania Ave., NW, Suite 650.	Washington	DC	20004	499,149.00
National Community Reinvestment Coalition.	740 15th Street, NW	Washington	DC	20005	499,636.21
Total					10,289,105.87

Appendix F

FY 2021 Fair Housing Initiatives Program (FHIP)—Fair Housing Organizations Initiative (FR–6500–N–21B)

Contact: Stephanie Waller (202) 402–6938.

Organization	Street	City	State	Zip code	Amount
Legal Aid Society of San Diego, Inc.	110 South Euclid Avenue	San Diego	CA	92114	$250,000.00
Fair Housing Advocates of Northern California.	1314 Lincoln Ave., Ste. A	San Rafael	CA	94901	250,000.00
Connecticut Fair Housing Center.	60 Popieluszko Court	Hartford	CT	06106	250,000.00
Florida Legal Services, Inc	P.O. Box 533986	Orlando	FL	32853	250,000.00
Iowa Legal Aid	1111 9th St., Suite 230	Des Moines	IA	50314	133,183.00
H.O.P.E. Inc d/b/a HOPE Fair Housing Center.	202 W. Willow Ave Suite 203	Wheaton	IL	60187	132,000.00
Louisiana Fair Housing Action Center, Inc.	1340 Poydras Street, Suite 710.	New Orleans	LA	70112	250,000.00
Telamon Corporation	5560 Munford Rd. Suite 201	Raleigh	NC	27612	250,000.00
High Plains Fair Housing Center.	406 Demers Road	Grand Forks	ND	58201	141,000.00
Housing Opportunities Made Equal of Virginia, Inc.	626 East Broad Street, Suite 400.	Richmond	VA	23219	250,000.00
Total					2,156,183.00

Appendix G

FY 2021 Fair Housing Initiatives Program (FHIP)—Private Enforcement Initiative (FR–6500–N–21C)

Contact: Stephanie Waller (202) 402–6938.

Name	Street	City	State	Zip	Amount
Central Alabama Fair Housing Center, Inc.	2867 Zelda Road	Montgomery	AL	36106	$374,826.00
Legal Aid of Arkansas, Inc	714 South Main	Jonesboro	AR	72401	375,000.00
Southwest Fair Housing Council.	177 N Church Ave. Suite 1104	Tucson	AZ	85701	375,000.00

Name	Street	City	State	Zip	Amount
The Arizona Fair Housing Center.	1402 S Central Ave	Phoenix	AZ	85004	370,000.00
California Rural Legal Assistance, Inc.	1430 Franklin Street Suite 103	Oakland	CA	94612	375,000.00
CSA San Diego County	327 Van Houten Avenue	El Cajon	CA	92020	375,000.00
Fair Housing Council of Riverside County, Inc.	P.O. Box 1068	Riverside	CA	92502	375,000.00
Orange County Fair Housing Council, Inc.	2021 E. 4th Street Suite 122	Santa Ana	CA	92705	375,000.00
Southern California Housing Rights Center.	3255 Wilshire Blvd.	Los Angeles	CA	90010	375,000.00
Fair Housing Council of Central California.	333 W Shaw Ave Ste 14	Fresno	CA	93704	353,177.00
Project Sentinel Inc	1490 El Camino Real	Santa Clara	CA	95050	375,000.00
Connecticut Fair Housing Center.	60 Popieluszko Court	Hartford	CT	06106	375,000.00
National Fair Housing Alliance	1331 Pennsylvania Ave., NW, Suite 650.	Washington	DC	20004	375,000.00
National Community Reinvestment Coalition.	740 15th Street, NW	Washington	DC	20005	375,000.00
Community Legal Aid Society, Inc.	100 W 10th Street, Suite 801	Wilmington	DE	19801	375,000.00
Housing Opportunities Project for Excellence (HOPE), Inc.	11501 NW 2nd Avenue	Miami	FL	33168	375,000.00
Jacksonville Area Legal Aid, Inc.	126 W Adams St.	Jacksonville	FL	32202	371,333.00
Legal Aid Society of Palm Beach County, Inc.	423 Fern Street Suite 200	West Palm Beach	FL	33401	375,000.00
Community Legal Services of Mid-Florida, Inc.	122 E Colonial Dr Ste 200	Orlando	FL	32801	375,000.00
JC Vision and Associates Inc	P.O. Box 1972	Hinesville	GA	31310	352,815.00
Legal Aid Society of Hawaii	924 Bethel Street	Honolulu	HI	96813	375,000.00
Intermountain Fair Housing Council, Inc.	4696 W Overland Rd. Suite 140.	Boise	ID	83705	374,936.33
Open Communities	1880 Oak Ave, Suite 301	Evanston	IL	60201	375,000.00
South Suburban Housing Center.	18220 Harwood Avenue, Suite 1.	Homewood	IL	60430	367,690.00
H.O.P.E. Inc d/b/a HOPE Fair Housing Center.	202 W Willow Ave Suite 203	Wheaton	IL	60187	374,996.00
Prairie State Legal Services, Inc.	303 N Main Street, Suite 600	Rockford	IL	61101	375,000.00
Rogers Park Community Council dba Northside Community Resources.	1530 W Morse Avenue	Chicago	IL	60626	375,000.00
Fair Housing Center of Central Indiana, Inc.	445 N Pennsylvania St. Suite 811.	Indianapolis	IN	46204	361,036.00
Lexington Fair Housing Council, Inc.	207 E Reynolds Rd. Suite 130	Lexington	KY	40517	375,000.00
Louisiana Fair Housing Action Center, Inc.	1340 Poydras Street Suite 710.	New Orleans	LA	70112	375,000.00
Suffolk University	8 Ashburton Place	Boston	MA	02108	374,888.00
Fair Housing Center of Southeastern Michigan.	301 W. Michigan Avenue, Suite 321.	Ypsilanti	MI	48197	374,998.00
Legal Services of Eastern Michigan.	436 S Saginaw Street, Suite 101.	Flint	MI	48502	347,233.00
Fair Housing Center of Metropolitan Detroit.	5555 Conner St.	Detroit	MI	48213	375,000.00
Fair Housing Center of West Michigan.	20 Hall Street SE	Grand Rapids	MI	49507	375,000.00
Fair Housing Center of Southwest Michigan.	405 W Michigan Ave. Suite 6	Kalamazoo	MI	49007	349,330.00
Mississippi Center for Justice	5 Old River Place, Suite 203	Jackson	MS	39202	375,000.00
Montana Fair Housing, Inc	501 East Front Street, Suite 533.	Butte	MT	59701	325,675.00
Legal Aid of North Carolina, Inc.	224 S. Dawson St.	Raleigh	NC	27601	375,000.00
High Plains Fair Housing Center.	406 Demers Road	Grand Forks	ND	58201	375,000.00
Family Housing Advisory Services, Inc.	2401 Lake Street	Omaha	NE	68111	375,000.00
New Hampshire Legal Assistance.	117 North State Street	Concord	NH	03301	375,000.00
Silver State Fair Housing Council.	110 W Arroyo Street, Suite A	Reno	NV	89509	350,776.00

Name	Street	City	State	Zip	Amount
CNY Fair Housing, Inc	731 James Street, Suite 200	Syracuse	NY	13203	375,000.00
Housing Opportunities Made Equal, Inc.	1542 Main Street	Buffalo	NY	14209	375,000.00
Westchester Residential Opportunities, Inc.	470 Mamaroneck Avenue, Suite 410.	White Plains	NY	10605	375,000.00
Fair Housing Justice Center, Inc.	30–30 Northern Blvd. Suite 302.	Long Island City	NY	11101	375,000.00
Fair Housing Opportunities, Inc. dba The Fair Housing Center.	326 N Erie St	Toledo	OH	43604	375,000.00
Fair Housing Resource Center, Inc.	1100 Mentor Avenue	Painesville	OH	44077	375,000.00
Fair Housing Contact Service, Inc.	441 Wolf Ledges Parkway, Suite 200.	Akron	OH	44311	375,000.00
Fair Housing Rights Center in Southeastern Pennsylvania.	444 N 3rd Street, Suite 110	Philadelphia	PA	19123	375,000.00
Southwestern Pennsylvania Legal Services, Inc.	10 West Cherry Avenue	Washington	PA	15205	375,000.00
Fair Housing Council of Suburban Philadelphia, Inc.	550 Pinetown Road, Suite 460	Fort Washington	PA	19034	375,000.00
West Tennessee Legal Services, Inc.	210 W Main Street	Jackson	TN	38301	375,000.00
Tennessee Fair Housing Council, Inc.	107 Music City Circle, Suite 318.	Nashville	TN	37214	375,000.00
North Texas Fair Housing Center.	8625 King George Drive, Suite 130.	Dallas	TX	75235	375,000.00
San Antonio Fair Housing Council, Inc.	4414 Centerview Drive, Suite 229.	San Antonio	TX	78228	375,000.00
Housing Opportunities Made Equal of Virginia, Inc.	626 East Broad Street, Suite 400.	Richmond	VA	23219	375,000.00
Vermont Legal Aid, Inc	264 N Winooski Ave	Burlington	VT	05401	375,000.00
Northwest Fair Housing Alliance.	35 W. Main, Suite 250	Spokane	WA	99201	375,000.00
Fair Housing Center of Washington.	1517 Fawcett Avenue, Suite 250.	Tacoma	WA	98402	375,000.00
Metropolitan Milwaukee Fair Housing Council.	759 North Milwaukee Street, Suite 500.	Milwaukee	WI	53202	375,000.00
Alaska Legal Services Corporation.	1016 W 6th Avenue, Suite 200.	Anchorage	AK	99051	375,000.00
Fair Housing Center of Northern Alabama.	1820 7th Avenue North, Suite 110.	Birmingham	AL	35203	375,000.00
Inland Fair Housing and Mediation Board.	1500 South Haven Avenue, Suite 100.	Ontario	CA	91761	375,000.00
Legal Aid Society of San Diego, Inc.	110 South Euclid Avenue	San Diego	CA	92114	278,500.00
Fair Housing Advocates of Northern California.	1314 Lincoln Ave, Ste. A	San Rafael	CA	94901	375,000.00
Bay Area Legal Aid	1735 Telegraph Avenue	Oakland	CA	94612	375,000.00
Equal Rights Center	11 Dupont Circle, NW	Washington	DC	20036	375,000.00
Legal Aid Chicago	120 S Lasalle Street	Chicago	IL	60602	375,000.00
Chicago Lawyers' Committee for Civil Rights Under Law.	100 N LaSalle Street	Chicago	IL	60602	354,831.33
Access Living of Metropolitan Chicago.	115 West Chicago Avenue	Chicago	IL	60654	375,000.00
South Coast Fair Housing, Inc.	721 County Street	New Bedford	MA	02740	375,000.00
Massachusetts Fair Housing Center Inc.	57 Suffolk Street	Holyoke	MA	01040	375,000.00
Community Legal Aid, Inc	405 Main Street	Worcester	MA	01608	375,000.00
Pine Tree Legal Assistance	88 Federal Street	Portland	ME	04112	375,000.00
Mid-Minnesota Legal Assistance.	430 First Avenue North, Suite 300.	Minneapolis	MN	55401	375,000.00
Metropolitan St. Louis Equal Housing and Opportunity Council.	1027 S Vandeventer Ave., 6th Floor.	St. Louis	MO	63110	375,000.00
Housing Education and Economic Development, Inc.	3405 Medgar Evers Boulevard	Jackson	MS	39206	375,000.00
New Jersey Citizen Action Education Fund, Inc.	625 Broad Street	Newark	NJ	07102	375,000.00
Fair Housing Council of Northern New Jersey.	131 Main Street, Suite 140	Hackensack	NJ	07601	375,000.00
Legal Assistance of Western New York, Inc.	361 South Main	Geneva	NY	14456	375,000.00
Long Island Housing Services, Inc.	640 Johnson Avenue	Bohemia	NY	11716	375,000.00

Name	Street	City	State	Zip	Amount
Brooklyn Legal Services	105 Court Street	Brooklyn	NY	11201	375,000.00
Housing Research & Advocacy Center.	2728 Euclid Ave., Suite 200	Cleveland	OH	44115	375,000.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc.	2400 Reading Road Suite 118	Cincinnati	OH	45202	375,000.00
Ohio State Legal Services Association.	1108 City Park Avenue	Columbus	OH	43206	375,000.00
Metropolitan Fair Housing Council of Oklahoma, Inc.	312 NE 28th Street, Suite 112	Oklahoma City	OK	73105	375,000.00
Legal Aid Services of Oklahoma, Inc.	2915 N Classen Blvd	Oklahoma City	OK	73106	375,000.00
Fair Housing Council of Oregon.	1221 SW Yamhill St. #305	Portland	OR	97205	375,000.00
Greater Houston Fair Housing Center, Inc.	P.O. Box 292	Houston	TX	77001	375,000.00
Austin Tenants' Council	1640–B East 2nd St., Suite 150.	Austin	TX	78702	375,000.00
Disability Law Center	205 North 400 West	Salt Lake City	UT	84103	374,580.00
Total					34,556,620.66

Appendix H

FY 2021 Fair Housing Initiatives Program (FHIP)—Tester Training (FR–6500–N–71A)

Contact: Stephanie Waller (202) 402–6938.

Legal Name	Address	City	State	Zip code	Amount
Metropolitan Milwaukee Fair Housing Council.	759 North Milwaukee Street, Suite 500.	Milwaukee	WI	53202	$499,149.00
Total					499,149.00

Appendix I

FY2021 Healthy Homes Weatherization Cooperation Demonstration Program (FR–6500–FA–62)

Contact: Brenda M. Reyes, MD, MPH. *Brenda.m.reyes@hud.gov*.

Organizations	Street Address of P.O. Box	City	State	ZIP Codes	Amount
Baltimore City Dept. of Housing & Community Development.	417 E Fayette St	Baltimore	MD	21202	$1,000,000.00
Green & Healthy Homes Initiative, Inc.	2714 Hudson St	Baltimore	MD	21224	1,000,000.00
Piedmont Triad Regional Council	1398 Carrollton Crossing Dr	Kernersville	NC	27284	1,000,000.00
Community Relations-Social Development Commission.	1730 W North Avenue	Milwaukee	WI	53205	1,000,000.00
Wayne Metropolitan Community Action Agency.	7310 Woodward Avenue, Suite 800.	Detroit	MI	48202	1,000,000.00
Total					5,000,000.00

Appendix J

FY2021 Lead Technical Studies Grant Program (FR–6500–FA–15)

Contact: Dr. J, Kofi Berko, Jr. (202) 402–7696.

Organization	Address	City	State	Zip	Award
National Center for Healthy Housing.	10320 Little Patuxent Pkwy., Suite 200.	Columbia	MD	21044	$699,696
The Research Foundation for SUNY on behalf of U. at Buffalo.	The UB Commons, 520 Lee Entrance, Suite 211.	Amherst	NY	14228	659,499
Michigan Technological University.	1400 Townsend Drive	Houghton	MI	49931	699,916
QuanTech, Inc	6110 Executive Blvd., STE 206	Rockville	MD	20852	648,549
Michigan State University	426 Auditorium Road Room 2	East Lansing	MI	48824	699,264
Kansas State University	2 Fairchild Hall, 1601 Vattier Street.	Manhattan	KS	66506	700,000
Total					4,106,924

Appendix K

FY2021 Healthy Homes Technical Studies Grant Program (FR–6500–FA–15)

Contact: Dr. J, Kofi Berko, Jr. (202) 402–7696.

Organization Name	Address	City	State	Zip	Award
The University of Tulsa	800 S Tucker Drive	Tulsa	OK	74104	$999,831
Berkeley Air Monitoring Group, Inc.	1935 Addison Street, Suite A	Berkeley	CA	94704	886,448
Duke University	Pratt School of Engineering, 2200 W Main St. Ste 710.	Durham	NC	27705	1,000,000
National Center for Healthy Housing.	10320 Little Patuxent Pkwy, Suite 200.	Columbia	MD	21044	1,000,000
Three3 Inc	520 W Summit Hill Dr., Suite 1101.	Knoxville	TN	37902	999,002
University of Iowa	2 Gilmore Hall	Iowa City	IA	52242	700,000
President and Fellows of Harvard College.	677 Huntington Avenue	Boston	MA	02115	1,000,000
Total					6,585,281

Appendix L

FY 2020 Choice Neighborhoods Implementation Grants (FR–6400–FA–34)

Contact: Luci Blackburn (202) 402–4190.

Organization	Address	City	State	Zip	Award Amount
Housing Authority of the City of Fort Myers.	4224 Renaissance Preserve Way.	Fort Myers	FL	33916	$30,000,000.00
Lewiston Housing Authority	1 College Street	Lewiston	ME	04240	30,000,000.00
City of Detroit	2 Woodward Avenue #1126	Detroit	MI	48226	30,000,000.00
Cuyahoga Metropolitan Housing Authority.	8120 Kinsman Road	Cleveland	OH	44104	35,000,000.00
Housing Authority of the City of Camden.	2021 Watson Street, 2nd Floor.	Camden	NJ	08105	35,000,000.00
Total					160,000,000.00

Appendix M

FY2020 HOPE VI Main Street Program (FR–6400–FA–03)

Contact: Susan Wilson (202) 402–4500.

Organization name	Address	City	State	Zip code	Award Amount
City of El Cerrito	10890 San Pablo Avenue	El Cerrito	CA	94530–2321	$500,000
Town of Kit Carson	301 Main Street, P.O. Box 375	Kit Carson	CO	80825–0375	500,000
City of Stayton	362 N Third Ave	Stayton	OR	97383–1726	500,000
Total					1,500,000

Appendix N

FY2020 Housing Related Hazards (FR–6200–FA–68)

Contact: David Fleischman (202) 402–2071.

Organization	Address	City	State	Zip code	Amount
Los Angeles County Development Authority.	700 West Main Street	Los Angeles	CA	91801	$2,725,100.00
Housing Authority of the City and County of Denver.	P.O. Box 40305 Santa Fe Drive Station.	Denver	CO	80204	505,787.00
Housing Authority of the City of New Haven.	360 Orange Street #1	New Haven	CT	6510	3,999,993.00
Wilmington Housing Authority	400 N Walnut Street	Wilmington	DE	19801	1,473,800.00
Pittsfield Housing Authority	65 Columbus Avenue	Pittsfield	MA	1201	133,328.00
Lowell Housing Authority	350 Moody Street	Lowell	MA	1879	186,293.00
Worcester Housing Authority	40 Belmont Street	Worcester	MA	1605	1,732,960.00
Flint Housing Authority	3820 Richfield Road	Flint	MI	48506	1,078,475.00
Asheboro Housing Authority	338 W Wainman Avenue	Asheboro	NC	27204	439,765.00
Rockingham Housing Authority	809 Armistead Street	Rockingham	NC	28379	70,000.00
Housing Authority of the City of Camden.	2021 Watson Street, 2nd Floor	Camden	NJ	8105	33,143.00
Rochester Housing Authority	675 West Main Street	Rochester	NY	14611	896,649.00
Cuyahoga Metropolitan Housing Authority.	8120 Kinsman Road	Cuyahoga	OH	44104	1,732,960.00
Harrison Metropolitan Housing Authority.	82450 Cadiz-Jewett Road	Harrison	OH	43907	145,000.00
Pickaway Metropolitan Housing Authority.	176 Rustic Drive	Circleville	OH	43113	708,742.00
The Housing Authority of the City of Lancaster.	325 Church Street	Lancaster	PA	17602	880,005.00
Housing Authority of the City of Pawtucket.	214 Roosevelt Avenue	Pawtucket	RI	2862	3,258,000.00
Total					20,000,000.00

Appendix O

FY2020 Housing Related Hazards (FR–6200–FA–68)

Contact: David Fleischman (202) 402–2071.

Organization	Address	City	State	Zip code	Amount
Housing Authority of the City of Conway.	335 S Mitchell Street	Conway	AR	72034	$250,000.00
Housing Authority of the City of Luxora.	316 Cedar Street P.O. Box 70	Luxora	AR	72358	40,000.00
City of Sacramento Housing Authority.	801 12th Street	Sacramento	CA	95814	250,000.00
City of Eureka Housing Authority	735 W Everding Street	Eureka	CA	95503	250,000.00
Wilmington Housing Authority	400 Walnut Street	Wilmington	DE	19801	247,500.00
Housing Authority of the City of Glennville.	P.O. Box 37	Glennville	GA	30427	244,578.00
Housing Authority of the City of Perry.	822 Perimeter Road	Perry	GA	31069	60,000.00
Ottumwa Housing Authority	935 West Main Street	Ottumwa	IA	52501	36,560.00
Housing Authority of the City of Freeport.	1052 W Galena Avenue	Freeport	IL	61032	231,485.00

Organization	Address	City	State	Zip code	Amount
Housing Authority of Edgard County.	604 Highland Drive	Edgard	IL	61944	125,000.00
Housing Authority of South Bend	501 Alonzo Watson Drive	South Bend	IN	46601	103,461.00
Sullivan Housing Authority	200 Sunrise Towers	Sullivan	IN	47882	250,000.00
Housing Authority of Covington	P.O. Box 15279	Covington	KY	41015	95,000.00
Housing Authority of Lexington	300 West New Circle Road	Lexington	KY	40505	250,000.00
Pineville Housing Authority	P.O. Box 3190	Pineville	LA	71360	27,540.00
Housing Authority of the Town of Mansfield.	P.O. Box 1020	Mansfield	LA	71052	250,000.00
Fall River Housing Authority	85 Morgan Street	Fall River	MA	2722	250,000.00
Chicopee Housing Authority	128 Meetinghouse Road	Chicopee	MA	1013	164,067.00
Taunton Housing Authority	30 Olney Street, Suite B	Taunton	MA	2780	250,000.00
Falmouth Housing Authority	115 Scranton Avenue	Falmouth	MA	2540	78,963.00
Needham Housing Authority	28 Captain Robert Cook Drive	Needham	MA	2494	250,000.00
Brewer Housing Authority	15 Colonial Circle Suite 1	Brewer	ME	4412	22,811.00
Grand Rapids Housing Commission.	1420 Fuller Avenue SE	Grand Rapids	MI	49507	249,984.00
St. Louis Housing Authority	3520 Page Boulevard	St. Louis	MO	63106	123,277.00
Marshall Housing Authority	275 S Redman Avenue	Marshall	MO	65340	16,000.00
Housing Authority of the City of Independence.	4215 S Hocker Drive Building 5	Independence	MO	64055	249,278.00
Housing Authority of the City of Lumberton.	P.O. Box 709	Lumberton	NC	28359	239,500.00
Housing Authority of Cass County.	230 8th Avenue W	Cass	ND	58078	69,700.00
Rolette Housing Authority	P.O. Box 567	Rolette	ND	58366	250,000.00
Omaha Housing Authority	1823 Harney Street	Omaha	NE	68102	247,000.00
Clay Center Housing Authority	114 E Division Street	Clay	NE	68933	114,522.00
Edgar Housing Authority	406 North B. Street	Edgar	NE	68935	40,654.00
Trenton Housing Authority	899 Southard Street	Trenton	NJ	8638	250,000.00
Clementon Housing Authority	22 Gibbsboro Road	Clementon	NJ	8021	210,857.00
New York City Housing Authority	90 Church Street Room 10–405	NYC	NY	10007	225,000.00
Utica Housing Authority	509 Second Street	Utica	NY	13501	250,000.00
Town of Oyster Bay Housing Authority.	115 Central Park Road	Oyster Bay	NY	11803	250,000.00
Cuyahoga Metropolitan Housing Authority.	8120 Kinsman Road	Cuyahoga	OH	44104	250,000.00
Cincinnati Metropolitan Housing Authority.	1044 West Liberty	Cincinnati	OH	45214	250,000.00
Philadelphia Housing Authority	2013 Ridge Avenue	Philadelphia	PA	19121	250,000.00
Chester Housing Authority	1111 Avenue of the States	Chester	PA	19013	250,000.00
Montgomery County Housing Authority.	104 W Main Street, Suite 1	Norristown	PA	19401	100,000.00
Housing Authority of the City of Lancaster.	325 Church Street	Lancaster	PA	17602	186,982.00
Housing Authority of the County of Lebanon.	1220 Mifflin Street, P.O. Box 420.	Lebanon	PA	17042	250,000.00
Woonsocket Housing Authority	679 Social Street	Woonsocket	RI	2895	244,188.00
Housing Authority of Spartanburg.	P.O. Box 2828	Spartanburg	SC	29304	190,330.00
Union City Housing Authority	1409 E Main Street	Union City	TN	38261	250,000.00
Pulaski Housing Authority	P.O. Box 1058	Pulaski	TN	38478	213,150.00
Housing Authority of Waxahachie*.	208 N Patrick Street	Waxahachie	TX	75165	73,441.00
Housing Authority of Corsicana	1360 N 13th Street	Corsicana	TX	75110	231,900.00
Robstown Housing Authority	625 W Avenue F	Robstown	TX	78380	236,419.00
Housing Authority City of Alpine	1024 N 5th Street	Alphine	TX	79830	9,250.00
Scott County Redevelopment & Housing Authority.	P.O. Box 266	Authority	VA	24244	250,000.00
Seattle Housing Authority	190 Queen Anne Avenue N P.O. Box 19028.	Seattle Housing	WA	98109	179,270.00
Housing Authority of the City of Barron.	611 Woodland Avenue Suite 25	Barron	WI	54812	72,333.00
Total					10,000,000.00

Appendix P

FY2021 Emergency and Natural Disaster Receivership

Contact: David Fleischman (202) 402–2071.

Organization	Address	City	State	Zip	Amount
Alexander County Housing Authority.	1101 Ohio Street	Cairo	IL	62914	$4,690,971
Highland Park Housing Commission.	12050 Woodward Avenue	Highland Park	MI	48203	1,509,246
New York City Housing Authority	200 South Pearl Street	New York	NY	10007–2516	38,799,784
Total					45,000,000

Appendix Q

FY2021 Emergency and Natural Disaster

Contact: David Fleischman (202) 402–2071.

Organization	Address	City	State	Zip code	Amount
Howard County Housing Authority.	P.O. Box 238	Nashville	AR	71852	$1,139,433
Keokuk Housing Authority	111 South 2nd Street	Keokuk	IA	52632	821,974
Housing Authority of the City of Yale.	100 Watson Drive, P.O. Box 265.	Yale	OK	74085	216,804
DeSmet Housing Authority	408 Calumet Avenue NE	DeSmet	SD	57231	65,219
Housing and Redevelopment Commission of Pierre.	301 West Pleasant Drive	Pierre	SD	57501	341,800
Village of Grantsburg Housing Authority.	213 W Burnet Avenue	Grantsburg	WI	54840	75,300
East Chicago Housing Authority	4444 Railroad Avenue, P.O. Box 498.	East Chicago	IN	46312	1,543,154
Total					4,203,684

Appendix R

PIH Notice 2021–09 Tribal VASH Supportive Housing Renewal

Contact: Hilary Atkin, (202) 402–3427.

Organization	Address	City	State	Zip code	Amount
AVCP Regional Housing Authority.	P.O. Box 767	Bethel	AK	99559	$55,044
Cook Inlet Housing Authority	3510 Spenard Road, Suite 100	Anchorage	AK	99503	150,655
Tlingit Haida Regional Housing Authority.	P.O. Box 32237	Juneau	AK	99803	173,253
Hopi Housing Authority	P.O. Box 906	Polacca	AZ	86042	188,403
Navajo Housing Authority	P.O. Box 4980	Window Rock	AZ	86515	281,152
San Carlos Housing Authority	P.O. Box 740	Peridot	AZ	85542–0740	80,946
Tohono O'odham K:K: Association.	P.O. Box 790	Sells	AZ	85634	417,931
Leech Lake Housing Authority	611 Elm Ave	Cass Lake	MN	56633	63,370
White Earth Reservation Housing Authority.	3303 U.S. Hwy 59	Waubun	MN	56589	66,050
Blackfeet Housing Authority	P.O. Box 449	Browning	MT	59417	210,584
Lumbee Tribe of North Carolina	6984 Highway 711	Pembroke	NC	28372	178,529
Standing Rock Housing Authority	P.O. Box 769	Fort Yates	ND	58538	86,538
Turtle Mountain Housing Authority.	P.O. Box 620	Belcourt	ND	58316	110,516
Zuni Housing Authority	P.O. Box 710	Zuni	NM	87327	71,286
Cherokee Nation	P.O. Box 948	Tahlequah	OK	74465	86,484
Cheyenne-Arapaho Tribes	P.O. Box 167	Concho	OK	73022	148,128

Organization	Address	City	State	Zip code	Amount
Choctaw Nation	P.O. Drawer 1210	Durant	OK	74702	104,148
Muscogee Creek Nation	P.O. Box 580	Okmulgee	OK	74447	163,012
Osage Nation	P.O. Box 779	Pawhuska	OK	74056	131,714
Warm Springs Housing Authority	P.O. Box 1167	Warm Springs	OR	97761–1167	42,121
Oglala Sioux Lakota Housing	P.O. Box 603	Pine Ridge	SD	57770	69,925
Sicangu Wicoti Awayankapi Corporation.	P.O. Box 69	Rosebud	SD	57570	33,323
Colville Indian Housing Authority	P.O. Box 528	Nespelem	WA	99155–0528	36,765
Spokane Indian Housing Authority.	P.O. Box 195	Wellpinit	WA	99040–0195	171,630
Yakama Nation Housing Authority.	P.O. Box 156	Wapato	WA	98951–0156	140,590
Oneida Nation of Wisconsin	P.O. Box 68	Oneida	WI	54155	114,965
Total					3,377,062

Appendix S

FY2020 Indian Housing Block Grant Competitive (FR–6400–FA–48)

Contact: Hilary Atkin, 202 402–3427.

Organization	Address	City	State	Zip code	Amount
Hydaburg Cooperative Association.	P.O. Box 349	Hydaburg	AK	99922	$1,893,691
Tagiugmiullu Nunamiulla Housing Association.	P.O. Box 409	Utqiagvik	AK	99723	4,292,814
White Mountain Apache Housing Authority.	P.O. Box 1270	Whiteriver	AZ	85941–1270	5,000,000
Fort Independence Community of Paiutes of Fort Independence.	P.O. Box 67	Independence	CA	93526–0067	2,000,000
Hoopa Valley Housing Authority	P.O. Box 1285	Hoopa	CA	95546–1285	5,000,000
Karuk Tribe Housing Authority	P.O. Box 1159	Happy Camp	CA	96039–1159	2,035,648
La Posta Band of Mission Indians.	P.O. Box 1120	Boulevard	CA	91905–1120	1,467,835
Tule River Indian Housing Authority.	342 N Reservation Road	Porterville	CA	93257	4,900,652
Nez Perce Tribal Housing Authority.	P.O. Box 188	Lapwai	ID	83540	4,798,703
Nottawaseppi Huron Band of the Potawatomi.	2221 1½ Mile Road	Fulton	MI	49052	2,459,530
Eastern Shoshone Housing Authority.	P.O. Box 1250	Fort Washakie	WY	82514	5,000,000
Fort Belknap Housing Authority	668 Agency Main St	Harlem	MT	59526	5,000,000
Nambe Pueblo Housing Entity	11 West Gutierrez, Unit 3456	Santa Fe	NM	87506–0217	1,205,977
Pueblo of Acoma Housing Authority.	P.O. Box 620	Acoma Pueblo	NM	87034–0620	5,000,000
Pueblo of Isleta	P.O. Box 760	Isleta	NM	87022–0760	5,000,000
Pueblo of Jemez Housing Authority.	P.O. Box 670	Jemez Pueblo	NM	87024	5,000,000
Duck Valley Housing Authority	P.O. Box 129	Owyhee	NV	89832–0129	5,000,000
Comanche Nation	1918 East Gore Blvd	Lawton	OK	73501	5,000,000
Quapaw Tribe	P.O. Box 765	Quapaw	OK	74363	2,309,325
Wichita and Affiliated Tribes Housing Authority.	1 Coronado Circle	Anadarko	OK	73005	3,170,000
Wyandotte Nation	64700 E Highway 60	Wyandotte	OK	74370	1,341,647
Crow Creek Sioux Tribe and Crow Creek Housing Authority.	241 South Central Circle	Fort Thompson	SD	57339	4,137,560
Oglala Sioux (Lakota) Housing	4 SuAnne Center Drive	Pine Ridge	SD	57770	5,000,000
Muckleshoot Indian Tribe dba Muckleshoot Housing Authority.	38037 158th Avenue SE	Auburn	WA	98092	5,000,000
Total					91,013,382

Appendix T

PIH Notice 2021–09 Tribal VASH Supportive Housing Renewal (FR–6400–N–73)

Contact: Hilary Atkin, 202 402–3427.

Organization	Address	City	State	Zip code	Amount
Tlingit Haida Regional Housing Authority.	5446 Jenkins Drive	Juneau	AK	99801–9511	$143,136
Fort Hall Housing Authority	161 Wardance Circle	Pocatello	ID	83202	133,320
Apsaalooke Nation Housing Authority.	P.O. Box 99	Crow Agency	MT	59022–0098	222,900
Lumbee Tribe of North Carolina	6984 Highway 711	Pembroke	NC	28372	197,130
Muscogee Creek Nation	P.O. Box 580	Okmulgee	OK	74447	325,332
Total					1,021,818

Appendix U

FY2020 Jobs Plus Initiative (FR–6400–FA–14)

Contact: Leigh Van Rij (202)402–5788.

Organization	Address Line	City	State	Zip	Amount grant funds
Rock Hill Housing Authority	467 South Wilson Street	Rock Hill	SC	29730	$2,300,000
San Antonio Housing Authority	818 S Flores Street	San Antonio	TX	78204	2,300,000
Housing Authority of the City of Goldsboro.	700 N Jefferson Ave	Goldsboro	NC	27530	2,300,000
Philadelphia Housing Authority	2013 Ridge Avenue	Philadelphia	PA	19121	2,979,543
Detroit Housing Commission	1301 E Jefferson Ave	Detroit	M	48207	2,300,000
Warner Robins Housing Authority.	112 Memorial Terrace Drive	Warner Robins	GA	31093	2,300,000
Housing Authority of the City of Wilmington, North Carolina.	1524 South 16th Street	Wilmington	NC	28401	2,300,000
Palm Beach County Housing Authority.	3432 West 45th Street	West Palm Beach	FL	33407	2,300,000
Houston Housing Authority (HHA).	2640 Fountain View Drive	Houston	TX	77057	2,300,000
Chesapeake Redevelopment and Housing Authority.	1468 S Military Hwy	Chesapeake	VA	23320	2,300,000
Rockford Housing Authority	223 S Winnebago St	Rockford	IL	61102	2,300,000
City of Roanoke Redevelopment and Housing Authority.	2624 Salem Turnpike NW	Roanoke	VA	24017	2,300,000
Total					28,279,543

Appendix V

FY2020 Resident Opportunity & Efficiency Service Coordinator (ROSS–SC) (FR–6400–N–05)

Grant Program Contact: Tremayne Youmans (202) 402–6621.

Organization	Address	City	State	Zip code	Total award amount
Bessemer Non-Profit Development Corporation.	1100 Fifth Ave	Bessemer	AL	35020	$239,250.00
Bessemer Non-Profit Development Corporation.	1100 Fifth Ave	Bessemer	AL	35080	239,250.00
AL068 Sheffield Housing Authority.	505 N Columbia Avenue	Sheffield	AL	35660	163,500.00
City of Anniston Housing Authority.	500 Glen Addie Avenue	Anniston	AL	36201	166,255.00
Prichard Housing Authority	200 W Prichard Ave	Prichard	AL	36610	239,250.00
Friendly House, Inc	113 W Sherman Street	Phoenix	AZ	85003	239,250.00

Organization	Address	City	State	Zip code	Total award amount
Pinal County Housing Department.	970 N Eleven Mile Corner Rd	Casa Grande	AZ	85194	239,091.00
Northern Circle Indian Housing Authority.	694 Pinoleville Rd	Ukiah	CA	95482	211,005.00
Housing Authority of the City of San Buenaventura.	995 Riverside Street	Ventura	CA	93001	239,250.00
Chico Rancheria Housing Corporation.	2889 Cohasset Rd. Suite 3	Chico	CA	95973	231,217.00
Housing Authority of the County of Santa Barbara.	815 West Ocean Avenue	Lompoc	CA	93436	239,250.00
San Pasqual Band of Mission Indians.	16400 Kumeyaay Way	Valley Center	CA	92082	231,000.00
Housing Authority of the City of Madera.	205 North G Street	Madera	CA	93637	239,250.00
Bishop Paiute Tribe	50 Tu Su Lane	Bishop	CA	93514	176,818.00
Los Angeles County Development Authority (LACDA).	700 West Main Street	Alhambra	CA	91801	713,621.00
Housing Authority of the City of Sacramento.	801 12th Street	Sacramento	CA	95814	478,500.00
Karuk Tribe Housing Authority	P.O. Box 1159	Happy Camp	CA	96039	227,940.00
Ute Mountain Housing Authority	P.O. Box EE	Towaoc	CO	81334	222,750.00
City of Englewood Housing Authority.	3460 S Sherman St	Englewood	CO	80113	216,081.00
Walsh Manor Local Resident Council.	1790 West Mosier Place	Denver	CO	80223	231,740.00
Westridge Local Resident Council.	3550 West 13th Avenue	Denver	CO	80204	210,283.00
Westwood Local Resident Council.	855 South Irving Street	Denver	CO	80219	232,311.00
The Housing Authority of the Town of Greenwich.	249 Milbank Avenue	Greenwich	CT	6830	239,250.00
Housing Authority of the City of New Britain.	16 Armistice Street	New Britain	CT	6053	239,250.00
Housing Authority of the City of Danbury.	2 Mill Ridge Road	Danbury	CT	6811	239,250.00
Stamford Housing Authority (AKA: Charter Oak Communities).	22 Clinton Avenue	Stamford	CT	6901	239,250.00
Housing Authority of the City of Meriden.	22 Church St	Meriden	CT	6451	239,250.00
Bristol Housing Authority	164 Jerome Avenue	Bristol	CT	6010	239,250.00
United Way of Suwannee Valley	871 SW State Road 47	Lake City	FL	32025	147,057.00
Housing Authority of the County of Flagler, Florida.	414 N Bacher Street	Bunnell	FL	32110	239,250.00
Housing Authority of the City of St. Petersburg.	2001 Gandy Boulevard	St. Petersburg	FL	33702	186,850.00
Pahokee Housing Authority	465 Friend Terrace	Pahokee	FL	33476	206,107.00
Punta Gorda Housing Authority	340 Gulf Breeze Avenue	Punta Gorda	FL	33950	239,250.00
Housing Authority of the City of Titusville.	524 S Hopkins Avenue	Titusville	FL	32796	225,866.00
Palm Beach County Housing Authority.	3432 West 45th Street	West Palm Beach	FL	33407	239,250.00
The Manatee County Housing Authority.	5631 11th Street E	Bradenton	FL	34203	239,250.00
Sarasota Housing Authority	269 S Osprey Ave	Sarasota	FL	34236	216,684.00
Lakeland Housing Authority	430 Hartsell Avenue Lakeland	Lakeland	FL	33815	198,900.00
City of Thomaston Housing Authority.	574 Triune Mill Rd	Thomaston	GA	30286	239,250.00
Northwest Georgia Housing Authority.	326 West 9th Street	Rome	GA	30162	239,250.00
Valdosta Housing Authority	610 East Ann Street	Valdosta	GA	31601	239,250.00
Housing Authority of Newnan	48 Ball Street	Newman	GA	30263	239,250.00
City of Des Moines Municipal Housing Agency.	2309 Euclid Ave	Des Moines	IA	50310	239,250.00
Eastern Iowa Regional Housing Authority.	7600 Commerce Park	Dubuque	IA	52002	239,250.00
Nez Perce Tribal Housing Authority.	P.O. Box 188	Lapwai	ID	83540	239,250.00
Rock Island Housing Authority	227 21st Street	Rock Island	IL	61201	186,699.00
Moline Housing Authority	4141 11th Avenue A	Moline	IL	61265	208,140.00
Decatur Housing Authority	1808 E Locust St	Decatur	IL	62521	229,029.00
Housing Authority of the City of Bloomington.	104 E Wood Street	Bloomington	IL	61701	215,397.00

Organization	Address	City	State	Zip code	Total award amount
Aurora Housing Authority	1449 Jericho Circle	Aurora	IL	60506	239,250.00
Housing Authority; City of Danville.	1607 Clyman Ln	Danville	IL	61832	157,956.00
Macoupin County Housing Authority.	760 Anderson Street	Carlinville	IL	62626	141,485.00
Rockford Housing Authority	233 South Winnebago Street	Rockford	IL	61102	239,250.00
Housing Authority of the Village of Oak Park.	21 South Blvd	Oak Park	IL	60302	218,068.00
Housing Authority of Cook County.	175 W Jackson Blvd	Chicago	IL	60604	239,250.00
Housing Authority of the City of Kokomo.	210 E Taylor St	Kokomo	IN	46903	184,182.00
The Housing Authority of the City of New Albany, IN.	P.O. Box 11	New Albany	IN	47150	212,118.00
Housing Authority of the City of Bloomington.	1007 North Summit Street	Bloomington	IN	47404	202,148.00
Marion Housing Authority	601 S Adams St	Marion	IN	46953	239,250.00
Housing Authority of Covington	2300 Madison Avenue	Covington	KY	41014	230,175.00
Louisville Metro Housing Authority.	420 South Eighth Street	Louisville	KY	40203	717,750.00
Bryant Way Resident Council	247 Double Springs Road	Bowling Green	KY	42101	191,942.00
Summit View/Gordon Ave. Resident Council.	247 Double Springs Rd	Bowling Green	KY	42101	176,746.00
Housing Authority of the City of Opelousas.	906 E Laurent Street	Opelousas	LA	70571	239,250.00
Lake Providence Housing Authority.	226 Foster Street	Lake Providence	LA	71254	239,250.00
Housing Authority of New Orleans.	4100 Touro St	New Orleans	LA	70122	478,500.00
Newton Housing Authority	82 Lincoln Street	Newton	MA	2461	234,750.00
Falmouth Housing Authority	115 Scranton Avenue	Falmouth	MA	2540	239,250.00
Quincy Housing Authority	80 Clay Street	Quincy	MA	2169	239,250.00
New Bedford Housing Authority	128 Union Street, 4th floor	New Bedford	MA	2740	239,250.00
Norwood Housing Authority	40 William Shyne Circle	Norwood	MA	2062	239,250.00
Medway Housing Authority	600 Mahan Circle	Medway	MA	2053	239,250.00
Plymouth Housing Authority	130 Court Street	Plymouth	MA	2361	239,250.00
Maverick Landing Community Services, Inc.	31 Liverpool Street	Boston	MA	2128	196,117.00
Housing Auth. of the City of Frostburg.	101 Meshach Frost Village	Frostburg	MD	21532	166,277.00
Housing Authority City of College Park.	9014 Rhode Island Ave	College Park	MD	20740	239,250.00
Portland Housing Authority	14 Baxter Boulevard	Portland	ME	4101	239,250.00
Presque Isle Housing Authority	58 Birch St	Presque Isle	ME	4769	239,250.00
Inkster Housing Commission	4500 Inkster Rd	Inkster	MI	48141	227,860.00
Moorhead Public Housing Agency.	800 2nd Ave N	Moorhead	MN	56560	237,600.00
Northwest Minnesota Multi-County Housing Authority.	205 Garfield Avenue	Mentor	MN	56736	239,250.00
White Earth Reservation Housing Authority.	3303 U.S. Hwy 59	Waubun	MN	56589	221,500.00
Housing Authority of the City of Poplar Bluff.	302 North E Street	Poplar Bluff	MO	63902	239,250.00
Independence Housing Authority	4215 S Hocker Dr	Independence	MO	64055	239,250.00
Natchez Housing Authority	2 Auburn Avenue	Natchez	MS	39120	239,250.00
Choctaw Housing Authority	13660 Highway 16 W	Choctaw	MS	39350	217,710.00
MHA Housing Development Corporation.	2425 E Street	Meridian	MS	39302	239,250.00
MHA Housing Development Corp.	2425 E Street	Meridian	MS	39302	239,250.00
MHA Housing Development Corp.	2425 E Street	Meridian	MS	39302	239,250.00
Housing Authority of the City of High Point.	500 E. Russell Ave	High Point	NC	27260	186,953.00
Sanford Housing Authority	P.O. Box 636	Sanford	NC	27331	183,000.00
Lumbee Regional Development Association.	636 Prospect Road	Pembroke	NC	28372	239,250.00
Housing Authority of the City of Lumberton.	407 N Sycamore St	Lumberton	NC	28358	239,250.00
Greensboro Housing Authority	450 N Church Street	Greensboro	NC	27401	239,250.00
North Wilkesboro Housing Authority.	101 Hickory Street	North Wilkesboro	NC	28659	239,250.00
Washington Housing Authority	809 Pennsylvania Ave	Washington	NC	27889	239,250.00

Organization	Address	City	State	Zip code	Total award amount
Ayden Housing Authority	4613 Liberty Street	Ayden	NC	28513	239,250.00
Northern Ponca Housing Authority.	1501 W Michigan Ave	Norfolk	NE	68701	186,326.00
Santee Sioux Nation	425 Frazier Ave. N Suite #2	Niobrara	NE	68760	185,526.00
Berlin Housing Authority	10 Serenity Circle	Berlin	NH	3570	239,250.00
New Jersey Institute for Disabilities.	10A Oak Drive—Roosevelt Park	Edison	NJ	8837	239,250.00
Phillipsburg Housing Authority	530 Heckman Street	Phillipsburg	NJ	8865	239,250.00
Housing Authority of the City of Elizabeth.	688 Maple Avenue	Elizabeth	NJ	7202	478,500.00
Housing Authority of the City of Rahway.	165 East Grand Avenue	Rahway	NJ	7065	239,250.00
Clementon Housing Authority	22 Gibbsboro Rd	Clementon	NJ	8021	239,250.00
Housing Authority of the City of Jersey City.	400 U.S. Highway #1	Jersey City	NJ	7306	239,250.00
Albany Housing Authority	200 Green Street	Albany	NY	12202	231,000.00
Rochester Housing Authority	675 West Main Street	Rochester	NY	14611	478,500.00
Niagara Falls Housing Authority	744 Tenth Street	Niagara Falls	NY	14301	216,913.00
Citywide Council of Syracuse Low Income Housing Residents.	516 Burt Street	Syracuse	NY	13202	239,250.00
Ocean Bay Community Development Corporation.	434 Beach 54th Street	Arverne	NY	11692	657,872.00
Community Development Corporation of Long Island, Inc..	2100 Middle Country Road	Centereach	NY	11720	195,777.00
Akron Metropolitan Housing Authority.	100 W Cedar St	Akron	OH	44307	717,750.00
Lucas Metropolitan Housing Authority.	435 Nebraska Avenue	Toledo	OH	43697	423,352.00
Zanesville Metropolitan Housing Authority.	407 Pershing Road	Zanesville	OH	43701	180,682.00
Youngstown Metropolitan Housing Authority.	131 West Boardman Street	Youngstown	OH	44503	239,250.00
Ponca Tribe of Indians of Oklahoma.	20 White Eagle Drive	Ponca City	OK	74601	167,369.00
Housing Authority of Lincoln County.	1039 NW Nye Street	Newport	OR	97365	239,250.00
Housing Authority of Clackamas County.	P.O. Box 1510	Oregon City	OR	97045	236,857.00
Bucks County Housing Authority	350 South Main Street, Suite 205.	Doylestown	PA	18901	239,250.00
Westmoreland County Housing Authority.	167 S Greengate Road	Greensburg	PA	15601	184,067.00
Reading Housing Authority	400 Hancock Boulevard	Reading	PA	19611	230,621.00
HACE f/k/a Hispanic Association of Contractors and Enterprise.	167 W Allegheny Avenue	Philadelphia	PA	19140	235,570.00
Harrisburg Housing Authority	351 Chestnut Street	Harrisburg	PA	17101	472,727.00
Wilkes-Barre Housing Authority	50 Lincoln Plaza	Wilkes-Barre	PA	18702	210,000.00
Allegheny County Housing Authority.	301 Chartiers Avenue	Mckees Rocks	PA	15136	717,750.00
Housing Authority of the City of York.	31 S Broad St	York	PA	17403	239,250.00
Johnston Housing Authority	8 Forand Circle	Johnston	RI	2919	239,250.00
Housing Authority of the City of Providence, RI.	100 Broad Street	Providence	RI	2903	478,500.00
Chestnut Court Tenants Association.	5 Chestnut Street	Westerly	RI	2891	239,250.00
Housing Authority of Florence	400 East Pine Street	Florence	SC	29506	193,236.00
Housing Authority of the City of Columbia, SC.	1917 Harden Street	Columbia	SC	29204	401,736.00
Sisseton Wahpeton Housing Authority.	605 Lydia Goodsell Street	Sisseton	SD	57262	183,150.00
Johnson City Public Housing Authority.	901 Pardee Street	Johnson City	TN	37601	239,250.00
Crossville Housing Development Corporation.	67 Irwin Avenue	Crossville	TN	38555	153,450.00
Houston Housing Authority (HHA).	2640 Fountain View Drive	Houston	TX	77057	717,750.00
Housing Authority of the City of Beaumont.	1890 Laurel	Beaumont	TX	77701	210,153.00
San Marcos Housing Authority	1201 Thorpe Ln	San Marcos	TX	78666	217,275.00
Baytown Housing Authority	1805 Cedar Bayou Road	Baytown	TX	77520	239,250.00

Organization	Address	City	State	Zip code	Total award amount
City of Roanoke Redevelopment and Housing Authority.	2624 Salem Turnpike NW	Roanoke	VA	24017	396,978.00
Chesapeake Redevelopment & Housing Authority.	1468 South Military Highway	Chesapeake	VA	23320	239,250.00
Lynchburg Redevelopment & Housing Authority.	918 Commerce Street	Lynchburg	VA	24504	215,635.00
Alexandria Redevelopment and Housing Authority.	401 Wythe Street	Alexandria	VA	22314	239,250.00
The Housing Authority of the City of Bremerton.	600 Park	Bremerton	WA	98337	224,739.00
Colville Indian Housing Authority	42 Convalescent Center Blvd	Nespelem	WA	99155	201,905.00
Puyallup Tribe of Indians	3009 E Portland Ave	Tacoma	WA	98404	239,250.00
Charleston-Kanawha Housing Authority.	1525 Washington Street West	Charleston	WV	25387	194,411.00
Total					37,699,255.00

[FR Doc. 2022–07869 Filed 4–12–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–33657; 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 March 26, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 28, 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 March 26, 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:

DISTRICT OF COLUMBIA

District of Columbia

Seafarers Boat Club, 1950 M St. SE, Washington, SG100007666

National Park Service, National Capital Region and U.S. Park Police Headquarters Buildings (Mission 66 Era Visitor Centers, Administration Buildings, and Public Use Areas in the Maryland, Virginia, West Virginia, and the District of Columbia Parks of the National Capital Region, NPS MPS), 1100 Ohio Dr. SW, Washington, MP100007677

FLORIDA

Palm Beach County

Loxahatchee Battlefield, 9060 Indiantown Rd., Jupiter, SG100007672

IOWA

Lee County

Presbyterian Church, 316 3rd St., West Point, SG100007678

MICHIGAN

Kalamazoo County

Vicksburg Historic District, East Highway, North and South Main, East and West Maple, East and West Park, East and West Prairie, East and West South, and West Washington Sts.; North and South Kalamazoo and South Michigan Aves.; East and West Liberty Lns., Vicksburg, SG100007671

Gibson, Inc. Factory and Office Building, 225 Parsons St., Kalamazoo, SG100007673

NEW YORK

Albany County

Steamboat Square Historic District, 20 Rensselaer, 186–198, 189–205, 200, 202–214, 207–221, 220, 223–237, 230 Green, 58–66 Plum, and 159 Church Sts., Albany, SG100007670

Albany Perforated Wrapping Paper Co., 19 Erie Blvd., Albany, SG100007679

Bronx County

Hunts Point Rail Station, 904–918 Hunts Point Ave., Bronx, SG100007684

Chautauqua County

Pierce, Levi J. and Frances A., House, 21 Pearl St., Forestville (Town of Hanover), SG100007688

Erie County

Visco Meter Factory-Buerk Tool Factory (Black Rock Planning Neighborhood MPS), 293 Grote St. (Historic Address 315 Grote St.), Buffalo, MP100007689

Livingston County

Avon Village Historic District, Portions of East and West Main, Genesee, Prospect, Oak, Temple, Clinton, Cemetery, Doer, and Railroad Sts.; Fisk and Park Pls., and Wadsworth Ave., Avon, SG100007683

New York County

Paddy's Market Historic District, 450–542, 523–547 9th Ave.; 367 West 35th, 362, 365–367 West 36th, 354–356 West 37th, 355–357 West 38th, 352–354, 405–411 West 39th, 356, 402–410, 401–409 West 40th Sts., New York, SG100007686

Onondaga County

H.A. Moyer Factory Complex (Industrial Resources in the City of Syracuse, Onondaga County, NY MPS), 1710 North Salina and 301 Wolf Sts., Syracuse, MP100007668

Queens County

Kent Manor, 117–01 Park Ln. South, Kew Gardens, SG100007667

Rensselaer County

Lion Factory (Textile Factory Buildings in Troy, New York, 1880–1920 MPS), 750 2nd Ave., Troy, MP100007669

Steuben County

Erwin Town Hall, 117 West Water St., Painted Post, SG100007682

Sullivan County

Reformed Dutch Church of Mamakating, 134 Sullivan St., Wurtsboro, SG100007687

Ulster County

Woodstock Artists Association, 28 Tinker St., Woodstock, SG100007685

PENNSYLVANIA

Philadelphia County

Engine Company No. 29, 1221–1225 North 4th St., Philadelphia, SG100007674

WISCONSIN

Waukesha County

Daubner, George H. and Frances, House, 16680 West North Ave., Brookfield, SG100007680

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

VIRGINIA

Richmond Independent City

Maggie L. Walker National Historic Site (NHS), 110½, 112–114, 116–118 East Leigh and 600 and 602 North 2nd Sts., Richmond, SG100007681

Authority: Section 60.13 of 36 CFR part 60.

Dated: March 29, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–07886 Filed 4–12–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–33690; 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 April 2, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by April 28, 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 April 2, 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:

GEORGIA

Laurens County

Emery Thomas Auditorium, 100 Riverview Dr., Dublin, SG100007698

MICHIGAN

Kalamazoo County

Parkwyn Village, Winchell and Lorraine Aves.; Parkwyn and Taliesin Drs., Kalamazoo, SG100007690

NEW MEXICO

Bernalillo County

Broadmoor Addition, Roughly bounded by Brockmont and Copper Aves, Morningside Dr., and Washington St., Albuquerque, SG100007699

Granada Heights

Roughly bounded by Silver and Garfield Aves., Carlisle Blvd., and Morningside Dr., Albuquerque, SG100007700

NEW YORK

Albany County

Downtown Albany Historic District (Boundary Increase/Decrease), 145–150 State, 36–42 Eagle, and 93 North Pearl Sts., Albany, BC100007692

WASHINGTON

King County

Arreguin, Alfredo & Susan Lytle, House and Studio, 2412 NE 80th St., Seattle, SG100007697

WISCONSIN

La Crosse County

Trimbell, Derwood and Myrtle, House, 224 Van Ness St. North, West Salem, SG100007696

Additional documentation has been received for the following resource:

NEW YORK

Albany County

Downtown Albany Historic District (Additional Documentation), 145–150 State, 36–42 Eagle, and 93 North Pearl Sts., Albany, AD80002579

Nominations submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination(s) and responded to the Federal Preservation Officer within 45 days of receipt of the nomination(s) and supports listing the properties in the National Register of Historic Places.

VIRGINIA

Hampton Independent City

Chesterville Site (Boundary Decrease), Address Restricted, Hampton vicinity, BC100007695

Chesterville Site (Additional Documentation), Address Restricted, Hampton vicinity, AD73002211

Authority: Section 60.13 of 36 CFR part 60.

Dated: April 5, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–07925 Filed 4–12–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–33503; PPWOCRADN0–PCU00RP16.R50000]

June 13, 2022 Native American Graves Protection and Repatriation Review Committee: Notice of Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service is soliciting nominations for the Native American Graves Protection and Repatriation Review Committee (Committee). The Secretary of the Interior will appoint members from nominations submitted by Indian Tribes, Native Hawaiian organizations, or traditional Native American religious leaders and national museum organizations or national scientific organizations.

DATES: Nominations must be received by June 13, 2022.

ADDRESSES: Please address nominations to Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Review Committee, via email *nagpra_info@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, via telephone at (202) 354–2201.

SUPPLEMENTARY INFORMATION: The Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and is regulated by the Federal Advisory Committee Act.

The Review Committee is responsible for:

1. Monitoring the NAGPRA inventory and identification process.
2. Reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items.
3. Facilitating the resolution of disputes.
4. Compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains.
5. Consulting with Indian Tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such Tribes or organizations.
6. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA.
7. Making recommendations regarding future care of repatriated cultural items.

The Committee consists of seven members appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Committee. Three members are appointed from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are appointed from nominations submitted by national museum or scientific organizations. One member is appointed from a list of persons developed and consented to by all of the other members.

Members are appointed for four-year terms and incumbent members may be reappointed for two-year terms. The Committee's work is completed during public meetings. The Committee attempts to meet in person twice a year and meetings normally last two or three days. In addition, the Committee may also meet by public teleconference one or more times per year.

Members will be appointed as special Government employees (SGEs). Please be aware that members selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: *https://www.doi.gov/ethics/special-government-employees/financial-disclosure.* Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

Committee members serve without pay but are reimbursed for each day of committee business. Committee members are also reimbursed for travel expenses incurred in association with Committee meetings (25 U.S.C. 3006(b)(4)). Additional information regarding the Committee, including the Committee's charter, meeting procedures, and past practice, is available on the National NAGPRA Program website, at *https://www.nps.gov/nagpra/review-committee.htm.*

Nominations must:

1. If submitted by an Indian Tribe or Native Hawaiian organization, be submitted on the official letterhead of the Indian Tribe or Native Hawaiian organization.
2. If submitted by and Indian Tribe or Native Hawaiian organization, affirm that the signatory is the official authorized by the Indian Tribe or Native Hawaiian organization to submit the nomination.
3. If submitted by a Native American traditional religious leader, affirm that the signatory meets the definition of traditional Native American religious leader (see 43 CFR 10.2(d)(3)).
4. If submitted by a national museum organization or national scientific organization, be submitted on the official letterhead of the organization. An organization that is created by, is a part of, and is governed in any way by a parent national museum or scientific organization must submit a nomination through the parent organization.
5. Affirm that the signatory is the official authorized by the organization to submit the nomination.
6. Affirm that the organization focuses on the interests of museum and science disciplines throughout the United States, as opposed to a lesser geographic scope; offers membership throughout the United States, although such membership need not be exclusive to the United States; and is organized under the laws of the United States Government.
7. Provide the nominator's original signature, daytime telephone number, and email address.
8. Include the nominee's full legal name, home address, home telephone number, and email address.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member.

Public Disclosure of Information: Before including your address, phone number, email address, or other personal identifying information with your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us in your nomination 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; 25 U.S.C. 3006.)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–07826 Filed 4–12–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0001; DS63644000 DRT000000.CH7000 223D1113RT; OMB Control Number 1012–0010]

Agency Information Collection Activities: Solid Minerals and Geothermal Collections

AGENCY: Office of Natural Resources Revenue (''ONRR''), Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), ONRR is proposing to renew an information collection. Through this Information Collection Request (''ICR''), ONRR seeks renewed authority to collect information necessary to report the production and royalties on solid minerals and geothermal resources from Federal and Indian lands. ONRR uses forms ONRR–4292 (Coal Washing Allowance Report); ONRR–4293 (Coal Transportation Allowance Report); ONRR–4430 (Solid Minerals Production and Royalty Report); and ONRR–4440 (Solid Minerals Sales Summary) as part of these information collection requirements.

DATES: You must submit your written comments on or before June 13, 2022.

ADDRESSES: All comment submissions must (1) reference ''OMB Control Number 1012–0010'' in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent through one of the following two methods:

- *Electronically via the Federal eRulemaking Portal:* Please visit *https://www.regulations.gov.* In the Search Box, enter the Docket ID Number for this ICR renewal (''ONRR–2011–0001'') and click ''search'' to view the publications associated with the docket folder. Locate the document with an open comment period and click the ''Comment Now!'' button. Follow the prompts to submit your comment prior to the close of the comment period.
- *Email Submissions:* Please submit your comments to *ONRR_regulationsmailbox@onrr.gov* with the OMB Control Number (''OMB Control Number 1012–0010'') listed in the subject line of your email. Email submissions must be postmarked on or before the close of the comment period.

Docket: To access the docket folder to view the ICR **Federal Register** publications, go to *https://www.regulations.gov* and search ''ONRR–2011–0001'' to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at *https://www.regulations.gov.*

OMB ICR Data: OMB also maintains information on ICR renewals and approvals. You may access this information at *https://www.reginfo.gov/public/do/PRASearch.* Please use the following instructions: Under the ''OMB Control Number'' heading enter ''1012–0010'' and click the ''Search'' button located at the bottom of the page. To view the ICR renewal or OMB approval status, click on the latest entry (based on the most recent date). On the ''View ICR—OIRA Conclusion'' page, check the box next to ''All'' to display all available ICR information provided by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Michael Anspach, Solid Minerals, ONRR, by email at *Michael.Anspach@onrr.gov* or by telephone at (303) 231–3618. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: Pursuant to the PRA, 44 U.S.C. 3501, *et seq.,* and 5 CFR 1320.5, all information collections, as defined in 5 CFR 1320.3, require approval by OMB. ONRR may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR to assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of ONRR's 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. 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 ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

Abstract: (a) General Information: The Federal Oil and Gas Royalty Management Act of 1982 (''FOGRMA'') directs the Secretary of the Interior (''Secretary'') to ''establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.'' *See* 30 U.S.C. 1711. ONRR performs these and other mineral revenue management responsibilities for the Secretary. *See* U.S. Department of the Interior Departmental Manual, 112 DM 34.1 (Sept. 9, 2020). ONRR uses the information collected in this ICR to ensure that a lessee properly pays royalty and other mineral revenues due on solid and geothermal resources produced from Federal and Indian lands. ONRR also uses these forms for lessees to claim a coal washing and/or transportation allowance. ONRR shares the data with the Bureau of Land Management, Bureau of Indian Affairs, and Tribal and State governments for their land and lease management responsibilities. The requirement to report accurately and timely is mandatory. Please refer to the chart for all reporting requirements and associated burden hours.

(b) Information Collections: This ICR covers the paperwork requirements under 30 CFR parts:

• 1202, subpart H, which pertains to geothermal resources royalties.

• 1206, subparts F, H and J, which pertain to product valuation of Federal coal, geothermal resources, and Indian coal.

• 1210, subparts E and H, which pertain to production and royalty reports on solid minerals and geothermal resources leases.

• 1212, subparts E and H, which pertain to recordkeeping of reports and files for solid minerals and geothermal resources leases.

• 1217, subparts E, F and G, which pertain to audits and inspections of coal, other solid minerals, and geothermal resources leases.

• 1218, subparts E and F, which pertain to royalties, rentals, bonuses and other monies payment for solid minerals and geothermal resources.

All data reported is subject to subsequent audit and adjustment. A lessee uses the following forms for solid minerals production, sales, royalty reporting, and allowances:

(i) ONRR–4292, Coal Washing Allowance Report: A lessee of any Federal or Indian lease producing coal must submit this form to claim a coal washing allowance.

(ii) ONRR–4293, Coal Transportation Allowance: A lessee of any Federal or Indian lease producing coal must submit this form to claim a coal transportation allowance.

(iii) ONRR–4430, Solid Minerals Production and Royalty Report: A Federal or Indian lessee must submit this form to report royalties, certain rents, and other lease-related transactions on solid mineral leases.

(iv) ONRR–4440, Solid Mineral Sales: A lessee must file this form for all coal and other solid minerals produced from Federal and Indian leases and for any remote storage site which the lessee sells Federal or Indian solid minerals.

Title of Collection: Solid Minerals and Geothermal Collections—30 CFR parts 1202, 1206, 1210, 1212, 1217 and 1218.

OMB Control Number: 1012–0010.

Form Numbers: ONRR–4292, ONRR–4293, ONRR–4430, and ONRR–4440.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 100 reporters.

Total Estimated Number of Annual Responses: 8,341. (Based on the average burden hours and responses for the last three years, there is a decrease of 1,093 in estimated annual responses).

Total Estimated Number of Annual Burden Hours: 3,380 hours. (Based on the average burden hours and responses for the last three years, there is a decrease of 504 in estimated annual burden hours).

Estimated Completion Time per Response: The average completion time is 24.31 minutes per response. The average completion time is calculated by first multiplying the estimated annual burden hours (3,380) by 60 minutes to obtain the total annual burden minutes (202,800). Then the total annual burden minutes (202,800) is divided by the estimated annual responses (8,341).

Respondent's Obligation: The records maintenance and the filing of forms ONRR–4430 and ONRR–4440 are mandatory. The filing of forms ONRR–4292 and ONRR–4293, and the submission of solid minerals and geothermal resource information that do not have an ONRR form, are required to obtain or retain a benefit.

Frequency of Collection: Monthly, annually, and on occasion.

Estimated Annual Non-hour Cost Burden: ONRR has identified no ''non-hour'' cost burden associated with the collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501, *et seq.*).

Kimbra G. Davis,

Director, Office of Natural Resources Revenue.

[FR Doc. 2022–07893 Filed 4–12–22; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081X3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held virtually on Wednesday, May 18, 2022, beginning at 9:00 a.m. (MDT) and concluding four (4) hours later in the respective time zones.

ADDRESSES: The meeting on Wednesday, May 18, 2022, will be held virtually and can be accessed at: *https://rec.webex.com/rec/j.php?MTID=ma82931804d9ce24412c2525d10a4fa49*, Meeting Number: 2762 821 5376, Password: May18.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Traynham, Bureau of Reclamation, telephone (801) 524–3752, email at *ltraynham@usbr.gov.* Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) GCDAMP budget and workplan for fiscal year 2023; (2) planned or ongoing experiments in 2022; and (3) current and forecasted basin hydrology and reservoir operations. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed for any individual or organization wishing to make extemporaneous and/or formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) prior to the meeting. Depending on the

number of persons wishing to speak, and the time available, the time for individual comments may be limited. Any written comments received will be provided to the AMWG members.

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.

Lee Traynham,

Chief, Adaptive Management Group, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2022–07860 Filed 4–12–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1557 (Final)]

Certain Mobile Access Equipment and Subassemblies Thereof From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is threatened with material injury by reason of imports of certain mobile access equipment and subassemblies thereof (''mobile access equipment'') from China, provided for in subheadings 8427.10.80, 8427.20.80, 8427.90.00, and 8431.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted this investigation effective February 26, 2021, following receipt of antidumping and countervailing duty petitions filed with the Commission and Commerce by the Coalition of American Manufacturers of Mobile Access Equipment (''CAMMAE'' or ''the Coalition'').[3] The Commission scheduled the final phase of these investigations following notification of a preliminary determination by Commerce that imports of mobile access equipment from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 12, 2021 (86 FR 44402). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on October 12, 2021. All persons who requested the opportunity were permitted to participate.

The investigation schedules became staggered when Commerce did not align its countervailing duty investigation with its antidumping duty investigation. Following notification of a final determination by Commerce that imports of mobile access equipment from China were being subsidized within the meaning of section 705(a) of the Act (19 U.S.C. 1671d(a)),[4] on December 3, 2021, the Commission issued a final affirmative determination in its countervailing duty investigation of mobile access equipment from China.[5] Following notification of a final determination by Commerce that imports of mobile access equipment from China were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)),[6] notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 2, 2022 (87 FR 11730).

The Commission made this determination pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on April 8, 2022. The views of the Commission are contained in USITC Publication 5317 (April 2022), entitled *Certain Mobile Access Equipment and Subassemblies Thereof from China: Investigation No. 731–TA–1557 (Final).*

By order of the Commission.
Issued: April 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–07912 Filed 4–12–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1238]

Certain Plant-Derived Recombinant Human Serum Albumins (''rHSA'') and Products Containing Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on April 7, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States: Unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 9576 (February 22, 2022).

[3] The Coalition is composed of JLG Industries, Inc. (''JLG''), Hagerstown, Maryland and Terex Corp. (''Terex''), Redmond, Washington.

[4] 86 FR 57809 (October 19, 2021).

[5] 86 FR 70147 (December 9, 2021).

[6] 87 FR 9576 (February 22, 2022).

the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain plant-derived recombinant human serum albumins (''rHSA'') and products containing imported, sold for importation, and/or sold after importation by respondents Wuhan Healthgen Biotechnology Corp. of Wuhan, China; Aspira Scientific, Inc. of Milpitas, California (''Aspira''); eEnzyme LLC of Gaithersburg, Maryland (''eEnzyme''); and ScienCell Research Laboratories, Inc., of Carlsbad, California (''ScienCell''); and cease and desist orders directed to Aspira, eEnzyme, and ScienCell. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on April 7, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on May 9, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1238'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–07904 Filed 4–12–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act Grants Evaluation, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the SUPPORT Act Grant Program Evaluation. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 13, 2022.

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

Email: ChiefEvaluationOffice@dol.gov; Mail or Courier: Kuang-chi Chang, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Kuang-chi Chang by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202)693–5992.

SUPPLEMENTARY INFORMATION:

I. Background

The Chief Evaluation Office (CEO) in partnership with the Employment and Training Administration (ETA) is sponsoring an implementation evaluation of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act Grants. The implementation evaluation will inform program administrators and practitioners on innovative practices and implementation challenges in providing services that address both employment and treatment needs for people with substance use disorders (SUDs). This **Federal Register** Notice provides the opportunity to comment on proposed data collection instruments that will be used in the implementation evaluation. The proposed information collection activity consists of:

1. *Data collection planning interviews.* Interviews with grantees and sub-grantees will be used to obtain background information for planning site visits to grantees and sub-grantees, identify partners to participate in the site visits, and identify key areas of interest for implementation learning activities.

2. *Web-based surveys.* The surveys will collect information from grantees about key relationships for program implementation that will be used for a social network analysis. The surveys will collect consistent information from sub-grantees about local implementation of grant-funded services across all sub-grantees. It will also collect information from community and employer partners about their involvement in grant-funded services, employer engagement, and relationships with the sub-grantee and other partners.

3. *Implementation study site visits.* Site visits will document the program context, program organization and staffing, program components, and other relevant aspects of grant activities. During the visits, site teams will interview key grantee administrators and staff, sub-grantee program managers and staff, and key community and employer partners using a modular interview guide that will be tailored for each respondent.

4. *In-depth participant interviews.* During implementation study site visits, site teams will interview program participants to learn about their experiences and attitudes about the SUPPORT Act grant-funded programs. Participants will also complete a brief participant information form to document demographic information about those responding to interviews.

5. *Final reflection interviews.* Approximately one year after site visits, grantee and sub-grantee program managers will be interviewed about changes to implementation, sustainability of grant-funded services, and to reflect on implementation learning activities.

Much of this data collection will occur during site visits to each grantee and selected sub-grantees. Surveys will be web-based and the data collection planning interviews and final reflection interviews will be conducted via video-conference.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection for the SUPPORT Act Grants Evaluation. DOL is particularly interested in comments that do the following:

○ Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

○ evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;

○ enhance the quality, utility, and clarity of the information to be collected; and

○ minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. Current Actions

At this time, the Department of Labor is requesting clearance for the data collection planning interviews, web-based surveys, implementation study site visits, in-depth participant interviews, and final reflection interviews.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: SUPPORT Act grantee and sub-grantee staff, sub-grantee partners involved in providing training, employment, and treatment and recovery services, and SUPPORT Act grant program participants.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Interview Guide for Data Collection Planning—Grantee Director	[1] 4	1	2	1	2
Interview Guide for Data Collection Planning—Sub-grantee Director	[1] 8	1	4	1.5	6.5
Survey—Grantee Director	[2] 4	1	2	0.5	1
Survey—Sub-grantee Director	[2] 18	1	9	1	9
Survey—Sub-Grantee Community Partner	[2] 72	1	36	0.5	18
Survey—Sub-Grantee Employer Partner	[2] 18	1	9	0.5	4.5
Interview Guide—Grantee Director	[3] 4	1	2	1.5	3
Interview Guide—Grantee Staff	[3] 16	1	8	1	8
Interview Guide—Sub-grantee Director	[4] 8	1	4	1.5	6
Interview Guide—Sub-grantee Staff	[4] 40	1	20	1	20

ESTIMATED ANNUAL BURDEN HOURS—Continued

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Interview Guide—Sub-grantee Community Partner	[4] 24	1	12	1	12
Interview Guide—Sub-Grantee Employer Partner	[4] 8	1	4	1	4
In-depth Participant Interview Consent Form	[5] 40	1	20	.12	2.4
In-depth Participant Interview Guide	[5] 40	1	20	1	20
Participant Interview Information Form	[5] 40	1	20	.12	2.4
Final Reflection Interview Guide—Grantee Director	[6] 4	1	2	1.5	3
Final Reflection Interview Guide—Sub-grantee Director	[6] 8	1	4	1.5	6
Total	356		178		127.8

[1] Assumes planning interviews with 4 grantees and the 8 sub-grantees selected for site visits.
[2] Assumes survey responses for 4 grantees, 18 sub-grantees, 4 community partners per sub-grantee, and 1 employer partner per sub-grantee.
[3] Assumes site visits to 4 grantees, which include 4 grantee director interviews and 4 staff interviews per grantee.
[4] Assumes site visits to 8 sub-grantees, which include 8 sub-grantee director interviews, 5 staff interviews per sub-grantee, 3 community partners and 1 employer partner per sub-grantee.
[5] Assumes 5 in-depth participant interviews per 8 sub-grantees.
[6] Assumes final reflection interviews with 4 grantees and 8 sub-grantees.

Christina Yancey,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2022–07873 Filed 4–12–22; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities: Announcement of the Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; announcement of the Office of Management and Budget's (OMB) approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces that OMB extended approval for the information collection requirements found in OSHA's standards and its requirements on non-regulatory collections outlined in this notice. OSHA sought approval of these requirements under the Paperwork Reduction Act of 1995 (PRA), and as required by that Act, is announcing the approval numbers and expiration dates for these requirements and regulations.

DATES: April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: In a series of **Federal Register** notices, the agency provided 60-day comment periods for the public to respond to OSHA's burden hour and cost estimates. The various information collection (paperwork) requirements in the safety and health standards pertain to general industry, shipyards, maritime, construction, and agriculture (*i.e.,* 29 CFR parts 1910, 1915, 1926, and 1928) and its requirements on the listed regulations.

In accordance with the PRA (44 U.S.C. 3501–3520), OMB approved these information collection requirements. The table below provides the following information for each of these requirements approved by OMB: the title of the **Federal Register** notice; the **Federal Register** citation (date, volume, and leading page); OSHA docket number; OMB's Control Number; and the new expiration date.

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number, and the agency informs respondents that they need not respond to the collection of information.

Title of the information collection request	Date of **Federal Register** publication, **Federal Register** citation, and OSHA docket No.	OMB control No.	Expiration date
Anhydrous Ammonia Storage and Handling (29 CFR 1910.111).	June 3, 2020, 85 FR 34251, Docket No. OSHA–2010–0050.	1218–0219	09/30/2024
Asbestos in Construction Standard (29 CFR 1926.1101).	June 3, 2021, 86 FR 32980, Docket No. OSHA–2012–0002.	1218–0134	12/31/2024
Beryllium Standard for General Industry (29 CFR 1910.1024), Construction (29 CFR 1926.1124), and Maritime (29 CFR 1915.1024).	February 3, 2020, 85 FR 5996, Docket No. OSHA–2019–0010.	1218–0267	06/30/2024
Beryllium in General Industry (29 CFR 1910.1024)	July 26, 2021, 86 FR 40083, Docket No. OSHA–2019–0010.	1218–0267	03/31/2025
Bloodborne Pathogens (29 CFR 1910.1030)	April 27, 2021, 86 FR 22276, Docket No. OSHA–2010–0047.	1218–0180	03/31/2025
Concrete and Masonry Construction (29 CFR part 1926, subpart Q).	May 20, 2020, 85 FR 30740, Docket No. OSHA–2010–0040.	1218–0095	06/30/2024
Confined Spaces in Construction (29 CFR part 1926, subpart AA).	February 26, 2021, 86 FR 11796, Docket No. OSHA–2017–0014.	1218–0258	09/30/2024
Control of Hazardous Energy (Lockout/Tagout) (29 CFR 1910.147).	December 23, 2020, 85 FR 84004, Docket No. OSHA–2011–0033.	1218–0150	08/31/2024
Cotton Dust (29 CFR 1910.1043)	April 27, 2021, 86 FR 22277, Docket No. OSHA–2011–0194.	1218–0061	09/30/2024

Title of the information collection request	Date of **Federal Register** publication, **Federal Register** citation, and OSHA docket No.	OMB control No.	Expiration date
Covid–19 Emergency Temporary Standard (29 CFR part 1910, subpart U).	June 21, 2021, 86 FR 32376, Docket No. OSHA–2020–0004.	1218–0277	03/31/2025
Cranes and Derricks in Construction (29 CFR part 1926, subpart CC).	February 26, 2020, 85 FR 11115, Docket No. OSHA–2013–0021.	1218–0261	07/31/2024
Electrical Protective Equipment Standard (29 CFR 1926.97 and 29 CFR 1910.137) and the Electric Power Generation, Transmission, and Distribution Standard (29 CFR part 1926 and 29 CFR 1910.269).	June 26, 2020, 85 FR 38391, Docket No. OSHA–2017–0005.	1218–0253	06/30/2024
Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S).	May 13, 2021, 86 FR 26237, Docket No. OSHA–2011–0187.	1218–0130	10/31/2024
Excavations (Design of Cave-In Protection Systems (29 CFR part 1926, subpart P).	October 21, 2020, 85 FR 67013, Docket No. OSHA–2011–0057.	1218–0137	05/31/2024
Fire Brigades Standard (29 CFR 1910.156)	August 03, 2020, 85 FR 46731, Docket No. OSHA–2011–0009.	1218–0075	02/29/2024
Forging Machines (29 CFR 1910.218)	December 21, 2020, 85 FR 83107, Docket No. OSHA–2011–0064.	1218–0228	08/31/2024
Fire Protection in Shipyard Employment (29 CFR part 1915, subpart P).	November 12, 2020, 85 FR 71949, Docket No. OSHA–2011–0010.	1218–0248	06/30/2024
General Provisions and Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (29 CFR part 1915).	December 23, 2020, 85 FR 84006, Docket No. OSHA–2011–0034).	1218–0011	09/30/2024
Gear Certification; OSHA 70 Form (29 CFR part 1919).	May 20, 2020, 85 FR 30738, Docket No. OSHA–2010–0042.	1218–0003	03/31/2024
Grain Handling Facilities (29 CFR 1910.272)	November 23, 2020, 85 FR 74765, Docket No. OSHA–2011–0028.	1218–0206	05/31/2024
Hazard Communication Standard (29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59 and 1928.21).	July 21, 2020, 85 FR 44108, Docket No. OSHA–2009–0014.	1218–0072	02/29/2024
Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(3)).	July 13, 2020, 85 FR 42024, Docket No. OSHA–2010–0025.	1218–0218	03/31/2024
Ionizing Radiation (29 CFR 1910.1096)	June 29, 2020, 85 FR 38931, Docket No. OSHA 2010–0030.	1218–0103	08/31/2024
Material Hoists, Personnel Hoists, and Elevators; Posting Requirements (29 CFR 1926.552).	November 12, 2020, 85 FR 71947, Docket No. OSHA–2010–0052.	1218–0231	05/31/2024
Mechanical Power Presses (29 CFR 1910.217(3))	October 28, 2020, 85 FR 68371, Docket No. OSHA–2010–0026.	1218–0229	08/31/2024
Notice of Alleged Safety and Health Hazard (OSHA–7 Form).	May 11, 2020, 85 FR 27765, Docket No. OSHA–2010–0056.	1218–0064	07/31/2024
Occupational Safety and Health Onsite Consultation Agreements (29 CFR part 1908).	October 20, 2021, 86 FR 58104, Docket No. OSHA–2011–0125.	12‘8–0110	02/28/2025
Overhead and Gantry Cranes (29 CFR 1910.179)	August 18, 2020, 85 FR 50838, Docket No. OSHA–2010–0023.	1218–0224	02/29/2024
Personal Protective Equipment for General Industry (29 CFR part 1910, subpart I).	September 9, 2019, 84 FR 47325, Docket No. OSHA–2009–0028.	1218–0205	07/31/2024
Portable Fire Extinguishers Standard (Annual Maintenance Certification Record) (29 1910.157(e)(3)).	July 23, 2020, 85 FR 44548, Docket No. OSHA–2010–0039.	1218–0238	07/31/2024
Powered Industrial Trucks (29 CFR 1910.178)	October 16, 2020, 85 FR 65876, Docket No. OSHA–2011–0062.	1218–0242	05/31/2024
Powered Platforms for Building Maintenance (29 CFR 1910.66).	June18, 2020, 85 FR 32883, Docket No. OSHA–2010–0048.	1218–0121	03/31/2024
Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).	July 26, 2021, 86 FR 40082, Docket No. OSHA 2012–0017.	1218–0070	03/31/2025
Requirements for the OSHA Training Institute Education Centers Program and the OSHA Outreach Training Program.	May 28, 2020, 85 FR 32052, Docket No. OSHA–2009–0022.	1218–0262	03/31/2024
Respiratory Protection (29 CFR 1910.134)	April 9, 2021, 86 FR 18557, Docket No. OSHA–2011–0027.	1218–0099	02/29/2024
Safe + Sound Campaign	December 9, 2020, 85 FR 79222, Docket No. OSHA–2017–0013.	1218–0269	07/31/2024
Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910,177).	April 2, 2021, 86 FR 17410, Docket No. OSHA–2011–0189.	1218–0219	09/30/2024
Shipyard Employment Standards (29 CFR part 1915)	April 27, 2021, 86 FR 22279, Docket No. OSHA–2011–0190.	1218–0220	09/30/2024
Steel Erection (29 CFR part 1926, subpart R)	October 19, 2020, 85 FR 66360, Docket No. OSHA–2011–0055.	1218–0241	08/31/2024
Susan Harwood Training Grant Program Grantee Quarterly Progress Report.	April 28, 2020, 85 FR 23534, Docket No. OSHA–2010–0021.	1218–0100	03/31/2024
Underground Construction (29 CFR 1926.800)	August 30, 2020, 85 FR 45926, Docket No. OSHA–2011–0029.	1218–0067	08/31/2024

Title of the information collection request	Date of **Federal Register** publication, **Federal Register** citation, and OSHA docket No.	OMB control No.	Expiration date
Voluntary Protection Program Information	December 23, 2020, 85 FR 84007, Docket No. OSHA–2011–0056.	1218–0239	07/31/2024

Authority and Signature

James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 6, 2022.

James S. Frederick,

Deputy Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2022–07872 Filed 4–12–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by June 13, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, 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).

SUPPLEMENTARY INFORMATION:

Title of Collection: ''National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide.''

OMB Approval Number: 3145–0058.

Expiration Date of Approval: June 30, 2024.

Type of Request: Intent to seek approval to extend with revision an information collection for three years. The primary purpose of this revision is to update the NSF Proposal and Award Policies and Procedures Guide (PAPPG) to incorporate a number of policy-related changes and clarifications of language. The draft NSF PAPPG is now available for your review and consideration on the NSF website at *http://www.nsf.gov/bfa/dias/policy/.* To facilitate review, revised text has been highlighted in yellow throughout the document to identify significant changes. A brief comment explanation of the change also is provided.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense . . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects, and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 50,000 proposals are expected during the course of one year for a total of 6,000,000 public burden hours annually.

Comments: 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; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 8, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–07941 Filed 4–12–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Education and Human Resources (#1119).

Date and Time: May 18, 2022; 12:00 p.m.–5:00 p.m. and May 19, 2022; 12:00 p.m.–5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 | Virtual.

To attend the virtual meeting, all visitors must register at least 48 hours prior to the meeting at: *https://nsf.zoomgov.com/webinar/register/WN_VSSvAVnxTOK7ZWqjTGMcLw.*

The final meeting agenda will be posted to EHR AC website: *https://www.nsf.gov/ehr/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Keaven M. Stevenson, National Science Foundation, 2415 Eisenhower Avenue, Room C11001, Alexandria, VA 22314; (703) 292–8600/*kstevens@nsf.gov.*

Summary of Minutes: Minutes and meeting materials will be available on the EHR Advisory Committee website at *http://www.nsf.gov/ehr/advisory.jsp* or can be obtained from Dr. Bonnie A. Green, National Science Foundation, 2415 Eisenhower Avenue, Room C11000, Alexandria, VA 22314; (703) 292–8600; *ehr_ac@nsf.gov.*

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

Wednesday, May 18, 2022, 12:00 p.m.–5:00 p.m. (Eastern)

- Welcoming Remarks from the AC Chair and the EHR Acting Assistant Director
- *Theme 1:* Promoting Organizational Level Transformation in STEM Education and Workforce Development
  - *Session 1–1:* Through the Lens of Equity and Access: Improving Implementation of Evidence-based Practices for Organizational Level Transformation
  - *Session 1–2:* Understanding and Addressing Structural Barriers to Organizational Level Transformation
  - *Session 1–3:* Cultivating Partnerships to Promote Sustainable Organizational Level Transformation

Thursday, May 19, 2022, 12:00 noon–5:00 p.m. (Eastern)

- *Theme 2:* Advancing Racial Equity in STEM Education and Workforce Development
  - *Session 2–1:* Pathways to Achieving Racial Equity in STEM
  - *Session 2–2:* Translating, Scaling, and Transferring Racial Equity Research into Sustainable Practice
  - *Session 2–3:* Racial Equity, Diversity, and Inclusion as the Catalyst for Improving Graduate Education
- Discussion with NSF Director and Chief Operating Officer and Closing Remarks

Dated: April 7, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–07821 Filed 4–12–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–129]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 14, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2020–129; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 609, Filed Under Seal; *Filing Acceptance Date:* March 29, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 14, 2022.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–07897 Filed 4–12–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. R2022–1; Order No. 6146]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service notice of inflation-based rate adjustments affecting market dominant domestic and international products and services, along with proposed classification changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 6, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Overview of the Postal Service's Filing
III. Initial Administrative Actions
IV. Ordering Paragraphs

I. Introduction

On April 6, 2022, the Postal Service filed a notice of price adjustments affecting market dominant domestic and international products and services, along with proposed classification changes to the Mail Classification Schedule (MCS).[1] The planned price adjustments described in the Notice are the second to be filed and reviewed pursuant to the new regulations of 39 CFR part 3030, which were finalized in Order No. 5763 and include new forms of rate authority.[2] The intended effective date for the planned price adjustments is July 10, 2022. Notice at 1. The Notice, which was filed pursuant to 39 CFR part 3030, triggers a notice-and-comment proceeding. 39 CFR 3030.125.

II. Over of the Postal Service's Filing

The Postal Service's filing consists of the Notice, which the Postal Service represents addresses data and information required under 39 CFR 3030.122 and 39 CFR 3030.123; three attachments (Attachments A–C) to the Notice; and five public library references and one non-public library reference.

Attachment A presents the planned price and related product description changes to the MCS. Notice, Attachment A. Attachments B and C address workshare discounts and the price cap calculation, respectively. *Id.* Attachments B and C.

The five public library references provide supporting documentation for the five classes of mail.[3] The Postal Service also filed a library reference pertaining to the two international mail products within First-Class Mail (Outbound Single-Piece First-Class Mail International and Inbound Letter Post) under seal and applied for non-public treatment of those materials.[4]

The Postal Service's planned percentage changes by class are, on average, as follows:

Market dominant class	Planned price adjustment (%)
First-Class Mail	6.506
USPS Marketing Mail	6.500
Periodicals	8.540
Package Services	8.511
Special Services	6.442

Notice at 4.

Price adjustments for products within classes vary from the average. *See, e.g., id.* at 6, 11 (Table 6 showing range for First-Class Mail products and Table 8 showing range for USPS Marketing Mail products). Most of the planned adjustments entail increases to market dominant rates and fees; however, in a few instances, the Postal Service proposes either no adjustment or a decrease. *See id.* at 11, 12, 25.

The Postal Service identifies the effect of its proposed classification changes on the MCS in Attachment A. *Id.* at 28; *id.* Attachment A. The Postal Service also notes that the promotions offered by the Postal Service in 2022 are not proposed to change as a result of this proceeding. Notice at 26.

III. Initial Administrative Actions

Pursuant to 39 CFR 3030.124(a), the Commission establishes Docket No. R2022–1 to consider the planned price adjustments for market dominant postal products and services, as well as the related classification changes, identified in the Notice. The Commission invites comments from interested persons on whether the Postal Service's planned price adjustments are consistent with applicable statutory and regulatory requirements. 39 CFR 3030.125. The applicable statutory and regulatory requirements the Commission considers in its review are the requirements of 39 CFR part 3030, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629. 39 CFR 3030.126(b). Comments are due no later than May 6, 2022. 39 CFR 3030.124(f).

The public portions of the Postal Service's filing are available for review on the Commission's website (*http://www.prc.gov*). Comments and other material filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to represent the interests of the general public (Public Representative) in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2022–1 to consider the planned price adjustments for market dominant postal products and services, as well as the related classification changes, identified in the Postal Service's April 6, 2022 Notice.

2. Comments on the planned price adjustments and related classification changes are due no later than May 6, 2022.

3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission to represent the interests of the general public (Public Representative) in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

[1] United States Postal Service Notice of Market-Dominant Price Change, April 6, 2022 (Notice).

[2] Docket No. RM2017–3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020 (Order No. 5763).

[3] USPS Notice of Filing Public Library References, April 6, 2022, at 1.

[4] USPS Notice of Filing USPS–LR–R2022–1–NP1, April 6, 2022, at 1, Attachment 1.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–07817 Filed 4–12–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94644]

Order Making Fiscal Year 2022 Annual Adjustments to Transaction Fee Rates

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities (''covered sales'') transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of covered sales transacted by or through any member of the association other than on an exchange.[3]

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate.[4] Specifically, the Commission must adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.[5]

The Commission is required to publish notice of the new fee rates under Section 31 not later than 30 days after the date on which an Act making a regular appropriation for the applicable fiscal year is enacted.[6] On March 15, 2022, the President signed into law the Consolidated Appropriations Act, 2022, which includes total appropriations of $1,999,663,000 to the SEC for fiscal year 2022.

II. Fiscal Year 2022 Annual Adjustment to the Fee Rate

The new fee rate is determined by (1) subtracting the sum of fees estimated to be collected prior to the effective date of the new fee rate[7] and estimated assessments on security futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2022[8] from an amount equal to the regular appropriation to the Commission for fiscal year 2022, and (2) dividing by the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.[9]

As noted above, the Consolidated Appropriations Act, 2022, includes total appropriations of $1,999,663,000 to the Commission for fiscal year 2022.[10] The Commission estimates that it will collect $643,763,663 in fees for the period prior to the effective date of the new fee rate and $0 in assessments on round turn transactions in security futures products during all of fiscal year 2022. Using the methodology described in Appendix A, the Commission estimates that the aggregate dollar amount of covered sales for the remainder of fiscal year 2022 to be $59,331,516,269,025.

The uniform adjusted rate is computed by dividing the residual fees to be collected of $1,355,899,337 by the estimated aggregate dollar amount of covered sales for the remainder of fiscal year 2022 of $59,331,516,269,025; this results in a uniform adjusted rate for fiscal year 2022 of $22.90 per million.[11]

III. Effective Date of the Uniform Adjusted Rate

Under Section 31(j)(4)(A) of the Exchange Act, the fiscal year 2022 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2021, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2022 is enacted.[12] The regular appropriation to the Commission for fiscal year 2022 was enacted on March 15, 2022, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on May 14, 2022.

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,

It is hereby ordered that the fee rates applicable under sections 31(b) and (c) of the Exchange Act shall be $22.90 per $1,000,000 effective on May 14, 2022.

By the Commission.

Dated: April 8, 2022.

Jill M. Peterson,

Assistant Secretary.

APPENDIX A

This appendix provides the methodology for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2022. Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2022.

To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter (''OTC'') markets over the course of the year. The fee rate equals the ratio of the

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] In some circumstances, the SEC also must make a mid-year adjustment to the fee rates applicable under Sections 31(b) and (c).

[5] 15 U.S.C. 78ee(j)(1) (the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.'').

[6] 15 U.S.C. 78ee(g).

[7] The sum of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate. The exchanges and FINRA have provided data on the dollar amount of covered sales through February, 2022. To calculate the dollar amount of covered sales from March, 2022 to the effective date of the new fee rate, the Commission is using the same methodology it used in fiscal year 2020. This methodology is described in Appendix A of this order.

[8] Currently, security futures do not trade on any market, therefore the Commission has not collected any assessments for transactions in security futures. Accordingly, the forecast for the assessments for all of fiscal year 2022 for single stock futures is zero.

[9] To estimate the aggregate dollar amount of covered sales for the remainder of fiscal year 2022 following the effective date of the new fee rate, the Commission is using the same methodology it used previously. This methodology is described in Appendix A of this order.

[10] The President signed into law the ''Consolidated Appropriations Act, 2022'' on March 15, 2022. This legislation included an appropriation of $1,988,550,000 to the SEC for fiscal year 2022 operations. The Act further directed that ''[i]n addition to the foregoing appropriation, for move, replication, and related costs associated with a replacement lease for the Commission's Fort Worth Regional Office facilities, not to exceed $6,746,000, to remain available until expended; and for move, replication, and related costs associated with a replacement lease for the Commission's San Francisco Regional Office facilities, not to exceed $4,367,000, to remain available until expended.'' The sum of these three amounts is $1,999,663,000. Finally, the Act further directed that ''for purposes of calculating the fee rate under section 31(j) . . . all amounts appropriated under this heading shall be deemed to be the regular appropriation to the Commission for fiscal year 2022.''

[11] Appendix A shows the process of calculating the fiscal year 2022 annual adjustment and includes the data used by the Commission in making this adjustment.

[12] 15 U.S.C. 78ee(j)(4)(A).

Commission's regular appropriation for fiscal year 2022 (less the sum of fees to be collected during fiscal year 2022 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during all of fiscal year 2022) to the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.

For 2022, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to February 2022, the last month for which the Commission has data on the dollar volume of covered sales.[13]

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Covered Sales for Fiscal Year 2022

First, calculate the average daily dollar amount of covered sales (''ADS'') for each month in the sample (August 2011–February 2022). The monthly total dollar amount of covered sales (exchange plus certain OTC markets) is presented in column C of Table A.

The model forecasts the monthly moving average of the average daily dollar amount of covered sales. Each month's average daily dollar amount of covered sales is calculated by dividing the total covered sales for that month (column C of Table A) by the number of trading days for that month (column B of Table A). These amounts are shown in column D of Table A. The moving average will span the same number of months required to be forecast for the remainder of the fiscal year. The trailing moving average used in the forecast model is presented in column E of Table A.

To capture the recent trends in the monthly changes in the moving averages, calculate the 1-month and 2-month lags of the trailing moving average shown in column E in Table A. These amounts are shown in columns F and G, respectively, of Table A.

Next, model the monthly trailing moving average of ADS as function of a constant term and the two lagged trailing moving averages using the ordinary least squares technique.

Use the estimated model to forecast the trailing moving average of ADS of the first month after the last available monthly data. Estimate the trailing moving average of the second month using the forecasted value of the first month and the actual value of the month before that. Similarly, estimate the trailing moving average of the third month using the forecasted values of the two previous months. Continue in this fashion until the end of the fiscal year.

The estimate of the trailing moving average ADS for the last applicable month in the fiscal year is a prediction of the moving average for those months that need to be predicted. This estimate is used as the predicted value of ADS for each month in the forecast period; to obtain the forecast total covered sales for each month, multiply the predicted ADS by the number of days in each month.

The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for total dollar volume of covered sales (column C). The sample spans ten years, from August 2011–February 2022.[14] Divide each month's total dollar volume by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month *t,* calculate the 6-month trailing moving average of ADS (shown in column E). For example, the value for January, 2012 is the average of the 6 months ending in January, 2012, or August 2011 through January 2012 inclusive.

3. Calculate the 1-month and 2-month lags of the trailing moving average. For example, the 1-month lag of the 6-month trailing moving average for February, 2012 is equal to the 6-month trailing moving average for January, 2012. The 2-month lag of the 6-month trailing moving average for March, 2012 is equal to the 6-month trailing moving average for January 2012. These are shown in columns F and G.

4. Estimate the model using ordinary least squares:

$$y_t = \alpha + \beta_1 y_{t-1} + \beta_2 y_{t-2} + u_t$$

Where y_t is the 6-month trailing moving average of the average daily sales for month t, and y_{t-1} and y_{t-2} are the 1-month and 2-month lags of y_t, and u_t representing the error term for month t. The model can be estimated using standard commercially available software. The estimated parameter values are a = −367,840,831, b_1 = +1.635496, b_2 = −0.629751. The root-mean squared error (RMSE) of the regression is 10,477,301,062.

5. The predicted value of the 6-month trailing moving average of the last month to be forecast represents the final forecast of covered sales for the entire prediction period. This value is shown in column H. This represents the prediction for August of 2022. To calculate this value from the model above, one needs the 1-month and 2-month lag of the 6-month trailing moving average ADS, *i.e.,* the 6-month trailing moving average for June and July. The 6-month trailing moving average for July is obtained by using the 1-month and 2-month lags for July, that is, the 6-month trailing moving averages for June and May. To arrive at all the necessary inputs, one begins with the first month to be forecast, in this case, March 2022, and iterates predictions forward until the last month is predicted. One then multiplies the final predicted 6-month trailing moving average ADS by the number of days in each month to arrive at the forecast total dollar amount of covered sales. This is shown in column I.

6. For example, for March 2022, using the a, b_1, and b_2 parameter estimates shown above, along with the 1-month and two-month lags in the 6-month trailing moving average ADS (representing the 6-month trailing moving average ADS for January and February 2022, respectively), one can estimate the forecast 6-month trailing moving average ADS for March: −367,840,831 + (1.635496 × 681,912,575,789) + (−0.629751 × 641,935,586,835) = 710,637,605,562.

7. With the estimated 6-month trailing moving average ADS for March 2022 calculated above, one can estimate the 6-month trailing moving average ADS for April, 2022. The estimate obtained from March becomes the 1-month lag for April, and the 1-month lag used in the March forecast becomes the 2-month lag for the April forecast. Thus, the predicted 6-month trailing moving average ADS for April 2022 is calculated as: –367,840,831 + (1.635496 × 710,637,605,562) + (-0.629751 × 681,912,575,789) = 732,441,711,767.

8. Using the forecasts for March and April, one can estimate the value for May. Repeat this procedure for subsequent months, until the estimate for August 2022 is obtained. This value

[13] To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on March 15, 2022. The first business day after this date was March 16, 2022. Data for February were due from the exchanges on March 14, 2022. As a result, the Commission used February 2022 and earlier data to forecast volume for March 2022 and later months.

[14] Because the model uses a two period lag in the 6-month trailing moving average of average daily covered sales, seven additional months of data are added to the table so that the model is estimated with 120 observations.

is 791,086,883,587.[15] This value is then used to calculate the final forecast total monthly covered sales for all 6 months from March 2022 through August 2022.

9. To obtain the estimate of total monthly covered sales for each month, multiply the number of trading days in the month, shown in column B in Table A, by the final forecast 6-month trailing moving average ADS, shown in column H of Table A. This product is shown in column I of Table A, and these figures are used to calculate the new fee rate.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table A to estimate fees collected for the period September 1, 2021 through May 13, 2022. The projected aggregate dollar amount of covered sales for this period is $126,228,169,296,551. Actual and projected fee collections at the current fee rate of $5.10 per million are $643,763,663.

2. Estimate the amount of assessments on security futures products collected from September 1, 2021 through August 31, 2022. The only entity reporting assessable security futures products ceased operations in September, 2020.[16] Consequently, the estimated amount of assessments on security futures products collected from September 2021 through August 2022 is zero.

3. Subtract the amount $643,763,663 from the target off-setting collection amount set by Congress of $1,999,663,000, leaving $1,355,899,337 to be collected on dollar volume for the period May 14, 2022 through August 31, 2022.

4. Use Table A to estimate dollar volume for the period May 14, 2022 through August 31, 2022. The estimate is $59,331,516,269,025. Finally, compute the fee rate required to produce the additional $1,355,899,337 in revenue. This rate is $1,355,899,337 divided by $59,331,516,269,025 or 0.00002285293.

5. Round the result to the seventh decimal point, yielding a rate of 0.0000229 (or $22.90 per million).

This table summarizes the estimates of the aggregate dollar amount of covered sales, by time period. The figures in this table can be used to determine the new fee rate.

Table A. Baseline estimate of the aggregate dollar amount of sales.

Fee rate calculation.	
a. Baseline estimate of the aggregate dollar amount of sales, 09/01/2021 to 04/30/2022 ($Millions)	118,317,300
b. Baseline estimate of the aggregate dollar amount of sales, 05/01/2022 to 05/13/2022 ($Millions)	7,910,869
c. Baseline estimate of the aggregate dollar amount of sales, 05/14/2022 to 05/31/2022 ($Millions)	8,701,956
d. Baseline estimate of the aggregate dollar amount of sales, 06/01/2022 to 08/31/2022 ($Millions)	50,629,561
e. Estimated collections in assessments on security futures products in fiscal year 2022 ($Millions)	0.000
f. Implied fee rate (($1,999,663,000 - $5.10*(a+b) - e) / (c+d)	$22.90

[15] One obtains insignificantly different values using the rounded parameter estimates shown above. The predicted ADS values displayed above represents the full precision estimate.

[16] Currently, security futures do not trade on any market, therefore the Commission has not collected any assessments for transactions in security futures. Accordingly, the forecast for the assessments for all of fiscal year 2022 for single stock futures is zero.

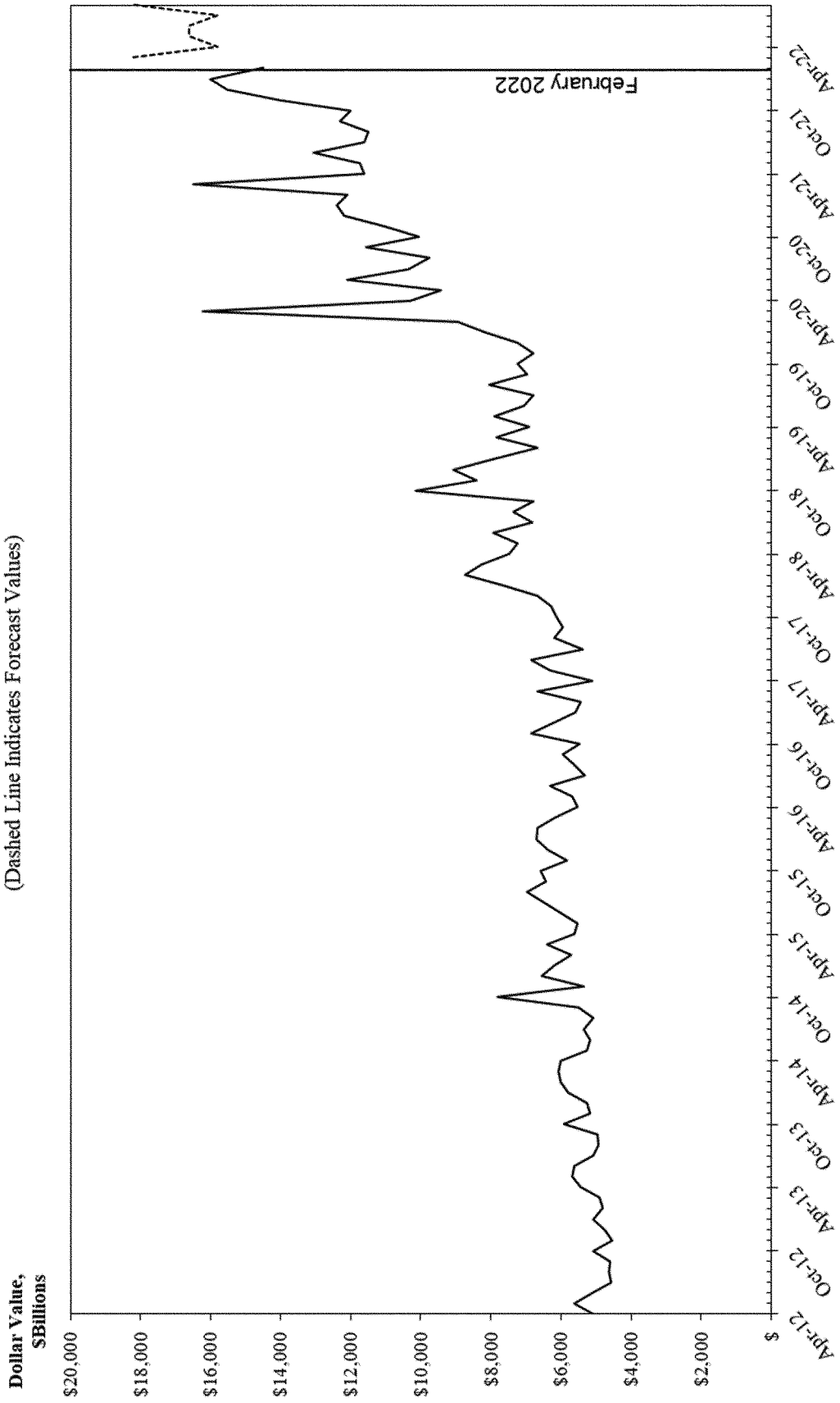
Month (A)	# of trading days in month (B)	Total dollar amount of sales (C)	Average daily dollar amount of sales (ADS) (D)	6-Month trailing moving average ADS (E)	1 Month lag of 6-month trailing moving average ADS (F)	2 Month lag of 6-month trailing moving average ADS (G)	Forecast 6-month trailing moving average ADS (H)	Forecast total dollar amount of sales (I)
Aug–11	23	$8,720,566,877,109	$379,155,081,613					
Sep–11	21	6,343,578,147,811	302,075,149,896					
Oct–11	21	6,163,272,963,688	293,489,188,747					
Nov–11	21	5,493,906,473,584	261,614,593,980					
Dec–11	21	5,017,867,255,600	238,946,059,790					
Jan–12	20	4,726,522,206,487	236,326,110,324	285,267,697,392				
Feb–12	20	5,011,862,514,132	250,593,125,707	263,840,704,741	285,267,697,392			
Mar–12	22	5,638,847,967,025	256,311,271,228	256,213,391,630	263,840,704,741	285,267,697,392		
Apr–12	20	5,084,239,396,560	254,211,969,828	249,667,188,476	256,213,391,630	263,840,704,741		
May–12	22	5,611,638,053,374	255,074,456,972	248,577,165,642	249,667,188,476	256,213,391,630		
Jun–12	21	5,121,896,896,362	243,899,852,208	249,402,797,711	248,577,165,642	249,667,188,476		
Jul–12	21	4,567,519,314,374	217,500,919,732	246,265,265,946	249,402,797,711	248,577,165,642		
Aug–12	23	4,621,597,884,730	200,939,038,467	237,989,584,739	246,265,265,946	249,402,797,711		
Sep–12	19	4,598,499,962,682	242,026,313,825	235,608,758,505	237,989,584,739	246,265,265,946		
Oct–12	21	5,095,175,588,310	242,627,408,967	233,677,998,362	235,608,758,505	237,989,584,739		
Nov–12	21	4,547,882,974,292	216,565,855,919	227,259,898,186	233,677,998,362	235,608,758,505		
Dec–12	20	4,744,922,754,360	237,246,137,718	226,150,945,771	227,259,898,186	233,677,998,362		
Jan–13	21	5,079,603,817,496	241,885,896,071	230,215,108,494	226,150,945,771	227,259,898,186		
Feb–13	19	4,800,663,527,089	252,666,501,426	238,836,352,321	230,215,108,494	226,150,945,771		
Mar–13	20	4,917,701,839,870	245,885,091,993	239,479,482,016	238,836,352,321	230,215,108,494		
Apr–13	22	5,451,358,637,079	247,789,028,958	240,339,752,014	239,479,482,016	238,836,352,321		
May–13	22	5,681,788,831,869	258,263,128,721	247,289,297,481	240,339,752,014	239,479,482,016		
Jun–13	20	5,623,545,462,226	281,177,273,111	254,611,153,380	247,289,297,481	240,339,752,014		
Jul–13	22	5,083,861,509,754	231,084,614,080	252,810,939,715	254,611,153,380	247,289,297,481		
Aug–13	22	4,925,611,193,095	223,891,417,868	248,015,092,455	252,810,939,715	254,611,153,380		
Sep–13	20	4,959,197,626,713	247,959,881,336	248,360,890,679	248,015,092,455	252,810,939,715		
Oct–13	23	5,928,804,028,970	257,774,088,216	250,025,067,222	248,360,890,679	248,015,092,455		
Nov–13	20	5,182,024,612,049	259,101,230,602	250,164,750,869	250,025,067,222	248,360,890,679		
Dec–13	21	5,265,282,994,173	250,727,761,627	245,089,832,288	250,164,750,869	250,025,067,222		
Jan–14	21	5,808,700,114,288	276,604,767,347	252,676,524,499	245,089,832,288	250,164,750,869		
Feb–14	19	6,018,926,931,054	316,785,627,950	268,158,892,846	252,676,524,499	245,089,832,288		
Mar–14	21	6,068,617,342,988	288,981,778,238	274,995,875,663	268,158,892,846	252,676,524,499		
Apr–14	21	6,013,948,953,528	286,378,521,597	279,763,281,227	274,995,875,663	268,158,892,846		
May–14	21	5,265,594,447,318	250,742,592,729	278,370,174,915	279,763,281,227	274,995,875,663		
Jun–14	21	5,159,506,989,669	245,690,809,032	277,530,682,815	278,370,174,915	279,763,281,227		
Jul–14	22	5,364,099,567,460	243,822,707,612	272,067,006,193	277,530,682,815	278,370,174,915		
Aug–14	21	5,075,332,147,677	241,682,483,223	259,549,815,405	272,067,006,193	277,530,682,815		
Sep–14	21	5,507,943,363,243	262,283,017,297	255,100,021,915	259,549,815,405	272,067,006,193		
Oct–14	23	7,796,638,035,879	338,984,262,430	263,867,645,387	255,100,021,915	259,549,815,405		
Nov–14	19	5,340,847,027,697	281,097,211,984	268,926,748,596	263,867,645,387	255,100,021,915		
Dec–14	22	6,559,110,068,128	298,141,366,733	277,668,508,213	268,926,748,596	263,867,645,387		
Jan–15	20	6,185,619,541,044	309,280,977,052	288,578,219,786	277,668,508,213	268,926,748,596		
Feb–15	19	5,723,523,235,641	301,238,065,034	298,504,150,088	288,578,219,786	277,668,508,213		
Mar–15	22	6,395,046,297,249	290,683,922,602	303,237,634,306	298,504,150,088	288,578,219,786		
Apr–15	21	5,625,548,298,004	267,883,252,286	291,387,465,949	303,237,634,306	298,504,150,088		
May–15	20	5,521,351,972,386	276,067,598,619	290,549,197,054	291,387,465,949	303,237,634,306		
Jun–15	22	6,005,521,460,806	272,978,248,218	286,355,343,969	290,549,197,054	291,387,465,949		
Jul–15	22	6,493,670,315,390	295,166,832,518	284,002,986,546	286,355,343,969	290,549,197,054		
Aug–15	21	6,963,901,249,270	331,614,345,203	289,065,699,908	284,002,986,546	286,355,343,969		
Sep–15	21	6,434,496,770,897	306,404,608,138	291,685,814,164	289,065,699,908	284,002,986,546		
Oct–15	22	6,592,594,708,082	299,663,395,822	296,982,504,753	291,685,814,164	289,065,699,908		
Nov–15	20	5,822,824,015,945	291,141,200,797	299,494,771,783	296,982,504,753	291,685,814,164		
Dec–15	22	6,384,337,478,801	290,197,158,127	302,364,590,101	299,494,771,783	296,982,504,753		
Jan–16	19	6,696,059,796,055	352,424,199,792	311,907,484,647	302,364,590,101	299,494,771,783		
Feb–16	20	6,659,878,908,747	332,993,945,437	312,137,418,019	311,907,484,647	302,364,590,101		
Mar–16	22	6,161,943,754,542	280,088,352,479	307,751,375,409	312,137,418,019	311,907,484,647		
Apr–16	21	5,541,076,988,322	263,860,808,968	301,784,277,600	307,751,375,409	312,137,418,019		
May–16	21	5,693,520,415,112	271,120,019,767	298,447,414,095	301,784,277,600	307,751,375,409		
Jun–16	22	6,317,212,852,759	287,146,038,762	297,938,894,201	298,447,414,095	301,784,277,600		
Jul–16	20	5,331,797,261,269	266,589,863,063	283,633,171,413	297,938,894,201	298,447,414,095		

Aug–16	23	5,635,976,607,786	245,042,461,208	268,974,590,708	283,633,171,413	297,938,894,201		
Sep–16	21	5,942,072,286,976	282,955,823,189	269,452,502,493	268,974,590,708	283,633,171,413		
Oct–16	21	5,460,906,573,682	260,043,170,175	268,816,229,361	269,452,502,493	268,974,590,708		
Nov–16	21	6,845,287,809,886	325,966,086,185	277,957,240,431	268,816,229,361	269,452,502,493		
Dec–16	21	6,208,579,880,985	295,646,660,999	279,374,010,803	277,957,240,431	268,816,229,361		
Jan–17	20	5,598,200,907,603	279,910,045,380	281,594,041,190	279,374,010,803	277,957,240,431		
Feb–17	19	5,443,426,609,533	286,496,137,344	288,502,987,212	281,594,041,190	279,374,010,803		
Mar–17	23	6,661,861,914,530	289,646,170,197	289,618,045,047	288,502,987,212	281,594,041,190		
Apr–17	19	5,116,714,033,499	269,300,738,605	291,160,973,118	289,618,045,047	288,502,987,212		
May–17	22	6,305,822,460,672	286,628,293,667	284,604,674,365	291,160,973,118	289,618,045,047		
Jun–17	22	6,854,993,097,601	311,590,595,346	287,261,996,756	284,604,674,365	291,160,973,118		
Jul–17	20	5,394,333,070,522	269,716,653,526	285,563,098,114	287,261,996,756	284,604,674,365		
Aug–17	23	6,206,204,906,864	269,834,995,951	282,786,241,215	285,563,098,114	287,261,996,756		
Sep–17	20	5,939,886,169,525	296,994,308,476	284,010,930,928	282,786,241,215	285,563,098,114		
Oct–17	22	6,134,529,538,894	278,842,251,768	285,601,183,122	284,010,930,928	282,786,241,215		
Nov–17	21	6,289,748,560,897	299,511,836,233	287,748,440,217	285,601,183,122	284,010,930,928		
Dec–17	20	6,672,181,323,001	333,609,066,150	291,418,185,351	287,748,440,217	285,601,183,122		
Jan–18	21	7,672,288,677,308	365,347,079,872	307,356,589,742	291,418,185,351	287,748,440,217		
Feb–18	19	8,725,420,462,639	459,232,655,928	338,922,866,405	307,356,589,742	291,418,185,351		
Mar–18	21	8,264,755,011,030	393,559,762,430	355,017,108,730	338,922,866,405	307,356,589,742		
Apr–18	21	7,490,308,402,446	356,681,352,497	367,990,292,185	355,017,108,730	338,922,866,405		
May–18	22	7,242,077,467,361	329,185,339,426	372,935,876,051	367,990,292,185	355,017,108,730		
Jun–18	21	7,936,783,802,579	377,942,085,837	380,324,712,665	372,935,876,051	367,990,292,185		
Jul–18	21	6,807,593,326,456	324,171,110,784	373,462,051,150	380,324,712,665	372,935,876,051		
Aug–18	23	7,363,115,477,823	320,135,455,558	350,279,184,422	373,462,051,150	380,324,712,665		
Sep–18	19	6,781,988,459,996	356,946,761,052	344,177,017,526	350,279,184,422	373,462,051,150		
Oct–18	23	10,133,514,482,168	440,587,586,181	358,161,389,806	344,177,017,526	350,279,184,422		
Nov–18	21	8,414,847,862,204	400,707,041,057	370,081,673,412	358,161,389,806	344,177,017,526		
Dec–18	19	9,075,221,733,736	477,643,249,144	386,698,533,963	370,081,673,412	358,161,389,806		
Jan–19	21	7,960,664,643,749	379,079,268,750	395,849,893,624	386,698,533,963	370,081,673,412		
Feb–19	19	6,676,391,653,247	351,389,034,381	401,058,823,428	395,849,893,624	386,698,533,963		
Mar–19	21	7,828,979,311,928	372,808,538,663	403,702,453,030	401,058,823,428	395,849,893,624		
Apr–19	21	6,907,923,076,080	328,948,717,909	385,095,974,984	403,702,453,030	401,058,823,428		
May–19	22	7,895,053,976,747	358,866,089,852	378,122,483,117	385,095,974,984	403,702,453,030		
Jun–19	20	7,070,583,442,058	353,529,172,103	357,436,803,610	378,122,483,117	385,095,974,984		
Jul–19	22	6,792,811,319,721	308,764,150,896	345,717,617,301	357,436,803,610	378,122,483,117		
Aug–19	22	8,059,527,400,976	366,342,154,590	348,209,804,002	345,717,617,301	357,436,803,610		
Sep–19	20	6,958,132,871,506	347,906,643,575	344,059,488,154	348,209,804,002	345,717,617,301		
Oct–19	23	7,235,982,824,882	314,607,948,908	341,669,359,987	344,059,488,154	348,209,804,002		
Nov–19	20	6,784,888,230,209	339,244,411,510	338,399,080,264	341,669,359,987	344,059,488,154		
Dec–19	21	7,252,856,724,647	345,374,129,745	337,039,906,538	338,399,080,264	341,669,359,987		
Jan–20	21	8,178,172,797,805	389,436,799,895	350,485,348,037	337,039,906,538	338,399,080,264		
Feb–20	19	8,951,554,790,521	471,134,462,659	367,950,732,716	350,485,348,037	337,039,906,538		
Mar–20	22	16,218,726,536,159	737,214,842,553	432,835,432,545	367,950,732,716	350,485,348,037		
Apr–20	21	10,289,596,902,933	489,980,804,902	462,064,241,877	432,835,432,545	367,950,732,716		
May–20	20	9,435,524,799,540	471,776,239,977	484,152,879,955	462,064,241,877	432,835,432,545		
Jun–20	22	12,093,857,552,130	549,720,797,824	518,210,657,968	484,152,879,955	462,064,241,877		
Jul–20	22	10,355,334,352,448	470,697,016,020	531,754,027,322	518,210,657,968	484,152,879,955		
Aug–20	21	9,763,364,099,611	464,922,099,981	530,718,633,543	531,754,027,322	518,210,657,968		
Sep–20	21	11,545,564,207,158	549,788,771,769	499,480,955,079	530,718,633,543	531,754,027,322		
Oct–20	22	10,052,383,314,951	456,926,514,316	493,971,906,648	499,480,955,079	530,718,633,543		
Nov–20	20	11,039,477,432,965	551,973,871,648	507,338,178,593	493,971,906,648	499,480,955,079		
Dec–20	22	12,172,302,216,779	553,286,464,399	507,932,456,356	507,338,178,593	493,971,906,648		
Jan–21	19	12,396,479,814,996	652,446,306,052	538,224,004,694	507,932,456,356	507,338,178,593		
Feb–21	19	12,103,659,666,497	637,034,719,289	566,909,441,246	538,224,004,694	507,932,456,356		
Mar–21	23	16,485,012,205,966	716,739,661,129	594,734,589,472	566,909,441,246	538,224,004,694		
Apr–21	21	11,602,282,119,601	552,489,624,743	610,661,774,543	594,734,589,472	566,909,441,246		
May–21	20	11,729,455,630,914	586,472,781,546	616,411,592,860	610,661,774,543	594,734,589,472		
Jun–21	22	13,038,812,281,463	592,673,285,521	622,976,063,047	616,411,592,860	610,661,774,543		
Jul–21	21	11,623,478,100,180	553,498,957,151	606,484,838,230	622,976,063,047	616,411,592,860		
Aug–21	22	11,493,350,851,643	522,425,038,711	587,383,224,800	606,484,838,230	622,976,063,047		
Sep–21	21	12,312,072,157,576	586,289,150,361	565,641,473,005	587,383,224,800	606,484,838,230		
Oct–21	21	12,011,570,888,110	571,979,566,100	568,889,796,565	565,641,473,005	587,383,224,800		
Nov–21	21	13,996,377,941,116	666,494,187,672	582,226,697,586	568,889,796,565	565,641,473,005		
Dec–21	22	15,494,373,840,971	704,289,720,044	600,829,436,673	582,226,697,586	568,889,796,565		
Jan–22	20	16,002,717,162,409	800,135,858,120	641,935,586,835	600,829,436,673	582,226,697,586		

Month (A)	# of trading days in month (B)	Total dollar amount of sales (C)	Average daily dollar amount of sales (ADS) (D)	6-Month trailing moving average ADS (E)	1 Month lag of 6-month trailing moving average ADS (F)	2 Month lag of 6-month trailing moving average ADS (G)	Forecast 6-month trailing moving average ADS (H)	Forecast total dollar amount of sales (I)
Feb–22	19	14,483,452,476,259	762,286,972,435	681,912,575,789	641,935,586,835	600,829,436,673		
Mar–22	23				681,912,575,789	641,935,586,835	791,086,883,587	18,194,998,322,501
Apr–22	20					681,912,575,789	791,086,883,587	15,821,737,671,740
May–22	21						791,086,883,587	16,612,824,555,327
Jun–22	21						791,086,883,587	16,612,824,555,327
Jul–22	20						791,086,883,587	15,821,737,671,740
Aug–22	23						791,086,883,587	18,194,998,322,501

Figure A.

Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

[FR Doc. 2022–07881 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94638; File No. SR–NYSENAT–2022–05]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

April 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 5, 2022, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on July 20, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.19 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 11.19 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 11.19.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rule 7.10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11] The Exchange later amended Rule 7.10 to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] October 20, 2020,[13] April 20, 2021,[14] October 20, 2021,[15] and April 20, 2022.[16]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further three months to the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) as described in former Rule 11.19 will be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[17] In such an event, the remaining sections of Rule 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NSX–2010–07).

[5] *See* Securities Exchange Act Release No. 68803 (Feb. 1, 2013), 78 FR 9078 (Feb. 7, 2013) (SR–NSX–2013–06).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NSX–2014–08).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENAT–2018–02).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71797 (March 25, 2014), 79 FR 18108 (March 31, 2014) (SR–NSX–2014–07).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85522 (April 5, 2019), 84 FR 14704 (April 11, 2019) (SR–NYSENAT–2019–07).

[12] *See* Securities Exchange Act Release No. 87352 (October 18, 2019), 84 FR 57063 (October 24, 2019) (SR–NYSENAT–2019–24).

[13] *See* Securities Exchange Act Release No. 88593 (April 8, 2020), 85 FR 20728 (April 14, 2020) (SR–NYSENAT–2020–13).

[14] *See* Securities Exchange Act Release No. 90157 (October 13, 2020), 85 FR 66393 (October 19, 2020) (SR–NYSENAT–2020–32).

[15] *See* Securities Exchange Act Release No. 91549 (April 14, 2021), 86 FR 20548 (April 20, 2021) (SR–NYSENAT–2021–08).

[16] *See* Securities Exchange Act Release No. 93359 (October 15, 2021), 86 FR 58322 (October 21, 2021) (SR–NYSENAT–2021–20).

[17] *See supra* notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

Extending the effectiveness of Rule 7.10 for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act,[19] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

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:

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–NYSENAT–2022–05 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–NYSENAT–2022–05. 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

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

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–NYSENAT–2022–05 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07844 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94632; File No. SR–ISE–2022–09]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot To Permit the Listing and Trading of Options Based on ⅕ the Value of the Nasdaq-100 Index and the Nonstandard Expirations Pilot

April 7, 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 March 31, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq-100 Index (''Nasdaq-100'') and the Exchange's nonstandard expirations pilot program, both currently set to expire on May 4, 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 proposes to extend 2 pilots, which are both set to expire on May 4, 2022. The Exchange proposes to extend (1) its pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq-100 Index (''NQX Pilot''), and (2) the Exchange's nonstandard expirations pilot program (''Nonstandard Pilot'').

NQX Pilot

ISE filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (''NQX'') on a twelve month pilot basis.[3] NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on ⅕ of the value of the Nasdaq-100, and are P.M.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6)(i) to extend the current NQX Pilot period to November 4, 2022. The NQX Pilot was previously extended with the last extension through May 4, 2022.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the NQX Pilot. The Exchange believes that the proposed extension of the NQX Pilot will not have an adverse impact on capacity.

NQX Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the NQX Pilot and will continue to make public any data or analysis it submits under the NQX Pilot in the future. The Exchange intends to submit a rule change proposing permanency of the NQX Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the NQX Pilot is made permanent or discontinued.

Nonstandard Pilot

ISE filed a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[5] The

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order).

[4] *See* Securities Exchange Act Release Nos.86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR–ISE–2019–18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR–ISE–2019–27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR–ISE–2020–18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR–ISE–2020–33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR–ISE–2021–05); and 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR–ISE–2021–22).

[5] *See* Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018)

Nonstandard Pilot permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. The Nonstandard Pilot was extended various times with the last extension through May 4, 2022.[6]

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to Options 4A, Section 12 so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through November 4, 2022. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

Nonstandard Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

NQX Pilot

In particular, the Exchange believes that the NQX Pilot has been successful to date. The Exchange has not encountered any problems with the NQX Pilot. By extending the NQX Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the NQX Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

NQX Pilot

NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of the NQX Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

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.

(approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[6] *See* Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR–ISE–2019–01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR–ISE–2019–11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR–ISE–2019–28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR–ISE–2020–17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR–ISE–2020–34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR–ISE–2021–06); and 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR–ISE–2021–23).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–09 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–ISE–2022–09. 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–ISE–2022–09, and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07855 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–245, OMB Control No. 3235–0204]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 19d–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–3 (17 CFR 240.19d–3) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19d–3 prescribes the form and content of applications to the Commission by persons seeking Commission review of final disciplinary actions against them taken by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Final disciplinary sanctions; (2) denial or conditioning of membership, participation or association; and (3) prohibitions or limitations of access to services offered by a SRO or member thereof.

The staff estimates that 32 respondents will file one application pursuant to Rule 19b–3 each year. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 is approximately eighteen hours. We estimate that approximately 16 firms or natural persons would draft the applications themselves, and therefore incur an hour burden of 18 hours each (a total hour burden of 288 hours), and that 16 would hire outside counsel, and therefore incur a cost burden of $8,496 each (a total cost burden of $135,936).

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 13, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 7, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07835 Filed 4–12–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94641; File No. SR–NYSEAMER–2022–18]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extend the Current Pilot Program Related to Rule 7.10E

April 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 5, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on July 20, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10E to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10E to extend the pilot's effectiveness to the close of business on April 20, 2020,[11] October 20, 2020,[12] April 20, 2021,[13] October 20, 2021,[14] and April 20, 2022.[15]

The Exchange now proposes to amend Rule 7.10E to extend the pilot's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[16] In such an event, the remaining sections of Rule 7.10E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10E.

The Exchange does not propose any additional changes to Rule 7.10E. Extending the effectiveness of Rule 7.10E for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEAmer–2010–60).

[5] *See* Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR–NYSEMKT–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEMKT–2014–37).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR–NYSEMKT–2014–28).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85563 (April 9, 2019), 84 FR 15241 (April 15, 2019) (SR–NYSEAMER–2019–11).

[11] *See* Securities Exchange Act Release No. 87354 (October 18, 2019), 84 FR 57139 (October 24, 2019) (SR–NYSEAMER–2019–44).

[12] *See* Securities Exchange Act Release No. 88589 (April 8, 2020), 85 FR 20769 (April 14, 2020) (SR–NYSEAMER–2020–22).

[13] *See* Securities Exchange Act Release No. 90154 (October 13, 2020), 85 FR 66376 (October 19, 2020) (SR–NYSEAMER–2020–73).

[14] *See* Securities Exchange Act Release No. 91552 (April 14, 2021), 86 FR 20583 (April 20, 2021) (SR–NYSEAMER–2021–19).

[15] *See* Securities Exchange Act Release No. 93356 (October 15, 2021), 86 FR 58345 (October 21, 2021) (SR–NYSEAMER–2021–41).

[16] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10E for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[24]

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)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–18 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–NYSEAMER–2022–18. 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

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

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–NYSEAMER–2022–18 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07847 Filed 4–12–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94630; File No. SR–IEX–2022–02]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule To Adopt Market Data Fees

April 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 1, 2022, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] the Exchange is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to assess fees for receipt of its proprietary market data feeds. IEX intends to implement the proposed fees beginning on July 1, 2022, to provide an opportunity for subscribers to update their data subscriptions to suit their particular market data needs.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to assess fees for receipt of its proprietary market data feeds.

Background

IEX previously filed a proposal to charge market data fees on November 1, 2021, with the proposed fee changes effective on filing but not operative until January 3, 2022 (''First Fee Filing'').[5] The First Fee Filing was published for comment in the **Federal Register** on November 17, 2021.[6] The Commission received no comments on the First Fee Filing before December 30, 2021. On that date, the Commission suspended the First Fee Filing and requested public comment and additional information on various aspects of the First Fee Filing.[7] To date, the Commission has received four comment letters in response to its Suspension Order, none of which stated that the First Fee Filing should not be approved by the Commission.[8] Generally, the letters either commended IEX for the level of transparency raised in its rule filing and offered support for approval, or raised issues which are irrelevant to the consideration of IEX fees. As described more fully below, this filing provides additional transparency in support of IEX's proposed approach to charging for proprietary market data, as well as providing additional data and information included in the Commission's requests for comments in the Suspension Order.

The Exchange withdrew the First Fee Filing on April 1, 2022 and now submits this proposal for immediate effectiveness (''Second Fee Filing''), with a scheduled implementation date of July 1, 2022. This Second Fee Filing revises the fees proposed in the First Fee Filing to remove the proposed redistribution fees[9] and provide additional clarity regarding how the fees apply to affiliated market data subscribers. Further, as discussed below, in connection with the First Fee Filing, IEX obtained feedback from some current market data subscribers with respect to their anticipated plans with respect to IEX's fee liable market data products (*i.e.,* products for which IEX would charge a fee) which was not available at the time of filing of the First Fee Filing. This feedback enables IEX to supplement this Second Fee Filing with additional details relevant to its revenue projections. Additionally, this filing responds to various questions and requests for information contained in the Suspension Order.

As explained in the First Fee Filing, IEX's proposed market data fees were derived based on IEX's costs to produce the market data products to which the fees apply and applying a reasonable markup over those costs (*i.e.,* a ''cost-plus model''). Further, as discussed more fully below, the proposed allocation of these fees to the two market data products is informed by the extent to which demand for each product drives IEX's overall market data costs and the different uses of the products by different types of participants.

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 93557 (November 10, 2021), 86 FR 64268 (November 17, 2021) (SR–IEX–2021–14).

[6] *See supra* note 3.

[7] *See* Securities Exchange Act Release No. 93883 (December 30, 2021), 87 FR 523 (January 5, 2022) (SR–IEX–2021–14) (''Suspension Order'').

[8] *See* January 27, 2022 letter from Erika Moore (Nasdaq Vice President and Corporate Secretary), January 26, 2022 letter from Tyler Gellasch (Executive Director, Healthy Markets Association), January 26, 2022 letter from Douglas Cifu (CEO, Virtu Financial, Inc.), and February 28, 2022 letter from Hope M. Jarkowski (General Counsel, New York Stock Exchange Group, Inc.). The comment letters are accessible at: *https://www.sec.gov/comments/sr-iex-2021-14/sriex202114.htm.*

[9] IEX determined not to propose a redistribution fee in this Second Fee Filing (referred to as distribution fees in the fee schedule proposed in the First Fee Filing) because of challenges allocating costs directly to redistribution by a Data Subscriber.

IEX has not previously imposed any fees to access its real-time top of book (''TOPS'' [10]) and depth of book (''DEEP'' [11]) proprietary market data feeds (''IEX Data''),[12] either by direct recipients or through redistribution. In general, IEX believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements. IEX believes this high standard is especially important when an exchange imposes fees for its own depth of book market data because each exchange is the exclusive source of its own depth of book market data. IEX further believes that, as a general matter, market data fees cannot be sufficiently justified based on unproven assumptions about competition for market data. Rather, IEX believes that market data fees can be best justified by an exchange demonstrating that its fees bear a reasonable relationship to its related costs and business needs (*i.e.,* to obtain a reasonable return on its costs) and that it is not taking unfair advantage of its unique position as the source of its own proprietary market data. IEX believes that it does not need to address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on a cost analysis.

In proposing to charge fees for access to IEX Data, IEX has sought to determine such fees in a transparent way in relation to its own aggregate costs of providing the related service, that also carefully and transparently assesses the impact on Data Subscribers [13]—both generally and in relation to other Data Subscribers, *i.e.,* to assure the fee will not create an unfair financial burden on any participant and will not have an undue impact in particular on smaller Data Subscribers and competition among Data Subscribers in general.

IEX believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[14] and Rule 19b–4 thereunder,[15] with respect to the types of information self-regulatory organizations (''SROs'') should provide in seeking approval of any fee changes, and Section 6(b) of the Act,[16] which requires, among other things, that exchange fees be reasonable and equitably allocated,[17] not designed to permit unfair discrimination,[18] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[19] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[20]

As noted above, IEX offers two real-time proprietary market data feeds: TOPS and DEEP. TOPS is an uncompressed data feed that offers aggregated top of book quotations for all displayed orders resting on the Order Book [21] and last sale information for executions on the Exchange.[22] The data available in TOPS is also available through the securities information processor (''SIP'') feeds. DEEP is an uncompressed data feed that provides aggregated depth of book quotations for all displayed orders resting on the Order Book at each price level and last sale information for executions on the Exchange.[23] DEEP includes all resting displayed liquidity on the Exchange, aggregated by price level, meaning it includes the top of book quotes contained in TOPS, and also contains any less aggressively priced displayed quotes. The content of both TOPS and DEEP is derived exclusively from orders that are sent by the Exchange's Members,[24] which the Exchange formats and rebroadcasts to market participants and to data vendors.

IEX currently does not charge fees for access to IEX Data, irrespective of whether the Data Subscriber is a Member or not, the manner in which the data is received or used, the number of users, how quickly the recipient is able to receive the data after it is made available by the System,[25] or whether the data is subject to any delay through the redistribution process. The objective of this approach was to eliminate any fee-based barriers to access IEX Data when IEX launched as a national securities exchange in 2016, and it was successful in achieving this objective in that a large number of both Members and non-Members currently receive either TOPS, DEEP, or both. As discussed more fully below, IEX recently calculated its annual aggregate costs for providing IEX Data to its Data Subscribers at approximately $2.5 million. Because IEX has to date offered IEX Data free of charge, IEX has borne 100% of all costs for the compilation and dissemination of IEX Data to IEX's Data Subscribers.

Proposal

In order to establish fees that are designed to recover the aggregate costs of providing IEX Data to its Data Subscribers and limit the amount of potential return in excess of those costs to no more than a reasonable markup, the Exchange is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to charge all Data Subscribers fees to access IEX Data in real time.

As proposed, the following definitions and concepts will be applicable to market data fees:

- ''Real-Time'' means IEX market data that is accessed, used, or distributed less than fifteen (15) milliseconds after it was made available by the Exchange. IEX provides only Real-Time IEX market data to Data Subscribers.
- ''Data Subscriber'' means any natural person or entity that receives Real-Time IEX market data either directly from the Exchange or from another non-affiliate Data Subscriber. A Data Subscriber must enter into a Data Subscriber Agreement with IEX in order to receive Real-Time IEX market data. A natural person or entity that receives Real-Time IEX market data from an affiliated Data Subscriber is subject to the Data Subscriber Agreement of such affiliated Data Subscriber.
- A Data Subscriber may redistribute Real-Time IEX market data that it receives from the Exchange on a Real-Time basis to a natural person or entity. Receipt of IEX market data on a Real-Time basis by an affiliate of a Data Subscriber is not subject to additional Fees beyond those paid by such affiliated Data Subscriber.
- ''Delayed'' means IEX market data that is accessed, used, or distributed at

[10] *See* IEX Rule 11.330(a)(1).

[11] *See* IEX Rule 11.330(a)(2).

[12] As discussed below, both TOPS and DEEP also include last sale information.

[13] ''Data Subscriber'' refers to any natural person or entity that receives real-time market data either directly from IEX or from another non-affiliated Data Subscriber. IEX notes that the current recipients of IEX Data include many Members of the Exchange, *see* IEX Rule 1.160(s), but also include several non-Members, including vendors who redistribute IEX Data to third-party recipients.

[14] 15 U.S.C. 78s(b)(1).

[15] 17 CFR 240.19b–4.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(8).

[20] In May 2019, the Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Guidance''). While IEX understands that the Guidance does not create new legal obligations on SROs, the Guidance is consistent with IEX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[21] *See* IEX Rule 1.160(p).

[22] *See* IEX Rule 11.330(a)(1).

[23] *See* IEX Rule 11.330(a)(2).

[24] *See* IEX Rule 1.160(s).

[25] *See* IEX Rule 1.160(nn).

least fifteen (15) milliseconds after it was made available by the Exchange. A Data Subscriber may redistribute Real-Time IEX market data that it receives from the Exchange on a Delayed basis to a natural person or entity. In addition, a recipient of Delayed IEX market data may further redistribute such Delayed IEX market data to a natural person or entity.

IEX proposes to charge the following flat fees to each Data Subscriber: $500 per month for Real-Time access to the TOPS feed and $2,500 per month for Real-Time access to the DEEP feed, whether received directly from IEX or from another Data Subscriber, except for an affiliated Data Subscriber [26] as described more fully below. As proposed, IEX will only provide Real-Time IEX Data, and every recipient of such data (whether directly or indirectly) is required to become a Data Subscriber and enter into a Data Subscriber Agreement with IEX.[27] A Data Subscriber may redistribute IEX Data on either a Real-Time basis or subject to a delay. IEX is not proposing to charge a fee for redistribution of IEX Data. However, a recipient of Real-Time IEX Data would be required to become a Data Subscriber, and would be subject to the applicable fees, except for an affiliated recipient of the Data Subscriber. Further, a recipient of IEX Data that is subject to at least a 15-millisecond delay (whether from an IEX Data Subscriber or other recipient) is not required to become a Data Subscriber or pay any fees to IEX.[28] IEX is not proposing to charge any additional fees to a Data Subscriber based on the way it uses the data, *e.g.,* display v. non-display use, and is not proposing to impose any individual per user fees.

The Suspension Order sought clarification on how affiliated entities are treated for purposes of the Data Subscriber definition, noting an apparent inconsistency between that language and IEX's calculation of the amount that exchange companies would be required to pay for IEX Data. To address that question, this Second Fee Filing clarifies that the definition of Data Subscriber includes any affiliates of the Data Subscriber. Thus, for example, a broker-dealer subscriber and an investment adviser under common control could both use the data from a particular feed for a single fee. Real-Time distribution of IEX Data to an affiliate of the Data Subscriber would not subject the affiliated recipient to any additional fees beyond those paid by the IEX Data Subscriber. Further, an affiliate that receives Real-Time IEX Data from an affiliated Data Subscriber is subject to the Data Subscriber Agreement of such Data Subscriber.

IEX Framework

The Suspension Order seeks additional information and comments on various aspects of the First Fee Filing. In many respects, the Commission's questions about the First Fee Filing raise broader questions around the factors the SEC should consider and the type of data and analysis an exchange should provide in considering whether market data or connectivity fees are fair and reasonable under a cost-based methodology.

In this Second Fee Filing, IEX offers a conceptual framework for further considering the Commission's questions that draws on IEX's experience over several years in analyzing its own costs. The elements of that framework are as follows:

First, we allocate costs to market data products as part of a comprehensive and coherent methodology for allocating costs to different types of exchange products. That methodology does not allow ''double-counting'' of the same costs for different classes of exchange products—for example market data, physical connectivity, or ''logical'' port connections. Our general methodology was detailed in our 2019 Study of exchange costs, described below. This methodology reflects our belief that in conducting a cost analysis, it is both realistic and appropriate to segregate the costs of producing market data, for example, from the costs of other general aspects of an exchange's operation, including the receiving and matching of orders for execution.

Second, we have sought to carefully and narrowly allocate specific costs to the market data products to which the fees apply. In this filing, we provide more detail about how that allocation was determined, including by providing information about tangential cost items that were *not* included. In general, we believe that the more an exchange can demonstrate its cost accounting is carefully circumscribed, the stronger it can make the case that its fees are fair and reasonable.

Third, in accounting for costs, we have included certain costs we have incurred in the last year to enhance our technology related to market data. We believe such expenses are appropriately included if they are identified and can be shown to bear a reasonable relationship to projected future expenses of this type.

Fourth, our framework recognizes that the cost elements related to market data are largely common across different types of market data products. Accordingly, we have set fees for each of our two market data products based on factors other than differences between the two in cost to produce. These other factors include differences in the use and need for depth of book compared to top of book data among different types of participants, and the impact of the need for more detailed real-time data in driving many operational costs of the Exchange.

Fifth, we have sought to maximize the availability of data that is not needed on a very time-sensitive basis to investors and other market participants. For that reason, we are not proposing to charge for any data that a user receives with a delay of 15 milliseconds or more. IEX believes that promoting the wide availability of market data to market participants other than latency-sensitive traders is consistent with the goal of fair and efficient markets.

Sixth, IEX has created a flat, simple fee structure that imposes a single monthly fee for each Data Subscriber and its affiliates, without added fees based on the way the data is used or individual per user fees. IEX believes this relatively simple, flat structure is transparent and easy for users to apply, and this difference also helps to show that it meets the objectives of the Act.

Finally, because it is difficult to predict how much revenue IEX will receive from market data fees with precision, IEX is committing to conduct a one-year review after implementation of these fees, and to publish the results of that review. IEX expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable

[26] As specified in the IEX Fee Schedule, as proposed, the terms ''affiliate'' and ''affiliated'' have the meaning specified in Rule 12b–2 of the Exchange Act which provides that such terms as ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified''. The Data Subscriber Agreement provides additional context and defines affiliate as ''any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party.'' A non-affiliated third-party is any individual, corporation, company, partnership, limited partnership, limited liability company, trust, association or other entity that is not an affiliate of the Data Subscriber pursuant to such definition.

[27] *See* IEX Market Data Policies, available at *https://storage.googleapis.com/assets-bucket/exchange/assets/Market_Data_Agreements/IEX_Market_Data_Policies_Jan_2022.pdf.*

[28] The Delayed IEX Data recipient may be subject to any fees charged by the redistributor of the Delayed IEX Data, based upon the contractual arrangement between the Delayed IEX Data recipient and the provider of Delayed IEX Data. Such fees would not be paid to the Exchange.

mark-up of such costs. Similarly, IEX would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, IEX will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover market data costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that IEX determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in a rule filing proposing the fee change. More generally, we believe that, in applying a cost-plus model, it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and IEX commits to do so.

IEX believes that applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside the stark contrast in the amount of the proposed fees in comparison to market data fees commonly charged by other exchanges.

IEX Market Data Costs

The proposed fees are based on a comprehensive and transparent ''cost-plus'' methodology, wherein the proposed fees bear a reasonable relationship to the cost of producing market data products using a rigorous and narrow allocation of costs.[29] Moreover, IEX believes that any potential profit over IEX's costs of offering market data is reasonably based on realistic revenue assumptions, as described below. Further, as described above, IEX will conduct a review of these fees one year after implementation (as well as subsequent periodic reviews), including public disclosure of its revenues based on actual experience, and may propose to adjust such fees if warranted based on that review. In addition, IEX intends to provide updated information about its market data costs and revenue in any future filing to change its fees.[30]

In determining the appropriate fees to charge, IEX considered its costs of providing market data, using what it believes to be a conservative methodology (*i.e.,* that strictly considers only those costs that are most clearly directly and exclusively related to the production and distribution of IEX Data) to estimate such costs,[31] and set fees that are designed to cover its costs with a limited potential return in excess of such costs. However, as discussed more fully below, such fees may also result in IEX recouping less than all of its costs of providing market data because of the uncertainty of forecasting Data Subscriber decision-making with respect to their IEX market data subscriptions.

Prior to the Commission's suspension of its First Fee Filing, IEX advised its current Data Subscribers of the proposed market data fees and received feedback from a significant number of such Data Subscribers as to whether they planned to continue to receive real-time IEX Data following implementation of such fees. Based on that feedback, which is described below, IEX believes it is likely that the proposed fees will not fully cover its costs and that a ''best case'' scenario is a return of approximately six percent in excess of such costs. The following describes IEX's cost allocation methodology, and how such methodology supports that the proposed fees are clearly consistent with the Act.

IEX was the first exchange to conduct a comprehensive review of its costs to produce market data, physical connectivity (the physical connections required to access IEX in its data center), and logical connectivity products (the cost to offer and maintain order entry ports) and published the results of that review in the January 2019 IEX Study.[32] The IEX Study explained how hardware, software, and personnel costs were allocated for market data and connectivity and identified an annual dollar cost for each line item in each category. The IEX Study also explained graphically and textually the relationship of the different parts of the operation of an electronic exchange, to allow readers to understand the interrelationship among the various components. The IEX Study estimated IEX's aggregate annual cost to offer IEX Data to its Data Subscribers to be approximately $1.8 million per year, for the year 2019, as reflected in Table 1.[33]

TABLE 1—ANNUAL IEX MARKET DATA INFRASTRUCTURE

[2019]

	($1,791,403)
Top of Book Servers (TOPS) (5)	($12,833)
Depth of Book Servers (DEEP) (5)	(12,833)
Market Data Feeds Switches (2 × 24 port)	(13,333)
ITF Market Data	(7,333)
Data Center Space, Power, Security	(10,605)
Administrative Access	(33,333)
Monitoring	(596,135)
Personnel	(1,104,998)
Total Annual Costs	(1,791,403)

In 2021, in preparation for the First Fee Filing, IEX updated and refreshed the cost estimates contained in the IEX Study. As further detailed below, this update reflects somewhat lower annual hardware costs related to market data than contained in the 2019 IEX Study, and somewhat higher personnel costs. Considering all factors together, the updated estimates reflect an increase in total annual costs to produce market data from $1,791,403 to $2,483,644.

Table 2, below, details the individual annual line-item costs considered by IEX to be directly related to offering IEX Data to Data Subscribers.[34] The chart shows three cost components: (1) Direct costs, such as servers, infrastructure, and monitoring; (2) enhancement initiative costs (*e.g.,* new functionality for IEX Data and increased capacity for the proprietary market data feeds, as described below);[35] and (3) personnel

[29] IEX first published a comprehensive study of its aggregate costs to produce market data and connectivity in January 2019. *See* ''The Cost of Exchange Services—Disclosing the Cost of Offering Market Data and Connectivity as a National Securities Exchange'' available at *https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf.* (''IEX Study'').

[30] Notwithstanding that IEX does not currently charge for its market data products, it does not believe that a review is warranted sooner than one year after implementation because of the feedback it received from current market data subscribers regarding their plans with respect to IEX's fee liable market data products, as discussed *supra.* This feedback provides a reasonable basis for IEX to project anticipated revenue and support that the proposed fees are consistent with the Act.

[31] For example, IEX only included the costs associated with physical assets that are directly responsible for producing and transmitting IEX Data and excluded from its market data cost calculations any physical connectivity assets that are used to provide both order entry and market data. *See* IEX Study at 16. Thus, IEX notes that this methodology underestimates the total costs of providing market data.

[32] *See supra* note 27.

[33] *See* IEX Study at 15–18 for details on how IEX estimated the costs of its market data infrastructure; *see also supra* note 29.

[34] Table 2 also shows the breakdown of the 2019 estimated market data infrastructure costs.

[35] As described more fully below, these enhancement initiative costs are a routine part of offering proprietary market data. Some of the enhancement costs in Table 2, such as the introduction of the snapshot functionality for TOPS and DEEP, are one-time costs, but each year IEX

costs. The costs allocated to IEX Data do not include the de minimis costs for creation of ''HIST'' [36] files available for download from IEX's website, or separate costs associated with transmitting IEX market data to the SIPs.[37]

The servers and related hardware included were limited to those specifically dedicated to IEX Data, subject to the depreciation schedule described below. Network Infrastructure and Administrative Access costs consist of 100% of the network equipment (switches and cabling) to enable data transmission and maintenance. Data Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs based on space utilized. Monitoring costs include 100% of the hardware and vendor licenses needed to enable the IEX technology team to monitor these servers and the health of the market data products provided by such assets, which are primarily used for market data monitoring.[38] The monitoring consists of real-time monitoring of system performance, integrity, and latency of market data products.

All physical assets were valued at cost for financial accounting purposes and depreciated over three years. All software used for market data purposes was developed internally, and the applicable costs are captured in the personnel category. For purposes of the allocation of these costs to market data, IEX allocates the annual depreciation expense (*i.e.,* one-third of the initial asset value) of in-scope physical assets in each year. For personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data,[39] and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.[40] Enhancement costs are allocated similarly (*i.e.,* hardware is subject to a three year depreciation schedule) and consist primarily of personnel costs (over 80%), with the balance comprised of hardware utilized for development and operation of each enhancement.

TABLE 2—ANNUAL IEX MARKET DATA INFRASTRUCTURE

	2019 ($1,791,403)	2021 ($2,483,644)
Direct Costs:		
Servers	($32,999)	($26,696)
Network Infrastructure & Admin Access	(46,666)	(152,783)
Monitoring	(596,135)	(213,109)
Data Center (Space, Power, Security)	(10,605)	(79,142)
Enhancement Initiatives Costs:		
DEEP Snapshot	N/A	(95,974)
TOPS Snapshot	N/A	(95,974)
Capacity Planning	N/A	(232,856)
Monitoring Tools	N/A	(49,609)
Ongoing Personnel Costs	(1,104,998)	(1,537,500)
Total Annual Costs	(1,791,403)	(2,483,644)

As noted in Table 2, IEX continues to introduce enhancement initiatives to IEX Data. First, effective February 3, 2021, IEX launched ''DEEP Snapshot'', which allows Data Subscribers to download point-in-time snapshots of DEEP in order to enable Data Subscribers to accelerate late start recovery.[41] Second, effective September 27, 2021, IEX launched ''TOPS Snapshot'', which allows Data Subscribers to download point-in-time snapshots of TOPS in order to enable them to accelerate late-start recovery. Third, IEX is in the process of expanding the capacity and monitoring tools that support the efficient transmission of IEX Data to the IEX's proprietary market data feeds.

IEX also notes that it has made recent changes to its system functionality and architecture which improve the content and speed of IEX's proprietary market data feeds, but that have no impact on IEX's estimated costs of providing IEX Data. For example, effective February 16, 2021, IEX removed its outbound 350 microsecond latency ''speedbump'' while retaining its inbound 350 microsecond latency ''speedbump.'' [42] Prior to that date, IEX disseminated its top of book data and last sale data to the SIPs free of any artificial delays, but all other outbound messages, including IEX Data transmitted through IEX's proprietary market data feeds, were subjected to a 350-microsecond latency.[43] Additionally, on April 1, 2021, IEX began to display odd lot sized orders, which are aggregated by price on DEEP, and can aggregate to form the top of book quote on TOPS.[44] And on October 13, 2021, IEX began disseminating a ''Retail Liquidity Indicator'' on both TOPS and DEEP, which tells market participants when

expects to incur new enhancement costs such as the costs associated with increasing the capacity of its market data feeds and costs associated with upgrading its market data infrastructure, as well as any new functionality. Thus, IEX believes that its annual enhancement costs on an ongoing basis will be similar and that the enhancement costs included in the 2021 update are not extraordinary.

[36] *See* IEX Rule 11.330(a)(4). HIST data is available for download at *https://iextrading.com/trading/market-data/#hist-download.*

[37] IEX also notes that the SIPs are operated separately from IEX's provision of proprietary market data, with correspondingly separate costs and revenue streams.

[38] These assets may be used infrequently for incidental purposes to assess the status of Exchange systems.

[39] Notably, IEX did not include any costs associated with operating the Exchange itself in calculating the costs of offering IEX Data.

[40] Applying the methodology of the IEX Study, IEX determined cost allocation for employees who perform work in support of compiling and disseminating IEX Data to arrive at a full time equivalent (''FTE'') of 6.15 FTEs across all the identified personnel (the FTE at the time of the IEX Study was 4.05). IEX then multiplied the FTE times a blended compensation rate for all relevant IEX personnel to determine the personnel costs associated with compiling and disseminating IEX Data.

[41] *See* Trading Alert No. 2021–003, available at *https://iextrading.com/alerts/#/135.*

[42] *See* Trading Alert No. 2021–006, available at *https://iextrading.com/alerts/#/138.*

[43] *See* Securities Exchange Act Release No. 91016, January 29, 2021, 86 FR 8238 (February 4, 2021) (SR–IEX–2020–18).

[44] *See* Trading Alert 2021–010, available at *https://iextrading.com/alerts/#/142*; *see also*, See Securities Exchange Act Release No. 90933, January 15, 2021, 86 FR 6687 (January 22, 2021) (SR–IEX–2021–01).

IEX has at least one round of Retail Liquidity Provider order[45] interest available for a particular security, which is resting at the Midpoint Price[46] and priced at least $0.001 better than the NBB[47] or NBO.[48] The Retail Liquidity Indicator reflects the symbol and side of the resting interest, but does not include the price or size.[49]

As discussed above, IEX's cost methodology allocates costs for hardware, software, and personnel expenses, and identified an annual dollar cost for each line item in each category. IEX's cost methodology does not provide for ''double-counting'', that is, the same cost items are not counted for more than one set of products. This was the approach followed in the IEX Study, the 2021 update, the First Fee Filing, and this Second Fee Filing. This segmentation of costs is also consistent with IEX's earlier filing to charge fees for order entry logical ''ports'' members use to communicate order messages to the Exchange (''Port Fee Filing'').[50] In the Port Fee Filing, we detailed the servers, other hardware, monitoring, administrative, and personnel expenses that were directly connected to the provision of logical order entry ports. Consequently, there is no overlap with the costs IEX allocated to the provision of logical order entry ports and the provision of market data feeds.

In the First Fee Filing, IEX provided detail on how it allocated the costs of providing market data feeds. The Suspension Order raised questions about whether additional detail and explanation should be provided, as detailed below. As described in the IEX Study, IEX considers the following physical technology assets and services as relevant to the production of market data:[51]

- Market Data Servers
- Market Data Feed Switches
- Software Licenses
- IEX Testing Facility (ITF) Infrastructure Hardware
- Data Center Space, Power, and Security
- Administrative Access[52]
- Monitoring Servers, Switches and Licenses[53]

Hardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation.[54]

The Suspension Order asked if IEX should provide more detail about the methodology IEX used to determine how much of an employee's time is devoted to specific market data related activities. In considering the cost of personnel, IEX generally considered the time spent on various market data projects and initiatives through project management tracking tools, in the following areas:

Technology Teams:

- Technical Operations
- Software Engineering
- Quality Assurance
- Infrastructure

Non-Technology Teams:

- Market Operations
- Project Management
- Product Management
- Business Development/Corporate Communications
- Regulatory
- Legal
- Accounting/Finance

Based on this analysis, IEX allocated 6.15 ''full time equivalent'' employees (or ''FTEs'') to direct market data costs. Generally, for the technology teams, we attributed approximately 8% of their aggregate time to market data. For the non-technology teams we attributed approximately 12% of their time to market data. Consistent with IEX's methodology, these allocations do not provide for any ''double counting''. Additionally, the Suspension Order asked if it is appropriate to include incentive compensation in the blended personnel compensation rate if the incentive compensation is not directly attributable to market data. IEX believes that inclusion is appropriate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with IEX's provision of market data. Moreover, IEX notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing market data. The FTE allocation represents just 7.1% of the Exchange's overall personnel costs. In addition, IEX allocated 1.58 FTEs to market data enhancements, which represents 1.8% of the Exchange's overall personal costs, totaling 7.73 FTEs and 8.9% when combined with personnel allocated to direct market data costs. Consistent with IEX's conservative methodology to limit costs allocated to market data, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of IEX's board of directors. Accordingly, IEX believes that the allocated personnel expenses included are appropriately attributable to market data.

Another way to evaluate whether costs are narrowly allocated is to consider other expenses that may bear an indirect relationship to the production of market data, but which were *not included.* Various expense items may be viewed as necessary to exchange functioning and therefore having some relationship to market data, but IEX chose not to allocate any portion of the cost of those items, because we believe limiting allocated costs to those with a more proximate relationship to market data is more justifiable and avoids the difficulties and potential arbitrariness of determining how to allocate a portion of general operational expenses to specific data products. IEX's excluded costs relate to:

- General and Administrative Expenses
  - Travel, Sales, and Marketing
  - Office and Miscellaneous/ Occupancy and Overhead
  - Professional Fees (including Audit Fees)
- Operating Expenses
  - Costs Paid to Exchanges
  - Other Technology and Infrastructure
- Other (Income)/Expense
- Income Tax (Benefit)/Expense

The expenses associated with the above, excluded, items amount to many multiples of the approximately $2.5 million in annual costs that IEX

[45] *See* IEX Rule 11.190(b)(14).

[46] The term ''Midpoint Price'' means the midpoint of the NBBO. *See* IEX Rule 1.160(t). The term ''NBBO'' means the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

[47] *See* IEX Rule 1.160(u).

[48] *Id.*

[49] *See* Trading Alert 2021–036, available at *https://iextrading.com/alerts/#/169*; *see also*, Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR–IEX–2021–06).

[50] *See* Securities Exchange Act Release No. 86626 (August 9, 2019), 84 FR 41793 (August 15, 2019) (SR–IEX–2019–07).

[51] In some cases, these assets and services also entail fees from outside service providers, such as software licenses and data center costs. Additional detail is available in the IEX Study.

[52] Administrative Access consists of the dedicated networking infrastructure to enable the technology team to manage and troubleshoot the production and distribution of market data.

[53] *See* IEX Study at 15. *See also* discussion *supra* describing monitoring functions.

[54] *See* IEX Study at 16.

allocated to market data. Inclusion of just a small portion of these more tangential items would have more than doubled the estimated cost basis for IEX to provide market data feeds.

Exchanges typically incur episodic expenses to upgrade market data or connectivity products, for example, to expand capacity, increase security or reliability, reduce latency, or to achieve other objectives. These expenses would not otherwise be captured in a methodology that looks exclusively at more static annualized expenses, such as servers, switches, and routine testing and monitoring functions. In the First Fee Filing, IEX detailed episodic expenses directly related to offering market data totaling $474,000, amounting to approximately 19% of the total of the approximately $2.5 million estimate for total market data infrastructure costs in 2021. These costs were approximately $282,000 for capacity planning and monitoring and approximately $192,000 for the addition of ''snapshot'' functionality, which facilitates the ability of users to construct an integrated stream of market data when there is a temporary interruption. IEX believes that this level of episodic expenses will likely recur, and that it is therefore appropriate to include such expenses as part of the cost allocation. In any event, variations in episodic expenses will be reflected in IEX's annual review of its market data fees and any proposed adjustments.

Characteristics and Pricing of Different Products

IEX believes the process of allocating costs to individual exchange products necessarily involves some degree of subjectivity, but that an exchange's allocation of costs to identified products and services should be part of a coherent and transparent methodology for allocating costs across various products and services, so that the Commission and commenters can evaluate whether its decisions are reasonable and well-grounded. Exchanges incur many operational costs as preconditions to being able to offer various products and services, but individual cost elements differ in how closely they are related to the offering of specific products, as distinct from general operational costs.

If an exchange is proposing different fees for products of the same class, *e.g.,* different connectivity options or different market data feeds, it may seek to allocate fees separately by product even if there are not material differences in terms of the cost of each product. It is IEX's experience, as explained in the IEX Study, that most of the expenses to offer a class of products and services, *e.g.,* physical connectivity, logical connectivity, and market data feeds, are common to the category and not unique to individual products. Accordingly, IEX believes that an exchange may base price differences among products in a given category based on factors other than cost where there are other reasons to differentiate.

Consistent with the practice at all other exchanges, IEX is proposing to charge different fees for its top of book (''TOB'') and depth of book (''DOB'') market data feeds, *i.e.,* TOPS and DEEP respectively. The costs allocated to IEX's production of market data are in large part costs that are common to the offering of both market data feeds. Thus, IEX based its proposed pricing for Real-Time access to TOPS and DEEP, as well as minimally delayed access to TOPS and DEEP, on other factors as well. While there are some cost differences to compile and disseminate TOPS versus DEEP,[55] IEX is basing its proposed pricing differential on other factors.

First, IEX believes that the fee differential is justified based on the need for real-time DEEP data by electronic trading firms, the relative volume of and benefit to those firms in terms of their trading on the Exchange, and the need to compile and distribute real-time DOB data as a factor driving Exchange costs. Based on data from the fourth quarter of 2021, the top ten members of IEX by volume on the Exchange collectively represented over 60% of total Exchange volume. More tellingly, the same firms represented approximately 70% of message traffic on the Exchange. Over 90% of displayed orders are submitted by market participants that subscribe to DEEP. IEX believes that it is clear and well-established that trading that occurs on a millisecond and sub-millisecond time scale drives the majority of trading on U.S. exchanges. Further, IEX systems costs are heavily impacted by the need to support this activity, including the need to provide real-time depth data that is required by electronic trading firms. IEX believes that in order to provide market data that supports these types of trading strategies, IEX's market data needs to be published quickly enough (*i.e.,* microsecond timescales) following order and trade events to be useful. Further, such publication timescales must be consistent and deterministic regardless of market volume and volatility.

In contrast, IEX believes that the relative value of real-time TOPS is diminished by the availability of alternative sources of IEX's TOB market data. Specifically, IEX believes that several factors operate to restrain demand for real-time TOPS, including that real-time IEX TOB market data can be readily obtained from the SIPs[56] and that fifteen-millisecond delayed TOPS data (which would not be subject to any IEX fees pursuant to this proposal) is adequate for many firms that are not electronic trading firms. In discussions with current market data subscribers regarding the fees proposed in the First Fee Filing, a number of such firms advised IEX that they would drop Real-Time access to TOPS to avoid the $500 monthly fee, and instead rely on the SIPs or delayed access for IEX's TOB market data. Thus, IEX believes that there are constraints that operate to limit its ability to base Real-Time TOPS pricing based on some type of pro rata cost allocation. In view of these factors, IEX believes that it is fair and reasonable to price Real-Time access to DEEP at five times the price of TOPS.

Further, IEX is charging only for data that is made available in Real-Time, because it is the very demand for Real-Time, low latency data that drives much of the costs associated with creating and distributing IEX Data. For example, IEX must invest more in the resiliency, capacity, and redundancy of its proprietary market data feeds to provide Real-Time, low latency access to IEX Data. Moreover, IEX's decision to not charge fees for Delayed IEX Data is also consistent with IEX's goal to make its data broadly available to a wide range of market participants including long-term investors.

Specifically, IEX believes that minimally delayed market data may be useful to a much broader range of market participants. For example, such data may be useful in a variety of display use cases, for example, in streams of market data prices that are available in a graphical user interface, for episodic trading strategies that are less latency sensitive, for retail and individual investors that have no need for Real-Time data, for use by ''middle office'' or risk personnel at broker-

[55] DEEP is an aggregated feed that must perform additional logic on each order-related message received from the System to calculate the total number of displayed shares available at each price level. TOPS requires less processing than DEEP because it only aggregates displayed liquidity at a single price level, the top of book.

[56] Broadly speaking, the self-regulatory organizations (''SROs'') administer the SIPs and set pricing. Each SIP charges its own fees, which are determined by the operating committees of each SIP subject to the SEC rule filing process. While IEX is a member of the operating committee of each SIP, it has only one vote and does not exercise control over SIP pricing. IEX also notes that the SIPs charge pursuant to a different pricing structure than the pricing structure proposed by IEX in this filing.

dealers, and for academics, among others.

The Suspension Order asks if IEX should provide more detail about the types of market participants that choose to subscribe to TOPS, DEEP, or both, in that such information may be relevant to an assessment of its pricing of different market data products. IEX has 70 Data Subscribers who it believes are individuals,[57] and 170 other subscribers who are comprised of approximately one-third IEX Members, one-third professional market participants that are not IEX Members (*e.g.,* hedge funds and broker-dealers), and one-third data vendors. Of the 170 non-individuals, 15 currently subscribe to only DEEP (4 IEX Members, 4 professional market participants, 7 vendors), 64 to only TOPS (14 IEX Members, 23 professional market participants, 27 vendors) and 91 to both (41 Members, 26 professional market participants, 24 vendors). All of the individuals currently subscribe only to TOPS, and no individual subscriber has indicated that it will continue to receive TOPS in Real-Time once IEX begins charging the fee set forth in this proposal.

As proposed, IEX is structuring its fees so that fee levels are aligned with access to Real-Time DOB market data of the type that is needed by the relatively small number of firms that drive much of the Exchange's market data costs. Because of this dynamic, the proposed fee structure means that the absolute amount of fees charged for DOB market data will be far less than those charged by other exchanges for the equivalent products[58] and result in fees that are fair and reasonable from the standpoint of all users, including electronic trading firms. This structure serves the goal of promoting the wide availability of minimally delayed data to a broad range of market participants, including investors. IEX believes that these distinctions are not only allowed by the Act but fully align with the principles of fair and efficient markets more than many other fee structures now in place. IEX's proposed cost structure serves to provide wide availability of market data on a cost-effective (and in some cases, free) basis, which is itself a fundamental purpose of the Securities Acts Amendments of 1975.[59]

IEX proposes to provide Delayed IEX Data free of charge in order to minimize barriers to access IEX Data and thereby potentially increase trading on IEX. IEX's business model seeks to primarily generate revenue from trading rather than from data and connectivity fees, so an essential objective of the proposed fee structure is to enable broad access to IEX Data while it is still timely and useful to most IEX Data consumers without incurring any IEX fees.

IEX notes that other equities exchanges also offer delayed market data free of charge, but they define ''delayed data'' as data that is disseminated at least fifteen minutes after the same data is disseminated in Real Time.[60] These delayed data feeds are often used by brokerage firms[61] or online distributors of market data[62] to provide stock quote information free of charge, even if it is 15 minutes old.

In determining the appropriate delay interval, IEX sought to strike a balance between offering IEX Data at a reasonable and transparent price to market participants who require real-time data, while also offering market participants a commercially viable option for the receipt of free IEX Data within a time period in which the data will remain useful to market participants who do not require near instantaneous real-time market data for trading purposes. Knowing there is no ''exact science'' to the determination of how long to delay data before allowing it to be retransmitted free of charge, IEX sought informal feedback from Members and other Data Subscribers. Based upon that informal feedback, IEX believes that most, if not all, non-electronic trading desks would be able to continue to use IEX Data if it was received subject to at least a fifteen-millisecond delay. Also based on that informal feedback, IEX believes that there will be some current Data Subscribers—*e.g.,* algorithmic traders, data vendors, and any electronic trading platform that we believe typically use real-time data to calculate the NBBO—that will continue to pay for Real-Time IEX Data.

In addition, IEX is not proposing to charge fees for HIST and did not include the de minimis incremental costs to create daily HIST files in its market data costs. IEX believes that HIST is not used for trading decisions since it is available only on a T+1 basis, other than possibly for back testing and research. Accordingly, all the factors that apply to IEX's decision not to charge for Delayed Data are even more applicable to HIST (which is significantly more delayed than 15 milliseconds), including the objective to provide broad access to IEX Data.

The proposed fees will not apply differently based upon the size or type of the market participant, but rather based upon the speed with which the Data Subscriber wishes to obtain IEX Data, based upon factors deemed relevant by each Data Subscriber, such as the cost to access and process IEX Data as well as business models.

Finally, IEX notes that this simple, transparent market data fee proposal will simplify IEX audits for compliance with applicable market data policies. Any Data Subscriber receiving Real-Time IEX Data will enter into a Data Subscriber Agreement with IEX, even if the Data Subscriber obtains its data through a third-party vendor (as noted above, if the Real-Time data is received by an affiliate of the Data Subscriber, there will be no additional fees charged). Further, any Delayed IEX Data recipient does not need to enter into a Data Subscriber Agreement with IEX. Therefore, to assess compliance with applicable market data policies, IEX would simply audit whether any redistribution of IEX Data to any external, non-affiliate third party Data Subscribers is occurring, and if so, whether such redistribution is in Real Time or subject to at least a fifteen-millisecond delay.

IEX's proposed fee structure is designed to recoup its costs and limit any revenue in excess of costs to an amount that represents no more than what IEX believes is a reasonable rate of return over such costs.[63] IEX conducted an updated analysis of potential

[57] IEX's belief in this regard is based on an assessment that the Data Subscriber has a natural person name (*i.e.,* fist name—last name), rather than an entity name.

[58] For examples of other exchange's market data fees, *see https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf; https://nasdaqtrader.com/Trader.aspx?id=DPUSdata;* and *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[59] Public Law 94–29, 89 Stat. 97 (1975).

[60] *See, e.g.,* NYSE Comprehensive Market Data Policies, Section 7 (Delayed Data Policy), available at *https://www.nyse.com/publicdocs/data/Policy-ComprehensivPackage_PDP.pdf;* Cboe Global Markets North American Data Policies, Section 5 (Delayed Data), available at *https://cdn.batstrading.com/resources/membership/Market_Data_Policies.pdf;* Nasdaq Delayed Data Policy, available at *http://www.nasdaqtrader.com/content/administrationsupport/policy/delayeddatapolicy.pdf.*

[61] *See, e.g.,* Interactive Brokers Delayed and Streaming Market Data, available at *https://www.interactivebrokers.com/en/software/webtrader/webtrader/marketdata/delayedandstreamingmarketdata.htm* (''Delayed market data is available for instruments for which you do not currently hold market data subscriptions.'').

[62] *See, e.g.,* MarketWatch Market Data Terms of Use, available at *https://www.marketwatch.com/site/investing-terms-of-use* (''comprehensive quotes and volume reflect trading in all markets and are delayed at least 15 minutes.'').

[63] IEX notes that it is not only being transparent about its costs associated with producing IEX Data, but is also being transparent about its anticipated markup over costs.

revenue, based on responses from current market data subscribers in connection with the First Fee Filing. Specifically, IEX obtained feedback from existing Data Subscribers in connection with the First Fee Filing on whether they intend to continue to subscribe to Real-Time TOPS and/or DEEP following the implementation of the fees proposed therein. As discussed above, this feedback, which was not available at the time of filing of the First Fee Filing, enables IEX to supplement this Second Fee Filing with additional details relevant to revenue projection. Based upon that feedback, and the expertise of IEX employees, IEX expects that most, if not all, of the individual Data Subscribers will terminate their subscriptions for Real-Time IEX Data and, if they choose to continue to receive IEX Data, can opt to receive Delayed IEX Data from a third-party vendor or through HIST. Of the non-individual Data Subscribers IEX projects the following: Over one-third overall will drop Real-Time IEX Data and use Delayed IEX Data, SIP feeds or obtain Real-Time IEX Data through an affiliate; approximately two-thirds of Members that are Data Subscribers will retain Real-Time access; over 50% of vendors will drop Real-Time IEX Data; and those Data Subscribers that currently only subscribe to TOPS are more likely to drop compared to those that subscribe to DEEP.

Based on the feedback received, IEX believes that in the worst case, assuming no subscribers that have not yet indicated whether they will continue to subscribe elect to subscribe, we estimate annual revenues of $1.75 million, amounting to a loss of 29.5% under our estimated costs. In the best case, if all such subscribers choose to continue to subscribe, we estimate annual revenue of $2.63 million, representing a potential markup of just 6.1%. IEX believes that this revenue and cost recovery range is clearly reasonable and does not come even close to constituting taking an unfair advantage of its unique position as the sole source of its own proprietary market data.

IEX does not have visibility into other equities exchanges' costs to provide market data, and therefore cannot use those exchanges' market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, IEX believes the other exchanges' market data fees are a useful example of alternative approaches to providing and charging for market data. To that end, IEX notes that its proposed fees are materially lower than what competing equities exchanges charge IEX for similar market data products.[64] Specifically, during 2022, IEX pays an aggregate monthly cost of $101,024 to the 11 other equities exchanges[65] that charge for their market data[66] to obtain TOB, *DOB* and last sale market data. By comparison, to obtain the equivalent market data from IEX (as proposed) the aggregate monthly cost for those 11 equity exchanges would be $3,000 per exchange family, compared to the approximately $34,000 (on average) that IEX pays each exchange family to obtain such equivalent market data. As proposed, the 11 competing exchanges will, in the aggregate, be subject to monthly fees of $9,000 or approximately one-eleventh of the aggregate fees that IEX pays to those 11 exchanges. Additionally, as noted in the IEX Study, the actual costs IEX incurs to obtain market data from other exchanges often involve aggregating several different kinds of fees, making it difficult to ascertain the actual costs to a market participant of obtaining equivalent market data from other exchanges.[67] For example, several other exchanges charge separate fees depending on whether exchange data is redistributed internally[68] or externally,[69] is used for non-display or other forms of use,[70] or is calculated on a per user basis, with different fees for non-professional[71] and professional[72] users of the data feeds.[73] By contrast, IEX's fee proposal is much simpler—charging a flat fee for any entity to access one or both of the IEX Data feeds ($500 month for TOPS/$2,500 for DEEP), with no fee to redistribute TOPS, DEEP, or both TOPS and DEEP in Real-Time or on a Delayed basis (regardless of the number of recipients that the entity redistributes to). This simple fee structure means the cost burden for subscribing to receive IEX Data would be relatively flat regardless of the size of the Data Subscriber's firm. At the same time, IEX believes that the fees are set at a level that will not represent a significant cost to any Data Subscriber. For example, because IEX will not be charging any variable per user fees, Data Subscribers will not need to expend resources on monthly reporting of market data usage that can be required when subscribing to other exchange data feeds with pricing that differs based on the various factors noted above. Furthermore, because IEX will not be charging different usage fees (such as for ''display'' vs. ''non-display'' usage) or charging based on ''controlled'' and ''uncontrolled'' products, the Data Subscribers will not need to expend resources on managing different methods of receiving and distributing IEX Data or different types of application usage. Furthermore, IEX understands that the above administrative concerns can result in contentious audits or even litigation between data subscribers and providers of proprietary market data, all of which can result in substantial costs to the subscribers of other exchanges' market data feeds.

IEX acknowledges that there are trade-offs between the benefits of a relatively simple fee structure and a fee structure that is more graduated based on the extent and variety of uses of IEX Data. IEX believes it has struck an appropriate balance of these interests by creating a fee model that is simple, easy to understand and administer, and set at a level that is affordable for all firms that need real-time data, while imposing no charge on recipients of Delayed IEX Data that do not need Real-Time IEX Data.

As discussed above, IEX estimates that this fee proposal would result in it receiving *at most* an amount equal to approximately 6.1% over its estimated costs of providing market data, with a significant possibility that IEX will not even recoup all of its costs.[74] We believe

[64] *See supra* note 56.

[65] Currently, IEX pays for market data from four NYSE exchanges (New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.), three Nasdaq exchanges (Nasdaq Stock Market LLC, Nasdaq BX, Inc., and Nasdaq PHLX LLC) and four Cboe exchanges (Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.).

[66] Long-Term Stock Exchange Inc.; MEMX LLC; MIAX PEARL, LLC; and NYSE Chicago, Inc. currently do not charge for their market data. However, MEMX LLC has announced a plan to begin charging for market data on April 1, 2022, which would increase IEX's fees.

[67] *See* IEX Study at 18.

[68] Internal distribution is receiving market data from an exchange and distributing it within the same entity that received the data.

[69] External distribution is receiving market data from an exchange and distributing it to a third party outside of the entity that received the data.

[70] Non-display usage means any method of accessing a market data product that involves access or use by a machine or automated device without access or use of a display by a natural person.

[71] Non-professional users are natural persons who use data for personal, not commercial, purposes, and are not a registered financial services professional.

[72] Anyone who is not a non-professional user is considered a professional user.

[73] *See supra* note 56.

[74] IEX notes that the proposed fee filing introduces a new subscription model, and IEX will notify all current Data Subscribers that before July 1, 2022, they will need to enter into a new Data Subscriber Agreement with IEX if they wish to continue receiving IEX Data in real time (either directly from IEX or via a third party). Furthermore, anyone who elects to receive Delayed IEX Data from a third party would no longer need to enter into a

Continued

the fact that some current users have indicated to IEX they no longer plan to subscribe to Real-Time IEX Data owes in part to the fact that they will have the option to receive Delayed IEX Data (at a minimal delay of only 15 milliseconds) in lieu of Real-Time IEX Data, without paying a fee to IEX. IEX believes that Data Subscribers that are not engaged in high speed, low latency trading may not choose to pay for Real-Time IEX Data. As proposed, Data Subscribers may provide Delayed IEX Data to market participants who do not require (or quite possibly even have the necessary technology tools to use) near instantaneous access to IEX Data.[75] These Delayed IEX Data recipients that elect to receive Delayed IEX Data from a Data Subscriber of IEX Data will not incur any IEX fees.[76] Conversely, a market participant that values near instantaneous market data (*e.g.,* algorithmic traders or other equities venues that use proprietary market data feeds to calculate the NBBO for each security) will have the option of paying $3,000 per month to receive Real-Time TOPS and DEEP. IEX also notes that any consumers can continue to obtain all the data in TOPS and DEEP free of charge on a T+1 basis from IEX's HIST data product. And a market participant can also choose to obtain IEX TOB market data from the SIPs instead of from IEX.

Annual Review of Fees

In its Suspension Order, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. IEX intends to conduct a review (as described above) one year after implementation of the proposed fees and will publish the results of that review, including the aggregate revenue received during the year from subscription to each market data product. IEX expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs. Similarly, IEX would propose to decrease fees in the event that revenue materially exceeds our current projections and is above a reasonable mark-up of market data costs. Further, and as discussed above, IEX will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis). In the event that IEX determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in a rule filing proposing the fee change. IEX believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

Specific Changes to the Fee Schedule

In order to effectuate the proposed fee changes, IEX is proposing to make the following changes to the definitions in the ''Market Data Fees'' part of its Fee Schedule:

- Remove the definitions for ''Internal Distribution Fee'' and ''External Distribution Fee'' because IEX is not proposing to charge any distribution fees.
- Define the term ''Real-Time'' as ''IEX market data that is accessed, used, or distributed less than fifteen (15) milliseconds after it was made available by the Exchange. IEX provides only Real-Time IEX market data to Data Subscribers. A Data Subscriber may redistribute Real-Time IEX market data that it receives from the Exchange on a Real-Time basis to a natural person or entity. Receipt of IEX market data on a Real-Time basis by an affiliate of a Data Subscriber is not subject to additional Fees beyond those paid by such Data Subscriber.[1]''
- Define the term ''Delayed'' as ''IEX market data that is accessed, used, or distributed at least fifteen (15) milliseconds after it was made available by the Exchange. A Data Subscriber may redistribute Real-Time IEX market data that it receives from the Exchange on a Delayed basis to a natural person or entity. In addition, a recipient of Delayed IEX market data may further redistribute such Delayed IEX market data to a natural person or entity.''
- Define the term ''Data Subscriber'' as ''any natural person or entity that receives Real-Time IEX market data either directly from the Exchange or from another non-affiliate Data Subscriber. A Data Subscriber must enter into a Data Subscriber Agreement with IEX in order to receive Real-Time IEX market data. A natural person or entity that receives Real-Time IEX market data from an affiliated Data Subscriber is subject to the Data Subscriber Agreement of such affiliated Data Subscriber.''
- Remove the definition of ''Usage Fee'' because IEX is not proposing to charge any usage fees for its market data.
- Add the following words before the ''Service/Fee'' table: ''The following fees[2] are assessed by IEX on market data recipients:''

IEX is also proposing to the make the following changes to the ''Service/Fee'' table in the Market Data Fees section of the Fee Schedule:

- Delete the references to the Internal Distribution, External Distribution, and Usage Fees.
- Add the following entries to the table:

Service	Fee
DEEP Feed (Real-Time).	$2,500 per month.[3]
TOPS Feed (Real-Time).	$500 per month.[3]
DEEP Feed (Delayed).	FREE.
TOPS Feed (Delayed).	FREE.

- Define footnote 1 to say: ''The terms ''affiliate'' and ''affiliated'' have the meaning specified in Rule 12b–2 of the Exchange Act.''
- Define footnote 2 to say: ''The fees set forth below include only fees charged by IEX. Receipt of Real-Time IEX market data from a Data Subscriber or Delayed IEX market data from a Data Subscriber or other person may also be subject to fees agreed to between the Data Subscriber and recipient of such IEX market data.''
- Define footnote 3 to say: ''These fees will be operative beginning July 1, 2022.''

Implementation Schedule

As noted above, the proposed rule change is effective on filing and the fees proposed herein will become operative on July 1, 2022. Delayed implementation will provide an opportunity for current Data Subscribers to modify the manner in which they receive IEX Data, if they choose to do so, allowing them to obtain IEX Data without incurring any charge from IEX if they receive it subject to at least a fifteen-millisecond delay,[77] before the first month in which IEX will charge for access to IEX Data.[78]

Data Subscriber Agreement with IEX, as required under IEX's current market data policies.

[75] As noted above, IEX will only provide real-time IEX Data and will not itself delay the dissemination of IEX Data to Data Subscribers.

[76] The Delayed IEX Data recipient may be subject to any fees charged by the redistributor of the Delayed IEX Data, based upon the contractual arrangement between the Delayed IEX Data recipient and the provider of Delayed IEX Data. Such fees would not be paid to the Exchange.

[77] The Delayed IEX Data recipient may be subject to any fees charged by the redistributor of the Delayed IEX Data, based upon the contractual arrangement between the Delayed IEX Data recipient and the provider of Delayed IEX Data. Such fees would not be paid to the Exchange.

[78] IEX will bill all Data Subscribers directly, even if the Data Subscriber obtains IEX Data from a

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [79] of the Act in general and furthers the objectives of Section 6(b)(4) [80] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also believes that the proposed fee change promotes just and equitable principles of trade and will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) [81] of the Act.

Reasonableness

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. IEX understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, IEX understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. IEX further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

As discussed in the Purpose section, IEX believes that as a general matter, because each exchange is the exclusive source of its own market data (particularly its depth of book data), market data fees cannot be sufficiently justified based on unproven assumptions about competition for market data, notwithstanding that a newer and/or smaller securities exchange, such as IEX, may be less able to set prices for its market data free of competition pressures than may be the case for more established securities exchanges. Nevertheless, IEX has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the extent to which demand for each product drives IEX's overall market data costs and the different uses of the products by different types of participants. In this context, IEX believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for IEX's aggregate costs of offering IEX Data to its Data Subscribers.

As discussed in the Purpose section, IEX believes that charging $500 per month for TOPS and $2,500 per month for DEEP is reasonable because it is based both on the relative costs to IEX to generate TOPS and DEEP, the extent to which each product drives IEX's overall costs and the relative value of each, as well as IEX's objective to make TOPS broadly available to a range of market participants including long-term investors. Therefore, IEX believes that it is reasonable to charge a higher fee for DEEP than for TOPS.

IEX also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of IEX's annual costs of providing market data. As discussed in the Purpose section, subsequent to the First Fee Filing, IEX conducted an updated analysis of potential revenue, based on responses from current market data subscribers. Based on that analysis, assuming no subscribers that have not yet indicated whether they will continue to subscribe elect not to subscribe, we estimate annual revenues of $1.75 million in market data fees, amounting to a loss of 29.5% under our estimated costs of providing that data. Even if all such subscribers choose to continue to subscribe, we estimate this fee filing will result in annual revenue of $2.63 million, representing a potential markup of just 6.1% over the cost of providing market data. Accordingly, IEX believes that this fee methodology is reasonable because it both allows IEX to recoup some or all of its expenses for providing market data (with any additional revenue representing no more than what IEX believes to be a reasonable rate of return), while continuing to allow market participants to access IEX Data free of charge if they can wait at least fifteen milliseconds to receive it.

Additionally, IEX believes the proposed fees are reasonable because IEX is only charging Data Subscribers who use IEX Data in Real-Time, and as described in the Purpose section, these Data Subscribers are the very ones creating the demand for Real-Time IEX Data, thereby causing IEX to incur the costs described above to produce Real-Time market data feeds.

IEX also believes that the proposed fees are reasonable because they are significantly less than the fees charged by competing equities exchanges, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data. As described above, the three large exchange families charge significantly more than IEX's proposed fees for real-time access to their proprietary market data. Significantly, they charge these fees without offering an option to receive delayed market data within a time frame that is usable for most trading purposes. The delayed data offered by other exchanges is also offered free of charge, but only fifteen minutes after it is first disseminated, which IEX believes generally makes the data stale for any subscribers using the data to make trading decisions.

Finally, as described in the Purpose section above, IEX believes that this fee proposal is reasonable because it will not impose onerous audit requirements on Data Subscribers, because there will be no need to substantiate the number of users of IEX Data or the manner in which it is being used, but rather only whether it is being redistributed in real time or subject to at least a fifteen-millisecond delay.

Equitable Allocation and Non-Discrimination

IEX believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided, will apply equally to all Data Subscribers that require real-time data, and will minimize barriers to entry by providing IEX Data for free after at least fifteen milliseconds, thereby allowing all but the most latency sensitive market participants access to IEX Data within a time frame that is usable for most trading purposes.

The Exchange believes that providing Delayed IEX Data without charging any fees and charging as much as $3,000 per month to Data Subscribers who require Real-Time IEX Data is fair and equitable, and not unfairly discriminatory because it will enable all market participants to access Delayed IEX Data without paying

vendor, rather than indirectly billing the Data Subscriber through the vendor and requiring the Data Subscriber to reimburse the vendor from which it receives IEX Data.

[79] 15 U.S.C. 78f(b).

[80] 15 U.S.C. 78f(b)(4).

[81] 15 U.S.C. 78f(b)(5).

any fees to IEX [82] and will charge only the users who require the fastest market data feeds available (which, as discussed in the Purpose section, drives much of the costs associated with creating and distributing IEX Data because it increases the resiliency, capacity and redundancy costs associated with IEX's proprietary market data feeds) for access to IEX Data. Additionally, as noted in the Purpose section, anyone can obtain TOPS and DEEP data free of charge on a T+1 basis through IEX's HIST data product. IEX believes this approach to market data fees will equitably distribute the costs of IEX Data among market participants whose business models require the highest speed market data available but without unfairly discriminating among market participants based on any distinctions between or among Members, customers, broker-dealers, or any other entity, because they are solely determined by the individual market participant based on its business needs.

Furthermore, IEX believes that charging $500 per month for TOPS and $2,500 per month for DEEP is fair and equitable because, as discussed in the Purpose section, it is based on the relative value of DEEP and TOPS, the fact that demand for real-time DEEP drives a significant portion of IEX's market data costs, and the existence of alternatives to real-time TOB market data. These factors operate to limit IEX's ability to base real-time TOPS pricing strictly on a proportional cost allocation; additionally, charging significantly less for TOPS supports IEX's objective to make TOPS broadly available to a range of market participants including long-term investors. Therefore, IEX believes that it is fair and equitable to charge a higher fee for DEEP than for TOPS.

The Exchange also believes that it is fair and reasonable to not charge additional fees to affiliates of a Data Subscriber because that approach is agnostic on corporate structure without financially penalizing a firm organized into multiple affiliates. Moreover, IEX's costs do not materially differ based on how Data Subscribers have legally structured their operations.

The Exchange further believes that the proposed fees are reasonable, fair, and equitable, and non-discriminatory because they will apply to all Data Subscribers in the same manner based on the type of market data needed. All similarly situated market participants are subject to the same fees. The fees also do not depend on any distinctions between or among Members, customers, broker-dealers, or any other entity, because they are solely determined by the individual market participant based on its business needs.

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee, with the option of receiving free data from a third party on at least a fifteen-millisecond delay [83] or for absolutely no cost on a T+1 basis using HIST, will enable a broad range of market participants to continue to receive IEX Data, thereby facilitating the economically efficient execution of securities transactions on IEX, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on IEX when it is the best market.

For the foregoing reasons, the Exchange believes that the proposed fee is reasonable, equitably allocated, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing equities exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

The Exchange also does not believe that the proposed fees will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all market participants are entitled to receive IEX Data free of charge after at least a fifteen-millisecond delay. Providing a commercially viable free data feed to Data Subscribers is designed to avoid creating barriers to entry for smaller Members, thereby promoting intramarket competition. In addition, even Members subject to relatively higher fees, because they are paying up to $3,000 per month for IEX Data, will still be subject to a relatively low aggregate fee (and significantly less than the fees charged by competing exchanges, as described above) and IEX thus believes that the proposed fee will not operate as a barrier to entry for such Members or impose a significant business cost burden on such Members relative to their levels of business activity. Finally, as noted in the Purpose and Statutory Basis sections, IEX believes that not requiring any onerous audits for Data Subscribers will be of equal benefit to all Data Subscribers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [84] of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [85] 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:

[82] Although IEX will not charge any distribution fees to a redistributor of Delayed IEX Data, the redistributor may still charge its own fees to its customers that receive Delayed IEX Data from such redistributor.

[83] Distributors of Delayed IEX Data may charge a fee for the data, but that fee is not payable to IEX.

[84] 15 U.S.C. 78s(b)(3)(A)(ii).

[85] 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–IEX–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–IEX–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 and on its internet website at *www.iextrading.com.* 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–IEX–2022–02, and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07853 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[86] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94639; File No. SR–NYSECHX–2022–05]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

April 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 5, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on July 20, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

[5] *See* Securities Exchange Act Release No. 68802 (Feb. 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–CHX–2014–06).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Article 20, Rule 10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] After the Commission approved the Exchange's proposal to transition to trading on Pillar,[11] the Exchange amended the corresponding Pillar rule—Rule 7.10—to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] October 20, 2020,[13] April 20, 2021,[14] October 20, 2021,[15] and April 20, 2022.[16]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Article 20, Rule 10 prior to being amended by SR–CHX–2010–13 shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[17] In such an event, the remaining sections of Article 20, Rule 10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of these rules for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act,[19] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85533 (April 5, 2019), 84 FR 14701 (April 11, 2019) (SR–NYSECHX–2019–04).

[11] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR–NYSECHX–2019–08). Article 20, Rule 10 is no longer applicable to any securities that trade on the Exchange.

[12] *See* Securities Exchange Act Release No. 87351 (October 18, 2019), 84 FR 57068 (October 24, 2019) (SR–NYSECHX–2019–13).

[13] *See* Securities Exchange Act Release No. 88591 (April 8, 2020), 85 FR 20771 (April 14, 2020) (SR–NYSECHX–2020–09).

[14] *See* Securities Exchange Act Release No. 90156 (October 13, 2020), 85 FR 66384 (October 19, 2020) (SR–NYSECHX–2020–29).

[15] *See* Securities Exchange Act Release No. 91550 (April 14, 2021), 86 FR 20560 (April 20, 2021) (SR–NYSECHX–2021–06).

[16] *See* Securities Exchange Act Release No. 93360 (October 15, 2021), 86 FR 58313 (October 21, 2021) (SR–NYSECHX–2021–15).

[17] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

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:

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–NYSECHX–2022–05 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–NYSECHX–2022–05. 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–NYSECHX–2022–05 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94637; File No. SR–NYSEArca–2021–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt New Exchange Rule 6.91P–O

April 7, 2022.

I. Introduction

On July 23, 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 Exchange Rule 6.91P–O to govern the trading of Electronic Complex Orders (''ECOs'') on the Exchange's Pillar technology platform and to make conforming amendments to Exchange Rule 6.47A–O. The proposed rule change was published for comment in the **Federal Register** on August 10, 2021.[3] The Commission received no comments regarding the proposal. On September 20, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time for Commission action on the proposal until November 8, 2021.[5] On October 29, 2021, the Commission issued an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 22, 2022, the Exchange filed Amendment No. 1 to the proposal, which supersedes the original filing in its entirety.[8] April 4, 2022, the Exchange filed Amendment No. 2 to the proposal.[9] The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92563 (August 4, 2021), 86 FR 43704 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93057 (September 20, 2021), 86 FR 53128 (September 24, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93466 (October 29, 2021), 86 FR 60955 (November 4, 2021).

[8] Amendment No. 1 makes certain non-substantive clarifying changes from the original filing (including alphabetizing the proposed definitions and relocating the description of Complex Only Orders), and makes the following substantive changes from the original filing: (1) Adds new definitions of Away Market Deviation and Leg Ratios; (2) revises the definition of DBBO to add cross-reference to ABBO, as that term is defined in the Single-Leg Pillar Filing, and to include details regarding market conditions that impact the trading of complex strategies; (3) revises the definition of an ECO to remove reference to Stock/Option Orders and Stock/Complex Orders; (4) adds Complex QCCs as an ECO order type and specifies that an ECO designated as FOK must also be designated as a Complex Only Order; (5) specifies that an ECO will not trade with leg market orders designated as FOK; (6) specifies circumstances when an ECO may trade with another ECO at the leg market price and when an ECO must price improve at least a portion of the leg markets when there is displayed Customer interest on the Exchange; and (7) modifies the description of how a COA Order trades on arrival and prior to initiating a COA. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2021-68/srnysearca202168.htm.*

[9] Amendment No. 2 revises proposed Exchange Rule 6.91P–O(c)(4) to provide that bids and offers for complex strategies may be expressed in one cent ($0.01) increments regardless of the MPV otherwise applicable to the individual leg(s) of the ECO. The Exchange notes that this provision is consistent with the rules of other options exchanges, including Nasdaq ISE, Options 3, Section 14 (c)(1). In addition, Amendment No. 2 revises proposed Exchange Rule 6.91P–O(d)(1)(B) to delete an erroneous cross-reference to proposed Exchange Rule 6.91P–O(a)(5)(B). Deleting the erroneous cross-reference will make clear that the Exchange will not open a complex strategy in the absence of an Exchange BO or ABO, even if there is an Exchange BB or an ABB. Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2021-68/srnysearca202168.htm.*

Amendment Nos. 1 and 2, 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' [10] (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 technology already in operation for its cash equity markets. 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. The Exchange plans to roll out the new technology platform over a period of time based on a range of symbols, anticipated for the second quarter of 2022.

In this regard, the Exchange recently filed a proposal to add new rules to reflect how options, particularly single-leg options, would trade on the Exchange once Pillar is implemented.[11] The current proposal sets forth how Electronic Complex Orders [12] would trade on the Exchange once Pillar is implemented. As noted in the Single-Leg Pillar Filing, as the Exchange transitions to Pillar, certain rules would continue to be applicable to symbols trading on the current trading platform, but would not be applicable to symbols that have transitioned to trading on Pillar.[13] Consistent with the Single-Leg Pillar Filing, proposed Rule 6.91P–O would have the same number as the current Electronic Complex Order Trading rule, but with the modifier ''P'' appended to the rule number. Current Rule 6.91–O, governing Electronic Complex Order Trading, would remain unchanged and continue to apply to any trading in symbols on the current system. Proposed Rule 6.91P–O would govern Electronic Complex Orders for trading in options symbols migrated to the Pillar platform. This Amendment No. 1 supersedes the original filing in its entirety.[14]

Similar to the Single-Leg Pillar Filing, proposed Rule 6.91P–O would (1) use Pillar terminology based on Pillar terminology that the Exchange uses for cash equities trading, as described in Exchange Rule 7–E; and (2) introduce new functionality for Electronic Complex Order trading (*e.g.,* adopting a DBBO and Away Market Deviation price check as well as enhancing the opening process for ECOs as described below).

Finally, as discussed in the Single-Leg Pillar Filing, the Exchange will announce by Trader Update when symbols are trading on the Pillar trading platform. The Exchange intends to transition Electronic Complex Order trading on Pillar at the same time that single-leg trading is transitioned to Pillar.

Proposed Rule 6.91P–O: Electronic Complex Order Trading

Current Rule 6.91–O (Electronic Complex Order Trading) specifies how the Exchange processes Electronic Complex Orders submitted to the Exchange. The Exchange proposes new Rule 6.91P–O to establish how such orders would be processed after the transition to Pillar. To promote clarity and transparency, the Exchange proposes to add a preamble to current Rule 6.91–O specifying that it would not be applicable to trading on Pillar.

As discussed in greater detail below and unless otherwise specified herein, the Exchange is not proposing fundamentally different functionality regarding how Electronic Complex Orders would trade on Pillar than is currently available on the Exchange. However, with Pillar, the Exchange would use Pillar terminology to describe functionality that is not changing and also introduce certain new or updated functionality for Electronic Complex Orders (*i.e.,* enhancing the opening auction process, including introducing the ''ECO Auction Collars'') that will also be available for outright options trading on the Pillar platform.

Definitions. Proposed Rule 6.91P–O(a) would set forth the definitions applicable to trading on Pillar under the new rule.

- Proposed Rule 6.91P–O(a)(1) would define the term ''Away Market Deviation'' as the difference between the Exchange BB (BO) for a series and the ABB (ABO) for that same series when the Exchange BB (BO) is lower (higher) than the ABB (ABO).[15] The maximum allowable Away Market Deviation is the greater of $0.05 or 5% below (above) the ABB (ABO) (rounded down to the nearest whole penny). As further proposed, no ECO on the Exchange would execute at a price that would exceed the maximum allowable Away Market Deviation on any component of the complex strategy. The maximum allowable Away Market Deviation is designed to protect market participants from having their complex strategies

[10] 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'').

[11] *See* Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (Notice of filing Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4) (SR–NYSEArca–2021–47) (''Single-Leg Pillar Filing'').

[12] The term ''Electronic Complex Order'' is currently defined in the preamble to Rule 6.91–O to mean any Complex Order, as defined in Rule 6.62–O(e) or any Stock/Option Order or Stock/Complex Order as defined in Rule 6.62–O(h) that is entered into the NYSE Arca System (the ''System'').

[13] *See* Single-Leg Pillar Filing (providing that, once a 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 and the Exchange would announce by Trader Update when symbols are trading on the Pillar trading platform).

[14] This Amendment No. 1 makes certain non-substantive clarifying changes from the original filing (including alphabetizing the proposed definitions and relocating the description of Complex Only Orders), and makes the following substantive changes from the original filing: (1) Adds new definitions of Away Market Deviation and Leg Ratios; (2) revises the definition of DBBO to add cross-reference to ABBO, as that term is defined in the Single-Leg Pillar Filing, and to include details regarding market conditions that impact the trading of complex strategies; (3) revises the definition of an ECO to remove reference to Stock/Option Orders and Stock/Complex Orders; (4) adds Complex QCCs as an ECO order type and specifies that an ECO designated as FOK must also be designated as a Complex Only Order; (5) specifies that an ECO will not trade with leg market orders designated as FOK; (6) specifies circumstances when an ECO may trade with another ECO at the leg market price and when an ECO must price improve at least a portion of the leg markets when there is displayed Customer interest on the Exchange; and (7) modifies the description of how a COA Order trades on arrival and prior to initiating a COA.

[15] In the Single-Leg Pillar Filing, the Exchange defines the (new) term ''Away Market BBO ('ABBO')'' as referring to the best bid(s) or offer(s) disseminated by Away Markets and calculated by the Exchange based on market information the Exchange receives from OPRA and the terms ''ABB'' and ''ABO'' as referring to the best Away Market bid and best Away Market offer, respectively. *See* Single-Leg Pillar Filing (defining Away Market BBO in proposed Rule 1.1).

execute at prices that are significantly outside of (and inferior to) the market for the individual legs. The proposed functionality provides the Exchange with flexibility in determining the acceptable execution range by allowing that it be calculated using either a percentage amount or a dollar amount. This proposed risk protection is not new or novel as it is available on other options exchanges.[16] As discussed further below, the Exchange proposes that its calculation of the DBBO (for each leg of a complex strategy) as well as trading of ECOs with the leg markets would be bound by the maximum allowable Away Market Deviation as an additional protection against ECOs being executed on the Exchange at prices too far away from the current market. This proposed definition is new and would promote clarity and transparency.

• Proposed Rule 6.91P–O(a)(2) would define the term ''Complex NBBO'' to mean the derived national best net bid and derived national best net offer for a complex strategy calculated using the NBB and NBO for each component leg of a complex strategy. This definition is based on current Rule 6.1A–O(a)(11)(b), without any substantive differences.

• Proposed Rule 6.91P–O(a)(3) would define ''Complex Order Auction'' or ''COA'' to mean an auction of an ECO as set forth in proposed Rule 6.91P–O(f) (discussed below). This definition is based on the title of paragraph (c) of current Rule 6.91–O, which sets forth the COA Process for ECOs without any substantive differences. Proposed Rule 6.91P–O(a)(3) would also state that the terms defined in paragraphs (a)(3)(A)–(D) would be used for purposes of a COA.

Proposed Rule 6.91P–O(a)(3)(A) would define a ''COA Order'' to mean an ECO that is designated by the OTP Holder as eligible to initiate a COA. This definition is based on the definition of a ''COA-eligible order'' as set forth in current Rule 6.91–O(c)(1) and (c)(1)(i), with a difference that the proposed definition would not require that an option class be designated as COA-eligible because all option classes that trade on Pillar would be COA-eligible.

Proposed Rule 6.91P–O(a)(3)(B) would define the term ''Request for Response'' or ''RFR'' to refer to the message disseminated to the Exchange's proprietary complex data feed announcing that the Exchange has received a COA Order and that a COA has begun. As further proposed, the definition would provide that each RFR message would identify the component series, the price, the size and side of the market of the COA Order. This definition is based on the description of RFR in Rule 6.91–O(c)(3) without any substantive differences. The Exchange proposes a clarifying difference to make clear that RFR messages would be sent over the Exchange's proprietary complex data feed, which is based on current functionality.

Proposed Rule 6.91P–O(a)(3)(C) would define the term ''RFR Response'' to mean any ECO received during the Response Time Interval (defined below) that is in the same complex strategy, on the opposite side of the market of the COA Order that initiated the COA, and marketable against the COA Order.[17] This definition is based in part on the description of RFR Responses in Rule 6.91–O(c)(5). However, unlike the current definition, an RFR Response would not have a time-in-force contingency for the duration of the COA. Instead, the Exchange would consider any ECOs received during the Response Time Interval (defined below) that are marketable against the COA Order as an RFR Response. As described below, the Exchange proposes to define separately the term ''ECO GTX Order,'' which would be more akin to the current definition of RFR Response. In addition, the proposed definition omits the current rule description that an RFR Response may be entered in $0.01 increments or that such responses may be modified or cancelled because these features are applicable to all ECOs and therefore not necessary to separately state in connection with RFR Responses.

Proposed Rule 6.91P–O(a)(3)(D) would define the term ''Response Time Interval'' to mean the period of time during which RFR Responses for a COA may be entered and would provide that the Exchange would determine and announce by Trader Update the length of the Response Time Interval; provided, however, that the duration of the Response Time Interval would not be less than 100 milliseconds and would not exceed one (1) second. This definition is based in part on the description of Response Time Interval in Rule 6.91–O(c)(4), with a difference that the Exchange proposes to reduce the minimum time from 500 milliseconds to 100 milliseconds. While other options exchanges do not establish a minimum duration for a COA, the Exchange notes that the proposed 100 millisecond minimum is consistent with the minimum auction length for electronic-paired auctions on NYSE American and for auctions on other markets.[18] Given that other options exchanges have (for years) offered electronic auction mechanisms with a Response Time Interval of at least 100 milliseconds, the Exchange believes that the proposed Response Time Interval of at least this length would provide OTP Holders and OTP Firms adequate time to respond to a COA.[19]

• Proposed Rule 6.91P–O(a)(4) would define the term ''Complex strategy'' to mean a particular combination of leg components and their ratios to one another. The proposed definition would further provide that new complex strategies can be created when the Exchange receives either a request to create a new complex strategy or an ECO with a new complex strategy. This proposed definition is new and is consistent with how this concept is defined on other options exchanges and would promote clarity and transparency.[20]

• Proposed Rule 6.91P–O(a)(5) would define the term ''DBBO'' to address situations where it is necessary to derive a (theoretical) bid or offer for a particular complex strategy. As

[16] *See, e.g.,* BOX Options Exchange LLC (''BOX'') Rule 7240(b)(3)(iii)(A) (providing that each leg of a complex strategy trade equal to or better than the ''Extended cNBBO,'' which has a default setting (per Rule 7240(a)(5)) of 5% of the cNBB or cNBO (per Rule 7240(a)(2) and (4), respectively) as applicable, or $0.05); Nasdaq ISE, LLC (''Nasdaq ISE''), Options 3, Section 16 (a) (providing that, in regard to ''Price limits for Complex Orders, ''[n]otwithstanding, the System will not permit any leg of a complex strategy to trade through the NBBO for the series or any stock component by a configurable amount calculated as the lesser of (i) an absolute amount not to exceed $0.10, and (ii) a percentage of the NBBO not to exceed 500%, as determined by the [ISE] Exchange on a class, series or underlying basis'').

[17] The term ''marketable'' is defined in proposed Rule 1.1 of the Single-Leg Pillar Filing.

[18] *See, e.g.,* NYSE American Rules 971.1NY(c)(2)(B) (providing that for a Customer Best Execution Auction ''[t]he minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second'') and 971.2NY(c)(1)(B) (same); Cboe Exchange Inc. (''Cboe'') Rule 5.33(d)(3) (providing that Cboe ''determines the duration of the Response Time Interval on a class-by-class basis, which may not exceed 3000 milliseconds'').

[19] *See, e.g.,* Securities Exchange Act Release Nos. 82498 (January 12, 2018), 83 FR 2823 (January 19, 2018) (SR–NYSEAmer-2017–26) (Notice of filing and immediate effectiveness of proposed rule change to reduce the response time interval for a CUBE Auction to no less than 100 milliseconds); 83384 (June 5, 2018), 83 FR 27061 (June 11, 2018) (SR–NYSEAMER–2018–05) (Order approving Complex CUBE functionality, including Rule 971.2NY(c)(1)(B), providing that ''[t]he minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second'')).

[20] *See, e.g.,* Cboe Rule 5.33(a) (defining ''complex strategy'' as ''a particular combination of components and their ratios to one another'' and further providing that ''[n]ew complex strategies can be created as the result of the receipt of a complex instrument creation request or complex order for a complex strategy that is not currently in the System''); MIAX Options Exchange (''MIAX'') Rule 518(a)(6) (same).

proposed, ''DBBO'' would mean the derived best net bid (''DBB'') and derived best net offer (''DBO'') for a complex strategy. The bid (offer) price used to calculate the DBBO on each leg would be the Exchange BB (BO) [21] (if available), bound by the maximum allowable Away Market Deviation (as defined above). If a leg of a complex strategy does not have an Exchange BB (BO), the bid (offer) price used to calculate the DBBO would be the ABB (ABO) for that leg. Thus, the ''bid (offer)'' prices used to calculate the DBBO would be based on the Exchange BB (BO) for each leg when available, and, absent an Exchange BB (BO) for a given leg, the ABB (ABO). The proposed definition would also provide that the DBBO would be updated as the Exchange BBO or ABBO, as applicable, is updated.

Proposed Rule 6.91P–O(a)(5)(A) would provide further detail about how the DBBO would be derived when, for a leg, there is no Exchange BB (BO) and no ABB (ABO). As proposed, in such circumstances, the bid (offer) price used to calculate the DBBO would be the offer (bid) price for that leg (*i.e.,* Exchange BO (BB), bound by the maximum allowable Away Market Deviation (or the ABO (ABB) for that leg if no Exchange BO (BB) is available)), minus (plus) ''one collar value,'' which would be (i) $0.25 where the offer (bid) is priced $1.00 or lower, or the lesser of $2.50 or 25% of the offer (bid) where the offer (bid) is priced above $1.00 (rounded down to the nearest whole penny); or (ii) $0.01, if the offer is equal to or less than one collar value. The proposed values used to generate a DBBO in the absence of local or Away Market interest is consistent with the values used in the Trading Collars for single-leg orders, per Rule 6.62P–O(a)(4)(C).[22] In addition, such values are within the current parameters for determining whether a trade is an Obvious Error or Catastrophic Error.[23] This proposed definition of the DBBO is new and is based, in part, on the current definition of Complex BBO set forth in Rule 6.1A–O(a)(2)(b), as well as on how this concept is defined on other options exchanges, including on NYSE American.[24] The Exchange believes that providing an alternative means of calculating the DBBO (*i.e.,* by looking to the contra-side best bid (offer) in the absence of same-side interest) would benefit market participants as it should increase opportunities for trading. For example, absent this proposed functionality, the Exchange would not be able to trade complex strategies when, for at least one leg of such strategy, the Exchange has no displayed interest on one or both sides of such component leg. Allowing the Exchange to look to the ABBO to calculate the DBBO in such circumstances would increase trading opportunities for ECOs to the benefit of all market participants. The Exchange believes that the additional detail about how the DBBO would be calculated in the absence of an Exchange BB (BO) and ABB (ABO), including that it would be rounded down to the nearest whole penny, would promote clarity and transparency. As noted above and herein, the Exchange believes that binding the DBBO (when calculated using the Exchange BBO) to the maximum allowable Away Market Deviation would help prevent ECOs from executing on the Exchange at prices too far away from the current market.

Proposed Rule 6.91P–O(a)(5)(B) would provide that, if for a leg of a complex strategy, there is neither an Exchange BBO nor an ABBO, the Exchange would not allow the complex strategy to trade until, for that leg, there is either an Exchange BB or BO, or an ABB or ABO, on at least one side of the market. The Exchange believes that preventing a complex strategy from trading when, for a leg, there is no reliable pricing indication—either on the Exchange or in Away Markets, would benefit market participants by preventing potentially erroneous executions. Moreover, including this additional detail in the proposed rule about when a complex strategy would not trade would benefit market participants as it would promote clarity and transparency in Exchange rules regarding ECO trading.

Proposed Rule 6.91P–O(a)(5)(C) would provide that if the best bid and offer prices (when not based solely on the Exchange BBO) for a component leg of a complex strategy are locked or crossed, the Exchange would not allow an ECO for that strategy to execute against another ECO until the condition resolves. The Exchange notes that, as described above, the DBBO may be calculated using leg prices derived either exclusively from, or a combination of, the Exchange BBO, the ABBO, or the Exchange BBO as adjusted to be priced within the maximum allowable Away Market Deviation. As such, if the best bid and offer prices (when not based solely on Exchange BBO) for a component leg of a complex strategy are locked or crossed, a DBBO calculated when using those prices could be erroneous.[25] Accordingly, the Exchange believes that it is appropriate to not permit an ECO to execute against another ECO under these circumstances until the locked or crossed market resolves. The Exchange believes preventing ECO-to-ECO trading in this circumstance would benefit market participants by preventing potentially erroneous ECO executions. Moreover, including this additional detail in the proposed rule about when an ECO would be prevented from trading with another ECO would benefit market participants as it would promote clarity and transparency in Exchange rules regarding ECO trading.

Further, per proposed Rule 6.91P–O(a)(5)(C), if an Away Market quote updates to lock or cross the current Exchange BB (BO) or ABB (ABO) for a component leg of a complex strategy, the Exchange would allow an ECO for that strategy to execute against leg market interest on the Exchange. Allowing an eligible ECO to execute against leg market interest in these

[21] The term BBO when used with respect to options traded on the Exchange would mean ''the best displayed bid or best displayed offer on the Exchange.'' *See* Single-Leg Pillar Filing (defining BBO in Rule 1.1, which definition is substantially identical to the current definition of BBO in Rule 6.1A–O(a)(2)(a)).

[22] *See* Single-Leg Pillar Filing (describing the calculation of Trading Collars, per Rule 6.62P–O(a)(4)(C), which ''for an order to buy (sell) will 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%)''). The Reference Price for calculating the Trading Collar for an order to buy (sell) will be the NBO (NBB), except in certain enumerated circumstances. *See id.* (setting forth the applicable Reference Price, per Rule 6.62P–O(a)(4)(B)).

[23] *See* Rules 6.87–O(c)(1) (thresholds for Obvious Errors) and 6.87–O(d)(1) (thresholds for Catastrophic Errors).

[24] *See, e.g.,* NYSE American Rule 900.2NY(7)(b) (providing that the Derived BBO ''is calculated using the BBO from the Consolidated Book for each of the options series comprising a given complex order strategy''); Cboe Rule 5.33(a) (defining ''Synthetic Bed Bid or Offer and SBBO'' for complex orders as ''the best bid and offer on the Exchange for a complex strategy calculated using'' the ''BBO for each component (or the NBBO for a component if the BBO for that component is not available) of a complex strategy from the [Cboe] Simple Book'').

[25] The reliability of the Exchange's calculated DBBO is essential to ECO trading on the Exchange as this concept permeates all aspects of complex trading, including to determine price parameters at the opening of each series and in determining when, and at what price, a COA Order may initiate a COA as well as market events impacting the DBBO that would result in an early end to a COA. *See, e.g.,* proposed Rule 6.91P–O(d)(3) (relying on the DBBO to determine ECO Auction Collars for the ECO Opening Auction Process) and 6.91P–O(f)(2)(A) and (f)(3) (relying on the DBBO to both initiate and price a COA Order as well as to terminate a COA early under certain market conditions)).

circumstances is consistent with the way single-leg orders trade. In this regard, the Exchange notes that, to the extent that leg prices are locked or crossed as a result of updates to the ABBO, such updates do not prevent resting leg market interest from trading at its resting price with all eligible contra-side interest, which includes incoming ECOs in the same complex strategy.[26]

Moreover, to the extent that an ECO trades with leg market interest in a complex strategy when interest in the leg markets is crossed, such executions are not deemed as trade-throughs.[27] As such, the Exchange believes that allowing an ECO to trade with leg market interest in this circumstance would maximize the execution opportunities of such ECO while respecting price-time priority of the leg markets.

• Proposed Rule 6.91P–O(a)(6) would define the term ''ECO Order Instruction'' to mean a request to cancel, cancel and replace, or modify an ECO. As described further below, this concept relates to order processing when a series opens or reopens for trading and is based on the term ''order instruction'' as used in Rule 7.35–E(g) and proposed to be used in Rules 6.64P–O(e) and (f), which (similarly) would define an ''order instruction'' for options as a request to cancel, cancel and replace, or modify an order or quote.[28]

• Proposed Rule 6.91P–O(a)(7) would define the term ''Electronic Complex Order'' or ''ECO'' to mean a Complex Order as defined in Rule 6.62P–O(f) that would be submitted electronically to the Exchange.[29] This proposed definition is based on the preamble to Rule 6.91–O, except that, under Pillar, an ECO would not include Stock/Option Orders and Stock/Complex Order [30] and the Exchange proposes to replace reference to the ''NYSE Arca System'' with the term ''Exchange'' and to update cross-reference to the definition of a Complex Order as proposed in the Single-Leg Pillar Filing.

• Proposed Rule 6.91P–O(a)(8) would define the term ''leg'' or ''leg market'' to mean each of the component option series that comprise an ECO. This definition is consistent with the concept of leg markets as used in current Rule 6.91–O(a), which defines legs as individual orders and quotes in the Consolidated Book. The Exchange believes the proposed definition would add clarity regarding how the terms ''leg'' and ''leg market'' would be used in connection with ECO trading on Pillar.

• Proposed Rule 6.91P–O(a)(9) would define ''Ratio'' or ''leg ratio'' to mean the quantity of each leg of an ECO broken down to the least common denominator such that the ''smallest leg ratio'' is the portion of the ratio represented by the leg with the fewest contracts. The Exchange believes the proposed definition would add clarity regarding how the terms ''ratio'' and ''leg ratio'' would be used in connection with ECOs trading on Pillar, which definition is consistent with how this concept is described on other options exchanges.[31]

Types of ECOs. Proposed Rule 6.91P–O(b) would set forth the types of ECOs that would trade on Pillar. Proposed Rule 6.91P–O(b)(1) would provide that ECOs may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, or as Complex QCCs.[32] This proposed text is based on current Rule 6.91–O(b)(1), with a difference to provide that the Exchange would offer Complex Only Orders and Complex QCCs on Pillar. Allowing ECOs to be designated as Complex QCCs (which order type is described in the Single-Leg Pillar Filing) is consistent with current functionality not described in the rule and the Exchange believes that this additional specificity to the proposed rule would add clarity and transparency. Complex Only Orders (as described below) are based on existing functionality for PNP Plus orders, with updated functionality available on Pillar.[33]

• Proposed Rule 6.91P–O(b)(2) would set forth the time-in-force contingencies available to ECOs, which would be Day, IOC, FOK, or GTC, as those terms are defined in the Single-Leg Pillar Filing in Rule 6.62P–O(b), and GTX (per proposed Rule 6.91P–O(b)(2)(C) as described below). The proposed text is based on current Rules 6.91–O(b)(2) and (3), except that it adds GTX (as described below). The proposed text also omits AON because the Exchange would not offer AONs for ECO trading on Pillar.

• Proposed Rule 6.91P–O(b)(2)(A) would provide that an ECO designated as IOC or FOK would be rejected if entered during a pre-open state,[34] which is consistent with the time-in-force of the order (because they could not be traded when a complex strategy is not open for trading) as well as with current functionality.

• Proposed Rule 6.91P–O(b)(2)(B) would provide that an ECO designated as FOK must also be designated as a Complex Only Order (per proposed Rule 6.91P–O(b)(1) and described further below). This proposed rule, which is new under Pillar, would simplify the operation of electronic complex order trading and would add clarity and transparency that ECOs designated as FOK (*i.e.,* that have conditional size-related instructions) would not be eligible to trade with the leg markets.

• Proposed Rule 6.91P–O(b)(2)(C) would provide that an ECO designated as GTX would be defined as an ''ECO GTX Order'' and would have the following features: It would not be displayed; it may be entered only during the Response Time Interval of a COA; it must be on the opposite side of the market as the COA Order; and it must specify the price, size, and side of the market. As further proposed, ECO GTX Orders may be modified or cancelled during the Response Time Interval and any remaining size that does not trade with the COA Order would be cancelled at the end of the COA. This definition is based on the description of an RFR Response in current Rule 6.91–O(c)(5)(A)–(C), which likewise are not displayed and expire at the end of the COA.

Priority and Pricing of ECOs. Proposed Rule 6.91P–O(c) would set

[26] *See* Single-Leg Pillar Filing (discussing Rules 6.76P–O(b)(3) providing that ''[i]f 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'').

[27] *See* Rule 6.94–O(b)(3) (exempting from trade-through liability transactions that occur ''when there was a Crossed Market''). *See also* the Options Order Protection And Locked/Crossed Market Plan, dated April 14, 2009, available here, *https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[28] *See* Single-Leg Pillar Filing (describing opening Auction Process rule per Rule 6.64P–O).

[29] The proposed definition of Complex Order under Pillar is set forth in Rule 6.62P–O(f), as described in the Single-Leg Pillar Filing, and is substantially identical to the current definition.

[30] *See* Single-Leg Pillar Filing (describing Stock/Option Orders and Stock/Complex Orders, per Rule 6.642–O(H)(6)(A) and (B) respectively, as open outcry only orders). Although current Rule 6.91–O provides that Stock/Option Orders and Stock/Complex Orders may trade as ECOs, under current functionality (and consistent with Pillar) such orders only trade in open outcry.

[31] *See, e.g.,* Cboe, US Options Complex Book Process, Complex Order Basics, Section 2.1, Ratios, available here: *https://cdn.batstrading.com/resources/membership/US-Options-Complex-Book-Process.pdf* (providing that ''[t]he quantity of each leg of a complex order broken down to the lowest terms will determine the ratio of the complex order'').

[32] *See* Single-Leg Pillar Filing (describing Limit Orders and Complex QCC Orders per Rule 6.62P–O(a)(2) and (g)(1)(A), (C) and (D)).

[33] *See, infra,* for discussion of proposed Rule 6.91P–O(e)(1)(C) (discussing Complex Only Order functionality).

[34] The term ''pre-open state'' is defined in Rule 6.64P–O(a)(12), as described in the Single-Leg Pillar Filing, to mean ''the period before a series is opened or reopened.''

forth how ECOs would be prioritized and priced under Pillar. The proposed priority scheme for ECOs under Pillar is consistent with current functionality, with the differences and clarifications noted below. As proposed, an ECO received by the Exchange that is not immediately executed (or cancelled), including an ECO that cannot trade due to conditions described in paragraphs (a)(5)(B)–(C) (above) [35] and (c)(1)–(2) of this proposed Rule (below) or does not initiate a COA per paragraph (f)(1) (below), would be ranked in the Consolidated Book according to price-time priority based on the total net price and the time of entry of the order. This proposed rule adds cross-references to new rule text but is otherwise based on Rule 6.91–O(a)(1), without any substantive differences. The Exchange proposes a non-substantive difference to refer simply to a ''net price'' rather than a ''net debit or credit price,'' which streamlined terminology is consistent with the use of the term ''net price'' on other options exchanges.[36] The proposed rule also incorporates the first sentence of Rule 6.91–O(a)(2)(iii)(A), regarding the ranking and priority of ECOs not immediately executed, with additional detail regarding the time-in-force modifier of the ECO, which adds clarity and transparency to the proposed Rule.[37]

Proposed Rule 6.91P–O(c) would further provide that, unless otherwise specified in this Rule, ECOs would be processed as follows:

- Proposed Rule 6.91P–O(c)(1) would provide that when trading with the leg markets, an ECO would trade at the price(s) of the leg markets provided the leg markets are priced no more than the maximum allowable Away Market Deviation (as defined herein). The proposed rule requiring that when trading with the leg markets, the components of the ECO would trade at the prices of the leg markets is consistent with current functionality, per Rule 6.91–O(a)(2)(ii); requiring that such prices be bound by the Away Market Deviation for an ECO to trade with the leg markets is new under Pillar, as discussed further below).[38]

For example, if there is sell interest in a leg market at $1.00, and a leg of an ECO to buy could trade up to $1.05, the ECO would trade with such leg market at $1.00. This would result in the ECO receiving price improvement and is consistent with the ECO trading as the Aggressing Order.[39] The proposed functionality that an ECO would trade with leg markets only if the prices of the leg markets are within (and do not exceed the maximum allowable) Away Market Deviation would be new under Pillar and is designed to operate as an additional protection against ECOs being executed on the Exchange at prices too far away from the current market.

- Proposed Rule 6.91P–O(c)(2) would provide that when trading with another ECO, each component leg of the ECO must trade at a price at or within the Exchange BBO for that series, and no leg of the ECO may trade at a price of zero.[40] This provision is based in part on current Rule 6.91–O(a)(2), which provides that no leg of an ECO will be executed outside of the Exchange BBO.[41] This proposed rule, which ensures that ECOs would never trade through interest in the leg markets, is consistent with current functionality and adds clarity and transparency to the proposed Rule. This proposed rule is also consistent with how ECOs are processed on other options exchanges.[42]
- Proposed Rule 6.91P–O(c)(3) would provide that an ECO may trade without consideration of prices of the same complex strategy available on other exchanges, which is based on the same text as contained in current Rule 6.91–O(a)(2) without any substantive differences.
- Proposed Rule 6.91P–O(c)(4) would provide that bids and offers for complex strategies may be expressed in one cent ($0.01) increments, and the leg(s) of complex strategies may trade in one cent ($0.01) increments regardless of the MPV otherwise applicable to the individual leg(s) of the ECO, which is based on current Rule 6.91–O, Commentary .01 without any substantive differences, except that it provides for bids and offers to be expressed in pennies rather than in decimals which is consistent with current functionality as well as with other options exchanges.[43]

Execution of ECOs at the Open (or Reopening after a Trading Halt). Current Rule 6.91–O(a)(2)(i) sets forth how ECOs are executed upon opening or reopening of trading. Proposed Rule 6.91P–O(d) would set forth details about how ECOs would be executed at the open or reopen following a trading halt.

With the transition to Pillar, the Exchange proposes new functionality regarding the ''ECO Opening Auction Process'' on the Exchange, which would be applicable both to openings and reopenings following a trading halt. The Exchange proposes to incorporate into the ECO Opening Auction Process certain functionality currently available on the Exchange's cash equity platform, which the Exchange has similarly proposed to include in the Auction Process for single-leg options.[44] Accordingly, proposed Rule 6.91P–O(d) would use Pillar terminology relating to auctions that is based in part on Pillar terminology set forth in Rule 7.35–E for cash equity trading and in part on Rule 6.64P–O for single-leg options.

- Proposed Rule 6.91P–O(d)(1) would set forth the conditions required for the commencement of an ECO Opening Auction Process. Specifically, as proposed, the Exchange would initiate an ECO Opening Auction Process for a complex strategy only if all legs of the complex strategy have opened or

[35] Proposed Rule 6.91P–O(a)(5)(B)–(C) describe conditions related to the leg markets when complex strategies will not trade.

[36] *See, e.g.,* Cboe Rule 5.33(f)(2) (setting forth parameters for the ''net price'' of complex orders traded on Cboe); Nasdaq ISE, Options 3, Section 14 (c) (providing, in relevant part, that ''[c]omplex strategies will not be executed at prices inferior to the best net price achievable from the best ISE bids and offers for the individual legs'').

[37] For example, an ECO designated as IOC that does not immediately execute would cancel rather than be ranked on the Consolidated Book, whereas an ECO designated as Day or GTC that does not immediately execute would be ranked on the Consolidated Book.

[38] *See* Rule 6.91–O(a)(2)(ii) (providing that ''[i]f, at a price, the leg markets can execute against an incoming [ECO] in full (or in a permissible ratio), the leg markets will have first priority at that price and will trade with the incoming [ECO] pursuant to Rule 6.76A before [ECO] resting in the Consolidated Book can trade at that price'').

[39] The term ''Aggressing Order'' is defined in Rule 1.1, as described in the Single-Leg Pillar Filing, to mean ''a buy (sell) order or quote that is or becomes marketable against sell (buy) interest on the Consolidated Book.''

[40] *See, infra,* for discussion of proposed Rule 6.91P–O(e)(1) (discussing ''Execution of ECOs During Core Trading Hours,'' including the treatment of ECOs that have executed, at a price, to the extent possible with the leg markets and of ECOs designated as Complex Only).

[41] As noted herein, no ECO on the Exchange would execute at a price that would exceed the maximum allowable Away Market Deviation on any component of the complex strategy. *See* proposed Rule 6.91P–O(a)(1) (defining Away Market Deviation).

[42] *See, e.g.,* BOX Rule 7240(b)(3)(ii). *See also* Securities Exchange Act Release Nos. 69027 (March 4, 2013), 78 FR 15093, 15094 (March 8, 2013) (SR–BOX–2013–01) (providing that ''where two Complex Orders trade against each other, the resulting execution prices will be at a price equal to or better than NBBO and BOX best bid or offer (''BBO'') for each of the component Legs,'' per proposed Rule 7240(b)(3)(ii)). *See, e.g.,* Cboe Rule 5.33(f)(2) (providing that complex orders may not execute at a net price that would cause any component of the complex strategy to be executed at a price of zero).

[43] *See* Amendment No. 2 and Nasdaq ISE, Options 3, Section 14 (c)(1) (providing, in relevant part, that ''[b]ids and offers for Complex Options Strategies may be expressed in one cent ($0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order'').

[44] *See* Single-Leg Pillar Filing (describing opening Auction Process rule per Rule 6.64P–O).

reopened for trading, which text is based on current Rule 6.91–O(a)(2)(i)(A) without any substantive differences. Proposed Rule 6.91P–O(d)(1)(A)–(B) would set forth conditions that would prevent the opening of a complex strategy, as follows:

○ Any leg of the complex strategy has neither an Exchange BO nor an ABO; or

○ The complex strategy cannot trade per proposed Rule 6.91P–O(a)(5)(C).[45]

The proposal to detail these conditions for opening (and reopening) are consistent with current functionality not set forth in the current rule. The Exchange believes that this added detail would not only add clarity and transparency to Exchange rules but would also protect market participants from potentially erroneous executions when there is a lack of reliable information regarding the price at which a complex strategy should execute, thereby promoting a fair and orderly ECO Opening Auction Process.

• Proposed Rule 6.91P–O(d)(2) would provide that any ECOs in a complex strategy with prices that lock or cross one another would be eligible to trade in the ECO Opening Auction Process. This proposed rule is based on current Rule 6.91–O(a)(2)(i)(B), which provides than an opening process will be used if there are ECOs that ''are marketable against each other.'' The Exchange proposes a difference in Pillar not to require that such ECOs be ''priced within the Complex NBBO'' because the proposed ECO Opening Auction Process under Pillar would instead rely on the DBBO (as described below).[46] As such, the Exchange may open a series based on the Exchange BBO, bound by the Away Market Deviation (or, the ABBO if the Exchange BBO is not available), which is consistent with ECO handling during Core Trading (per proposed Rule 6.91P–O(e)). The Exchange believes this proposed change would better align the permissible opening price for a series with the permissible execution price during Core Trading, which adds consistency to ECO order handling to the benefit of investors.

Proposed Rule 6.91P–O(d)(2)(A) would provide that an ECO received during a pre-open state would not participate in the Auction Process for the leg markets pursuant to Rule 6.64P–O, which is based on the same text (in the second sentence) of current Rule 6.91–O(a)(2)(i)(A) without any substantive differences.

Proposed Rule 6.91P–O(d)(2)(B) would provide that a complex strategy created intra-day when all leg markets are open would not be subject to an ECO Opening Auction Process and would instead trade pursuant to paragraph (e) of the proposed Rule (discussed below) regarding the handling of ECOs during Core Trading Hours.

Proposed Rule 6.91P–O(d)(2)(C) would provide that the ECO Opening Auction Process would be used to reopen trading in ECOs after a trading halt. This proposed rule is consistent with current Rule 6.64–O(e) and makes clear that the ECO Opening Auction Process would be applicable to reopenings, which would add internal consistency to Exchange rules and promote a fair and orderly ECO Opening Auction Process following a trading halt.

• Proposed Rule 6.91P–O(d)(3) would describe each aspect of the ECO Opening Auction Process. First, proposed Rule 6.91P–O(d)(3)(A) would describe the ''ECO Auction Collars,'' which terminology would be new for ECO trading and is based on the term ''Auction Collars'' used in Rule 7.35–E for trading cash equity securities as well as in Rule 6.64P–O(a)(2) for single-leg options trading.[47]

As proposed, the upper (lower) price of an ECO Auction Collar for a complex strategy would be the DBO (DBB); provided, however, that if the DBO (DBB) is calculated using the Exchange BBO for all legs of the complex strategy and all such Exchange BBOs have displayed Customer interest, the upper (lower) price of an ECO Auction Collar would be one penny ($0.01) times the smallest leg ratio inside the DBO (DBB). This new functionality on Pillar would ensure that if there is displayed Customer interest on the Exchange on all legs of the strategy, the opening price for the complex strategy would price improve the DBBO, which the Exchange believes is consistent with fair and orderly markets and investor protection.

• Next, proposed Rule 6.91P–O(d)(3)(B) would describe the ''ECO Auction Price.'' As proposed, the ECO Auction Price would be the price at which the maximum volume of ECOs can be traded in an ECO Opening Auction, subject to the proposed ECO Auction Collar. As further proposed, if there is more than one price at which the maximum volume of ECOs can be traded within the ECO Auction Collar, the ECO Auction Price would be the price closest to the midpoint of the ECO Auction Collar, or, if the midpoint falls within such prices, the ECO Auction Price would be the midpoint, provided that the ECO Auction Price would not be lower (higher) than the highest (lowest) price of an ECO to buy (sell) that is eligible to trade in the ECO Opening (or Reopening) Auction Process. The concept of an ECO Auction Price is consistent with the concept of ''single market clearing price'' set forth in current Rule 6.91–O(a)(2)(i)(B). For Pillar, the Exchange proposes to determine the ECO Auction Price in a manner that is based in part on how an Indicative Match Price is determined for trading of cash equity securities, as set forth in Rule 7.35–E(a)(8)(A), and how the Exchange proposes to determine the price for Auctions on Pillar for single-leg options trading.[48]

Finally, as proposed, if the ECO Auction Price would be a sub-penny price, it would be rounded to the nearest whole penny, which text is based on current Rule 6.91–O(a)(2)(i)(B), with a difference that the current rule refers to the midpoint of the Complex NBBO (which could be a sub-penny price and if so, is rounded down to the nearest penny) as opposed to referring to the ECO Auction Price, which would be a new Pillar term for trading ECOs, which price, if in sub-pennies, would be rounded (up or down) to the nearest MPV.

Proposed Rule 6.91P–O(d)(3)(B)(i) would provide that an ECO to buy (sell) with a limit price at or above (below) the upper (lower) ECO Auction Collar would be included in the ECO Auction Price calculation at the price of the upper (lower) ECO Auction Collar, but ranked for participation in the ECO Opening (or Reopening) Auction Process in price-time priority based on its limit price. This proposed text is based in part on current Rule 6.91–O(a)(2)(i)(B). The proposed rule is also based on how the Exchange processes auctions for cash equity trading, as described in Rules 7.35–E(a)(10)(B) and (a)(6) and how the Exchange proposes to process Auctions on Pillar for single-leg options trading.[49]

Proposed Rule 6.91P–O(d)(3)(B)(ii) would provide that locking and crossing ECOs in a complex strategy would trade at the ECO Auction Price. As further proposed, if there are no locking or crossing ECOs in a complex strategy at

[45] *See* Amendment No. 2.

[46] *See* Rule 6.91–O(a)(2)(i)(B) (providing that ''[t]he CME will use an opening auction process if there are Electronic Complex Orders in the Consolidated Book that are marketable against each other and priced within the Complex NBBO''). Per Rule 6.1A–O(a)(11)(b) (and proposed Rule 6.91P–O(a)(2), the ''Complex NBBO'' for each complex strategy is derived from the national best bid and national best offer for each leg.

[47] *See* Single-Leg Pillar Filing (defining Auction Collars in Rule 6.64P–O(a)(2)).

[48] *See* Single-Leg Pillar Filing (describing Rule 6.64P–O(a)(9)).

[49] *See* Single-Leg Pillar Filing (describing Rules 6.64P–O(a)(9)(B)(i) and 6.64P–O(b)).

or within the ECO Auction Collars, the Exchange would open the complex strategy without a trade. This proposed text would be new and is based in part on Rule 6.64P–O(d)(2)(B) for single-leg options, which describes when an option series could open without a trade.[50]

• Proposed Rule 6.91P–O(d)(4) would describe the ''ECO Order Processing during ECO Opening Auction Process.'' Because the Exchange would be using the same Pillar auction functionality for ECO trading that is used for its cash equity market and that the Exchange is proposing for single-leg options trading, the Exchange proposes to apply existing Pillar auction functionality regarding how to process ECOs that may be received during the period when an ECO Auction Process is ongoing.

Accordingly, as proposed, new ECOs and ECO Order Instructions (as defined in proposed Rule 6.91P–O(a)(6), described above) that are received when the Exchange is conducting the ECO Opening Auction Process for the complex strategy would be accepted but would not be processed until after the conclusion of this process. As further proposed, when the Exchange is conducting the ECO Opening Auction Process, ECO Order Instructions would be processed as follows:

○ Proposed Rule 6.91P–O(d)(4)(A) would provide that an ECO Order Instruction received during the ECO Opening Auction Process would not be processed until after this process concludes if it relates to an ECO that was received before the process begins and that any subsequent ECO Order Instruction(s) relating to such ECO would be rejected if received during the ECO Opening Auction Process when a prior ECO Order Instruction is pending.

○ Proposed Rule 6.91P–O(d)(4)(B) would provide that an ECO Order Instruction received during the ECO Opening Auction Process would be processed on arrival if it relates to an order that was received during this process.

Proposed Rule 6.91P–O(d)(4) and sub-paragraphs (A) and (B) are based on both current Rule 7.35–E(g) and its sub-paragraphs (1) and (2) and Rule 6.64P–O(e) and its sub-paragraphs (1) and (2) (as described in the Single-Leg Pillar Filing) with differences only to reference the defined term ECO Order Instruction and to refer to the ECO Opening Auction Process. The Exchange believes that the proposed rule text would provide transparency regarding how ECO Order Instructions that arrived during the ECO Opening Auction Process would be processed.

• Proposed Rule 6.91P–O(d)(5) would describe the ''Transition to continuous trading'' after the ECO Opening Auction Process. As proposed, after the ECO Opening Auction, ECOs would be subject to ECO Price Protection, per proposed Rule 6.91P–O(g)(2) (as described below) and, if eligible to trade, would trade as follows:

○ Proposed Rule 6.91P–O(d)(5)(A) would provide that ECOs received before the complex strategy was opened that did not trade in whole in the ECO Opening Auction Process and that lock or cross other ECOs or leg markets in the Consolidated Book would trade pursuant to proposed Rule 6.91P–O(e) (discussed below) regarding the handling of ECOs during Core Trading Hours; otherwise, such ECOs would be added to the Consolidated Book. This provision is based on the (last sentence) of current Rule 6.91–O(a)(2)(i)(B) and (C), with non-substantive differences to use Pillar terminology.

○ Proposed Rule 6.91P–O(d)(5)(B) would provide that ECOs received during the ECO Opening Auction Process would be processed in time sequence relative to one another based on original entry time. This proposed rule is based on both current functionality and how the Exchange proposes to process orders in an option series that were received during an Auction Processing Period, as described in the Single-Leg Pillar Filing for Rule 6.64P–O(a)(6).

Execution of ECOs During Core Trading Hours. Proposed Rule 6.91P–O(e) would describe how ECOs would be processed during Core Trading Hours.

Proposed Rule 6.91P–O(e)(1) would provide that once a complex strategy is open for trading, an ECO would trade with the best-priced contra-side interest as follows:

• Proposed Rule 6.91P–O(e)(1)(A) relates to ECOs that are permitted to trade with the leg markets and would provide that if, at a price, the leg markets can trade with an eligible ECO,[51] in full or in a permissible ratio, the leg markets would trade first at that price, pursuant to proposed Rule 6.76AP–O,[52] until the quantities on the leg markets are insufficient to trade with the ECO, at which time such ECO would trade with contra-side ECOs resting in the Consolidated Book at that price, which is based on Rule 6.91–O(a)(2)(ii).[53] Although the current rule makes clear that the leg markets have first priority, at a price, to trade with an ECO in full or in a permissible ratio, the proposed rule would add text to specify that an ECO may trade with another ECO *at* the leg market price only after such ECO has executed to the extent possible with the leg markets at that price. In other words, such ECO must first exhaust any available interest in the leg markets at that price that can satisfy the ECO, in full or in a permissible ratio, before it may trade with another ECO at that price.

This proposed description regarding how ECOs would trade with other ECOs is consistent with the rules of the BOX, and is therefore not new or novel.[54] Per BOX Rule 7240(b)(2)(ii), ''[a] Complex Order for which a leg of such Complex Orders' underlying Strategy is not in a one-to-one ratio with each other leg of such Strategy'' must first trade with all eligible interest in the leg markets, *i.e.,* ''for all of the quantity available at the best price in a permissible ratio until the quantities remaining on the BOX Book are insufficient to execute against the Complex Order while respecting the ratio.'' [55] And, after such execution on the BOX Book, ''the remaining quantity of the Complex Order may execute against other Complex Orders and the component Legs of the Complex Order may trade at prices equal to the corresponding prices on the BOX Book.'' [56]

Consistent with BOX Rule 7240(b)(2)(ii), proposed Rule 6.91P–O(e)(1)(A) would provide that an ECO that is eligible to trade with the leg markets must first trade with the leg markets, at a price, to the extent possible (*i.e.,* in full or in a permissible

[50] *See* Single-Leg Pillar Filing (describing Rule 6.64P–O(d)(2)(B)).

[51] *See* proposed Rule 6.91P–O(e)(1)(C) and (D) (for description of ECOs that are not eligible to trade with the leg markets).

[52] *See* Single-Leg Pillar Filing (describing Rule 6.76AP–O, Order Execution and Routing, which is the substantively identical Pillar version of current Rule 6.76AP–O).

[53] *See* Rule 6.91–O(a)(2)(ii) (providing that ''[i]f, at a price, the leg markets can execute against an incoming [ECO] in full (or in a permissible ratio), the leg markets will have first priority at that price and will trade with the incoming [ECO]pursuant to Rule 6.76A before [ECO] resting in the Consolidated Book can trade at that price'').

[54] *See* BOX Rule 7240(b)(2)(ii). *See also* Securities Exchange Act Release Nos. 69027 (March 4, 2013) 78 FR 15093 (March 8, 2013) (Notice of Proposed Rule Change, as Modified by Amendment No. 1, regarding, among other things, allowing the execution of certain Complex Orders to trading at the same price as best-priced interest in the BOX Book after such eligible leg interest has been exhausted) (''BOX Notice''); 69419 (April 19, 2013) 78 FR 24449 (April 25, 2013) (Order Approving BOX Notice) (''BOX Approval Order'') (SR–BOX–2013–01).

[55] *See* BOX Rule 7240(b)(2)(ii). The ''BOX Book'' is conceptually the same as the leg markets and are defined as ''the electronic book of orders on each single series of options maintained by the BOX Trading Host.'' *See* BOX Rule 100(a)(10).

[56] *See* BOX Rule 7240(b)(2)(ii).

ratio) before that ECO can trade at the same price with another ECO.[57] As proposed, such ECO would never trade ahead of interest (Customer or otherwise) in the leg markets if that interest is sufficient to satisfy the ECO in full or in a permissible ratio. However, such ECO may execute with another ECO, at a price, after exhausting eligible leg market interest—Customer or otherwise—at that price if the leg markets cannot satisfy the ratio spread of the ECO).[58] Thus, per proposed Rule 6.91P–O(e)(1)(A), such ECO would be eligible to trade with contra-side ECOs resting in the Consolidated Book at the same price, which is consistent with BOX's rules.[59]

The Exchange believes this proposed Rule makes clear that the priority of the leg markets remains primary—as such interest is afforded the opportunity to trade at the best price, but also ensures that ECO trading opportunities are maximized. As noted by BOX, the Exchange proposes to apply the ''straightforward principle'' of allowing the execution of an ECO against another ECO once any eligible interest on the leg markets at the same net price has already been executed.[60]

The following example illustrates how proposed Rule 6.91P–O(e)(1)(A) would be applied.

Example: Assume an ECO consisting of the simultaneous purchase of one Option A instrument and two Option B instruments (A+2B).

The interest in the leg markets is initially as follows:

Leg market for Option A is:

Order to buy 2 at $1.00.	Order to sell 20 at $1.06.
Order to buy 5 at $0.99.	Order to sell 2 at $1.10.

Leg market for Option B is:

Order to buy 3 at $1.00.	Order to sell 3 at $1.10.

Complex Order Book for Strategy A+2B:

ECO to buy 2 at $3.00.	ECO to sell 10 at $3.20.
ECO to buy 5 at $2.90.	

The DBBO is $3.00 bid, $3.26 offered.

In this example, an ECO is received to sell 2 A+2B at $3.00. This order can match with either the existing $3.00 bid on A+2B in the Complex Order Book or with the interest on the leg markets for $3.00. However, as the Exchange proposes to give priority to interest on the leg markets over executable ECOs, 1 unit of the incoming order to sell A+2B at $3.00 will execute against the orders on the respective legs (selling 1 A and 2 B at $1.00 each ($1.00 + 2($1.00) = $3.00)).

After this initial execution against the leg markets, the leg markets are as follows:

Leg Market for Option A is:

Order to buy 1 at $1.00.	Order to sell 20 at $1.06.
Order to buy 5 at $0.99.	Order to sell 2 at $1.10.

Leg Market for Option B is:

Order to buy 1 at $1.00.	Order to sell 3 at $1.10.

Complex Order Book for Strategy A+2B:

ECO to buy 2 at $3.00.	ECO to sell 10 at $3.20.
ECO to buy 5 at $2.90.	
One ECO to sell A+2B at $3.00 remains.	

Because insufficient quantity remains on the bid of B at $1.00 to combine with the bid on A (of $1.00) to respect the ECO ratio (*i.e.,* the incoming ECO seeks to sell 2B, but the remaining leg market bid is for 1B), the remaining order to sell 1 A+2B at $3.00 would be executed against the resting ECO to buy at $3.00. In the above scenario, consistent with proposed Rule (e)(1)(A), the Exchange may trade two ECOs without at least one leg having a price better than the best prices on the leg markets.[61]

The Exchange believes that proposed Rule 6.91P–O(e)(1)(A) would benefit market participants because it is designed to protect the priority of orders on the leg markets by requiring an ECO to execute first against interest on the leg markets at the best price to the extent possible, *i.e.,* in full or in a permissible ratio, and only then permitting an ECO to execute against another ECO at that price. Thus, following the executions against the best-priced interest on the leg markets, an ECO would no longer be executable against interest on the leg markets at the best price because the leg markets would lack sufficient quantity to fill the ECO in a permissible ratio at that price. Absent this provision in Rule 6.91P–O(e)(1)(A), the Exchange believes that otherwise executable ECOs at the leg market price would lose execution opportunities without any benefit to interest on the leg markets, which is unable to trade with the ECO at that price.[62] Because ''orders are executable against each other only when both the price and the quantity of the orders match,'' the Exchange believes it is appropriate (and does not deny leg markets priority) to allow ECOs to trade with other ECOs at the leg market price when such eligible leg market interest at that price has been exhausted.[63]

- Proposed Rule 6.91P–O(e)(1)(B) would provide that an ECO would not trade with orders in the leg markets designated as AON, FOK, or with an MTS modifier. This proposed text would be new and is based in part on existing functionality (for AON and FOK) and also reflects the Exchange's proposed treatment under Pillar of its new MTS modifier for orders in the leg markets.[64] Consistent with current functionality, orders with an AON, FOK, or (new) MTS modifier are conditional and, by design, will miss certain execution opportunities. The Exchange believes that this proposed rule would simplify the operation of electronic complex order trading and would add clarity and transparency that ECOs would not trade with orders that have conditional size-related instructions.
- Proposed Rule 6.91P–O(e)(1)(C) would provide that an ECO designated as Complex Only would be eligible to trade solely with another ECO and would not trade with the leg markets. The proposed Complex Only Orders are based on existing functionality for PNP Plus orders, with updated functionality available on Pillar.[65] The Exchange

[57] *See* proposed Rule 6.91P–O(e)(1)(A).

[58] *See id.* Unlike BOX, the Exchange has deemed it unnecessary to refer to ECOs with other than one-to-one ratios and believes the proposed rule text is clear and concise in stating that if the leg markets have sufficient quantity to satisfy an ECO in full or in a permissible ratio, such leg markets have first priority to trade with such ECO (ahead of any ECOs resting in the Consolidated Book at that price) unless or until the leg market interest cannot satisfy the ECO ratio spread.

[59] The Exchange does not propose to copy into Rule 6.91P–O(e)(1)(A) the requirement of current Commentary .02 to Rule 6.91–O that at least one leg of an ECO must execute at a price better than the corresponding leg market price containing Customer interest because this requirement would be incorporated into how Complex Only Orders would function on the Exchange, and therefore the Exchange no longer needs to separately specify that requirement. *See* proposed Rule 6.91P–O(a)(1)(C) (requiring of Complex Only Order that, when there is displayed Customer interest on all legs of the complex strategy, such Complex Only Order must price improve at least a portion of such displayed Customer interest).

[60] *See* BOX Notice, 78 FR, at 15093.

[61] *See* proposed Rule 6.91P–O(e)(1)(A); *see also* BOX Rule 7240(b)(2)(ii)).

[62] *See* BOX Notice, 78 FR at 15093.

[63] *See* BOX Approval Order, 78 FR at 24449.

[64] *See* Single-Leg Pillar Filing (describing Minimum Trade Size or MTS Modifier in Rule 6.62P–O(i)(3)(B)).

[65] *See* Rule 6.91–O(b)(1) (providing that ECOs may be designated as Limit Orders designated as PNP Plus); Rule 6.62–O(y) (describing PNP Plus

Continued

proposes on Pillar not to use the term ''PNP Plus Order'' and instead rename this order type as a Complex Only Order, which is more aptly named, and is consistent with similar order types available on other options exchanges.[66]

As further proposed, an ECO designated as Complex Only must trade at a price at or within the DBBO; provided that, if the DBB (DBO) is calculated using the Exchange BBO for all legs of the complex strategy and all such Exchange BBOs have displayed Customer interest, the Complex Only Order would not trade below (above) one penny ($0.01) times the smallest leg ratio inside the DBB (DBO), regardless of whether there is sufficient quantity on such leg markets to satisfy the ECO.[67] This proposed requirement is designed to ensure that, if there is displayed Customer interest on all legs of the strategy on the Exchange, a Complex Only Order would price improve at least some portion of such interest making up the DBBO. Thus, a Complex Only Order does not get the benefit of the priority treatment set out in proposed Rule 6.91P–O(e)(1)(A). If a Complex Only Order is unable to trade within the aforementioned price parameters, it would remain on the Consolidated Book until it can trade with another ECO per the requirements of proposed Rule 6.91P–O(e)(1)(C).

As noted above, the (renamed) Complex Only Order type is based on existing PNP Plus Order functionality, with updated functionality for trading on Pillar. Specifically, unlike the operation of the PNP Plus Order, the Exchange would not reprice a resting Complex Only Order and instead would restrict a Complex Only Order from trading until such order could trade at a price at or inside the DBBO, as described above. The Exchange believes that allowing Complex Only Orders to trade up to the DBBO unless there is displayed Customer interest on all legs of the strategy on the Exchange at the DBBO (as described above), provides market participants additional trading opportunities while still protecting displayed Customer interest on the Exchange.

The proposed operation of the Complex Only Order, insofar as it protects displayed Customer interest in the leg markets when an ECO trades with another ECO, is consistent with the rules of NYSE American and is therefore not new or novel.[68]

- Proposed Rule 6.91P–O(e)(1)(D) would provide that ECOs with any one of the following complex strategies would be ineligible to trade with the leg markets and would be processed as a Complex Only Order:
  - A complex strategy with more than five legs;
  - a complex strategy with two legs and both legs are buying or both legs are selling, and both legs are calls or both legs are puts; or
  - a complex strategy with three or more legs and all legs are buying or all legs are selling.

The proposal to restrict ECOs with more than five legs from trading with the leg markets (and being treated as Complex Only Orders), per proposed Rule 6.91P–O(e)(1)(D)(i), would be new functionality under Pillar and is designed to help Market Makers manage risk. The Exchange currently requires Market Makers to utilize certain risk controls for quoting to help mitigate risk particularly during periods of market volatility, and would require Market Makers to continue to use risk controls on Pillar.[69] Because the execution of a multi-legged ECO is a single transaction, comprising discrete legs that must all trade simultaneously, allowing ECOs with more than five legs to trade with the leg markets may allow a multi-legged transaction to occur before a Market Maker's risk settings would be triggered. This proposed limitation is designed to prevent such multi-legged transactions, which would help ensure that Market Makers continue to provide liquidity and do not trade above their established risk tolerance levels. The Exchange notes that this restriction is consistent with similar limits established on other options exchanges.[70]

Proposed Rule 6.91P–O(e)(1)(D)(ii)–(iii), which treats ECOs with certain complex strategies as Complex Only Orders, is based in part on current Rule 6.91–O(b)(4)(i)–(ii), with a difference that currently, such so-called ''directional strategies'' are rejected. The proposed handling under Pillar would be less restrictive than the current rule because such strategies would not be rejected and is consistent with the treatment of such complex strategies on other options exchanges.[71] As with the proposal to restrict ECOs with more than five legs trading with the leg markets, this proposed restriction is also designed to ensure that Market Maker risk settings would not be bypassed. Because ECOs with directional strategies are typically geared towards an aggressive directional capture of volatility, such ECOs can represent significantly more risk than trading any one of the legs in isolation. As such, because Market Maker risk settings are only triggered after the entire ECO package has traded, the Exchange believes this proposed rule change would help ensure fair and orderly markets by preventing such orders from trading with the leg markets, which would minimize risk to Market Makers.

Proposed Rule 6.91P–O(e)(2) would provide that the Exchange would evaluate trading opportunities for a resting ECO when the leg markets comprising a complex strategy update, provided that during periods of high message volumes, such evaluation may be done less frequently. The Exchange believes that this proposed rule promotes transparency of the frequency with which the Exchange would be evaluating the leg markets for updates.

The Exchange believes the proposed handling of ECOs during Core Trading

orders as ECOs that may only trade with other ECOs, but which will continuously be repriced if locking or crossing the Complex BBO). Unlike the PNP Plus Order, which trades inside the Complex BBO (conceptual equivalent to the DBBO), the Complex Only Order may trade with another ECO at the DBBO, unless there is certain displayed Customer interest on the Exchange (as described herein), in which case the Complex Only Order must trade inside the DBBO.

[66] *See* proposed Rule 6.91P–O(e)(1)(C). Other options exchanges likewise offer Complex Orders that trade only with Complex Orders. *See, e.g.,* Cboe Rule 5.33(a) (defining ''Complex Only'' order as an ECO ''that a [Cboe] Market-Maker may designate to execute only against complex orders in the COB and not Leg into the Simple Book''). The proposed Complex Only Order (like its predecessor PNP Plus Order) would be available to all market participants.

[67] *See* proposed Rule 6.91P–O(e)(1)(C). Because Complex Only Orders would never trade with the leg markets, whether or not there is sufficient quantity at the displayed Customer price is irrelevant to the operation of this order type.

[68] *See* NYSE American Rule 980NY, Commentary .02(i) (providing that, when executing an ECO, if each leg of the contra-side Derived BBO—calculated using the BBO from the Consolidated Book for each of the options series comprising a given complex order strategy per Rule 900.2NY(7)(a)(b)—for the components of the ECO includes Customer interest, the price of at least one leg of the order must ''trade at a price that is better than the corresponding price of all customer bids or offers in the Consolidated Book for the same series, by at least one standard trading increment as defined in Rule 960NY,'' which minimum trading increment is one cent ($0.01). *See* NYSE American Rule 960NY(b).

[69] *See* Single-Leg Pillar Filing (describing the activity-based controls with updated functionality under Pillar that Market Makers would be required to use to manage risk in connection with their quotes, per Rule 6.40P–O(a)(3) and (b)(2)). The proposed Pillar risk controls are substantively identical to the existing risk controls set forth in Rules 6.40–O(b)(2), (c)(2) and (d)(2) and Commentary .04 to Rule 6.40–O.

[70] *See, e.g.,* Cboe Rule 5.33(g) (providing the ECOs may be restricted from trading with the leg markets if such ECO has more than a maximum number of legs, which maximum the Exchange determines on a class-by-class basis and may be two, three, or four).

[71] *See, e.g.,* Nasdaq ISE Options 3, Section 14 (d)(3)(A)–(B) (providing that ECOs with these complex strategies may trade only with other ECOs).

is reasonably designed to facilitate increased interaction between orders on the leg markets and ECOs, and to do so in such a manner as to ensure a dynamic, real-time trading mechanism that maximizes the opportunity for trade executions for both ECOs and orders on single option series.

Execution of ECOs During a COA. Proposed Rule 6.91P–O(f) would describe how ECOs would trade during a COA. The COA Process is currently described in Rule 6.91–O(c). Under Pillar, the Exchange proposes to modify the COA process, including by relying on the DBBO (as described above) for pricing, allowing a COA Order to initiate a COA only on arrival, and streamlining the rule text describing the circumstances that would cause an early end to a COA.

As proposed, a COA Order received when a complex strategy is open for trading and that satisfies the requirements of paragraph (f)(1) of the proposed Rule would initiate a COA only on arrival after trading with eligible interest per proposed Rule 6.91P–O(f)(2)(A) (described below). As further proposed, a COA Order would be rejected if entered during a pre-open state or if entered during Core Trading Hours with a time-in-force of FOK or GTX. This proposed order handling is based in part on current Rule 6.91–O(c)(1)(ii), which requires that COA Orders be submitted during Core Trading Hours. The proposed rejection of such orders during a pre-open state would be new under Pillar and is consistent with the Exchange's proposed functionality that a COA Order would initiate a COA only on arrival. In addition, the proposal would clarify that COA Orders designated as FOK or GTX would be rejected, even if submitted during Core Trading Hours, is based on current functionality and this addition would add further detail and clarification to the rule text. Finally, as further proposed, only one COA may be conducted at a time in a complex strategy, which is identical to text in current Rule 6.91–O(c)(3).

Proposed Rule 6.91P–O(f)(1) would describe the conditions required for the ''Initiation of a COA.'' As proposed, to initiate a COA, the limit price of the COA Order to buy (sell) must be higher (lower) than the best-priced, same-side ECOs resting on the Consolidated Book and equal to or higher (lower) than the midpoint of the DBBO, which is designed to encourage aggressively-priced COA Orders and, in turn, to attract a meaningful number of RFR Responses to potentially provide price improvement of the COA Order's limit price. This proposed text is based in part on current Rule 6.91–O(c)(3)(i), with a difference to add a new ''midpoint of the DBBO'' requirement to reflect this new concept under Pillar. As further proposed, a COA Order that does not satisfy these pricing parameters would not initiate a COA and, unless it is cancelled (*i.e.,* if an IOC), such order would be ranked in Consolidated Book and processed as an ECO, per proposed Rule 6.91P–O(e) (described above). This would be new under Pillar, as current Rule 6.91–O(c)(3) allows an order designated for COA to reside on the Consolidated Book unless or until such order meets the requisite pricing conditions to initiate a COA. The Exchange believes this proposed change would simplify the COA process and promote the orderly initiation of COAs, which is essential to maintaining a fair and orderly market for ECOs.

Finally, as proposed, once a COA is initiated, the Exchange would disseminate a Request for Response message, the Response Time Interval would begin and, during such interval, the Exchange would accept RFR Responses, including ECO GTX Orders. This proposed text is based on current functionality set forth in Rule 6.91–O(c), with non-substantive differences to use Pillar terminology, including using the new Pillar term for ECO GTX Orders.

Proposed Rule 6.91P–O(f)(2) would describe the ''Pricing of a COA.'' As proposed, a COA Order to buy (sell) would initiate a COA at its limit price, unless its limit price locks or crosses the DBO (DBB), in which case it would initiate a COA at a price equal to one penny ($0.01) times the smallest leg ratio inside the DBO (DBB) (the ''COA initiation price''). This proposed functionality utilizes the new concept of a DBBO, is consistent with current functionality (that relies on substantively similar concept of Complex BBO), and ensures (consistent with current functionality) that interest on the leg markets maintain priority.

- Proposed Rule 6.91P–O(f)(2)(A) would provide that prior to initiating a COA, a COA Order to buy (sell) would trade with any ECO to sell (buy) resting in the Consolidated Book that is priced equal to or lower (higher) than the DBO (DBB), unless the DBO (DBB) is calculated using the Exchange BBO for all legs of the complex strategy and all such Exchange BBOs have displayed Customer interest, in which case the COA Order will trade up (down) to one penny ($0.01) times the smallest leg ratio inside the DBO (DBB) (*i.e.,* priced better than the leg markets) and any unexecuted portion of such COA Order would initiate a COA. This proposed rule is based on current Rule 6.91–O(c)(2) with a difference to use the Pillar concept of DBBO rather than refer to the contra-side Complex BBO and to specify that the COA Order must price improve the DBBO when there is displayed Customer interest on the Exchange leg markets, as noted above.
- Proposed Rule 6.91P–O(f)(2)(B) would provide that a COA Order would not be eligible to trade with the leg markets until after the COA ends, which added detail, while not explicitly stated in the current rule, is consistent with current functionality described in Rules 6.91–O(c)(7)(A) and (B) that only RFR Responses (*i.e.,* GTX orders) and ECOs will be allocated in a COA and that the COA Order would not trade with the leg markets until after the COA allocations.
- Proposed Rule 6.91P–O(f)(3) would set forth the conditions that would result in the ''Early End to a COA'' (*i.e.,* a COA ending prior to the expiration of the Response Time Interval), which conditions are consistent with current Rule 6.91–O(c)(6) as described below. Currently, as described in Rule 6.91–O(c)(3), the Exchange takes a snapshot of the Complex BBO at the start of a COA and uses that snapshot as the basis for determining whether to end a COA early. Under Pillar, the Exchange would no longer use a snapshot of the Complex BBO as the basis for determining whether to end a COA early but would instead rely on the DBBO (calculated per proposed Rule 6.91P–O(a)(5)), which is updated as market conditions change (including during the Response Time Interval).[72] The Exchange believes relying on the DBBO is appropriate and would benefit investors as it would provide real-time trading information that includes an additional layer of price protection for ECO trading as the DBBO is based on Exchange BBOs, when available, or the ABBO. The Exchange proposes a COA would end early under the following conditions:
  - Proposed Rule 6.91P–O(f)(3)(A) would provide that a COA would end early if the Exchange receives an incoming ECO or COA Order to buy (sell) in the same complex strategy that is priced higher (lower) than the initiating COA Order to buy (sell), which proposed text is based on current Rule 6.91–O(c)(6)(B)(i) without any substantive differences.
  - Proposed Rule 6.91P–O(f)(3)(B) would provide that a COA would end early if the Exchange receives an RFR Response that locks or crosses the DBBO on the same-side as the COA Order,

[72] As discussed *infra* regarding proposed Rule 6.91P–O(a)(5) and the definition of the Derived BBO, ''the DBBO will be updated as the Exchange BBO or ABBO, as applicable, is updated'').

which proposed text is based on current Rule 6.91–O(c)(6)(A)(i), except (as noted above) it refers to the DBBO rather than the ''initial Complex BBO.''

○ Proposed Rule 6.91P–O(f)(3)(C) would provide that a COA would end early if the leg markets update causing the DBBO on the same-side as the COA Order to lock or cross (i) any RFR Response(s) or (ii) if no RFR Responses have been received, the best-priced, contra-side ECOs. This proposed rule is based in part on current Rule 6.91–O(c)(6)(C)(i), with differences to use Pillar terminology, including reference to the DBBO.

○ Proposed Rule 6.91P–O(f)(3)(D) would provide that a COA would end early if the leg markets update causing the contra-side DBBO to lock or cross the COA initiation price. This proposed rule is based in part on current Rule 6.91–O(c)(6)(C)(ii), except that it would refer to the DBBO and the COA initiation price, which would be new concepts under Pillar.

Because the DBBO may be calculated using the ABBO for a given leg, the Exchange notes that it would be new under Pillar to have a COA end early based on (locking or crossing) market conditions outside of the Exchange. The Exchange believes this proposed functionality would benefit market participants by preventing COA Orders from executing at prices too far away from the prevailing market for that complex strategy. In addition, the Exchange believes this proposed functionality would promote internal consistency and benefit market participants because, as proposed, the execution of ECOs on the Exchange, including whether such ECO may initiate a COA as a COA Order, is based on the DBBO. As such, the Exchange believes it is appropriate and to the benefit of market participants that the early termination of a COA likewise be based on the DBBO—regardless of whether the prices used to calculate such DBBO include (or consist entirely of) ABBO prices.

• Proposed Rule 6.91P–O(f)(4) would set forth the ''Allocation of COA Orders'' after a COA either ends early or after the expiration of the Response Time Interval. Current Rule 6.91–O(c)(7)(A) sets forth that the COA-eligible orders are allocated against the best-priced interest received in the COA at each price on a ''Size Pro Rata Basis,'' as that concept is defined in Rule 6.75–O(f)(6). Under Pillar, the allocation of the COA Order would be based on price-time priority, rather than Size Pro Rata, which would align the allocation of ECOs in a COA with standard processing of ECOs on the Exchange, which adds transparency and consistency to ECO processing on the Exchange as well as internal consistency to Exchange rules, all to the benefit of market participants.

Proposed Rule 6.91P–O(f)(4)(A) would provide that RFR Responses to sell (buy) that are priced lower (higher) than a COA Order to buy (sell) would trade in price-time priority up (down) to the DBBO; provided, however, that if all legs of the DBB (DBO) are calculated using Exchange BBOs and all such Exchange BBOs have displayed Customer interest, RFR Responses to sell (buy) would not trade below (above) one penny ($0.01) times the smallest leg ratio inside the DBB (DBO). This proposed rule would ensure that the COA Order would not trade at a worse price than the leg markets and would price improve the DBBO where there is displayed Customer interest on all legs of the complex strategy on the Exchange. The proposed text is based in part on current Rule 6.91–O(c)(7)(A) insofar as it ensures that the COA Order would trade with the best-priced RFR Responses received in the COA and differs substantively because the COA Order would not trade ahead of certain displayed Customer interest and, as discussed above, the COA Order would trade with RFR Responses in price-time priority (and not Size Pro Rata).

Proposed Rule 6.91P–O(f)(4)(B) would provide that after COA allocations pursuant to paragraph (f)(4)(A) of this proposed Rule, any unexecuted balance of a COA Order (including COA Orders designated as IOC) would be eligible to trade with any contra-side interest, including the leg markets unless the COA Order is designated or treated as a Complex Only Order. This proposed text is based on existing functionality and makes explicit that a COA Order would trade solely with complex interest (and not the leg markets) during a COA. This proposed rule is designed to provide clarity and transparency that the remaining balance of a COA Order would be eligible to trade with the leg markets after the COA ends.

Proposed Rule 6.91P–O(f)(4)(C) would provide that after a COA Order trades pursuant to proposed Rule 6.91P–O(f)(4)(B), any unexecuted balance of a COA Order that is not cancelled (*i.e.,* if an IOC) would be ranked in the Consolidated Book and processed as an ECO pursuant to paragraph (e) of this Rule. The proposed text is based on current Rule 6.91–O(c)(7)(B) without any substantive differences.

Proposed Rule 6.91P–O(f)(5) would set forth ''Prohibited Conduct related to COAs,'' and is based on the first sentence of current Commentary .04 to Rule 6.91–O with one substantive differences: To add reference to quotes, and would provide that a pattern or practice of submitting ''unrelated *quotes or* orders that cause a COA to conclude early would be deemed conduct inconsistent with just and equitable principles of trade,'' [73] which addition would broaden the scope of ''Prohibited Conduct'' to the benefit of market participants and would also add clarity and transparency to Exchange rules.

ECO Risk Checks. Proposed Rule 6.91P–O(g) would describe the ''ECO Risk Checks,'' which are designed to help OTP Holders and OTP Firms to effectively manage risk when trading ECOs. Current Commentaries .03, .05, and .06 of Rule 6.91–O set forth the existing risk checks for ECOs. With the transition to Pillar, the Exchange proposes to modify and enhance its existing risk checks for ECOs, as follows:

• Proposed Rule 6.91P–O(g)(1) would set forth the ''Complex Strategy Limit.'' As proposed, the Exchange would establish a limit on the maximum number of new complex strategies that may be requested to be created per MPID, which limit would be announced by Trader Update.[74] As further proposed, when an MPID reaches the limit on the maximum number of new complex strategies, the Exchange would reject all requests to create new complex strategies from that MPID for the rest of the trading day. In addition, and notwithstanding the established Complex Strategy Limit, the Exchange proposes that it may reject a request to create a new complex strategy from any MPID whenever the Exchange determines it is necessary in the interests of a fair and orderly market.

This is new functionality proposed under Pillar but is conceptually similar to the Complex Order Table Cap (the ''Cap''), set forth in Commentary .03 to Rule 6.91–O, which Cap (like the

[73] *See* proposed Rule 6.91P–O(f)(5) (emphasis added). In addition, rather than copy into proposed Rule 6.91P–O the second sentence of current Rule 6.91–O, Commentary .04, which provides that dissemination of information related to COA Orders to third parties would also be deemed as conduct inconsistent with just and equitable principles of trade, the Exchange proposes to add more expansive language regarding this prohibited conduct to the order exposure rule. *See infra* for discussion of proposed change to Rule 6.47A–O.

[74] The Exchange has proposed to add the definition of MPID to proposed Rule 1.1, which would refer to ''the identification number(s) 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. 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.'' *See* Single-Leg Pillar Filing.

Complex Strategy Limit), would help maintain a fair and orderly market because it would operate as a system protection tool that enables the Exchange to prevent any single MPID from creating more than a limited number of complex strategies during the trading day. The Exchange also notes that other options exchanges likewise impose a limit on new complex order strategies.[75]

• Proposed Rule 6.91P–O(g)(2) would set forth the ECO Price Protection. The existing ECO ''Price Protection Filter'' is set forth in Commentary .05 to current Rule 6.91–O (the ''ECO Filter''). The proposed ''ECO Price Protection'' on Pillar would work similarly to how the current ECO price protection mechanism functions on the Exchange because an ECO would be rejected if it is priced a specified percentage away from the contra-side Complex NBB or NBO.[76] However, on Pillar, the Exchange proposes to use new thresholds and reference prices, which would not only simplify the existing price check, but it would also align the proposed functionality with the proposed ''Limit Order Price Protection'' for single-leg interest, thus adding uniformity to Exchange rules.[77] Although the mechanics of the ECO Price Protection would vary slightly from the existing Price Protection Filter, the goal of this feature would remain the same: To prevent the execution of ECOs that are priced too far away from the prevailing market for the same strategy and therefore potentially erroneous. Whereas the Away Market Deviation (vis a vis a DBBO based on an Exchange BBO) is designed to make sure that ECOs do not trade too far away from the prevailing market, the ECO Order Protection as proposed (and as is the case today) is to prevent the execution of ECOs that were potentially (inadvertently) entered at prices too far away from the prevailing market and, as such, this mechanism protects the order sender from itself.

Proposed Rule 6.91P–O(g)(2)(A) would provide that each trading day, an ECO to buy (sell) would be rejected or cancelled (if resting) if it is priced a Specified Threshold amount or more above (below) the Reference Price (as described below), subject to proposed paragraphs (g)(2)(A)(i)–(v) of the Rule as described below. Because ECO Price Protection would be applied each trading day, an ECO designated GTC would be re-evaluated for ECO Price Protection on each day that it is eligible to trade and would be cancelled if the limit price is equal to or through the Specified Threshold.

○ Proposed Rule 6.91P–O(g)(2)(A)(i) would provide that an ECO that arrives when a complex strategy is open for trading would be evaluated for ECO Price Protection on arrival. The Exchange has proposed similar functionality for single-leg options.[78]

○ Proposed Rule 6.91P–O(g)(2)(A)(ii) would provide that an ECO received during a pre-open state would be evaluated for ECO Price Protection after the ECO Opening Auction Process concludes.[79] The Exchange has proposed similar functionality for single-leg options.[80]

○ Proposed Rule 6.91P–O(g)(2)(A)(iii) would provide that an ECO resting on the Consolidated Book before a trading halt would be reevaluated for ECO Price Protection after the ECO Opening Auction Process concludes. The Exchange has proposed similar functionality for single-leg options.[81]

○ Proposed Rule 6.91P–O(g)(2)(A)(iv) would provide that QCC Orders (per Rule 6.62P–O(g)(1)) would not be subject to ECO Price Protection, as the Exchange subjects such paired orders to distinct price validations.[82] The Exchange has proposed similar functionality for single-leg options.[83]

○ Proposed Rule 6.91P–O(g)(2)(A)(v) would provide that ECO Price Protection would not be applied if there is no Reference Price for an ECO. The Exchange has proposed similar functionality for single-leg options.[84]

Proposed Rule 6.91P–O(g)(2)(B) would specify the ''Reference Price'' used in connection with the ECO Price Protection. As proposed, the Reference Price for calculating ECO Price Protection for an ECO to buy (sell) would be the Complex NBO (NBB), provided that, immediately following an ECO Opening Auction Process, the Reference Price would be the ECO Auction Price or, if none, the Complex NBO (NBB). The Exchange believes that adjusting the Reference Price for ECO Price Protection immediately following an ECO Opening Auction would ensure that the most up-to-date price would be used to assess whether to cancel an ECO that was received during a pre-open state, including during a Trading Halt. The Exchange notes this functionality is consistent with the proposed operation of the Limit Order Price Protection for single-leg options.[85]

As further proposed, there would be no Reference Price for an ECO if there is no NBBO for any leg of such ECO (*i.e.,* the Exchange would not calculate a Complex NBB (NBO)), which text is based on current Rule 6.91–O, Commentary .05(c), except that the proposed rule would not reference OPRA because, as further proposed, for purposes of determining a Reference Price, the Exchange would not use an adjusted NBBO (*i.e.,* such NBBO is implicitly reliant on information from OPRA).[86] The Exchange notes that using an unadjusted NBBO to calculate the Reference Price is based on how Limit Order Price Protection currently functions on the Exchange's cash equity market, as described in Rule 7.31–E(a)(2)(B) and is also consistent with the proposed operation of the Limit Order Price Protection for single-leg options.[87]

[75] *See, e.g.,* Cboe Rule 5.33(a) (providing, in its definition of ''complex strategy'' that Cboe ''may limit the number of new complex strategies that may be in the [Cboe] System at a particular time'') and MIAX Rule 518(a)(6) (providing, in its definition of ''complex strategy'' that MIAX ''may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular'').

[76] As noted above, the Exchange proposes to define the Complex NBBO as the derived national best bid and derived national best offer for a complex strategy calculated using the NBB and NBO for each component leg of a complex strategy. *See* proposed Rule 6.91P–O(a)(2).

[77] *See* Single-Leg Pillar Filing (Rule 6.62P–O(a)(3) sets forth the Limit Order Price Protection applicable to Limit Orders and quotes).

[78] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(a)(3)(A)(i)).

[79] *See* discussion *infra* regarding proposed Rule 6.91P–O(d), which describes the ECO Opening Auction Process (or Reopening after a Trading Halt) as well as the concepts of ECO Auction Collars and ECO Auction Price.

[80] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(a)(3)(A)(ii)).

[81] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(a)(3)(A)(iii)).

[82] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(g)(1)(C) and (D) regarding price requirements for execution of QCC Orders and Complex QCC Orders, respectively).

[83] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(a)(3)(A) excluding Cross Orders).

[84] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(a)(3)(A)).

[85] *See* Single-Leg Pillar Filing (discussion regarding Rule 6.62P–O(a)(3)(B) describing that the Reference Price for Limit Order Price Protection would be adjusted 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).

[86] *See* Single-Leg Pillar Filing (discussion regarding the definition of ''NBBO'' in Rule 1.1 describing that the ''NBBO'' for purposes of options trading as referring to the national best bid or offer and that ''[u]nless otherwise specified, 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'').

[87] 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

Continued

Proposed Rule 6.91P–O(g)(2)(C) would set forth the ''Specified Threshold'' used in connection with the ECO Price Protection. As proposed, the Specified Threshold for calculating ECO Price Protection would be $1.00, unless determined otherwise by the Exchange and announced to OTP Holders and OTP Firms by Trader Update.

The Exchange believes that the proposed Specified Threshold of $1.00 simplifies how the Reference Price would be calculated as compared to the calculations currently specified in Commentary .05 to Rule 6.91–O. In addition, consistent with Commentary .05(d), the Exchange proposes that the Specified Threshold could change, subject to announcing the changes by Trader Update. Providing flexibility in Exchange rules regarding how the Specified Threshold would be set is consistent with the rules of other options exchanges as well as the proposed functionality for the single-leg Limit Order Price Protection feature.[88]

• Proposed Rule 6.91P–O(g)(3) would set forth the ''Complex Strategy Protections.'' The proposed protections are based on current Rule 6.91–O, Commentary .06, which are referred to as the ''Debit/Credit Reasonability Checks.'' The Exchange believes this name change is appropriate because it more accurately conveys that the check applies solely to certain complex strategies and because (as discussed above), the Exchange proposes to refer simply to a ''net price'' as opposed to the ''total net debit or credit price.'' The proposed Pillar Complex Strategy Protections would function similarly to the current Debit/Credit Reasonability Checks because potentially erroneously priced incoming ECOs would be rejected. However, rather than to refer to specified debit or credit amounts as a way to determine whether a given strategy is erroneously priced, the proposed rule would instead focus on the expectation of the order sender and what would result if the ECO were not rejected. Consistent with current functionality, the proposed Complex Strategy Protections are designed to prevent the execution of ECOs at prices that are inconsistent with/not aligned with their strategies.

As proposed, to protect an OTP Holder or OTP Firm that sends an ECO (each an ''ECO sender'') with the expectation that it would receive (or pay) a net premium but has priced the ECO such that the ECO sender would instead pay (or receive) a net premium, the Exchange would reject any ECO that is comprised of the erroneously-priced complex strategies as set forth in proposed Rule 6.91P–O(g)(3)(A)–(C) and described below.

Proposed Rule 6.91P–O(g)(3)(A) would provide that '' 'All buy' or 'all sell' strategies'' would be rejected as erroneously-priced if it is an ECO for a complex strategy where all legs are to buy (sell) and it is entered at a price less than one penny ($0.01) times the sum of the number of options in the ratio of each leg of such strategy (*e.g.,* a complex strategy to buy (sell) 2 calls and buy (sell) 1 put with a price less than $0.03). The proposed text is based on Rule 6.91–O, Commentary .06(a)(1), with no substantive differences, except that the Exchange has streamlined the text and set forth the minimum price (*i.e.,* $0.03) for any ''all buy'' or ''all sell'' strategies.

Proposed Rule 6.91P–O(g)(3)(B) would provide for the rejection of erroneously-priced ''Vertical spreads,'' which are defined as complex strategies that consists of a leg to sell a call (put) option and a leg to buy a call (put) option in the same option class with the same expiration but at different strike prices. As proposed, the Exchange would reject as erroneously-priced: (i) An ECO for a vertical spread to buy a lower (higher) strike call and sell a higher (lower) strike call and the ECO sender would receive (pay) a net premium (proposed Rule 6.91P–O(g)(3)(B)(i)); and (ii) an ECO for a vertical spread to buy a higher (lower) strike put and sell a lower (higher) strike put and the ECO sender would receive (pay) a net premium (proposed Rule 6.91P–O(g)(3)(B)(ii)). The proposed strategy protections for vertical spreads are based on current Rule 6.91–O, Commentary .06(a)(2), except that, as noted above, the proposed Rule is written from the standpoint of the expectation of the ECO sender as opposed to reviewing total net debit or credit price of the strategy.

Proposed Rule 6.91P–O(g)(3)(C) would provide for the rejection of erroneously-priced ''Calendar spreads,'' which are defined as consisting of a leg to sell a call (put) option and a leg to buy a call (put) option in the same option class at the same strike price but with different expirations. As proposed, the Exchange would reject as erroneously-priced: (i) An ECO for a calendar spread to buy a call leg with a shorter (longer) expiration while selling a call leg with a longer (shorter) expiration and the ECO sender would pay (receive) a net premium (proposed Rule 6.91P–O(g)(3)(C)(i)); and (ii) an ECO for a calendar spread to buy a put leg with a shorter (longer) expiration while selling a put leg with a longer (shorter) expiration and the ECO sender would pay (receive) a net premium (proposed Rule 6.91P–O(g)(3)(C)(ii)). The proposed strategy protections for calendar spreads are based on current Rule 6.91–O, Commentary .06(a)(3), except that, as noted above, the proposed Rule is written from the standpoint of the expectation of the ECO sender as opposed to reviewing the total net debit or credit price of the strategy. The Exchange has also not retained discretion to disable the strategy protections for calendar spreads (as contained in Commentary .06(a)(3)(i) of the current Rule) because since adopting this provision in 2017, the Exchange has never exercised this discretion and therefore has determined that such discretion is no longer needed.

Proposed Rule 6.91P–O(g)(3)(D) would provide that any ECO that is not rejected by the complex strategy protections would still be subject to the ECO Price Protection, per paragraph (g)(2) of this Rule, which proposed text is based on Rule 6.91–O, Commentary .06(b) without any substantive difference.

Rule 6.47A–O: Order Exposure Requirements—OX

The Exchange also proposes conforming, non-substantive amendments to Rule 6.47A–O, regarding order exposure, to add a cross-reference to new Pillar Rule 6.91P–O. Current Rule 6.47A–O(iii) exempts orders submitted to the COA Process, (per current Rule 6.91–O) from its one-second order exposure requirements. This proposed amendment would extend the exemption from the order exposure requirements to orders submitted to a COA on Pillar.[89] The Exchange also proposes to modify the reference to ''Complex Order Auction Process ('COA')'' to simply ''Complex Order Auction ('COA')'' (*i.e.,* removing the word Process) consistent with how this concept is defined in proposed Rule 6.91P–O(a)(3). As previously stated, the Exchange believes that the proposed Response Time Interval for a COA (with a duration of no less than 100 milliseconds) is of sufficient length to allow OTP Holders and OTP Firms time to respond to a COA. As such, the

adjusted. *See* Single-Leg Pillar Filing (describing use of unadjusted NBBO for single-leg Limit Order Price Protection in Rule 6.62P–O(a)(3)(B)).

[88] *See, e.g.,* Cboe Rule 5.34(b)(6) (describing the ''Drill-Through Protection'' and that Cboe ''determines a default buffer amount on a class-by-class basis). *See* Single-Leg Pillar Filing (describing use of Trader Update to modify Specified Thresholds in Rule 6.62P–O (a)(3)(C)).

[89] *See* proposed Rule 6.47A–O(iii). Consistent with the Single-Leg Pillar Filing, the Exchange also proposes to replace reference to ''OX'' with ''the Exchange.'' *See id.* (preamble).

proposal is designed to promote timely execution of the COA Order, while ensuring adequate exposure of such orders. Accordingly, the Exchange proposes to amend Rule 6.47A–O(iii) to extend the exemption from the one-second exposure requirement to COA Orders under Pillar, which exemption is consistent with the treatment of similar orders on other options exchanges.[90] Consistent with Rule 6.47A–O, Commentary .01, OTP Holders and OTP Firms would only utilize the COA where there is a genuine intention to execute a bona fide transaction.[91]

The Exchange also proposes to modify Commentary .03 to Rule 6.47A–O, which is currently Reserved, to provide that ''[p]rior to or after submitting an order to the Exchange, an OTP Holder or OTP Firm cannot inform another OTP Holder or OTP Firm or any other third party of any of the terms of the order.'' The proposed provision is designed to prevent OTP Holders or OTP Firms from providing material, non-public information to third parties and is consistent with similar provisions on other options exchanges.[92]

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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 Exchange's current 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''),[93] in general, and furthers the objectives of Section 6(b)(5),[94] 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 proposed Rule 6.91P–O to support electronic complex trading on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would promote transparency in Exchange rules by using consistent terminology governing trading on both the Exchange's cash equity and options Pillar 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.

The Exchange believes that adding new Rule 6.91P–O with the modifier ''P'' to denote that this rule 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 current Rule 6.91–O stating that it 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.

The Exchange believes that incorporating Pillar functionality currently available on the Exchange's cash equity market (and recently proposed for single-leg options),[95] for trading of electronic complex orders on its options market in proposed Rule 6.91P–O 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 trading of electronic complex orders. As discussed herein, and unless otherwise specified herein, the Exchange is not proposing fundamentally different functionality regarding how ECOs would trade on Pillar than is currently available on the Exchange. Accordingly, with the transition to Pillar, the Exchange would use Pillar terminology to describe functionality that is not changing and also introduce certain new or updated functionality for Electronic Complex Orders (*i.e.,* enhancing the opening auction process, including introducing the ''ECO Auction Collars'') that will also be available for outright options trading on the Pillar platform. As such, the Exchange believes that using Pillar terminology and incorporating updated functionality for the proposed new rule 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, Types of ECOs and Priority and Pricing of ECOs

The Exchange believes that the proposed definitions in Rule 6.91P–O(a) 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 by consolidating existing defined terms related to electronic complex trading into one section of the proposed rule. The Exchange believes that the proposed non-substantive amendments to those terms currently defined in Rule 6.91–O would promote clarity and transparency by using Pillar terminology. The Exchange further believes consolidating defined terms in proposed Rule 6.91P–O(a) (including alphabetizing the proposed terms) would make the proposed rule more transparent and easier to navigate.

The Exchange believes that the proposed new definition of Away Market Deviation would further remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity and transparency to market participants regarding how the Exchange would calculate this additional protection against ECOs being executed on the Exchange at prices too far away from the current market.

The Exchange believes that the proposed new definition of DBBO (and related terms of DBB and DBO) would further remove impediments to and perfect the mechanism of a free and open market and a national market

[90] *See, e.g.,* NYSE American Rule 935NY(iii) (exempting from the one-second order exposure requirement orders submitted to the Customer Best Execution Auction (or CUBE) process per Rules 971.1NY (for single-leg CUBE) and 971.2NY (for Complex CUBE)).

[91] *See* Rule 6.47A–O, Commentary .01 (''Rule 6.47A–O prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book'').

[92] *See, e.g.,* NYSE American Rule 935NY, Commentary .04 (providing that ''[p]rior to or after submitting an order to the System, an ATP Holder cannot inform another ATP Holder or any other third party of any of the terms of the order'').

[93] 15 U.S.C. 78f(b).

[94] 15 U.S.C. 78f(b)(5).

[95] *See generally* the Single-Leg Pillar Filing.

system because it would promote clarity and transparency to market participants regarding how the DBBO would be calculated under Pillar. The proposed definition is not novel and is based in part on similarly defined terms used on NYSE American and Cboe. The Exchange believes that providing an alternative means of calculating the DBBO (*i.e.,* by looking to the contra-side best bid (offer) in the absence of same-side interest) would remove impediments to and perfect the mechanism of a free and open market and a national market system thereby benefitting as it should increase opportunities for trading. This proposed definition of Away Market Derivation is new and would promote clarity and transparency In addition, the proposal to use the Away Market Deviation as a means of binding the Exchange's calculation of the DBBO as well as trading of ECOs with the leg markets would remove impediments to and perfect the mechanism of a free and open market and a national market system because such limitation would benefit market participants by providing an additional protection against ECOs being executed on the Exchange at prices too far away from the current market.

In addition, the Exchange believes that setting forth additional definitions in proposed Rule 6.91P–O(a), including those that are used on other options exchanges (*e.g.,* ''complex strategy'' and ''ratio'') and clarifying terms (*e.g.,* ''leg'' and ''leg markets''), would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity and transparency to market participants regarding electronic complex trading under Pillar. Finally, the proposed definition of ''ECO Order Instruction'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would incorporate for ECOs existing Pillar order handling functionality in an auction that is currently available on the Exchange's cash equity platform, as described in Rule 7.35–E(g) and is proposed for options trading in Rule 6.64P–O(e) and its sub-paragraphs (1) and (2) (as described in the Single-Leg Pillar Filing). The Exchange similarly proposes this functionality for the ECO Opening Auction Process, with non-substantive differences only to use an ECO-specific defined term and to refer to the ECO Opening Auction Process.

The Exchange believes that the proposed types of ECOs available per Rule 6.91P–O(b) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would describe the ECOs and time-in-force modifiers that would be available on Pillar, as well as specifying additional ECO types. The Exchange is not proposing any new ECO order types or time-in-force modifiers on Pillar and believes that the non-substantive differences to use Pillar terminology to describe the available ECO order types would promote transparency and clarity in Exchange rules. The Exchange believes that the proposed Complex Only Order is not novel because it is based in part on the existing PNP Plus order functionality as both order types only interact with other ECOs. In addition, the proposed ECO GTX Order uses Pillar terminology to describe what is referred to as an ''RFR Response'' in the current rules, and therefore is not novel.

The Exchange believes that proposed new Rule 6.91P–O(c), and subparagraphs (2), (3), and (4), would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rules would set forth a price-time priority model for Pillar and pricing requirements for ECO trading that are substantively the same as the Exchange's current price-time priority model and pricing requirements as set forth in Rule 6.91–O(a)(1) and Commentaries .01 and .02(i) to Rule 6.91–O. The Exchange proposes certain modified functionality, including the Complex Only Order as noted above, and regarding ECO trading vis a vis the DBBO (and binding such DBBO by the maximum allowable Away Market Deviation when the Exchange BBO is used to calculate the DBBO for a leg), which would benefit market participants as the proposes features would provide additional price protection in ECO trading and would add clarity and transparency to the rules. The Exchange believes that proposed Rule 6.91P–O(c)(1)–(4) would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would promote transparency and clarity in Exchange rules regarding how ECOs would trade with the leg markets and with other ECOs.

Execution of ECOs at the Open (or Reopening After a Trading Halt)

The Exchange believes that proposed Rule 6.91P–O(d) regarding the ECO Opening Auction Process 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 the Exchange currently uses for ECOs, as described in Rule 6.91–O(a)(2)(i)(B), while at the same time enhancing the process by incorporating Pillar auction functionality that is currently available on the Exchange's cash equity platform, as described in Rule 7.35–E as well as proposed for single-leg options in Rule 6.64P–O. For example, the Exchange proposes to use Pillar functionality to determine how to price an ECO Opening Auction Process, as described in proposed Rule 6.91P–O(d)(3), including using proposed ''ECO Auction Collars'' and an ''ECO Auction Price,'' which are consistent with the core functionality for opening ECOs, with additional detail that would promote clarity and transparency to market participants regarding this process. The Exchange believes it is appropriate to refrain from opening a series when there is a lack of reliable pricing indication(s) regarding the price at which a complex strategy should execute because doing so would protect market participants from potentially erroneous executions, thereby promoting a fair and orderly ECO Opening Auction Process.

Moreover, the Exchange believes that the proposal to use the DBBO (as opposed to the currently used Complex NBBO) for the ECO Opening Process would allow the Exchange to open a series based on the Exchange BBO, bound by the Away Market Deviation (or, the ABBO if the Exchange BBO is not available), which is consistent with ECO handling during Core Trading (per proposed Rule 6.91P–O(e)). The Exchange believes this proposed change would better align the permissible opening price for a series with the permissible execution price during Core Trading, which adds consistency to ECO order handling (as well as internal consistency to Exchange rules) to the benefit of investors. As such, this proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the Exchange believes that requiring that the opening price for a complex strategy must improve the DBBO if there is displayed Customer interest on all legs of the strategy on the Exchange would protect displayed Customer interest, and protect investors in general, while ensuring a fair and orderly ECO Opening Process.

The Exchange also proposes to process ECOs received during an ECO Opening Auction Process, as described in proposed Rule 6.91P–O(d)(4), and transition to continuous trading following an ECO Opening Auction Process, as described in proposed Rule

6.91P–O(d)(5), in a manner similar to how the Exchange's cash equity market processes orders that are received during an Auction Processing Period and transitions to continuous trading following a cash equity Trading Halt Auction, which the Exchange also proposes for single-leg options in Rule 6.64P–O. The Exchange believes that using similar functionality for different types of auctions would promote consistency across the Exchange's options and cash equity trading platforms. Because the Exchange would be harnessing Pillar technology to support the ECO Opening Auction Process for electronic complex options trading, the Exchange believes that structuring proposed Rule 6.91P–O(d) based on Rule 7.35–E and Rule 6.64P–O would promote transparency in the Exchange's trading rules.

The Exchange further believes that the proposed Rules 6.91P–O(d)(1) and (2), which describe when the Exchange would initiate an ECO Opening Auction Process and which ECOs would be eligible to trade in that process, would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would provide clarity and transparency of the conditions required before the Exchange would initiate an ECO Opening Auction Process. The Exchange further believes that those conditions are not novel and are based on existing conditions specified in Rule 6.91–O(a)(2)(i)(A) and (B), with additional specificity designed to promote clarity and transparency. Accordingly, the Exchange believes that the ECO Opening Auction Process for ECOs trading on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed process is based on the current opening process, including that orders would be matched based on price-time priority at a price at which the maximum volume can be traded.

Execution of ECOs During Core Trading Hours

The Exchange believes that proposed Rule 6.91P–O(e), setting forth the execution of ECOs during Core Trading Hours, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed functionality would incorporate the Exchange's existing price-time priority model for trading ECOs, including providing that the leg markets would have priority at a price. The Exchange believes that the proposed rule change to add text to specify that an ECO may trade with another ECO at the leg market price if the interest in the leg markets is insufficient to trade at that price (*i.e.,* the leg markets cannot trade at that price in full or in a permissible ratio), would continue to respect the priority of the leg markets at a price, but would also ensures that ECO trading opportunities are maximized after eligible interest in the leg markets is exhausted at that price resulting in more efficient executions. The Exchange note that this proposed functionality is consistent with the rule of at least one options exchange and is therefore not new or novel.[96] Once interest in the leg markets is exhausted at a price, such interest is no longer executable as ''orders are executable against each other only when both the price and the quantity of the orders match.'' [97]

In addition, the Exchange believes that allowing Complex Only Orders to trade up to the DBBO unless there is displayed Customer interest on each leg on the Exchange at the DBBO (as described above) would provide market participants additional trading opportunities while still protecting Customer interest on the Exchange, which would, in turn, remove impediments to and perfect the mechanism of a free and open market and national market system.

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and national market system to specify that ECOs will not trade with orders in the leg markets designated AON, FOK or with an MTS modifier (as described in the Single-Leg Pillar Filing) because it would add clarity and transparency to the proposed Rule regarding the handling of ECO vis a vis these single-leg order types that are conditional based on order size. The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system for ECOs to trade as Complex Only Orders (rather than be rejected as they would under current rules) if they have a complex strategy that could result in a Market Maker breaching their established risk settings.[98] This proposed process is also consistent with the treatment of similar ECOs on other options markets.[99] The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to specify the frequency with which the Exchange would evaluate trading opportunities for an ECO with the leg markets update because it would promote clarity and transparency in Exchange rules.

Overall, the Exchange believes the proposal for ECO trading during Core Trading would help maintain a fair and orderly market and would benefit investors by facilitating increased interaction between ECOs (not designated as Complex Only) and leg markets interest. In particular, such ECOs would execute against interest in the leg markets for all of the quantity available at the best price in a permissible ratio until the quantities remaining on such leg markets are insufficient to execute against the ECO while respecting the spread ratio. The Exchange believes that requiring Complex Only Orders to improve at least a portion of the displayed Customer interest on the leg markets when all legs of a complex strategy contain displayed Customer interest would provide market participants with additional trading opportunities while still protecting displayed Customer interest on the Exchange. To the extent that this proposed handling of ECOs on the Exchange during Core Trading results in greater liquidity (because of increased opportunity for order execution) this increased liquidity should, in turn, enhance execution quality.

Execution of ECOs During a COA

The Exchange believes that proposed Rule 6.91P–O(f), setting forth the execution of ECOs during a COA, 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 both incorporate existing functionality to provide that COA Orders would trade solely with other ECOs (and not the leg markets) during the auction and that a COA Order would be allocated on price-time priority, which is consistent with the Exchange's priority scheme. The Exchange believes that relying on the DBBO (and binding such DBBO by the maximum allowable Away Market Deviation when the Exchange BBO is used to calculate the DBBO for a leg) as

[96] *See* BOX Rule 7240(b)(2)(ii); *see also* BOX Notice, 78 FR at 15093 and BOX Approval, 78 FR, at 24449.

[97] *See* BOX Approval Order, 78 FR, at 24449.

[98] *See* discussion *infra* regarding rationale for proposed Rule 6.91P–O(e) to restrict certain ECOs from executing as a package and bypassing Market Maker risk settings.

[99] *See supra* notes 62 and 63 (citing to Cboe Rule 5.33(g) and Nasdaq ISE Options 3, Section 14 (d)(3)(A)-(B) regarding similar functionality).

opposed to an initial snapshot of the Complex BBO (as is currently the case), would benefit market participants as the proposed operation of the DBBO would provide additional price protection in ECO trading, including during a COA, and would add clarity and transparency to the rules. The Exchange also believes that the proposed change to add reference to quotes (in addition to orders) to Rule 6.91P–O(f)(5) (Prohibited Conduct) regarding the COA Process, would benefit market participants as it would broaden the scope of such the prohibition. Overall, the Exchange believes the proposed rule would add clarity and transparency to OTP Holders and OTP Firms utilizing the COA process.

In addition, the Exchange further believes that the proposed changes to the COA process on Pillar that either differ from current functionality or that would be new would remove impediments to and perfect the mechanism of a free and open market and national market system because:

- Requiring that a COA Order initiate a COA on arrival, else be treated as a standard ECO, is new under Pillar as, per the current Rule, a COA Order may sit on the Consolidated Book until market conditions change such that it may initiate a COA. The Exchange believes the proposed change would provide OTP Holders and OTP Firms with a higher level of transparency and determinism of when a COA Order could initiate a COA and would also encourage market participants to submit aggressively-priced orders in order to qualify for initiation of a COA, which better-priced interest benefits all investors and improves market quality.
- Making explicit that COA Orders may only execute with ECOs (and not the leg markets) until after the COA ends is consistent with current functionality, per Rule 6.91–O(c)(2), but is designed to make clear that ECOs have priority during a COA.
- Streamlining the rule text that would describe the market events that, under Pillar, would cause an early end to a COA would simplify the COA process and would provide OTP Holders and OTP Firms with a higher level of transparency and determinism regarding the handling of COA Orders.
- Allowing a COA to end early based on the DBBO, which may be calculated using ABBO leg prices, would benefit market participants and promote internal consistency because, as proposed, such early termination would prevent COA Orders from executing at prices too far away from the prevailing market for that complex strategy. In addition, the DBBO is used to determine the execution of ECOs on the Exchange, including whether such ECO may initiate a COA as a COA Order. As such, the Exchange believes it is appropriate and to the benefit of market participants that the early termination of a COA likewise be based on the DBBO—regardless of whether the prices used to calculate such DBBO include (or consist entirely of) ABBO prices.

ECO Risk Checks

The Exchange believes that proposed Rule 6.91P–O(g), setting forth ECO Risk Checks, 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 risk controls, without any substantive differences. The Exchange further believes that the proposed changes to ECO Risk Checks on Pillar that either differ from current functionality or would be new would remove impediments to and perfect the mechanism of a free and open market and national market system because:

- The Exchange believes that the new Complex Strategy Limit (which is conceptually similar to the Complex Order Table Cap under the current Rule) would help maintain a fair and orderly market because it would operate as a system protection tool that enables the Exchange to prevent any single MPID from creating more than a limited number of complex strategies during the trading day. The proposed limits are not novel and are based on limits imposed by other options exchanges on new complex order strategies.[100]
- The proposed ECO Price Protection on Pillar would work similarly to how the current ECO price protection mechanism functions on the Exchange because an ECO would be rejected if it is priced a specified percentage away from the contra-side Complex NBB or NBO.[101] The Exchange believes that the proposed differences on Pillar, to use new thresholds and reference prices, would not only simplify the existing price check, but it would also align the proposed functionality with the proposed ''Limit Order Price Protection'' for single-leg interest, thus adding uniformity to Exchange rules.[102] Although the mechanics of the ECO Price Protection would vary slightly from the existing Price Protection Filter, the goal of this feature would remain the same: Prevent the execution of ECOs that are priced too far away from the prevailing market for the same strategy and therefore potentially erroneous to be benefit of market participants.
- The proposed Pillar Complex Strategy Protections would function similarly to the current Debit/Credit Reasonability Checks because erroneously priced incoming ECOs would be rejected. Consistent with current functionality, the proposed Complex Strategy Protections are designed to prevent the execution of ECOs at prices that are inconsistent with/not aligned with their strategies to the benefit of market participants. The Exchange believes that the non-substantive differences to focus on the expectation of the ECO sender and what would result if the ECO were not rejected rather than refer to specified debit or credit amounts as a way to determine whether a given strategy is erroneously priced would remove impediments to and perfect the mechanism of a free and open market system because it would promote clarity and transparency in Exchange rules.

Rule 6.47A–O

The Exchange believes that the proposed non-substantive change to Rule 6.47A–O to update references to ''COA'' (versus COA Process) and ''the Exchange,'' to delete reference to ''OX,'' and add the reference to Rule 6.91P–O would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed conforming changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion. Similarly, the Exchange believes that adding a cross-reference to proposed Rule 6.91P–O(f) and extending the exemption from the one-second order exposure requirement of Rule 6.47A–O would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity and transparency of which Pillar rules would be eligible for the exception specified in that Rule.

[100] *See supra* note 67 (citing Cboe Rule 5.33(a) and MIAX Rule 518(a)(6) regarding each exchange's ability to limit the number of new complex strategies in their systems at any particular time).

[101] As noted above, the Exchange proposes to define the Complex NBBO as the derived national best bid and derived national best offer for a complex strategy calculated using the NBB and NBO for each component leg of a complex strategy. *See* proposed Rule 6.91P–O(a)(2).

[102] *See* Single-Leg Pillar Filing (Rule 6.62P–O(a)(3) sets forth the Limit Order Price Protection Filter applicable to Limit Orders and quotes).

As previously stated, the Exchange believes that the proposed Response Time Interval for a COA (*i.e.* no less than 100 milliseconds) is of sufficient length so as to permit OTP Holders and OTP Firms time to respond to a COA. As such, the Exchange believes the proposed rule change would provide the order sender with a timely execution of its COA Order, while ensuring that there is an adequate exposure of such order. Accordingly, the Exchange proposes to amend Rule 6.47A–O(iii) to extend the exemption from the one-second order exposure requirement to COA Orders under Pillar, which exemption is consistent with the treatment of similar orders on other options exchanges.[103] Consistent with Rule 6.47A–O, Commentary .01, OTP Holders and OTP Firms would only utilize the COA where there is a genuine intention to execute a bona fide transaction.[104]

The Exchange believes that the proposed prohibition that OTP Holder and OTP Firms not inform another OTP Holder or OTP Firm or any other third party of any of the terms of the order, per proposed Commentary .03 to Rule 6.47A–O, would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed change is designed to prevent OTP Holders or OTP Firms from providing material, non-public information to third parties and consistent with similar provisions on other options exchanges.[105]

* * * * *

For the reasons set forth above, the Exchange believes proposed Rule 6.91P–O, regarding ECO trading, including the priority and execution of such ECOs vis a vis the leg markets, is consistent with the goals of the Act to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the 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 for trading of ECOs on its options trading platform would promote competition among options exchanges by offering a low-latency platform that offers more deterministic outcomes for trading interest, which, in turn, facilities ECO trading on a continuous and real-time basis on the Exchange.

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 trading of ECOs 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 the treatment of ECOs. Rather, the Exchange believes that the proposed rule changes would promote consistent use of terminology to support options (both single-leg and complex) 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 treatment of ECOs, without proposing any material substantive changes.

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, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[106] In particular, for the reasons discussed below, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[107] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This order approves the proposed rule change in its entirety, although only certain more significant aspects of the proposed rules are discussed below.

A. Definitions

Several defined terms in proposed Exchange Rule 6.91P–O(a) are consistent with defined terms in the Exchange's rules or in the rules of other options exchanges. The definition of Complex NBBO in proposed Exchange Rule 6.91P–O(a)(2) is consistent with defined terms used on other options exchanges.[108] Similarly, the definition of complex strategy in proposed Exchange Rule 6.91P–O(a)(4) is consistent with definitions in the rules of other options exchanges.[109] The definition of ECO Order Instruction in proposed Exchange Rule 6.90P–O(a)(6) is based on the term ''order instruction'' used in Exchange Rules 7.35–E(g) and 6.64P–O(e), which the Commission has previously approved.[110] The Commission believes that the definitions of ''leg'' or ''leg market,'' and ''ratio'' or ''leg ratio'' in proposed Exchange Rules 6.91P–O(a)(8) and (9), respectively, should help to clarify the

[103] *See supra* note 82 (regarding NYSE American Rule 935NY(iii)).

[104] *See supra* note 83 (regarding Rule 6.47A–O, Commentary .01).

[105] *See supra* note 84 (regarding similarly provision contained in NYSE American Rule 935NY, Commentary .04).

[106] 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).

[107] 15 U.S.C. 78f(b)(5).

[108] *See, e.g.,* BOX Rule 7240(a)(3) (stating that the term ''cNBBO'' means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy); and MIAX Rule 518(a)(2)) (stating, in part, that the cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy).

[109] *See, e.g.,* BOX Rule 7240(a)(9) (stating that the term Complex Order Strategy or Strategy means a particular combination of components of a Complex Order and their ratios to one another. BOX will assign a strategy identifier to each Strategy); and MIAX Rule 518(a)(6) (stating that the term ''complex strategy'' means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular).

[110] Exchange Rule 7.35E(g) states that, for purposes of paragraphs (g) and (h) of Exchange Rule 7.35E, an ''order instruction'' refers to a request to cancel, cancel and replace, or modify an order. Exchange Rule 6.64P–O(e), which the Commission approved in the Single-Leg Pillar Proposal, states that, for purposes of paragraphs (e) and (f) of Exchange Rule 6.64P–O, an ''order instruction'' refers to a request to cancel, cancel and replace, or modify an order or quote.

terminology used to describe the trading of ECOs.

Currently, Exchange Rule 6.91–O defines Electronic Complex Order to mean any Complex Order as defined in Exchange Rule 6.62–O(e) or any Stock/Option Order or Stock/Complex Order as defined in Exchange Rule 6.62–O(h) that is entered into the NYSE Arca System. Proposed Exchange Rule 6.91P–O(a)(7) eliminates the references to Stock/Option and Stock/Complex Orders and defines an Electronic Complex Order or ECO to mean a Complex Order as defined in Exchange Rule 6.62P–O(f) that is submitted electronically to the Exchange.[111] The definition of Complex Order in Exchange Rule 6.62P–O(f) is consistent with the definition of complex order used on other options exchanges.[112] In addition, the elimination of references to Stock/Option and Stock/Complex Orders helps to ensure that the definition of ECO accurately reflects the Exchange's functionality because the Exchange does not permit trading of such orders electronically.[113]

Proposed Exchange Rule 6.91P–O(a)(1) defines the Away Market Deviation to mean the difference between the Exchange BB(BO) for a series and the ABB(ABO) for that same series when the Exchange BB(BO) is lower (higher) than the ABB(ABO). The maximum allowable Away Market Deviation is the greater of $0.05 or 5% below (above) the ABB(ABO) (rounded down to the nearest whole penny). No ECO on the Exchange will execute at a price that would exceed the maximum allowable Away Market Deviation on any component of the complex strategy.[114] The Exchange states that the Away Market Deviation will provide additional protection against ECOs being executed on the Exchange at prices too far away from the current market.[115] The Commission notes that other options exchanges have adopted similar protections for complex orders.[116]

The definitions in proposed Exchange Rule 6.91P–O(a)(3) related to the COA are substantially similar to the current COA definitions in Exchange Rule 6.91–O(c), with certain differences.[117] The definition of RFR Response in proposed Exchange Rule 6.91–O(a)(3)(C) eliminates the time-in-force contingency in the current definition of RFR Response and would include as an RFR Response any ECO received during the Response Time Interval that is on the opposite side of the market of, and marketable against, the COA Order.[118] By treating any ECO received during the Response Time Interval that is marketable against the COA Order as an RFR Response, the Commission believes that the proposed definition of RFR Response could help to increase competition in the COA, thereby potentially increasing price improvement opportunities for the COA Order.

The definition of Response Time Interval in proposed Exchange Rule 6.91P–O(a)(3)(D) will reduce the minimum duration of the Response Time Interval from no less than 500 milliseconds, as provided in Exchange Rule 6.91–O(c)(4), to no less than 100 milliseconds. The Exchange also proposes to amend Exchange Rule 6.47A–O to provide that orders submitted to the proposed COA will satisfy the order exposure requirements of Exchange Rule 6.47A–O. The Exchange states that the proposed Response Time Interval will provide OTP Holders and OTP Firms with adequate time to respond to a COA, given that other options exchanges have for several years offered electronic paired auctions with a Response Time Interval of at least 100 milliseconds.[119] The Exchange further states that the proposal is designed to provide the order sender with a timely execution of the COA Order while ensuring adequate exposure of the order.[120] Based on the Exchange's representations, the Commission believes that the proposed Response Time Interval is designed to provide market participants with adequate time to respond to a COA, which should continue to assure competition for the auctioned orders. Accordingly, the Commission also believes that it is consistent with the Act to allow Users to utilize the proposed COA to satisfy the order exposure requirements of Exchange Rule 6.47A–O.

As described more fully above, proposed Exchange Rule 6.91P–O(a)(5) defines the DBBO as the derived best net bid (''DBB'') and derived best net offer (''DBO'') for a complex strategy, calculated using the Exchange BB(BO) for each leg of the strategy (if available) or the ABB (ABO) for a leg if the Exchange has no BB(BO) for that leg.[121] The proposed definition states that when the Exchange uses the Exchange

[111] Exchange Rule 6.62P–O(f), which the Commission approved in the Single-Leg Pillar Proposal, defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more option series in the same underlying security (the ''legs'' or ''components'' of the Complex Order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[112] *See, e.g.,* BOX rule 7240(a)(7); EDGX Rule 21.20(a); ISE Options 3, Section 14(a)(1); and MIAX Rule 518(a)(5).

[113] Stock/Option Orders and Stock/Complex Orders are available only for open outcry trading on the Exchange. *See* Exchange Rule 6.62P–O(h)(6). *See also* Amendment No. 1 at n. 23.

[114] *See* proposed Exchange Rules 6.91P–O(a)(1).

[115] *See* Amendment No. 1 at 43.

[116] *See, e.g.,* ISE Options 3, Section 16(a) (providing that ISE's system ''will not permit any leg of a complex strategy to trade through the NBBO for the series or any stock component by a configurable amount calculated as the lesser of (i) an absolute amount not to exceed $0.10, and (ii) a percentage of the NBBO not to exceed 500%, as determined by the Exchange on a class, series or underlying basis. A Member can also include an instruction on a Complex Order that each leg of the Complex Order is to be executed only at a price that is equal to or better than the NBBO for the options series or any stock component, as applicable''); and BOX Rule 7240(a)(5) (providing that the '''Extended cNBBO' means the maximum permissible net bid and offer execution price for a Complex Order Strategy. The Extended cNBBO is calculated by subtracting the Extended cNBBO Limit from the cNBB and adding the Extended cNBBO Limit to the cNBO. In calculating the Extended cNBBO, each side of the Extended cNBBO is rounded to the nearest penny within the Extended cNBBO (*i.e.,* the cNBB is rounded up to the nearest penny and the cNBO is rounded down to the nearest penny'')).

[117] For example, the definition of COA Order in proposed Exchange Rule 6.91P–O(a)(3)(A), unlike the current definition of COA-eligible order, will not require that an option class be designated as COA-eligible because all option classes that trade on Pillar will be COA-eligible. The definition of RFR in proposed Exchange Rule 6.91P–O(a)(3)(B) will indicate that the Exchange disseminates RFR messages through its proprietary data feed.

[118] The Exchange also proposes to adopt an ECO GTX Order that is similar to the current RFR Response. *See* Amendment No. 1 at 7–8 and proposed Exchange Rule 6.91P–O(b)(2)(C).

[119] *See* Amendment No. 1 at 8, citing NYSE American Rule 971.1NY(c)(2)(B) (providing that for a Customer Best Execution Auction ''[t]he minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second''); and 971.2NY(c)(1)(B) (same); Cboe Exchange Inc. (''Cboe'') Rule 5.33(d)(3) (providing that Cboe ''determines the duration of the Response Time Interval on a class-by-class basis, which may not exceed 3000 milliseconds''). *See also* BOX Rule 7245(f)(1) (providing for a Complex Order Price Improvement Period of 100 milliseconds); and ISE Options 3, Section 13(e)(4)(i) (providing an exposure period for the Complex Price Improvement Mechanism of no less than 100 milliseconds and no more than one second). The Exchange states that other options exchanges do not establish a minimum duration for a COA. *See* Amendment No. 1 at 8.

[120] *See* Amendment No. 1 at 50.

[121] The Commission notes that another options exchange also uses away market prices to calculate the synthetic best bid and offer for a strategy when the exchange has no bid or offer for a component leg of the strategy. *See* Cboe Rule 5.33(a) (defining the Synthetic Best Bid or Offer or SBBO to mean the best net bid and net offer on the Exchange for a complex strategy calculated using: (1) For complex orders, the BBO for each component (or the NBBO for a component if the BBO for that component is not available) of a complex strategy from the Simple Book; and (2) for stock-option orders, the BBO for each option component (or the NBBO for a component if the BBO for that component is not available) and the NBBO of the stock component of a complex strategy).

BB(BO) to calculate the DBBO, the Exchange BB(BO) will be bound by the maximum allowable Away Market Deviation, which the Exchange believes will help to prevent ECOs from executing on the Exchange at prices that are too far away from the current market.[122] The proposed definition of DBBO further provides that the Exchange will calculate the DBBO by adding or subtracting one ''collar value'' from a quote on one side of the market when there is no quote available on the other side of the market. The Exchange notes that the proposed values used to generate a DBBO in the absence of local or Away Market interest are consistent with the values used in the Trading Collars for single-leg orders.[123] The Exchange states that providing alternative means for calculating the DBBO will benefit market participants by providing increased trading opportunities for ECOs.[124]

The proposed definition of DBBO provides that the Exchange will not allow a strategy to trade if there is neither an Exchange BBO nor an ABBO for a component leg of a strategy, which could help to protect investors by preventing a strategy from trading when reliable pricing for a component leg of the strategy is unavailable.[125] ECOs for a strategy will not be permitted to execute against each other when the bids and offers (when not based solely on the Exchange BBO) are locked or crossed.[126] The Exchange states that preventing ECO-to-ECO trading in this circumstance would benefit market participants by preventing potentially erroneous ECO executions.[127] If an Away Market quote updates to lock or cross the current Exchange BB (BO) or ABB (ABO) for a component leg of a complex strategy, the Exchange will allow an ECO for that strategy to execute against leg market interest on the Exchange.[128] The Exchange states that allowing an eligible ECO to execute against leg market interest in these circumstances is consistent with the trading of single-leg orders because updates to the ABBO that lock or cross leg market prices do not prevent resting leg market interest from trading at its resting price with eligible contra-side interest.[129] The Exchange further notes that if an ECO trades with leg market interest in a complex strategy when the leg markets are crossed, such an execution would not be deemed a trade-through.[130] The Exchange states that allowing these executions against leg market interest will maximize the execution opportunities for ECO while respecting the price-time priority of the leg markets.[131]

B. Order Types and Times-in-Force

The ECO order types and times-in-force in proposed Exchange Rule 6.91P–O(b) are similar to the order types and times-in-force currently available for Electronic Complex Orders on the Exchange or on other options markets. Current Exchange Rule 6.91–O(b)(1) provides that Electronic Complex Orders may be entered as Limit Orders or as Limit Orders designated as PNP Plus. Proposed Exchange Rule 6.91P–O(b)(1) states that ECOs may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, or Complex QCCs.[132] The Exchange states that Complex Only Orders are based on the existing functionality for PNP Plus Orders, and, like PNP Plus Orders, will trade only with another ECO and not with leg market interest.[133] As discussed more fully below, a Complex Only Order will be required to execute at a price that is better than the DBB(DBO) if the DBB(DBO) is calculated using the Exchange BBO for all of the legs of the complex strategy and all of the Exchange BBOs for those legs have displayed Customer interest.[134]

Proposed Exchange Rule 6.91P–O(b)(2) states that ECOs may be designated with a time-in-force of Day, IOC, FOK, or GTC, as those terms are defined in Exchange Rule 6.62P–O(b), or GTX.[135] The Exchange's current rules allow Electronic Complex Orders to be designated as FOK or AON and to be entered with a time-in-force of IOC, Day, or GTC.[136] The Commission notes that other options exchanges offer similar order types and times-in-force for complex orders.[137] Under the proposal, an ECO designated as FOK must also be designated as a Complex Only Order.[138] Similarly, an ECO will not trade with orders in the leg markets designated as AON, FOK, or with an MTS Modifier.[139] The Commission notes that other options exchanges have adopted similar restrictions with respect to the execution of AON orders.[140]

[122] *See* proposed Exchange Rule 6.91P–O(a)(5) and Amendment No. 1 at 10.

[123] *See* Amendment No. 1 at 9.

[124] *See id.* at 10.

[125] *See* proposed Exchange Rule 6.91P–O(a)(5)(B).

[126] *See* proposed Exchange Rule 6.91P–O(a)(5)(C).

[127] *See* Amendment No. 1 at 11.

[128] *See* proposed Exchange Rule 6.91P–O(a)(5)(C).

[129] *See* Amendment No. 1 at 11–12 (citing Exchange Rule 6.76P–O(b)(3), which provides that ''[i]f 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'').

[130] *See* Amendment No. 1 at 12 and Exchange Rule 6.94–O(b)(3) (providing an exception from trade-through liability for trade-throughs that occur when there was a Crossed Market). *See also* the Options Order Protection And Locked/Crossed Market Plan, dated April 14, 2009, available here, *https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[131] *See* Amendment No. 1 at 12.

[132] The Commission approved the Exchange's Complex QCC Orders in the Single-Leg Pillar Proposal. *See* Single-Leg Pillar Approval Order, *supra* note 11. The Exchange states that allowing ECOs to be designated as Complex QCCs is consistent with current functionality. *See* Amendment No. 1 at 13.

[133] *See* proposed Exchange Rule 6.91P–O(c)(1)(C) and Amendment No. 1 at 26. *See also* Exchange Rule 6.62–O(y) (stating that an Electronic Complex Order designated as PNP Plus will be automatically re-priced by the Exchange as an MPV greater than the Complex BBO bid (for sell orders) or an MPV lower than the Complex BBO offer (for buy orders) for any or all of the order that remains unexecuted and would otherwise lock or cross the Complex BBO should it be displayed in the Consolidated Book. The re-priced order will then be posted in the Consolidated Book. The PNP Plus order will continue to be repriced at an MPV greater than the Complex BBO bid (for sell orders) or an MPV lower than the Complex BBO offer (for buy orders) and re-posted in the Consolidated Book, with each change in the Complex BBO, until such time as the Complex BBO has moved to a price where the original limit price of the PNP Plus Order no longer locks or crosses the Complex BBO, at which time the PNP Plus Order will revert to the original limit price of such order. Electronic Complex Orders designated as PNP Plus shall be ranked in the Consolidated Book pursuant to Rule 6.91–O(a)(1) and assigned a new price time priority as of the time of each reposting). Unlike PNP Plus Orders, the Exchange will not reprice a resting Complex Only Order and instead will restrict a Complex Only Order from trading with leg market interest. *See* Amendment No. 1 at 27.

[134] *See* proposed Exchange Rule 6.91P–O(e)(1)(C).

[135] As noted above, ECO GTX Orders are similar to the RFR Responses provided in current Exchange Rule 6.91O–(c)(5). *See* Amendment No. 1 at 8 and 14.

[136] *See* Exchange Rules 6.91–O(b)(2) and (3).

[137] *See, e.g.,* BOX Rule 7240(b)(4)(i) (allowing complex orders to be entered as Fill-and-Kill orders, Limit Orders, Market Orders, or Session Orders); ISE Options 3, Section 14(b) (allowing complex orders to be entered as, among others, market orders, limit orders, AON orders, Day orders, FOK orders, IOC orders, and GTC orders; and MIAX Rule 518(b)(1) (permitting the entry of complex orders that are limit orders, market orders, GTC, or day limit orders, among others).

[138] *See* proposed Exchange Rule 6.91P–O(b)(2)(B). In addition, an ECO designated as IOC or FOK will be rejected if entered during a pre-open state. *See* proposed Exchange Rule 6.91P–O(b)(2)(A). The Exchange notes that this is consistent with the time-in-force of these orders, which could not be traded when a complex strategy is not open for trading. *See* Amendment No. 1 at 14.

[139] *See* proposed Exchange Rule 6.91P–O(e)(1)(B).

[140] *See* Cboe Rules 5.33(d)(5) (stating that an AON complex order may only execute against COA Responses and unrelated orders resting in the COB in price-time priority if there is sufficient size to satisfy the AON complex order (and may not execute against orders resting in the Simple Book)); and 5.33(g)(4) (stating that Post Only complex orders and AON complex orders may not Leg into the Simple Book); and EDGX Rules 21.20(d)(5)(A) and 21.20(g)(4) (same). See also *NYSE American Rule 900.3NY(d)(4) (providing that an All-or-None Order is a Market or Limit Order that is to be*

Continued

C. Priority and Pricing of ECOs

The Exchange states that proposed Exchange Rule 6.91P–O(c) sets forth a price-time priority model and ECO pricing requirements that are substantively the same as the price-time priority model and pricing requirements currently forth in Exchange Rules 6.91–O(a)(1) and 6.91–O, Commentaries .01 and .02(i).[141] Proposed Exchange Rule 6.91P–O(c)(1) states that when trading with the leg markets, an ECO will trade at the price(s) of the leg markets unless the leg markets are priced more than the maximum allowable Away Market Deviation. The requirement that an ECO trading with the leg markets trade at the price(s) of the leg markets is consistent with current Exchange Rule 6.91–O(a)(2)(ii).[142] The The Commission believes that the proposed limitation on the execution prices to within the maximum allowable Away Market Deviation for the component legs of an ECO is designed to protect investors by helping to prevent ECOs from executing at prices that do not reflect the current market. The Commission notes that other options exchanges have adopted similar protections for complex orders.[143]

The Commission believes that proposed Exchange Rules 6.91P–O(c)(2), (3), and (4) are consistent with the Exchange's current rules and with the rules of other options exchanges. The requirement that each component leg of an ECO that executes against another ECO trade at a price at or within the Exchange BBO for that series is consistent with current Exchange Rule 6.91–O(a)(2) and the rules of other options exchanges, and ensures that ECOs will never trade through leg market interest.[144] Similarly, the provisions in proposed Exchange Rule 6.91P–O(c)(2) (stating that no leg of an ECO may trade at a price of zero), proposed Exchange Rule 6.91P–O(c)(3) (stating that ECOs may trade without consideration of prices of the same complex strategy available on other exchanges), and proposed Exchange Rule 6.91P–O(c)(4) (allowing complex strategies to be quoted and traded in $0.01 increments regardless of the MPV otherwise applicable to the individual leg(s) of the ECO) are consistent with the existing rules of other options exchanges.[145]

D. Execution of ECOs at the Opening or Reopening After a Trading Halt

The Commission believes that the ECO opening auction process in proposed Exchange Rule 6.91P–O(d) is designed to provide for the orderly opening, or re-opening after a trading halt, of ECOs on the Exchange.[146] As discussed below, the proposed ECO opening auction process is similar to the Exchange's current opening process for Electronic Complex Orders and incorporates Pillar auction functionality that is currently available for single-leg options and on the Exchange's cash equity platform. The Commission notes that the proposed ECO Auction Collar, which establishes the boundaries for the ECO Auction Price, protects the priority of resting displayed Customer leg market interest by providing that when the DBO (DBB) used to determine the ECO Auction Collar is calculated using the Exchange BBO for all legs of the complex strategy and all the Exchange BBOs have displayed Customer interest, the upper (lower) price of the ECO Auction Collar will be one penny ($0.01) times the smallest leg ratio inside the DBO (DBB).[147] The Exchange states that this requirement will protect displayed Customer interest, and protect investors in general, while ensuring a fair and orderly ECO Opening Process.[148]

The Exchange states that proposed Exchange Rule 6.91P–O(d) maintains the fundamentals of the opening auction process for Electronic Complex Orders in current Exchange Rule 6.91–O(a)(2)(i)(B).[149] The Exchange notes that the proposed ECO Auction Price—the price at which the maximum volume of ECOs can be traded in an ECO Opening Auction, subject to the ECO Auction Collar—is consistent with the ''single market clearing price'' in current Exchange Rule 6.91–O(a)(2)(i)(B) and will be determined in a manner that is based, in part, on how an Indicative Match Price is determined for the trading of cash equity securities and how the Exchange will determine the price for auctions on Pillar for single-leg options.[150] The Exchange believes that proposed Exchange Rule 6.91P–O(d)(1), which provides that the Exchange will not open a complex strategy under certain circumstances when pricing information for a component leg of the strategy is unavailable or when the market for the component leg is locked or crossed, could protect market participants from potentially erroneous executions.[151]

executed on the Exchange in its entirety or not at all. AON Orders that do not execute on arrival will not have standing in any Order Process in the Consolidated Book and will not be routed or displayed. AON Orders will not be eligible to execute against incoming interest and may execute solely against interest resting in the Consolidated Book when sufficient size is available. The System monitors the Consolidated Book for AON Order execution opportunities).

[141] *See* Amendment No. 1 at 44. Proposed Exchange Rule 6.91P–O(c) states that an ECO that is not executed immediately (or cancelled), including if it cannot trade under proposed Exchange Rules 6.91(a)(5)(B)–(C) and 6.91(c)(1)–(2), or does not initiate a COA, as provided in proposed Exchange Rule 6.91(f)(1), will be ranked in the Consolidated Book according to price-time priority based on the total net price and time of entry of the order. Current Exchange Rule 6.91–O(a)(1) provides that Electronic Complex Orders in the Consolidated Book will be ranked according to price/time priority based on the total or net debit or credit and the time of entry of the order.

[142] *See* Amendment No. 1 at 15. Exchange Rule 6.91–O(a)(2)(ii) states that ''[i]f, at a price, the leg markets can execute against an incoming Electronic Complex Order in full (or in a permissible ratio), the leg markets will have first priority at that price and will trade with the incoming Electronic Complex Order pursuant to Rule 6.76A before Electronic Complex Orders resting in the Consolidated Book can trade at that price.''

[143] *See* note 116, *supra.*

[144] *See* proposed Exchange Rule 6.91P–O(c)(2) and Amendment No. 1 at 16. Exchange Rule 6.91(a)(2) states that no leg of an Electronic Complex Order will be executed at a price outside the Exchange best bid/offer for that leg. *See also* BOX Rule 7240(b)(3)(iii) (stating that the exchange will filter inbound Complex Orders to ensure that each leg of a Complex Order will be executed at a price that is equal to or better than the BOX BBO for each of the component series); and Cboe Rule 5.33(f)(2)(A)(iii) (stating that the System does not execute a complex order at a price that would cause any component of the complex strategy to be executed at a price worse than the individual component prices on the Simple Book).

[145] *See, e.g.,* Cboe Rule 5.33(f)(2)(A)(i) and MIAX Rule 518(c)(1)(iii) (prohibiting any component leg of a complex strategy from executing at a price of zero); Exchange Rule 6.91O–(a)(2) (stating that Electronic Complex Orders submitted to the System may be executed without consideration of prices of either single-legged orders or the same complex order strategy that might be available on other exchanges) and BOX Rule 7420(b)(3) (stating that Complex Orders will be executed without consideration of any prices on the same Strategy that might be available on other exchanges); and ISE, Options 3, Section 14(c)(1) (stating that bids and offers for Complex Options Strategies may be expressed in one cent ($0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order) and MIAX Rule 518(c)(1)(i) (stating that bids and offers on complex orders and quotes may be expressed in $0.01 increments, and the component(s) of a complex order may be executed in $0.01 increments, regardless of the minimum increments otherwise applicable to individual components of the complex order). *See also* Amendment No. 2 (revising proposed Exchange Rule 6.91P–O(c)(4) to state that bids and offers for complex strategies may be expressed in one cent ($0.01) increments).

[146] *See* proposed Exchange Rule 6.91P–O(d)(2)(C) (stating that the ECO Opening Auction Process will be used to reopen trading in ECOs after a trading halt). The Exchange notes that this is consistent with current Rule 6.64–O(e). *See* Amendment No. 1 at 18.

[147] *See* proposed Exchange Rule 6.91P–O(d)(3)(A).

[148] *See* Amendment No. 1 at 45.

[149] *See* Amendment No. 1 at 44.

[150] *See* Amendment No. 1 at 19 and Exchange Rule 6.64P–O(a)(9).

[151] *See* Amendment No. 1 at 17. Proposed Exchange Rule 6.91P–O(d)(1) provides, in part, that a complex strategy will not be opened if any leg of the complex strategy has neither an Exchange BO

The Exchange states that proposed Exchange Rule 6.91P–O(d)(3)(B)(i) regarding the ranking and pricing of orders in the ECO opening auction is based in part on current Exchange Rule 6.91–O(a)(2)(i)(B) and on the Exchange's auction processes for cash equity trading and single-leg options trading.[152] Similarly, proposed Exchange Rule 6.91P–O(d)(3)(B)(ii), which provides that locking and crossing ECOs in a complex strategy will trade at the ECO Auction Price, and that the Exchange will open a complex strategy without a trade if there are no locking or crossing ECOs in the complex strategy at or within the ECO Auction Collars, is based in part on Exchange Rule 6.64P–O(d)(2)(B) for single-leg options.[153] Proposed Exchange Rule 6.91P–O(d)(4) regarding the processing of new ECOs and ECO Order Instructions received when the Exchange is conducting the ECO Opening Auction Process for a strategy is based on Exchange Rules 7.35–E(g)(1) and (2) and 6.64P–O(e)(1) and (2).[154] Proposed Rule 6.91P–O(d)(5)(A) and (B), which describe the processing of ECOs during the transition to continuous trading after the ECO Opening Auction Process, are based, respectively, on current Exchange Rules 6.91–O(a)(2)(i)(B) and (C) and Exchange Rule 6.64P–O(a)(6) for single-leg options.[155]

E. Execution of ECOs During Core Trading Hours

The Commission believes that proposed Exchange Rule 6.91P–O(e)(1)(A) is designed to provide for the execution of complex orders while protecting the priority of established leg market interest. Under proposed Exchange Rule 6.91P–O(e)(1)(A), after a complex strategy is open for trading, an ECO will trade with the best-priced contra-side interest and if, at a price, the leg markets can trade with an eligible ECO, in full or in a permissible ratio, the leg markets will trade first at that price, pursuant to Exchange Rule 6.76AP–O, until the quantities on the leg markets are insufficient to trade with the ECO, at which time the ECO will trade with contra-side ECOs resting in the Consolidated Book at that price. The Exchange notes that under the proposed rule an ECO would never trade ahead of resting leg market interest (Customer or otherwise) if the leg market interest is sufficient to satisfy the ECO in full or in a permissible ratio.[156] The Exchange further states that the proposed rule makes clear that the priority of the leg markets remains primary, but also ensures that ECO trading opportunities are maximized after eligible interest in the leg markets at a price is exhausted.[157] The Commission notes that the execution priority in proposed Exchange Rule 6.91P–O(e)(1)(A) is consistent with the rules of another options exchange.[158] The Commission further notes, however, that unlike ECOs that are eligible to execute against leg market interest, Complex Only Orders will not be able to trade at the DBB(DBO) for a strategy when the DBB(DBO) is calculated using Exchange BBOs and all of those Exchange BBOs have displayed Customer interest.[159]

The Commission believes that proposed Exchange Rule 6.91O(e)(1)(C) is designed to provide for the execution of Complex Only Orders while protecting the priority of resting leg market interest, including Customer interest. Under the proposed rule, a Complex Only Order will not be able to trade at a price that is worse than the Exchange BB(BO) when the DBBO is calculated using the Exchange's BB(BO) for the component legs of the order. In addition, if the DBB(DBO) is calculated using the Exchange BBOs for all legs of the strategy and all of the Exchange BBOs have displayed Customer interest, the Complex Only Order will be required to trade at a price that is better than the DBB(DBO).[160] The Exchange states that this requirement is designed to ensure that a Complex Only Order would price improve at least some portion of the interest making up the DBBO if there is displayed Customer interest on all legs of the strategy on the Exchange.[161] The Commission notes that this requirement is consistent with the Exchange's current rules and with the rules of other options exchanges.[162]

Proposed Exchange Rule 6.91P–O(e)(1)(D) provides that an ECO will be processed as a Complex Only Order if the ECO has a complex strategy with (i) more than five legs; (ii) two legs and both legs are buying or both legs are selling, and both legs are calls or both legs are puts; or (iii) three or more legs and all legs are buying or all legs are selling. The Exchange states that requiring these ECOs to be processed as Complex Only Orders is designed to help Market Makers manage risk.[163] The Commission notes that other options exchanges have similar rules.[164]

nor an ABO; or the complex strategy cannot trade per proposed Exchange Rule 6.91P–O(a)(5)(C). *See* Amendment No. 2.

[152] *See* Amendment No. 1 at 20.

[153] *See* Amendment No. 1 at 20.

[154] *See* Amendment No. 1 at 21.

[155] *See* Amendment No. 1 at 21–22.

[156] *See* Amendment No. 1 at 23.

[157] *See* Amendment No. 1 at 24 and 46.

[158] *See* BOX Rule 7240(b)(2)(ii). *See also* BOX Rules 7240(b)(3)(i) and (ii). BOX Rule 7240(b)(2)(ii) provides that ''A Complex Order for which a leg of such Complex Order's underlying Strategy is not in a one-to-one ratio with each other leg of such Strategy will execute against the bids and offers on the BOX Book for the individual legs of the Strategy for all of the quantity available at the best price in a permissible ratio until the quantities remaining on the BOX Book are insufficient to execute against the Complex Order. Following such execution, a Complex Order may execute against another Complex Order and the component legs of the Complex Orders may trade at prices equal to the corresponding prices on the BOX Book.'' BOX Rule 7240(b)(3)(i) states that ''Complex Orders will be automatically executed against bids and offers on the Complex Order book in price/time priority; provided, however, that Complex Orders will execute against Complex Orders only after bids and offers at the same net price on the BOX Book for the individual legs have been executed.'' BOX Rule 7240(b)(3)(ii) states that ''Complex Orders will be automatically executed against bids and offers on the BOX Book for the individual legs of the Complex Order to the extent that the Complex Order can be executed in full or in a permissible ratio by such bids and offers.''

[159] *See* proposed Exchange Rule 6.91P–O(e)(1)(C).

[160] *See* proposed Exchange Rule 6.91P–O(e)(1)(C) (stating that a Complex Only Order must trade at a price at or within the DBBO, provided that if the DBB (DBO) is calculated using the Exchange BBOs for all legs of the complex strategy and all such Exchange BBOs have displayed Customer interest, the Complex Only Order will not trade below (above) one penny ($0.01) times the smallest leg ratio inside the DBB (DBO), regardless of whether there is sufficient quantity on such leg markets to satisfy the ECO).

[161] *See* Amendment No. 1 at 27. If a Complex Only Order is unable to trade within these parameters, it will remain on the Consolidated Book until it can trade with another ECO as provided in proposed Exchange Rule 6.91P–O(e)(1)(C). *See id.*

[162] *See* Exchange Rule 6.91–O, Interpretation and Policy .02(i) (stating that, when executing an ECO, the price of at least one leg of the order must trade at a price that is better than the corresponding price of all the customer bids or offers in the Consolidated Book for the same series, by at least one standard trading increment as defined in Exchange Rule 6.72–O) and Amendment No. 1 at n. 50. *See also* ISE Options 3, Section 14(c)(2)(i); MIAX Rule 518(c)(3)(i); NYSE American Rule 980NY, Commentary .02(i).

[163] *See* Amendment No. 1 at 28–9.

[164] *See, e.g.,* Cboe Rule 5.33(g)(2) (stating that complex orders for any capacity other than customer with two option legs that are both buy or both sell and that are both calls or both puts may not leg into the simple book and may execute against other complex orders in the COB); Cboe Rule 5.33(g)(3) (stating that all complex orders with three or four option legs that are all buy or all sell (regardless of whether the option legs are calls or puts) may not leg into the Simple Book and may execute against other complex orders in the COB); ISE Options 3, Sections 14(d)(3)(A) (stating that Complex Orders with two option legs where both legs are buying or both legs are selling and both legs are calls or both legs are puts may only trade against other Complex Orders in the Complex Order Book); ISE Options 3, Section 14(d)(3)(B) (stating that complex orders with three or four option legs where all legs are buying or all legs are selling may only trade against other Complex Orders in the Complex Order Book; and MIAX Rule 518(c)(iii) (stating that complex orders with two option legs where both legs are buying or both legs are selling and both legs are calls or both legs are puts may only trade against other complex orders on the Strategy Book and will not be permitted to leg into the Simple Order Book. Complex orders with three option legs where all legs are buying or all legs are selling may only trade

Continued

Proposed Exchange Rule 6.91P–O(e)(2) provides that the Exchange will evaluate trading opportunities for a resting ECO when the leg markets comprising a complex strategy update, provided that during periods of high message volumes, such evaluation may be done less frequently. The Commission believes that these evaluations could result in additional executions of resting ECOs.

F. Execution of ECOs During a COA

The Commission believes the COA in proposed Exchange Rule 6.91P–O(f) is designed to provide COA Orders [165] submitted to the auction with execution and price improvement opportunities while preserving the priority of resting interest on the Exchange's limit order book. As described more fully above, the COA in proposed Exchange Rule 6.91P–O(f) would modify the current COA process set forth in Exchange Rule 6.91–O(c) by, among other things, relying on the DBBO for pricing, streamlining the rule text specifying the circumstances that would cause a COA to end early, and providing that a COA Order will initiate a COA only upon arrival.[166] The Exchange states that allowing a COA order to initiate a COA only upon arrival could simplify the COA process, provide OTP Holders with greater certainty regarding when a COA Order would initiate a COA, and encourage market participants to submit aggressively-priced orders to qualify for the initiation of a COA.[167] In addition, the Exchange states that the proposed pricing requirements that an order would be required to satisfy to initiate a COA are designed to encourage aggressively-priced COA Orders, which could help to attract a meaningful number of RFR Responses to potentially provide price improvement to the COA Order.[168] The Commission believes that these requirements could result in more competitive COA auctions, which could make it more likely that COA Orders will receive price improvement.

The Commission believes that proposed Exchange Rule 6.91P–O(f)(2)(A) will help to preserve the priority of resting ECO and leg market interest, including displayed Customer leg market interest, by providing that prior to initiating a COA, a COA Order to buy (sell) will trade with any ECO to sell (buy) resting in the Consolidated Book that is priced equal to or lower (higher) than the DBO (DBB). If the DBO (DBB) is calculated using the Exchange BBO for all legs of the complex strategy and all such Exchange BBOs have displayed Customer interest, the COA Order will trade up (down) to one penny ($0.01) times the smallest leg ratio inside the DBO (DBB) (*i.e.,* priced better than the leg markets) and any unexecuted portion of the COA Order will initiate a COA.[169] Similarly, the Commission believes that proposed Exchange Rule 6.91P–O(f)(2) will help to maintain the priority of leg market interest (when the Exchange uses the Exchange BB(BO) to calculate the DBB(DBO)) by requiring the COA Order to initiate a COA at a price equal to one penny ($0.01) times the smallest leg ratio inside the DBO (DBB), rather than at the COA Order's limit price, when the COA Order's limit price locks or crosses the DBO (DBB). Likewise, the Commission believes that proposed Exchange Rule 6.91P–O(f)(4)(A) will help to protect the priority of resting leg market interest at the conclusion of a COA by providing that RFR Responses to sell (buy) that are priced lower (higher) than a COA Order to buy (sell) will trade in price-time priority up (down) to the DBBO. If all legs of the DBB (DBO) are calculated using Exchange BBOs and all such Exchange BBOs have displayed Customer interest, RFR Responses to sell (buy) will not trade below (above) one penny ($0.01) times the smallest leg ratio inside the DBB (DBO) on the Exchange.[170]

The Exchange states that proposed Rule 6.91P–O(f)(3), which would identify the conditions that would cause a COA to end prior to the expiration of the Response Time Interval, is consistent current Exchange Rule 6.91–O(c)(6).[171] The Exchange states that rather than using a snapshot of the Complex BBO taken at the start of a COA as the basis for determining whether to end a COA early, the Exchange will instead rely on the DBBO, which is updated as market conditions change, to determine whether to end the COA early.[172] The Exchange notes that because the DBBO could be calculated using the ABBO for a leg(s) of a complex strategy, it would be new under Pillar to have a COA end early based on interest on the Exchange that locks or crosses interest on an Away Market, rather than interest on the Exchange.[173] The Commission believes that ending a COA early under these circumstances would benefit market participants by preventing COA Orders from executing at prices too far away from the prevailing market for the complex strategy.

Unlike current Exchange Rule 6.91O–(c)(7)(A), which provides for the allocation of COA-eligible orders against the best-priced interest received in the COA on a size pro rata basis, proposed Exchange Rule 6.91P–O(f)(4)(A) would provide for the allocation of RFR Responses against the COA Order based on price-time priority. The Exchange states that this allocation would align the allocation of ECOs in a COA with standard processing of ECOs on the Exchange, which would add consistency to the Exchange's processing of ECOs.[174]

Proposed Exchange Rule 6.91P–O(f)(5) would provide that a pattern or practice of submitting unrelated quotes or orders that cause a COA to conclude early would be deemed conduct inconsistent with just and equitable principles of trade. The Exchange states that the proposed rule is based on current Exchange Rule 6.91–O, Commentary .04, except that it adds a reference to quotes, in addition to orders, thereby broadening the scope of the prohibited conduct, to the benefit of market participants.[175] The Commission notes that other options exchanges have similar rules.[176]

The proposal also adds Commentary .03 to Exchange Rule 6.47A–O, which is designed to prevent OTP Holders or OTP Firms from providing material,

against other complex orders on the Strategy Book, regardless of whether the option leg is a call or a put).

[165] A COA Order is an ECO that is designated by OTP Holder as eligible to initiate a COA. *See* proposed Exchange Rule 6.91P–O(a)(3)(A).

[166] *See* Amendment No. 1 at 48. As discussed above, the proposal also reduces the minimum duration of the Response Time Interval for submitting COA Responses from not less than 500 milliseconds to not less than 100 milliseconds.

[167] *See* Amendment No. 1 at 48.

[168] *See* Amendment No. 1 at 30. Proposed Exchange Rule 6.91P–O(f)(1) provides that, to initiate a COA, the limit price of the COA Order to buy (sell) must be higher (lower) than the best-priced, same-side ECOs resting on the Consolidated Book and equal to or higher (lower) than the midpoint of the DBBO. A COA Order that does not satisfy these pricing parameters will not initiate a COA and, unless it is cancelled, will be ranked in the Consolidated Book and processed as an ECO pursuant to proposed Exchange Rule 6.91P–O(e).

[169] *See* proposed Exchange Rule 6.91P–O(f)(2)(A).

[170] *See* proposed Exchange Rule 6.91P–O(f)(4)(A).

[171] *See* Amendment No. 1 at 31.

[172] *See* Amendment No. 1 at 31 and proposed Exchange Rule 6.91P–O(a)(5) (stating that the DBBO will be updated as the Exchange BBO or ABBO, as applicable, is updated).

[173] *See* Amendment No. 1 at 32.

[174] *See* Amendment No. 1 at 33.

[175] *See* Amendment No. 1 at 34.

[176] *See, e.g.,* Cboe Rule 5.33, Interpretation and Policy .03 (stating that a pattern or practice of submitting orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 8.1); and ISE Options 3, Section 13, Supplementary Material .01 (stating, in part, that it shall be considered conduct inconsistent with just and equitable principles of trade for any Member to enter orders, quotes, Agency Orders, Counter-Side Orders or Improvement Orders for the purpose of disrupting or manipulating the Price Improvement Mechanism).

non-public information to third parties.[177] The Commission notes that other options exchanges have similar rules.[178]

G. ECO Risk Checks

The Exchange states that the complex strategy limit in proposed Exchange Rule 6.91P–O(g)(1), which limits the maximum number of new complex strategies that may be requested to be created per MPID, will operate as a system protection tool that enables the Exchange to prevent any single MPID from creating more than a limited number of complex strategies during a trading day, thereby helping to maintain a fair and orderly market.[179] The Commission notes that other options exchanges have similar strategy limits.[180]

The Commission believes that the ECO price and strategy protections in proposed Exchange Rule 6.91P–O(g)(2) and (3) are designed to protect investors by preventing the entry and execution of ECOs at potentially erroneous prices. The Exchange states that the ECO Price Protection in proposed Exchange Rule 6.91P–O(g)(2) will work in a manner that is similar to the existing electronic complex order Price Protection Filter in current Exchange Rule 6.91–O, Commentary .05, although the proposed ECO Price Protection will use new thresholds and reference prices that are designed to simplify the price check and to align it with the Limit Order Price Protection for single-leg interest.[181] The Exchange states that the Complex Strategy Protections in proposed Exchange Rule 6.91P–O(g)(3) will function in a manner similar to the Debit/Credit Reasonability Checks in current Exchange Rule 6.91–O, Commentary .06.[182] The Exchange further states that, consistent with the current functionality, the proposed Complex Strategy Protections are designed to prevent the execution of ECOs at prices that are inconsistent with or not aligned with their strategies.[183] The Commission notes that other options exchanges have adopted price protections for complex strategies.[184]

IV. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 1 and 2 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–68 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–2021–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–68, and should be submitted on or before May 4, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. Amendment No. 1 revises the Exchange's original proposal to make the changes discussed in detail above. Notably, in Amendment No. 1 the Exchange revises the proposal to delete from the definition of ECO references to Stock/Option and Stock/Complex Orders, which trade only on the Exchange's floor. In addition, Amendment No. 1 revises proposed Exchange Rule 6.91P–O(c) to indicate that each component leg of an ECO that executes against another ECO must trade at a price that is at or within the Exchange BBO for the series, which makes clear that an ECO may not trade through resting leg market interest on the Exchange and aligns the Exchange's rule with the rules of other options exchanges. Similarly, Amendment No. 1 revises the execution priority provisions in proposed Exchange Rule 6.91P–O(e) to more closely align them with the rules of another options exchange and to describe the operation of, and price improvement requirements associated with, Complex Only Orders, which do not execute against leg market interest and must trade at a price that is better than resting displayed Customer leg market interest under certain circumstances. Amendment No. 1 revises proposed Exchange Rule 6.91P–O(f) to describe the price improvement requirements that apply to executions that occur prior to the initiation of a COA and in the allocation of orders at the conclusion of a COA when the DBBO includes displayed Customer interest. In addition, Amendment No. 1 modifies proposed Exchange Rule 6.91P–O(f)(5) to indicate that the rule's prohibition on submitting unrelated interest that causes a COA to end early applies to quotes as well as orders, which should provide additional protection to investors. Amendment No. 1 also provides additional analysis of several aspects of the proposal, thus facilitating the Commission's ability to make the findings set forth above to approve the proposal. The Commission believes that Amendment No. 2 does not raise any novel regulatory issues. As described above, Amendment No. 2 eliminates an incorrect cross-reference

[177] *See* Amendment No. 1 at 41.

[178] *See, e.g.,* EDGX Rule 22.12, Interpretation and Policy .04 (stating that, prior to or after submitting an order to EDGX Options, an Options Member cannot inform another Options Member or any other third party of any of the terms of the order); and NYSE American Rule 935NY, Commentary .04 (same).

[179] *See* Amendment No. 1 at 49.

[180] *See, e.g.,* Cboe Rule 5.33(a) (stating, in the definition of Complex Strategy, that Cboe may limit the number of new complex strategies that may be in [Cboe's] System or entered for any EFID (which EFID limit would be the same for all Users) at a particular time; and MIAX Rule 518(a)(6) (stating that MIAX may limit the number of new complex strategies that may be in [MIAX's] System at a particular time and will communicate this limitation to Members via Regulatory Circular).

[181] *See* Amendment No. 1 at 35 and proposed Exchange Rule 6.62P–O(a)(3).

[182] *See* Amendment No. 1 at 38.

[183] *See id.*

[184] *See, e.g.,* Cboe Rule 5.34(b)(3); ISE Options 3, Section 16(b); and MIAX Rule 532(b)(2), (3), and (4).

in the rules describing the ECO opening process, which should help to assure that the proposed rules accurately describe the Exchange's ECO opening process. In addition, Amendment No. 2 revises the proposal to state that bids and offers for complex strategies may be expressed in $0.01 increments regardless of the MPV otherwise applicable to the individual leg(s) of the ECO, which is consistent with the rules of other options exchanges. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[185] that the proposed rule change (SR–NYSEArca–2021–68), as modified by Amendment Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[186]

J. Matthew De LesDernier,

Assistant Secretary.

[FR Doc. 2022–07843 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[185] 15 U.S.C. 78s(b)(2).

[186] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–440, OMB Control No. 3235–0496]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Appendix F to Rule 15c3–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Appendix F to Rule 15c3–1 (''Appendix F'' or ''Rule 15c3–1f'') (17 CFR 240.15c3–1f) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Appendix F applies to certain members of a class of broker-dealers known as over-the-counter (''OTC'') derivatives dealers. Exchange Act Rule 15c3–1 is the Commission's net capital rule for broker-dealers.[1] Under Appendix F, an OTC derivatives dealer that is not a security-based swap dealer may apply to the Commission for authorization to compute net capital charges for market and credit risk in accordance with Appendix F in lieu of computing securities haircuts under paragraph (c)(2)(vi) of Exchange Act Rule 15c3–1.[2]

At present, three OTC derivatives dealers have been approved to use Appendix F. No additional OTC derivatives dealers have applied to use Appendix F, and the staff does not expect that any additional OTC derivatives dealers will apply to use Appendix F during the next three years. The Commission estimates that the three approved OTC derivatives dealers will spend an average of approximately 1,000 hours each per year reporting information concerning their value-at-risk (''VAR'') models and internal risk management systems, for a total annual burden of approximately 3,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days May 13, 2022 of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: April 7, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07834 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 240.15c3–1. An OTC derivatives dealer that is also registered as a security-based swap dealer is subject to the net capital provisions of Exchange Act Rule 18a–1 (17 CFR 240.18a–1).

[2] An OTC derivatives dealer that is also registered as a security-based swap dealer may apply to the Commission for authorization to compute deductions for market and credit risk using models under paragraph (d) of Rule 18a–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94642; File No. SR–NYSE–2022–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

April 7, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 5, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on July 20, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision to Rule 128 designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions to Rule 128 providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 128 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 128.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rules 7.10 and 128 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11] The Exchange later amended Rule 7.10 to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] October 20, 2020,[13] April 20, 2021,[14] October 20, 2021,[15] and April 20, 2022.[16]

The Exchange now proposes to amend Rule 7.10 to extend the pilot program's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[17] In such an event, the remaining sections of Rules 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act,[19] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSE–2010–47).

[5] *See* Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR–NYSE–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSE–2014–22).

[7] *See* Securities Exchange Act Release Nos. 82945 (March 26, 2019), 83 FR 13553, 13565 (March 29, 2019) (SR–NYSE–2017–36) (Approval Order) and 85962 (May 29, 2019), 84 FR 26188, 26189 n.13 (June 5, 2019) (SR–NYSE–2019–05) (Approval Order).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR–NYSE–2014–17).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85523 (April 5, 2019), 84 FR 14706 (April 11, 2019) (SR–NYSE–2019–17).

[12] *See* Securities Exchange Act Release No. 87353 (October 18, 2019), 84 FR 57087 (October 24, 2019) (SR–NYSE–2019–56).

[13] *See* Securities Exchange Act Release No. 88580 (April 7, 2020), 85 FR 20551 (April 13, 2020) (SR–NYSE–2020–24).

[14] *See* Securities Exchange Act Release No. 90151 (October 9, 2020), 85 FR 65458 (October 15, 2020) (SR–NYSE–2020–83).

[15] *See* Securities Exchange Act Release No. 91553 (April 14, 2021), 86 FR 20552 (April 20, 2021) (SR–NYSE–2021–24).

[16] *See* Securities Exchange Act Release No. 93354 (October 15, 2021), 86 FR 58354 (October 21, 2021) (SR–NYSE–2021–59).

[17] *See supra* notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) [23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[25]

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:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–19 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–NYSE–2022–19. 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–NYSE–2022–19 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07848 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94635; File No. SR–CboeBZX–2022–024]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule for its equities trading platform (''BZX Equities''). Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product (''Product'') listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.[3] For example, a firm that currently subscribes to BZX Top would be eligible to receive a free 30-day trial of BZX Depth, whether in a display-only format or for non-display use. However, a firm that currently receives BZX Depth for non-display use would not be eligible to receive a free 30-day trial of BZX Depth in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[7] Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,[8] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.[9]

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are

[3] For example, if a User that has elected to participate in the free trial program for BZX Top data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.,* User Fee) through May 14, 2022.

[4] *See* The Nasdaq Stock Market LLC (''Nasdaq'') Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC (''NYSE'') Proprietary Market Data Fees Schedule, General.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78k–1.

[8] *See* 17 CFR 242.603.

[9] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.[10] The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–024. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–024, and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07841 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94634; File No. SR-CboeBYX–2022–010]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule for its equities trading platform (''BYX Equities''). Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product (''Product'') listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.[3] For example, a firm that currently subscribes to BYX Top would be eligible to receive a free 30-day trial of BYX Depth, whether in a display-only format or for non-display use. However, a firm that currently receives BYX Depth for non-display use would not be eligible to receive a free 30-day trial of BYX Depth in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[7] Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,[8] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.[9]

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are

[3] For example, if a User that has elected to participate in the free trial program for BYX Top data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.,* User Fee) through May 14, 2022.

[4] *See* The Nasdaq Stock Market LLC (''Nasdaq'') Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC (''NYSE'') Proprietary Market Data Fees Schedule, General.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78k–1.

[8] *See* 17 CFR 242.603.

[9] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.[10] The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBYX–2022–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2022–010. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–010, and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07856 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94631; File No. SR–Phlx–2022–16]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot To Permit the Listing and Trading of Options Based on 1/100 the Value of the Nasdaq-100 Index and the Nonstandard Expirations Pilot

April 7, 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 March 31, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 extend the pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index (''Nasdaq-100') and the Exchange's nonstandard expirations pilot program, both currently set to expire on May 4, 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 proposes to extend 2 pilots, which are both set to expire on May 4, 2022. The Exchange proposes to extend (1) pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index (''XND Pilot''), and (2) the Exchange's nonstandard expirations pilot program (''Nonstandard Pilot'').

XND Pilot

Phlx filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Micro Index Options (''XND'') on a pilot basis.[3] XND options trade independently of and in addition to NDX options, and the XND options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, XND options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror in all respects those of the NDX options contract already listed on the Exchange, except that XND options are based on 1/100th of the value of the Nasdaq-100 Index, and are P.M.-settled pursuant to Options 4A, Section 12(a)(5).

The Exchange proposes to amend Phlx Options 4A, Section 12(a)(6) to extend the current XND Pilot period to November 4, 2022. This pilot was previously extended with the last extension through May 4, 2022.[4] The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of XND options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in XND options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the XND Pilot. The Exchange believes that the proposed extension of the XND Pilot will not have an adverse impact on capacity.

XND Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the XND Pilot and will continue to make public any data or analysis it submits under the XND Pilot in the future. The Exchange intends to submit a rule change proposing permanency of the XND Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the XND Pilot is made permanent or discontinued.

Nonstandard Pilot

On December 15, 2017, the Commission approved a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates (''Nonstandard Pilot'').[5] The Nonstandard Pilot permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. The Nonstandard Pilot was extended various times and is currently extended through May 4, 2022.[6]

Pursuant to Phlx Options 4A, Section 12(b)(5)(A) the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are P.M.-settled.

Similarly, pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are P.M.-settled.

The Exchange now proposes to amend Options 4A, Section 12(b)(5)(C) so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through November 4, 2022. The Exchange continues to have sufficient systems capacity to handle P.M.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public

[3] *See* Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR–Phlx–2021–07) (Approval Order).

[4] *See* Securities Exchange Act Release No. 93447 (October 28, 2021), 86 FR 60719 (November 3, 2021) (SR–Phlx–2021–66).

[5] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[6] *See* Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR–Phlx–2018–80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR–Phlx–2019–13); 87381 (October 22, 2019), 84 FR 57788 (October 28, 2019) (SR–Phlx–2019–43); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR–Phlx–2020–24); 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR–Phlx–2020–48); 91484 (April 6, 2021), 86 FR 19050 (April 12, 2021) (SR–Phlx–2021–21); and 93464 (October 29, 2021), 86 FR 60952 (November 4, 2021) (SR–Phlx–2021–65).

on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

Nonstandard Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

XND Pilot

In particular, the Exchange believes that the XND Pilot has been successful to date. The Exchange has not encountered any problems with the XND Pilot. By extending the XND Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the XND Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for XND options, including on the underlying component stocks.

Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

XND Pilot

XND options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–Phlx–2022–16 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2022–16.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–Phlx–2022–16* and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07854 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–242, OMB Control No. 3235–0206]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 19d–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–1 (17 CFR 240.19d–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19d–1 prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary actions with respect to any person; (2) denial, bar, prohibition, or limitation of membership, participation or association with a member or of access to services offered by an SRO or member thereof; (3) summarily suspending a member, participant, or person associated with a member, or summarily limiting or prohibiting any persons with respect to access to or services offered by the SRO or a member thereof; and (4) delisting a security.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to delist a security, discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that approximately 19 respondents will file a total of approximately 912 submissions per year (an average of 48 per respondent). The Commission estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 1 hour. The total annual burden for all respondents is thus 912 hours. The Commission estimates that the internal compliance cost per respondent is approximately $319 per response. The annual internal cost of compliance for all respondents is thus approximately $290,928 (19 respondents × 48 responses × $319 per response).

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 13, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 7, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07833 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94629; File No. SR–NYSEArca–2022–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the FMC Excelsior Focus Equity ETF Under Rule 8.900–E (Managed Portfolio Shares)

April 7, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 1, 2022, NYSE Arca, Inc. (''NYSE Arca'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under Rule 8.900–E (Managed Portfolio Shares): FMC Excelsior Focus Equity ETF. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 8.900–E permits the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[4] Rule 8.900–E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade Managed Portfolio Shares of the FMC Excelsior Focus Equity ETF (the ''Fund''), a series of the Northern Lights Fund Trust IV (the ''Trust''), under Rule 8.900–E.

The Commission has previously approved or noticed for immediate effectiveness the listing and trading on the Exchange of Managed Portfolio Shares under NYSE Arca Rule 8.900–E.[5]

Description of the Fund and the Trust

The shares of the Fund (the ''Shares'') will be issued by the Trust, a statutory trust organized under the laws of the state of Delaware and registered with the Commission as an open-end management investment company.[6] The investment adviser to the Fund will be First Manhattan Co. (the ''Adviser''). Vident Investment Advisory, LLC will be the sub-adviser (the ''Sub-Adviser'') for the Fund. Northern Lights Distributors, LLC (the ''Distributor'') will serve as the distributor for each of the Fund's Shares. All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under Rule 8.900–E(b)(1).

Rule 8.900–E(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket.[7] Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Rule 8.900–E(b)(4) is similar to Commentary .03(a)(i) and (iii) to Rule 5.2–E(j)(3); however, Commentary .03(a) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[8] Rule 8.900–E(b)(4) is also

[4] Rule 8.900–E(c)(1) provides that the term ''Managed Portfolio Share'' means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[5] *See* Securities Exchange Act Release Nos. 89663 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR–NYSEArca–2020–48) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Gabelli ETFs Under Rule 8.900–E, Managed Portfolio Shares); 90528 (November 30, 2020), 85 FR 78389 (December 4, 2020) (SR–NYSEArca–2020–80) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of Alger Mid Cap 40 ETF and Alger 25 ETF Under Rule 8.900–E); and 90683 (December 16, 2020), 85 FR 83665 (December 22, 2020) (SR–NYSEArca–2020–94) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF Under NYSE Arca Rule 8.900–E). *See also* Securities Exchange Act Release No. 92349 (July 19, 2021), 86 FR 39084 (July 23, 2021) (SR–NYSEArca–2021–54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Cambiar Large Cap ETF, Cambiar Small Cap ETF and Cambiar SMID ETF) (the ''Cambiar Notice'').

[6] The Trust is registered under the Investment Company Act of 1940 (the ''1940 Act''). On September 24, 2021, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') and the 1940 Act for the Fund (File No. 811–23603) (''Registration Statement''). The Commission issued an order granting exemptive relief to the Trust (''Exemptive Order'') under the 1940 Act on March 22, 2022 (Investment Company Act Release No. 34537). The Exemptive Order was granted in response to the Trust's application for exemptive relief (the ''Exemptive Application'') (File No. 812–15282). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

[7] Rule 8.900–E(c)(5) provides that the term ''Creation Basket'' means, on any given business day, the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, Sub-Adviser, and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to

similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Rule 8.900–E(b)(4) relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to an Investment Company's portfolio and Creation Basket, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's portfolio and/or Creation Basket. The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser, Sub-Adviser, or the Trust who makes decisions pertaining to the Fund's portfolio composition or that has access to information regarding the Fund's portfolio composition or that has access to information regarding the Fund's portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 8.900–E(b)(5) requires that any person or entity, including an AP Representative (as defined below), custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Description of the Fund [9]

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and the holdings will be consistent with all requirements in the Exemptive Application and Exemptive Order.[10]

The Fund's primary objective is to seek long-term capital appreciation. The Fund will primarily invest in U.S. exchange-traded common stocks of companies that are listed on U.S. national securities exchanges and trade contemporaneously with the Shares. The Fund does not have a targeted market capitalization for the common stocks of its holdings. The Fund will, during normal market conditions, generally own approximately 25 to 30 holdings but may, from time to time, hold a greater number of common stocks.

Investment Restrictions

The Fund's holdings will be consistent with all requirements described in the Exemptive Application and Exemptive Order.[11]

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[12]

Creations and Redemptions of Shares

Creations and redemptions of Shares will take place as described in Rule 8.900–E. Specifically, in connection with the creation and redemption of Creation Units [13] the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (a ''Confidential Account'').[14] An Authorized Participant (''AP''), as defined in the applicable Form N–1A filed with the Commission, will sign an agreement with an AP Representative [15] establishing the Confidential Account for the benefit of the AP. AP Representatives will be broker-dealers. An AP must be a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'') or a participant in the Depository Trust Company, and

subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. The Fund will also be required to comply with Exchange rules relating to disclosure, including Rule 5.3–E(i).

[9] The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act. *See* 17 CFR 240.10A–3.

[10] Pursuant to the Exemptive Order, the only permissible investments for the Fund are the following that trade on a U.S. exchange contemporaneously with Shares of the Fund: exchange-traded funds (''ETFs''), exchange-traded notes, exchange-listed common stocks, exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metal trusts, exchange-traded currency trusts, and exchange-traded futures for which the reference asset is one in which the Fund may invest directly, in the case of an index future traded on a U.S. exchange, is based on an index, the components of which are a type of asset in which the Fund could invest directly, as well as cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). All of the equity instruments or futures held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[11] *See id.*

[12] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[13] Rule 8.900–E(c)(6) provides that the term ''Creation Unit'' means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash. Rule 8.900–E(c)(7) provides that the term ''Redemption Unit'' means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash. For purposes of this filing, the terms ''Creation Unit'' means either a Creation Unit as defined in Rules 8.900–E(c)(6) or a Redemption Unit as defined in Rule 8.900–E(c)(7).

[14] Rule 8.900–E(c)(4) provides that the term ''Confidential Account'' means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

[15] Rule 8.900–E(c)(3) provides that the term ''AP Representative'' means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

must have executed an authorized participant agreement (''Participant Agreement'') with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP, without disclosing the identity of such securities to the AP.

Each day, the Fund's custodian will transmit the underlying securities of the Fund's Creation Basket (as described below) to each AP Representative. This information will permit an AP that has established a Confidential Account with an AP Representative to transact in the underlying securities of the Creation Basket through their AP Representatives, enabling them to engage in in-kind creation or redemption activity without knowing the identity or weighting of those securities. Fund Shares will be issued and redeemed in Creation Units of 5,000 Shares or more. The Fund will offer and redeem Creation Units on a continuous basis at the net asset value (''NAV'') per Share next determined after receipt of an order in proper form. The Fund's NAV will be determined as of the scheduled closing time of the regular trading session on the Exchange (ordinarily, 4:00 p.m. E.T.) on each day that the Exchange is open.

In order to keep costs low and permit the Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. The Fund will issue and redeem Creation Units principally in exchange for a basket of securities (the ''Deposit Securities''), together with the deposit of a specified cash payment (the ''Cash Component''). Together, the Deposit Securities and Cash Component constitute the ''Portfolio Deposit.'' The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities. On each business day, prior to the opening of business on the Exchange (ordinarily, 9:30 a.m. E.T.), the custodian will make available to the AP Representatives through NSCC the name and amount of each Deposit Security in the current Portfolio Deposit for the Fund and the estimated Cash Component. The Deposit Securities and estimated Cash Component, as applicable, announced are applicable to purchases of Creation Units until the next announcement of Deposit Securities and estimated Cash Component, as applicable. The Fund may permit or require the substitute of an amount of cash to be added to the Cash Component to replace any Deposit Security. On any given business day, the names and quantities of the instruments that constitute the Deposit Securities will correspond pro rata to the positions in the Fund's portfolio (including cash positions) and, thus, will be identical. These instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.''

Placement of Purchase Orders

The Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs, including transparent ETFs. The Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in the Fund's prospectus or Statement of Additional Information (''SAI''). The NAV of the Fund is expected to be determined once each business day as of the close of the regular trading session on the Exchange (ordinarily, 4:00 p.m. E.T.). An AP must submit an irrevocable purchase order no later than the earlier of (i) 4:00 p.m. E.T. or (ii) the closing time of the trading session on the Exchange, on any business day in order to receive that business day's NAV (''Cut-off Time''). The business day the order is deemed received by the Distributor is referred to as the ''Transmittal Date.'' An order to create Creation Units is deemed received on a business day if (i) such order is received by the Distributor by the Cut-off Time on such day and (ii) all other procedures set forth in the Participant Agreement are properly followed. In purchasing the necessary securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

Purchases of Shares will be settled in-kind and/or in cash for an amount equal to the applicable NAV per Share purchased plus applicable transaction fees.[16] Other than the Cash Component, the Fund will substitute cash only under circumstances that are in the best interests of the Fund and as set forth under the Fund's policies and procedures governing the composition of Creation Baskets.

Authorized Participant Redemption

The Shares may be redeemed to the Fund in Creation Unit size or multiples thereof as described below. Redemption orders of Creation Units must be placed by or through an AP. Creation Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Cut-off Time. To initiate a redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Creation Unit no later than the Cut-off Time on the Transmittal Date. A transaction fee may be imposed to offset costs associated with redemption orders.

To redeem a Creation Unit, an AP must submit an irrevocable redemption request to the Distributor no later than the Cut-off Time. The Fund would then instruct its custodian to deliver a designated portfolio of securities (''Redemption Instruments'') to the appropriate Confidential Account in exchange for the Creation Units being redeemed. The AP will instruct the AP Representative when to liquidate the securities in the Confidential Account. As with purchase orders, the business day the order is deemed received by the Distributor is referred to as the Transmittal Date. A redemption request is deemed received if (i) such order is received by the Distributor by the Cut-off Time on such day and (ii) all other procedures set forth in the Participant Agreement are properly followed. In response to a redemption request, the Fund will instruct the custodian to deliver an in-kind basket of designated securities (the ''Redemption Securities'') and a Cash Component (together, the ''Redemption Basket'') to the appropriate Confidential Account. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the Redemption Securities. The AP would direct the AP Representative on that day to liquidate those securities. As with the purchase of securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Redemption Basket.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Fund may permit or require

[16] To the extent that the Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

the substitution of cash to be added to the Cash Component to replace any Redemption Security. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

Net Asset Value

The NAV will be calculated for the Shares of the Fund on each business day. The Fund's NAV is determined as of the close of regular trading on the Exchange, normally 4:00 p.m., E.T. The NAV of the Fund's Shares is determined by dividing the total value of the Fund's assets, less any liabilities, by the total number of Shares outstanding of the Fund at the time the determination is made.

Generally, the Fund's portfolio securities are valued each day at the last quoted sales price on each security's primary exchange. Securities traded or dealt in upon one or more securities exchanges for which market quotations are readily available and not subject to restrictions against resale shall be valued at the last quoted sales price on the primary exchange or, in the absence of a sale on the primary exchange, at the mean between the current bid and ask prices on such exchange. Securities primarily traded in the NASDAQ National Market System for which market quotations are readily available shall be valued using the NASDAQ Official Closing Price. If market quotations are not readily available, securities will be valued at their fair market value as determined in good faith by the Fund's fair value committee in accordance with procedures approved by the Board. Securities that are not traded or dealt in any securities exchange (whether domestic or foreign) and for which over-the-counter market quotations are readily available generally shall be valued at the last sale price or, in the absence of a sale, at the mean between the current bid and ask price on such over-the- counter market.

More information about the valuation of the Fund's holdings can be found in the SAI.

Information regarding the Fund's NAV and how often Shares of the Fund traded at a price above (*i.e.,* at a premium) or below (*i.e.,* at a discount) the Fund's NAV will be available on the Fund's website (*www.FMCX.com*).

Availability of Information

The Fund's website, *www.FMCX.com,* will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[17] and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

Form N–PORT requires reporting of a Fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a Fund's SAI, its shareholder reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. The Fund's SAI and shareholder reports are available free upon request from the Fund, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed onscreen or downloaded from the Commission's website at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Verified Intraday Indicative Value (''VIIV''), as defined in Rule 8.900–E(c)(2),[18] will be widely disseminated by the Reporting Authority [19] and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session and will be available to all market participants at the same time.

Dissemination of the VIIV

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The VIIV will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Exchange's Core Trading Session. The VIIV is based on the current market value of the securities in the Fund's portfolio that day. The methodology for calculating the Fund's VIIV is available on the Fund's website. The VIIV is intended to provide investors and other market participants with a highly correlated per Share value of the underlying portfolio that can be compared to the current market price. Therefore, under normal circumstances the VIIV would be effectively a near real time approximation of the Fund's NAV, available free of charge from one or more market data vendors, which is computed only once a day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[20] Trading in Shares of the Fund will be halted if the circuit breaker parameters in Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to Rule 8.900–E(d)(2)(C), which sets forth circumstances under

[17] The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or their service providers.

[18] Rule 8.900–E(c)(2) provides that the term ''Verified Intraday Indicative Value'' is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Exchange's Core Trading Session by the Reporting Authority.

[19] Rule 8.900–E(c)(8) provides that the term ''Reporting Authority'' in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the NAV, the VIIV, or other information relating to the issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

[20] *See* Rule 7.12–E.

which trading in the Shares of the Fund will be halted.

Specifically, Rule 8.900–E(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[21]

Rule 8.900–E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the NAV, or the holdings are available, as required.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange in all trading sessions in accordance with Rule 7.34–E(a). As provided in Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00, for which the MPV for order entry is $0.0001. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

The Shares will conform to the initial and continued listing criteria under Rule 8.900–E, as well as all terms in the Exemptive Order. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. As part of these surveillance procedures and consistent with Rule 8.900–E(b)(3) and 8.900–E(d)(2)(B), the Adviser will upon request make available to the Exchange and/or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, the daily portfolio holdings of the Fund. The issuer of the Shares of the Fund will be required to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5–E(m).

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Fund would meet each of the rules relating to listing and trading of Managed Portfolio Shares. To the extent that the Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading on the Exchange or commence delisting procedures under Rule 8.900–E(d)(2)(B). Specifically, the Exchange would consider the suspension of trading, and commence delisting proceedings under Rule 8.900–E(d)(2)(B), of the Fund under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Fund; (b) if the Exchange has halted trading in the Fund because the VIIV is interrupted pursuant to Rule 8.900–E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in the Fund because the NAV with respect to such Fund is not disseminated to all market participants at the same time, the holdings of such Fund are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900–E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted

[21] The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

trading in Shares of the Fund pursuant to Rule 8.900–E(d)(2)(C)(i) and such issue persists past the trading day in which it occurred; (e) if the Fund has failed to file any filings required by the Commission or if the Exchange is aware that the Fund is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff with respect to the Fund; (f) if any of the continued listing requirements set forth in Rule 8.900–E are not continuously maintained; (g) if any of the statements of representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules as specified herein to permit the listing and trading of the Fund, are not continuously maintained; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As discussed above, the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such affiliate broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio and Creation Basket. The Sub-Adviser is neither registered as a broker-dealer nor affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser or Sub-Adviser, as applicable, will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser, Sub-Adviser, or the Trust who makes decisions pertaining to the Fund's portfolio composition or that has access to information regarding the Fund's portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

In addition, Rule 8.900–E(b)(5) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. Any person or entity who has access to information regarding the Fund's portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio or changes thereto or the Creation Basket.

The Exchange further believes that Rule 8.900–E is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund because it provides meaningful requirements about both the data that will be made publicly available about the Shares, as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection set forth in Rule 8.900–E(b)(5) will act as a safeguard against misuse and improper dissemination of information related to the Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material non-public information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. Accordingly, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund and to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange would halt trading under certain circumstances under which trading in the Shares of the Fund may be inadvisable. Specifically, trading in the Shares will be subject to Rule 8.900–E(d)(2)(C)(i), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[24] Additionally, trading in the Shares will be subject to Rule 8.900–E(d)(2)(C)(ii), which provides that the Exchange would halt trading where the Exchange becomes aware that: (a) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.900–E.[25] The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order.[26] As noted above,

[24] *See* note 21, *supra.*

[25] The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act. *See* 17 CFR 240.10A–3.

[26] *See* note 10, *supra.*

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to trading of Shares of the Fund, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation that the NAV per Share of the Fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, its shareholder reports, its Form N–CSR (filed twice a year), and its Form N–CEN (filed annually). The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Exchange's Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for the Fund will include a prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under Rule 8.900–E. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The Exchange also believes that the proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit the listing and trading of an additional actively-managed exchange-traded product, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [27] and Rule 19b-4(f)(6) thereunder.[28]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved, and noticed for immediate effectiveness, proposed rule changes to permit listing and trading on the Exchange of Managed Portfolio Shares similar to the Funds.[30] The proposed listing rule for the Fund raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[31]

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] *See supra* note 5.

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–17 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–2022–17. 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–2022–17 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07852 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–802, OMB Control No. 3235–0758]

Submission for OMB Review; Comment Request; Extension: Rule 30e–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), (''Paperwork Reduction Act'') the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations. Rules 30e–1 (17 CFR 270.30e–1) and 30e–2 (17 CFR 270.30e–2) under the Investment Company Act require most funds to send their shareholders annual and semiannual reports containing financial information on the fund.

Rule 30e–3 (17 CFR 270.30e–3) under the Investment Company Act (15 U.S.C. 80a–1 *et seq.*) provides certain funds and unit investment trusts with an optional method to satisfy shareholder report transmission requirements by making such reports and certain other materials publicly accessible on a website, as long as they satisfy certain other conditions of the rule regarding: (a) Availability of the report and other materials; (b) notice to investors of the website availability of the report; and (c) delivery of paper copies of materials upon request. Reliance on the rule is voluntary. Responses to the disclosure requirements are not kept confidential.

The Commission estimates that 13,079 funds could rely on rule 30e–3. Of these funds, we estimate that 90% (or 11,771 funds) are currently relying on rule 30e–3. With respect to these 11,771 funds, we estimate that 90% (or 10,594 funds) already post shareholder reports on their websites for other purposes. In total, rule 30e 3 will impose an average total annual hour burden of 24,719 hours on applicable funds. Based on the Commission's estimate of 24,719 hours and an estimated wage rate of about $362 per hour, the total annual cost to registrants of the hour burden for complying with rule 30–3 is about $8.9 million.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 30e–3 is mandatory. The information provided under rule 30e–3 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Written comments and recommendations for the proposed information collection should be sent within 30 days May 13, 2022 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.

Dated: April 7, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07832 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94625; File No. SR–OCC–2022–002]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Concerning the Options Clearing Corporation's Governance Arrangements

April 7, 2022.

On February 7, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–002 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend certain of its governing documents by (1) clarifying that OCC's public directors may not be affiliated with any designated contract market or futures commission merchant; (2) allowing OCC's board of directors (''Board'') to delegate certain authorities to Board-level committees (''Committees'') or officers; (3) amending OCC's by-laws with regard to stockholder consent; and (4) applying additional housekeeping amendments to the Board Charter and Committee Charters.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on February 25, 2022.[4] The Commission received a comment regarding the Proposed Rule Change.[5]

Section 19(b)(2)(i) of the Exchange Act [6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, 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 unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[7] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[8]

The 45th day after publication of the Notice of Filing is April 11, 2022. In order to provide the Commission with sufficient time to consider 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 and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[9] designates May 26, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2022–002.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07851 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR at 10881.

[4] Securities Exchange Act Release No. 94283 (Feb. 18, 2022), 87 FR 10881 (Feb. 25, 2022) (File No. SR–OCC–2022–002) (''Notice of Filing'').

[5] The comment on the Proposed Rule Change is available at *https://www.sec.gov/comments/sr-occ-2022-002/srocc2022002.htm.*

[6] 15 U.S.C. 78s(b)(2)(i).

[7] 15 U.S.C. 78s(b)(2)(ii).

[8] *Id.*

[9] *Id.*

[10] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94640; File No. SR–NYSEARCA–2022–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10–E

April 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 5, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on July 20, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10–E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEArca–2010–58).

[5] *See* Securities Exchange Act Release No. 68809 (Feb. 1, 2013), 78 FR 9081 (Feb. 7, 2013) (SR–NYSEArca–2013–12).

resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10–E to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10–E to extend the pilot's effectiveness to the close of business on April 20, 2020,[11] October 20, 2020,[12] April 20, 2021,[13] October 20, 2021,[14] and April 20, 2022.[15]

The Exchange now proposes to amend Rule 7.10–E to extend the pilot's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[16] In such an event, the remaining sections of Rule 7.10–E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10–E.

The Exchange does not propose any additional changes to Rule 7.10–E. Extending the effectiveness of Rule 7.10–E for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10–E for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[21]

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEArca–2014–48).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71807 (March 26, 2014), 79 FR 18087 (March 31, 2014) (SR–NYSEArca–2014–32).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85532 (April 5, 2019), 84 FR 14708 (April 11, 2019) (SR–NYSEArca–2019–21).

[11] *See* Securities Exchange Act Release No. 87355 (October 18, 2019), 84 FR 57094 (October 24, 2019) (SR–NYSEArca–2019–75).

[12] *See* Securities Exchange Act Release No. 88590 (April 8, 2020), 85 FR 20791 (April 14, 2020) (SR–NYSEArca–2020–25).

[13] *See* Securities Exchange Act Release No. 90155 (October 13, 2020), 85 FR 66386 (October 19, 2020) (SR–NYSEArca–2020–88).

[14] *See* Securities Exchange Act Release No. 91551 (April 14, 2021), 86 FR 20562 (April 20, 2021) (SR–NYSEArca–2021–22).

[15] *See* Securities Exchange Act Release No. 93357 (October 15, 2021), 86 FR 58326 (October 21, 2021) (SR–NYSEArca–2021–87).

[16] *See supra* notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

Continued

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[24]

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) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2022–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–21. 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–2022–21 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–07846 Filed 4–12–22; 8:45 am]

BILLING CODE 8011–01–P

at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94636; File No. SR–PEARL–2022–13]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend Exchange Rule 2622 To Adopt on a Permanent Basis the Pilot Program Related to the Market-Wide Circuit Breaker

April 7, 2022.

Pursuant to the provisions of 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 April 6, 2022 MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt on a permanent basis the pilot related to the Market-Wide Circuit Breaker mechanism in Rule 2622.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt on a permanent basis the pilot related to the Market-Wide Circuit Breaker (''MWCB'') mechanism in Rule 2622.

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange LLC (''NYSE'') to adopt on a permanent basis the pilot program for MWCB mechanism in NYSE Rule 7.12.[3] The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Rule 2622.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 2622, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988. In 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis[4] and, in 2020, the Exchange adopted the cash equities uniform rule under Exchange Rule 2622(a)–(d) to also operate on a pilot basis[5] (the ''Pilot Rules''). The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

Exchange Rule 2622 was approved by the Commission to operate on a pilot basis set to expire on at the close of business on October 18, 2020.[7] The Exchange subsequently amended Rule 2622 to extend the Pilot Rules' effectiveness to the close of business on October 18, 2021,[8] March 18, 2022[9] and April 18, 2022.[10]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[11] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[12]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, the NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[13] On March 16, 2022, the Commission approved NYSE's proposal.[14]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d) of Rule 2622) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 2622, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the

[3] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE–2021–40).

[4] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order''). *See also* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03) (''Equities Approval Order'') (approving, among other things, Exchange Rule 2622).

[5] *See* Equities Approval Order, *id.*

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* Exchange Rule 504(a) *and* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Equities Approval Order, *supra note* 4.

[8] *See* Securities Exchange Act Release No. 90124 (October 8, 2020), 85 FR 65105 (October 14, 2020) (SR–PEARL–2020–20).

[9] *See* Securities Exchange Act Release No. 93331 (October 14, 2021), 86 FR 58130 (October 20, 2021) (SR–PEARL–2021–50).

[10] *See* Securities Exchange Act Release No. 94452 (March 17, 2022), 87 FR 16509 (March 23, 2022) (SR–PEARL–2022–08).

[11] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[12] *See id.* at 46.

[13] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[14] *See supra* note 3.

Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 2622, as follows:

(e) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Equity Members designated pursuant to Chapter III of these Rules [15] to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that an Equity Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Equity Members not designated pursuant to standards established in Chapter III of these Rules are permitted to participate in any MWCB test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

* * * * *

To accommodate the addition of new paragraphs (e), (f), and (g), the Exchange proposes to renumber existing paragraphs (e), (f), and (g) as (h), (i), and (j). The Exchange does not proposes any other changes to these paragraphs. The Exchange also proposes to update cross-references to current Exchange Rule 2622(e) to its renumbered Exchange Rule 2622(h) in Exchange Rules 2614 (a)(1)(H), 2614 (c)(2)(B), 2617 (a)(3), 2617 (b)(3), 2617 (b)(4)(B)(ii), and 2617 (b)(4)(B)(iii).

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 2622(a)–(d) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, 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 protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, 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 protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, 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 protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange

[15] The Exchange notes that Chapter III incorporates by reference Chapter III of the rules of the Exchange's affiliate, Miami International Securities Exchange LLC (''MIAX''), including paragraph (b) and Interpretations and Policies .01 of MIAX Rule 321 providing the business continuity and disaster recovery plans testing requirements for designated members.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, 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 protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[18]

The Exchange believes that proposed paragraph (f) would benefit market participants, 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 protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 2622 and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 2622 in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) would benefit market participants, 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 protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 2622 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 2622, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing.

[18] *See* 17 CFR 240.17a–1.

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–13 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11706]

60-Day Notice of Proposed Information Collection: COVID–19 Vaccination Requests for Waiver

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *June 13, 2022.*

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0100'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: NicodemusAL@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* COVID–19 Vaccination Request for Waiver.
- *OMB Control Number:* 1405–0246.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* GTM.
- *Form Number:* DS–1558, DS–1559.
- *Respondents:* New employees at the Department of State who may request an exception to Executive Order 14043 from this vaccination requirement based on a sincerely held religious belief or medical needs.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 100.
- *Average Time per Response:* 75 minutes per response.
- *Total Estimated Burden Time:* 75 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The purpose of collecting this information is to provide an avenue for individuals to request an exception to the vaccination requirement as a medical/disability or religious accommodation, and to determine whether the request for an exception to Executive Order 14043 is valid and can be accommodated.

Methodology

For prospective employees, both forms are PDFs that must be printed, completed, signed, and emailed to points of contact. The Medical Exception form has two parts: Part 2 of the form must be completed by a medical professional before the entire document is scanned and emailed.

A Notice Regarding Injunctions

The vaccination requirement issued pursuant to E.O. 14043, is currently the subject of a nationwide injunction. While that injunction remains in place, the Department will not process requests for a medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043. The Department will also not request the submission of any medical information related to a request for an exception from the vaccination requirement pursuant to E.O. 14043 while the injunction remains in place. But the Department may nevertheless receive information regarding a medical exception. That is because, if the Department were to receive a request for an exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 during the pendency of the injunction, the Department will accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation and enforcement of the COVID–19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the injunction is in place. In other words, during the pendency of the injunction, any information collection related to requests for medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 is not undertaken to implement or enforce the COVID–19 vaccination requirement.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–07879 Filed 4–12–22; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. EP 770]

Urgent Issues in Freight Rail Service

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on April 26 and 27, 2022, on recent rail service problems and recovery efforts involving several Class I carriers. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001. The Board will direct executive-level officials, including operating and human resources officials, of BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and Union Pacific Railroad Company (UP) to appear to discuss the recent rail service problems, each carrier's ongoing and planned efforts to improve service, and each carrier's estimated timeline for recovery of normal service levels. The Board will also invite and welcome the attendance of executive-level officials, including operating and human resources officials, of Canadian National Railway Company (CN), Kansas City Southern Railway Company (KCS), and Canadian Pacific Railway Company (CP). In addition, the Board will provide other carriers, rail customers, labor organizations, and other interested parties the opportunity to report on recent service issues and service recovery efforts.

DATES: The hearing will be held on April 26 and 27, 2022, beginning at 9:30 a.m. each day, in the Hearing Room of the Board's headquarters and will be open for public observation. The hearing will be available for viewing on the Board's website. Any person wishing to speak at the hearing should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) as soon as possible but no later than April 14, 2022. Submission of written testimony by hearing participants is optional; any such written testimony, and written comments by any other interested persons, may be submitted by April 22, 2022.

ADDRESSES: All filings should be submitted via e-filing on the Board's website at *www.stb.gov.* Filings will be posted to the Board's website and need not be served on the other hearing participants, written commenters, or any other party to the proceeding.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Rail network reliability is essential to the Nation's economy and is a foremost priority of the Board. In recent weeks, the Board has heard informally from a broad range of stakeholders about inconsistent and unreliable rail service. These challenges include tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer assistance. Moreover, the Board has received several recent reports, from the Secretary of Agriculture, Senator Shelley Moore Capito, and other stakeholders, about the serious impact of these service trends on rail users, particularly with respect to shippers of agricultural and energy products.[1]

At the same time, the Board has been closely monitoring weekly rail service performance data submitted pursuant to 49 CFR part 1250.[2] The data validate the anecdotal information reported to the Board, as many key performance indicators, such as system average train speed and average number of trains holding per day, suggest performance is below historical norms. While the Board appreciates that the pandemic has caused significant volume fluctuations, which have created great uncertainty and other challenges, these trends demonstrate that service has continued to deteriorate. Since the beginning of 2022, and through the data for the week ending March 25, 2022, there has been no material, sustained decline in trains held per day due to crew or locomotive availability for BNSF, CSXT, NSR, or UP. Recognizing large reductions in railroad employment over the past several years (including prior to the pandemic), as reported to the Board under 49 CFR 1246.1, and understanding that carriers have reported hiring difficulties—difficulties that are not restricted to the rail industry—the Board is concerned that crew shortages have contributed to these recent service trends and affected carriers' recovery efforts. For these reasons, the Board has determined that the service issues may have reached a level that requires action by the Board, and it is imperative that the Board hear from carriers, rail customers, labor

[1] *See* Honorable Thomas J. Vilsack, U.S. Dep't of Agric. Letter, Mar. 30, 2022, *Reciprocal Switching,* EP 711 (Sub-No. 1); Letter from Honorable Shelley Moore Capito, to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 29, 2022), *available at www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence''); Letter from the Nat'l Grain & Feed Ass'n, to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 24, 2022), *available at www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence''); Letter from SMART-Transp. Div., to Chairman Martin J. Oberman (Apr. 1, 2022), *available at www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence'').

[2] Data collected pursuant to 49 CFR part 1250 is available on the Board's website at *https://www.stb.gov/reports-data/rail-service-data/.*

organizations, and other interested persons.

Given the serious nature of the service issues reported to the Board, in addition to providing as much visibility as possible to all aspects of the current service issues, the Board expects the information provided at the hearing to inform any potential future Board actions to ameliorate the problems that have been reported.

The Board will hold a public hearing on April 26 and 27, 2022, beginning at 9:30 a.m. each day, at its offices in Washington, DC, to hear firsthand from senior officials of BNSF, CSXT, NSR, and UP, as well as affected shippers, shipper organizations, and labor organizations, about rail service and efforts to improve service. The Board will direct executive-level officials, including operating and human resources officials, of BNSF, CSXT, NSR, and UP to appear [3] at the hearing to discuss their recent rail service problems and their ongoing and planned efforts to improve service, including detailed plans outlining the steps needed to improve service.[4] The Board will also direct BNSF, CSXT, NSR, and UP to address the extent to which crew shortages, particularly in the context of past employment reductions and current hiring difficulties, may have contributed to these service problems, and their plans, if any, to change and improve their hiring and employee retention policies to alleviate the acute crew shortages that appear to be among the central causes of the current service issues. In addition to the required participation of BNSF, CSXT, NSR, and UP, because the above-discussed problems have also been occurring to some degree on an industry-wide basis, the Board invites and will welcome the attendance of executive-level officials, including operating and human resources officials, of CN, KCS, and CP, and invites any other interested carriers to participate.

The Board also encourages affected rail customers, shipper organizations, labor organizations, and other interested parties to appear at the public hearing to discuss their service concerns and comment on carriers' efforts toward service recovery.[5]

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov*. The Board will issue a separate notice containing the schedule of appearances. A transcript of the hearing will be posted on the Board's website once it is available.

It is ordered:

1. A public hearing will be held on April 26 and 27, 2022, beginning at 9:30 a.m. each day, in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001.

2. Executive-level officials, including operating and human resources officials, of BNSF, CSXT, NSR, and UP are directed to appear at the public hearing, as discussed above.

3. By April 14, 2022, BNSF, CSXT, NSR, UP and any other person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker(s), and the time requested.

4. Written testimony by hearing participants (which is optional) and written comments from any other interested persons may be filed by April 22, 2022.

5. Filings will be posted to the Board's website and need not be served on any hearing participants or other commenters.

6. This decision is effective on its service date.

7. This decision will be published in the **Federal Register**.

Decided: April 7, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2022–07831 Filed 4–12–22; 8:45 am]

BILLING CODE 4915–01–P

[3] The Board is directing BNSF, CSXT, NSR, and UP to appear because most recent service issues involve these four carriers. Additionally, other carriers and interested persons are invited to participate. The Board notes that it is prepared to address service problems with respect to any of the Class I carriers, as appropriate.

[4] In response to letters from Chairman Martin J. Oberman dated May 27, 2021, October 18, 2021, and November 23, 2021, Class I carriers have provided the Board with information about their service performance and workforce levels. Chairman Oberman's letters and Class I carriers' responsive letters are available on the Board's website at *www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence''). While the Board appreciates the information that Class I carriers have provided thus far, the trends discussed above demonstrate that service has continued to deteriorate, and the ongoing service problems and crew shortages indicate that the Class I carriers need to take additional steps to ensure adequate service. Accordingly, BNSF, CSXT, NSR, and UP should prepare to discuss at the hearing, with specificity, their most recent efforts to improve service and their proposed timeline for recovery.

[5] The Board's public hearing is not intended to replace the informal and confidential dispute resolution process facilitated by the Board's Rail Customer and Public Assistance, and stakeholders are encouraged to continue communicating through that office.

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Coterra Energy Inc.; Pad ID: BrazitisD P1; ABR–202203002; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 9, 2022.

2. EXCO Resources (PA), LLC; Pad ID: Patterson Drilling Pad #1; ABR–20100146.R21; Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 9, 2022.

3. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 356 Pad J; ABR–201201014.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 11, 2022.

4. SWN Production Company, LLC.; Pad ID: FIELDS PAD 1; ABR–201202015.R2; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 11, 2022.

5. Chesapeake Appalachia, L.L.C.; Pad ID: Otis; ABR–20100318.R2; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 14, 2022.

6. Chief Oil & Gas, LLC; Pad ID: AMBROSIUS B PAD; ABR–201703002.R1; Wilmot Township, Bradford County, Pa.; Consumptive Use

of Up to 2.5000 mgd; Approval Date: March 14, 2022.

7. Repsol Oil & Gas USA, LLC; Pad ID: Spencer 729; ABR–201009065.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 15, 2022.

8. Repsol Oil & Gas USA, LLC; Pad ID: Red Run Mountain Inc. 739; ABR–201010006.R2; McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 15, 2022.

9. Repsol Oil & Gas USA, LLC; Pad ID: Parent 749; ABR–201012054.R2; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 15, 2022.

10. SWN Production Company, LLC.; Pad ID: WATTS; ABR–201202028.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 15, 2022.

11. Seneca Resources Company, LLC; Pad ID: Covington Pad R; ABR–202203001; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 16, 2022.

12. Coterra Energy Inc.; Pad ID: TompkinsJ P1; ABR–202203006; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 23, 2022.

13. Coterra Energy Inc.; Pad ID: RayiasE P2; ABR–202203005; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 23, 2022.

14. Big Dog Energy, LLC; Pad ID: Cowfer B (CC–09) Pad; ABR–201107010.R2; Gulich Township, Clearfield County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 23, 2022.

15. Big Dog Energy, LLC; Pad ID: River Hill Power Karthaus Pad; ABR–201107014.R2; Karthaus Township, Clearfield County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 23, 2022.

16. Chesapeake Appalachia, L.L.C.; Pad ID: Cappucci; ABR–20100312R2; Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 23, 2022.

17. Seneca Resources Company, LLC; Pad ID: Murray Pad A; ABR–20100317.R2; Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 23, 2022.

18. Repsol Oil & Gas USA, LLC; Pad ID: MORGAN (01 074) W; ABR–20100302.R2; Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 23, 2022.

19. Repsol Oil & Gas USA, LLC; Pad ID: DCNR 587 (02 013); ABR–20100308.R2; Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 23, 2022.

20. SWN Production Company, LLC.; Pad ID: GOOD; ABR–201201027.R2; Cogan House Township and Jackson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 23, 2022.

21. Coterra Energy Inc.; Pad ID: HinkleyR P1; ABR–20100322.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 23, 2022.

22. Coterra Energy Inc.; Pad ID: LauerD P1; ABR–202203004; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 29, 2022.

23. Coterra Energy Inc.; Pad ID: ManzerA P1; ABR–201203013.R2; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 29, 2022.

24. Coterra Energy Inc.; Pad ID: RussoB P2; ABR–20100326.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 29, 2022.

25. Chesapeake Appalachia, L.L.C.; Pad ID: Marbaker; ABR–20100321.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 29, 2022.

26. Inflection Energy (PA), LLC; Pad ID: Nature Boy East; ABR–201203010.R2; Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 31, 2022.

27. SWN Production Company, LLC.; Pad ID: GREMMEL; ABR–201203005.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: March 31, 2022.

28. Chesapeake Appalachia, L.L.C.; Pad ID: Rose; ABR–20100327.R2; Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 31, 2022.

29. Chesapeake Appalachia, L.L.C.; Pad ID: Walt; ABR–20100329.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 31, 2022.

30. Seneca Resources Company, LLC; Pad ID: Webster 549; ABR–20100335.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 31, 2022.

31. Chief Oil & Gas, LLC; Pad ID: Stasiak Drilling Pad #1; ABR–201203025.R2; Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 31, 2022.

32. Coterra Energy Inc.; Pad ID: WarnerA P1; ABR–20100331.R2; Delmar Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 31, 2022.

33. Coterra Energy Inc.; Pad ID: GrosvenorD P1; ABR–20100333.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: March 31, 2022.

34. Blackhill Energy LLC; Pad ID: WOLFE B Pad; ABR–201203002.R2; Athens Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: March 31, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: April 8, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–07885 Filed 4–12–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Minor Modifications

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for a previously approved project by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modifications, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06 for the time period specified above:

Minor Modification Issued Under 18 CFR 806.18

1. Sunset Golf Club LLC, Docket No. 20220317, Oneida Township, Huntington County, Pa.; modification approval to change the consumptive use mitigation method; Approval Date: March 18, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: April 8, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–07884 Filed 4–12–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: March 1–31, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, subpart E for the time period specified above: *Grandfathering Registration Under 18 CFR part 806, subpart E:*

1. Furman Farms, Inc., GF Certificate No. GF–202203207, various municipalities and counties, Pa.; see Addendum; Issue Date: March 11, 2022.
2. Motor Components, LLC, GF Certificate No. GF–202203208, Town of Horseheads and Village of Elmira Heights, Chemung County, N.Y.; Wells 1, 2, and 3; Issue Date: March 11, 2022.
3. Pennsy Supply, Inc.—Penn Township Quarry, GF Certificate No. GF–202203209, Penn Township, Cumberland County, Pa.; Wells 1 and 3; Issue Date: March 1, 2022.
4. City of Hornell—Public Water Supply System, GF Certificate No. GF–202203210, Towns of Hornellsville and Fremont, Steuben County, N.Y.; Reservoir 1 and combined withdrawal from Wells 1 and 2; Issue Date: March 17, 2022.
5. Cortland Country Club, Inc.—Cortland Country Club, GF Certificate No. GF–202203211, Town of Cortlandville, Cortland County, N.Y.; combined withdrawal from Wells 1 and 2 and consumptive use; Issue Date: March 17, 2022.

Authority: Public Law 91–575, 84 stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: April 8, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–07883 Filed 4–12–22; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on May 5, 2022. The Commission will hold this hearing in-person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for June 16, 2022, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments is May 16, 2022.

DATES: The public hearing will convene on May 5, 2022, at 6:30 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for the submission of written comments is Monday, May 16, 2022.

ADDRESSES: This public hearing will be conducted in-person and telephonically. You may attend in person at Susquehanna River Basin Commission, 4423 N Front St, Harrisburg, Pennsylvania or join by Conference Call #: 1–888–387–8686, Conference Room #: 917 968 6050.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.*

Information concerning the applications for the projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Information concerning the proposals can be found at *https://www.srbc.net/about/meetings-events/.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Blackhill Energy LLC (Susquehanna River), Ulster Township, Bradford County, Pa. Application for surface water withdrawal of up to 3.024 mgd (peak day).
2. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20170603).
3. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Susquehanna River), Wysox Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20170604).
4. Project Sponsor and Facility: Chesapeake Appalachia, L.L.C. (Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.715 mgd (peak day) (Docket No. 20170605).
5. Project Sponsor: Corning Incorporated. Project Facility: Houghton Park, City of Corning, Steuben County, N.Y. Application for renewal of groundwater withdrawal of up to 1.080 mgd (30-day average) from Well 5 (Docket No. 19970503).
6. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico, West Cocalico, and Brecknock Townships, Lancaster County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.081 mgd from Well 11, 1.150 mgd from Well F, and 1.395 mgd from Well M (Docket Nos. 19920702 and 20070606).
7. Project Sponsor: Golf Acres, Inc. Project Facility: Chapel Hill Golf Course (Little Muddy Creek), Spring Township, Berks County, Pa. Applications for surface water withdrawal of up to 0.180

mgd (peak day) and consumptive use of up to 0.162 mgd (peak day).

8. Project Sponsor and Facility: Hydrage, LLC, East Union and Mahanoy Townships, Schuylkill County, Pa. Application for renewal of consumptive use of up to 0.200 mgd (peak day) (Docket No. 20070603).

9. Project Sponsor and Facility: Lykens Valley Golf Course & Resort Inc (unnamed tributary to Wiconisco Creek), Upper Paxton Township, Dauphin County, Pa. Applications for renewal of surface water withdrawal of up to 0.200 mgd (peak day) and consumptive use of up to 0.200 mgd (peak day) (Docket No. 20080614).

10. Project Sponsor and Facility: Municipal Authority of the Township of East Hempfield dba Hempfield Water Authority, East Hempfield Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.353 mgd from Well 6, 0.145 mgd from Well 7, 1.447 mgd from Well 8, and 1.800 mgd from Well 11, and Commission-initiated modification to Docket No. 20120906, which approves withdrawals from Wells 1, 2, 3, 4, and 5 and Spring S–1 (Docket Nos. 19870306, 19890503, 19930101, and 20120906).

11. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Tyrone Quarry, Warriors Mark Township, Huntingdon County, Pa. Application for groundwater withdrawal of up to 0.173 mgd (30-day average) from Well MW–36B and modification to increase consumptive use (peak day) by an additional 0.238 mgd, for a total consumptive use of up to 0.532 mgd (Docket No. 20031205).

12. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Towanda Creek), Franklin Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20170611).

13. Project Sponsor and Facility: Shrewsbury Borough, Shrewsbury Township and Shrewsbury Borough, York County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.099 mgd from the Meadow Well and 0.180 mgd from the Village Well (Docket Nos. 19890501 and 19900105).

14. Project Sponsor: SUEZ Water Pennsylvania Inc. Project Facility: Grantham Operation, Upper Allen Township, Cumberland County, Pa. Application for renewal of groundwater withdrawal of up to 0.395 mgd (30-day average) from Well 2 (Docket No. 19901104).

15. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

16. Project Sponsor and Facility: Town of Kirkwood, Broome County, N.Y. Application for renewal of groundwater withdrawal of up to 0.841 mgd (30-day average) from Well 3 (Docket No. 19920304).

17. Project Sponsor and Facility: Village of Canisteo, Steuben County, N.Y. Application for renewal of groundwater withdrawal of up to 0.499 mgd (30-day average) from Well 2 (Docket No. 19950902).

18. Project Sponsor: Vulcan Construction Materials, LLC. Project Facility: Havre de Grace Quarry (Susquehanna River), Havre de Grace District, Harford County, Md. Applications for renewal of surface water withdrawal of up to 0.234 mgd (peak day) and consumptive use of up to 0.823 mgd (peak day) (Docket No. 19920105).

Project Scheduled for Action Involving a Diversion

19. Project Sponsor and Facility: Patrick Hoopes Trucking, Inc., Eulalia Township, Potter County, Pa. Application for an into-basin diversion from the Ohio River Basin of up to 1.000 mgd (peak day) from the Allegheny River.

Commission Initiated Project Approval Modification

20. Project Sponsor and Facility: Lebanon Valley College, Annville and North Annville Townships, Lebanon County, Pa. Conforming the grandfathered amount with the forthcoming determination for groundwater withdrawals (30-day averages) of up to 0.019 mgd from the Football Well, 0.044 mgd from the Baseball Well, and 0.042 mgd from the West (Soccer) Well, as well as modify monitoring and reporting requirements for the project (Docket No. 20030409).

Opportunity To Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before May 16, 2021, to be considered.

Authority: Pub. L. 91–575, 84 stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 8, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–07882 Filed 4–12–22; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notification of U.S.-Korea Free Trade Agreement Labor Council Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Under the United States-Korea Free Trade Agreement (KORUS), the United States and Republic of Korea (Parties) intend to hold a virtual meeting of the Labor Council on April 25–26, 2022. The session will include a government-to-government Labor Council meeting on April 25, 2022, and a virtual public session on implementation of the KORUS labor chapter on April 26, 2022. The Office of the United States Trade Representative (USTR) and the U.S. Department of Labor (DOL) seek questions from the public in advance of the public session.

DATES:

April 18, 2022: Information on how to register for the public session will be posted on the USTR and DOL websites noted in the Addresses section below, and registration to attend the public session will open.

April 20, 2022, 5:00 p.m. ET: Deadline for submission of questions for the public session. Attendees also will be given an opportunity to ask questions through a live-chat function during the event.

April 24, 2022: Registration for the public session will close.

April 25, 2022: The Parties will hold a government-to-government session.

April 26, 2022, 8:00 p.m. to 9:00 p.m. ET: The Parties will host a virtual public session regarding the implementation of Chapter 19 of the KORUS.

ADDRESSES: Submit written questions with the subject line 'KORUS Labor Council Meeting' to Donna Chung, Director for Labor Affairs, USTR by email to *MBX.USTR.Labor@ustr.eop.gov;* and Sarah Casson at the Division of Monitoring and Enforcement, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, DOL by email to *ILAB-Outreach@DOL.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Chung, Director for Labor Affairs, USTR by email to *MBX.USTR.Labor@ustr.eop.gov, or* by phone 202–395–2870; and Sarah Casson at the Division of Monitoring and Enforcement, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, DOL by email to *ILAB-Outreach@DOL.gov, or by* phone 202–693–2960.

SUPPLEMENTARY INFORMATION:

I. Background

Article 19.5 of the KORUS establishes a Labor Council composed of senior government representatives from the Parties' labor ministries and other appropriate agencies or ministries. Pursuant to the Article, the Council met within the first year after the KORUS entered into force. This will be the second meeting of the Council under the KORUS.

The Labor Council may consider any matter within the scope of the implementation of Chapter 19 (Labor), including activities of the Labor Cooperation Mechanism established under Article 19.6. Unless the Parties otherwise agree, each meeting of the Council will include a session in which members of the Council have an opportunity to meet with the public to discuss matters related to the implementation of Chapter 19. Formal decisions of the Council will be made public, unless the Council decides otherwise. The Council may prepare reports on matters related to the implementation of Chapter 19 and will make such reports public.

The Labor Council meeting will include a virtual government-to-government session to discuss the Parties' Chapter 19 (Labor) obligations, and a virtual public session. The government-to-government session will not be open to the public.

II. Public Session on KORUS FTA Chapter 19 Implementation

The Labor Council invites members of the public to attend a virtual public session on April 26, 2022, from 8:00 p.m. to 9:00 p.m. ET, to address the implementation of Chapter 19 (Labor) of the KORUS. In addition to the questions received in advance of the public session, the Labor Council will welcome questions concerning the implementation of Chapter 19 obligations through a live-chat function during the event. Details on how to access the public session will be made available by April 18, 2022, on the USTR website at *https://ustr.gov/issue-areas/labor, and on the* DOL website at *https://www.dol.gov/agencies/ilab/our-work/trade/agreements/upcoming-fta-labor-meetings.*

III. Comments

DOL and USTR invite specific questions that could be addressed at the public session. When preparing questions or comments, we encourage submitters to refer to Chapter 19 of the KORUS (*https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file934_12718.pdf*).

Joshua Kagan,

Assistant U.S. Trade Representative for Labor Affairs Office of the United States Trade Representative.

[FR Doc. 2022–07895 Filed 4–12–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Proposed Change of Airport Property Land Use From Aeronautical to Non-Aeronautical Use at Shawnee Regional Airport, Shawnee, OK

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

ACTION: Notice.

SUMMARY: The FAA is considering a request from the City of Shawnee, Oklahoma to change approximately 72 acres, located on the west side of the airport bordered by North Leo Street and West Independence Avenue, from aeronautical use to non-aeronautical use and to authorize the conversion of the airport property.

DATES: Comments must be received on or before May 13, 2022

ADDRESSES: Send comments on this document to Mr. Glenn Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports District Office Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177. Email: *Glenn.A.Boles@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Wilson, Airport Manager, Shawnee Regional Airport, 2202 Airport Drive, Shawnee, OK 74115, telephone (405) 878–1532. Email: *Bonnie.Wilson@shawneeok.org;* or Mr. Glenn Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports District Office Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177, telephone (817) 222–5639. Email: *Glenn.A.Boles@faa.gov.*

Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The proposal consists of 72 acres comprised of portions of seven tracts of land, which were originally purchased by the City of Shawnee. No federal funds were used to purchase these properties. The Airport was leased to the United States between the years of 1943 and 1947. Under the provisions of the Surplus Property Act of 1944, the leased property was transferred back to the City in January 1946. No improvements were made by the United States to these tracts during the lease.

The land comprising these parcels is outside the forecasted need for aviation development and is not needed for indirect or direct aeronautical use. The Airport wishes to develop this land for compatible non-aeronautical use. The Airport will retain ownership of this land and ensure the protection of Part 77 surfaces and compatible land use. The income from the conversion of these parcels will benefit the aviation community by reinvestment in the airport.

Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion 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. 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.

Issued in Fort Worth, TX.

Ignacio Flores,

Director, Airports Division, FAA, Southwest Region.

[FR Doc. 2022–07902 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Proposed Change of Airport Property Land Use From Aeronautical To Non-Aeronautical Use at Russellville Regional Airport, Russellville, AR

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

ACTION: Notice.

SUMMARY: The FAA is considering a request from the City of Russellville, Arkansas to change 39.14 acres, located on the northwest side of the airport bordered largely by East 16th Street and Airport Road, from aeronautical use to non-aeronautical use and to authorize the conversion of the airport property.

DATES: Comments must be received on or before May 13, 2022.

ADDRESSES: Send comments on this document to Mr. Glenn Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports District Office Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177. Email: *Glenn.A.Boles@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Keith Frazier, Director, Russellville Regional Airport, 1759 Airport Road, Russellville, AR, telephone (479) 967–1227. Email: *kfrazier@rsvlar.org;* or Mr. Glenn Boles, Federal Aviation Administration, Arkansas/Oklahoma Airports District Office Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177, telephone (817) 222–5639. Email: *Glenn.A.Boles@faa.gov.*

Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The proposal consists of 39.14 acres of airport property (Tract 1) which is part of 306.12 acres that was purchased with Federal Aid in 1958 under FAA Grant 9–03–010–5901.

The land requested to be released for continued non-aeronautical use is outside of the forecasted need for aviation development and is not needed for indirect or direct aeronautical use. The Airport will retain ownership of this land and ensure the protection of Part 77 surfaces and compatible land use. The income from the conversion of these parcels will benefit the aviation community by reinvestment in the airport.

Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion 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. 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.

Issued in Fort Worth, TX.

Ignacio Flores,

Director, Airports Division, FAA, Southwest Region.

[FR Doc. 2022–07900 Filed 4–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[DOT Docket Number: FAA–2022–0481]

NextGen Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held virtually, on April 29, 2022, from 8:00 a.m.–5:00 p.m. ET. Requests to attend the meeting virtually and request for accommodations for a disability must be received by April 22, 2022. If you wish to submit a written statement to be included in the public record of the meeting, you must submit a written copy of your remarks by April 22, 2022.

ADDRESSES: This will be a virtual meeting. Virtual meeting information will be provided upon registration. Information on the NAC, including copies of previous meeting minutes, is available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/.* Members of the public interested in attending must send the required information listed in the **SUPPLEMENTARY INFORMATION** section to *9-AWA-ANG-NACRegistration@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Noonan, NAC Coordinator, U.S. Department of Transportation, at *Kimberly.Noonan@faa.gov* or 202–267–3760. Any requests or questions not regarding attendance registration should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, Public Law 92–463, 5 U.S.C. app. 2, to provide independent advice and recommendations to the FAA, and to respond to specific taskings received directly from the FAA. The NAC recommends consensus-driven advice for FAA consideration relating to Air Traffic Management System modernization.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chairman's Report
- FAA Report
- NAC Chairman Closing Comments

The detailed agenda will be posted on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

This virtual meeting will be open to the public. Members of the public who wish to attend are asked to register via email by submitting their full legal name, country of citizenship, contact information (telephone number and email address), and name of your industry association or applicable affiliation. Please email this information to the email address listed in the **ADDRESSES** section. When registration is confirmed, registrants will be provided the virtual meeting information/teleconference call-in number and passcode. Callers are responsible for paying associated long-distance charges (if any).

Note: Only NAC Members, and NAC working groups and FAA staff who are providing briefings will have the ability to speak. All other attendees will be able to listen only.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Written statements submitted by the deadline will be provided to the NAC members before the meeting. Any member of the public may submit a written statement to the committee at any time.

Signed in Washington, DC, this 8 day of April 2022.

Kimberly Noonan,

Manager, Stakeholder and Collaboration Division (A), NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2022–07939 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0015; Notice 2]

Arai Helmet, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Arai Helmet, Inc. (Arai), has determined that certain Arai Corsair X Mamola Edge motorcycle helmets, do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets.* Arai filed a noncompliance report dated March 6, 2019, and later amended it on March 28, 2019. Arai subsequently petitioned NHTSA on March 28, 2019, and later amended its petition on July 9, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Arai's petition.

FOR FURTHER INFORMATION CONTACT: Paloma Lampert, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5299, *Paloma.Lampert@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Arai has determined that certain Arai Corsair X Mamola Edge helmets, size small, do not comply with paragraph S5.6.1(b) of FMVSS No. 218, *Motorcycle Helmets* (49 CFR 571.218). Arai filed a noncompliance report dated March 6, 2019, and later amended it on March 28, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Arai subsequently petitioned NHTSA on March 28, 2019, and later amended its petition on July 9, 2020, for an exemption from the notification and remedy requirement of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Arai's petition was published with a 30-day public comment period on September 12, 2019, in the **Federal Register** (84 FR 48211). One comment was received. To view the petition, all supporting documents, and the comment received from the public, log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0015.''

II. Equipment Involved

Approximately 24 Arai Corsair X Mamola Edge helmets, size small, manufactured between June 29, 2018, and January 31, 2019, are potentially involved.

III. Noncompliance

Arai explains that the noncompliance is that the discrete size label may not be permanently attached as required by S5.6.1(b) of FMVSS No. 218.

IV. Rule Requirements

Paragraph S5.6.1(b) of FMVSS No. 218, provides the requirements relevant to this petition. Each helmet must be labeled permanently and legibly, in a manner such that the label can be read easily without removing padding or any other permanent part, with ''discrete size.''

V. Summary of Arai's Petition

The following views and arguments presented in this section, ''V. Summary of Arai's Petition,'' are the views and arguments provided by Arai and do not reflect the views of the agency. Arai describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Arai submits the following reasoning:

1. Arai states that the subject motorcycle helmets comply with all the performance requirements under FMVSS No. 218 and all labeling requirements of FMVSS No. 218, except that the discrete size label does not appear to be permanent as required by paragraph S5.6.1(b). Arai cites FMVSS No. 218, which says the discrete size means ''a numerical value that corresponds to the diameter of an equivalent circle representing the helmet interior in inches (±0.25 inch) or to the circumference of the equivalent circle in centimeters (±0.64 centimeters).''

2. Arai believes NHTSA's reason for requiring the helmet's discrete size is primarily to determine the appropriate headform for conducting the performance testing of paragraph S6.1 of FMVSS No. 218. In promulgating the discrete size label, Arai cites the agency as saying that it added the discrete size requirement to the standard to ''eliminate enforcement problems.'' *See* 73 FR 57297, 57304 (October 2, 2008). Arai says that the agency had previously permitted generic head sizes on helmet labels, however, they lacked the precision the agency desired for enforcing the helmet standard, raising potential problems with the objective requirements of 49 U.S.C. 30111(a). Arai says that NHTSA explained its reasoning in the rulemaking for specifying the discrete size and cited the following:

a. The reason for this is to eliminate enforcement problems that arise when helmets are labeled only with a generic size specification (*e.g.,* Small, Medium, or Large).

b. Enforceability problems can arise because while S6.1 specifies which headform is used to test helmets with a particular ''designated discrete size or size range,'' a helmet's generic size may not correspond to the same size ranges that the agency uses to determine which headform to use for testing.

3. Arai states that in the final rule, NHTSA further elaborated that defining the discrete size ''would have two benefits.'' First, it would provide certainty as to the headform on which the helmet would be tested by NHTSA, thereby, improving the enforceability of the standard. Second, it would provide more precise information to customers. Arai further notes that the requirement would in no way preclude manufacturers from specifying a generic size in addition to the discrete size on the size label.

4. Arai believes that the primary reason for requiring the discrete size is related to enforceability of the performance tests and that a label that is present on the helmet at the time of NHTSA's testing, but that may not be permanently attached to the helmet does not expose the user of the noncompliant helmet to a ''significantly greater risk'' than to a user of a compliant helmet.

5. Arai states that NHTSA tested the subject Arai Helmet under FMVSS No. 218, and that the testing demonstrated that these helmets meet the performance standards. The discrete label on the helmet tested by NHTSA permitted the Agency to select the correct headform for the size small Arai Corsair-X helmet that was tested.

6. Arai believes that in the FMVSS No. 218 final rule, NHTSA explained that while the discrete label would provide ''more precise information to customers,'' NHTSA acknowledged that generic sizes could also be used on helmets. Arai believes this indicates that the value to customers of a ''more precise'' helmet size serves limited safety benefits. Arai says that NHTSA did not claim the discrete size served a safety purpose, but stated that ''discrete size labeling requirements will both improve customer information regarding the size of the helmet and avert potential enforceability problems.'' [1]

7. Arai states that the noncompliance arose from the nonpermanency of the label, not the content and that the label would be present, at a minimum, to the first purchaser. Further, Arai states that another label showing the discrete size of the helmet is sewn into a tag in the headliner; moreover, the helmet's packaging provides the size information and secondhand purchasers could try on the helmet to determine whether it properly fits; accordingly, the consumer would have sizing information available to determine the correct helmet size for purchase.

8. Arai says that in a petition related to a noncompliance that resulted from a goggle strap potentially obscuring the DOT label of a motorcycle helmet, NHTSA agreed that the noncompliance was inconsequential to motor vehicle safety. *See* 79 FR 47720. Arai went on to write that NHTSA reasoned that ''the presence of the strap holder which obscures the DOT label does not affect the helmet's ability to protect the wearer in the event of a crash if that helmet meets or exceeds the performance requirements of FMVSS No. 218.'' Arai believes the same reasoning applies here as well.

9. Arai stated their belief that the helmets' potential failure to permanently provide ''customer information'' does not pose a ''significantly greater risk'' to the user of a noncompliant helmet compared to the user of a compliant helmet. Arai says they are not aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the subject noncompliance.

In response to a request from NHTSA, Arai submitted a supplement to the subject petition to include additional information regarding how consumers would identify helmets subject to a potential recall in the event of a future performance-related concern. Arai describes the general approach it would use in the event a recall becomes necessary to address a future safety concern.

Arai explains that to assist consumers in identifying Arai helmets, every Arai helmet is labeled with a unique serialized number on a Snell label,[2] which is cross-referenced to the helmet model, the date of manufacture, the outer shell size, the corresponding fit of the helmet, and the distributor to whom Arai sold the helmet—or for direct-consumer sales, the customer information for the first retail sale. Further, Arai states that while NHTSA does not require Snell certification and the Snell label, these labels are permanently affixed to the helmet and removing these labels leaves evidence of tampering.

In the event of a recall, Arai would direct consumers to the Snell label to determine whether a specific helmet was subject to the recall. Depending on the scope and context of the recall, Arai may also rely on other information on the helmet to guide consumers. This additional information that is on every helmet includes the helmet model and style, the graphics package on the shell of the helmet, the date code laser-etched into the chinstrap's D-ring, and the information listed on the label sewn into the headliner.[3] To the extent necessary, Arai would provide this information in the owner notification letter required by 49 Part 577 to assist consumers. For example, photographs of the Snell label and other relevant identifying information would be included to assist consumers. Arai would also provide a customer service line staffed by agents prepared to explain to consumers how to locate the relevant identifying information.

With respect to equipment such as motorcycle helmets, the scope of any potential recall would be determined based on identifying information available to the consumers. If any Arai helmet is involved in a future recall, Arai would follow the general approach explained above, looking first to the serial number on the Snell label and, if necessary, to the other information depending on the context of the recall. Arai states that FMVSS No. 218 does not define an objective test for the label's permanency and Arai claims that NHTSA has not generally defined the meaning of ''permanently affixed'' in other contexts within the safety standards themselves. Rather, NHTSA has generally dealt with the question of permanency through various legal interpretations.[4] Further, Arai states that within the context of the labels required under FMVSS No. 208, NHTSA determined ''that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions.'' [5] Based on these interpretations, Arai contends, the permanency of the label depends on the purpose of the label. For these determinations, the underlying purposes of these labeling requirements were to provide useful safety information to users over the life of the equipment or vehicle. Thus, it is understandable that ''permanency'' in these contexts would mean that the label could not be easily removed throughout the life of the product.

With respect to the discrete size label, Arai reiterated its argument that the label's primary purpose is to assist NHTSA in selecting the correct headform to test a new helmet. The content of the subject labels met this primary purpose, as NHTSA was able to select the correct headform for the subject helmets. Moreover, the label did not (and would not likely have) become detached from the helmet prior to the final sale of the helmets. Indeed, removal of the label would require a deliberate act; these labels would not fall off on their own and, therefore,

[1] *See* 76 FR 28145 (May 13, 2011).

[2] Arai states that it certifies its helmets through the Snell Foundation, a not-for-profit organization dedicated to research, education, testing, and development of helmet safety standards. Additional information about the Snell Foundation can be found at *https://www.smf.org/about*.

[3] The headliners are snapped into the helmet and may be removed. Arai does sell replacement headliners, which would have a sewn-in label containing the helmet thickness, the generic helmet size, and the country of origin. The liners are snapped into the helmet, and replacement headliners must have corresponding snaps. Accordingly, a size small headliner would not fit into a size MIL shell and vice versa. Arai is not aware of any third-party headliners for its helmets.

[4] *See* Letter to Todd Mitchell, 19 Mar. 2001, *https://isearch.nhtsa.gov/files/22512.rbm.html* Letter to R. Mark Willingham, 1 Apr 1994; *https://isearch.nhtsa.gov/files/9640.html* (specifying precisely how the label is to be permanently affixed would be design restrictive).

[5] *See* Letter to Todd Mitchell; *see also* Letter to Tony Dosmann, 15 Apr 2005, *https://isearch.nhtsa.gov/files/GF002565.html* (stating that the rim label ''must be affixed in a manner that would make it likely to stay attached and legible during the lifetime of the vehicle, under normal conditions'').

would remain in place at the time of any NHTSA compliance test.

Likewise, the secondary purpose of the label—to provide more precise information to consumers—would remain satisfied as, again, the label would be in place on the helmet at the time of purchase. Size information is also available to consumers on the helmet's packaging and on a label sewn into the helmet's headliner providing the generic size.[6] Moreover, Arai explains, that consumers are more likely to rely on the fit of the helmet by trying it on, rather than the discrete size listed on the label. And, as noted, this labeling issue does not affect the helmet's ability to protect the wearer in the event of a crash.

Arai concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. Public Comment

NHTSA received one comment concerning Arai's petition, from Mr. Zach Robertson. Mr. Robertson was of the opinion that Arai's subject helmets were likely noncompliant with the letter of the regulation. He believes, however, that the helmet is mostly, if not completely, meeting the intent of the regulation since the discrete size is included on the headliner and helmet packaging and there were no performance failures during NHTSA's testing. NHTSA appreciates Mr. Robertson's input and agrees that there were no performance failures during testing but disagrees that a discrete size on the removable comfort liner (headliner) or packaging is sufficient to meet the labeling requirements since FMVSS No. 218 states the helmet shall be labeled permanently with the discrete size.

VII. NHTSA's Analysis

Discrete size labels on motorcycle helmets offer important information to consumers, sellers, testing laboratories, and regulatory entities. For NHTSA's enforcement purposes, the discrete size label provides precise information necessary to determine the appropriate headform for conducting performance testing per FMVSS No. 218. For consumers and sellers, the discrete size label provides specific information to help them determine the size of the helmet to aid them in selling or purchasing a helmet that fits properly, which is important to realizing the safety benefits a helmet offers in the event of a crash. Furthermore, the discrete size label may be useful to determine if a particular motorcycle helmet falls within the scope of a recall when a remedy campaign is being conducted. It is worth reiterating that the noncompliance in this case is not that the helmet lacked a discrete size label, but that the discrete size label was not permanent. All labels on a motorcycle helmet are required to be permanent. This permanency requirement is related to the safety of the helmet in that the labels, including the discrete size label, provide a safety benefit for the life of the motorcycle helmet.

Arai raises several points in support of its request to be exempt from the notification and remedy requirements for this helmet. Arai believes the primary reason for NHTSA requiring the discrete size is related to enforceability of the performance tests in FMVSS No. 218 and that a label that is present on the helmet at the time of NHTSA's testing, but that may not be permanently attached to the helmet, does not expose the user of the noncompliant helmet to a ''significantly greater risk'' than to a user of a compliant helmet. NHTSA responds that the discrete size label has other critical roles besides enforceability of performance tests. It is important for motorcycle helmets to be labeled permanently and legibly with a discrete size in a manner that the label can be read easily without removing padding or any other permanent part for the duration of the life of the product. NHTSA disagrees with Arai's claim that the reason for requiring the helmet's discrete size is restricted to determining the appropriate headform for conducting the performance testing, and that therefore having a permanent label is not necessary. Motorcyle helmets are safety equipment and the ability of a consumer to select a well-fitting helmet is a safety goal. Arai's claim that consumers are more likely to rely on the fit of the helmet by trying it on, rather than the discrete size listed on the label is not supported by data. Additionally, a permanent discrete size label on a motorcycle helmet is important in the event a recall is filed. A recall is necessary when a motor vehicle or item of motor vehicle equipment does not comply with an FMVSS or when there is a safety-related defect in the vehicle or equipment. A motorcycle helmet with a discrete size label that is not permanent may hinder the user from being able to determine if the motorcycle helmet is part of a remedy campaign that includes a specific range of sizes.

Regarding how permanency is assessed, NHTSA has published a test procedure titled Laboratory Test Procedure for FMVSS No. 218 (TP–218–07), which explains how permanency of the discrete size label (as well as the other required labels) is evaluated as part of its motorcycle helmet compliance program. That information follows:

OVSC compliance labs shall attempt to remove labels without tools and inspect for the following:

(a) Labels according to S5.6.1(a) through (c) would be determined to be permanent if they are located in a place such that it is intended to remain there for the life of the product (*i.e.* not on the visor or a removable padding) and at least one of the following five conditions:

(1) It cannot be removed without the aid of tools or solvents, or

(2) Attached by a seam, or

(3) Tears into at least 3 or more pieces with no single piece being larger than 50% of the total area of the label when removed, or

(4) Removal damages the surface to which it is attached and the size of the damage is greater than 50% of the size of the label, or

(5) Removal creates physical evidence that an affixation was originally present or required to be present. Physical evidence may include such things as adhesive residue or an area of contrasting color showing some information is missing.

The tested helmets had a discrete size label, but the label failed permanency requirements because it was removed without the aid of tools or solvents, it was not attached by a seam, it did not tear into at least 3 or more pieces, the removal did not damage the surface to which it was attached, and the removal did not create physical evidence that an affixation was originally present.

Arai stated in its petition that another label showing the discrete size of the helmet is sewn into a tag in the headliner and that the helmet's packaging provides the size information. The Arai Corsair X motorcycle helmets tested by NHTSA did not contain an additional discrete size label sewn onto a tag in the headliner (removable comfort liner). Furthermore, an additional size label sewn onto a removable comfort liner (headliner) or placed on the packaging is not a suitable

[6] Arai's March 28, 2019 petition erroneously stated that the label sewn into the headliner of the subject helmets included the discrete size. Further investigation revealed that the size small headliners that are used in the subject helmets do not include the discrete size information.

replacement for a permanent discrete size label since the removable comfort liner (headliner) is made to be exchanged for a new liner that may not contain a size label (or may have an incorrect size label), and expecting a consumer to rely on the original packaging is unrealistic since product packaging is often discarded.

Arai refers to a petition related to a noncompliance that resulted from a goggle strap potentially obscuring the DOT label of a motorcycle helmet and that NHTSA agreed that the noncompliance was inconsequential to motor vehicle safety. *See* 79 FR 47720. NHTSA responds that the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts of each case. NHTSA does not agree that this petition supports granting Arai's petition because the goggle strap petition does not seem related. For example, (1) the noncompliance in the case referenced by Arai resulted from a goggle strap potentially obscuring the DOT symbol which is completely unrelated to a discrete size label; (2) the issue of permanency was not examined; and (3) the purposes of the DOT symbol are significantly different than the purposes for discrete size labels. NHTSA is not persuaded to grant the Arai petition based on facts concerning the goggle strap petition (79 FR 47720).

However, Arai states, and NHTSA agrees, that the discrete label on the helmet tested by NHTSA permitted the agency to select the correct headform and that the Arai Corsair-X helmet samples tested by NHTSA met the performance standards under FMVSS No. 218. In this instance, NHTSA agrees the discrete size label non-permanency did not affect the helmet's ability to be tested in accordance with FMVSS No. 218.

The key issue in determining inconsequentiality is whether the noncompliance in question is likely to increase the safety risk to the individual persons who experience the type of injurious event against which the standard is designed to protect.

In response to Arai's statement that NHTSA tested the subject Arai Helmet under FMVSS No. 218, and that the testing ''demonstrated that these helmets meet the performance standards,'' NHTSA is clarifying that testing performed on behalf of NHTSA is neither sufficient nor intended to ensure that the item tested, nor similar products, meet or exceed FMVSS. The burden to certify products and ensure every product manufactured and imported into the United States meets or exceeds all applicable FMVSS, falls squarely on the manufacturer. Arai has provided NHTSA with its basis for certification of the Arai Corsai-X motorcycle helmet.

In this specific case, the subject helmets are labeled with a unique serial number which helps satisfy the safety need associated with the discrete size being permanent. In addition to certifying its helmets to FMVSS No. 218, Arai also certifies its helmets through the Snell Foundation. Every Arai helmet is permanently labeled with a unique serialized number on a Snell label, which is cross-referenced to the helmet model, the date of manufacture, the outer shell size, the corresponding fit of the helmet, and the distributor to whom Arai sold the helmet. Arai stated that in the event of a recall, it would direct consumers to the Snell label to determine whether a specific helmet was subject to the recall.

Therefore, in this specific instance, NHTSA agrees that, because the helmet was labeled with the discrete size and had additional permanent labeling, the safety needs of consumers would be met despite the discrete size label not being permanent.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Arai has met its burden of persuasion that the FMVSS No. 218 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Arai's petition is hereby granted, and Arai is exempted from the obligation to provide notification of and remedy for the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject equipment that Arai no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after Arai notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–07824 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0063; Notice 1]

Daimler Trucks North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Trucks North America, LLC, (DTNA) has determined that certain model year (MY) 2020–2021 Freightliner Cascadia heavy motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* DTNA filed a noncompliance report dated May 12, 2020, and amended the report on December 23, 2021. DTNA subsequently petitioned NHTSA on June 4, 2020, and later amended its petition on July 22, 2020, and January 19, 2022, for a decision that the subject noncompliances are inconsequential as it relates to motor vehicle safety. This notice announces receipt of DTNA's petition.

DATES: Send comments on or before May 13, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.

• *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.

• Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

DTNA has determined that certain MY 2020–2021 Freightliner Cascadia heavy motor vehicles do not fully comply with the requirements of paragraph S6.1.5.1 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). DTNA filed a noncompliance report dated May 12, 2020, and amended the report on December 23, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA subsequently petitioned NHTSA on June 4, 2020, and later amended its petition on July 22, 2020, and January 19, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of DTNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Trucks Involved

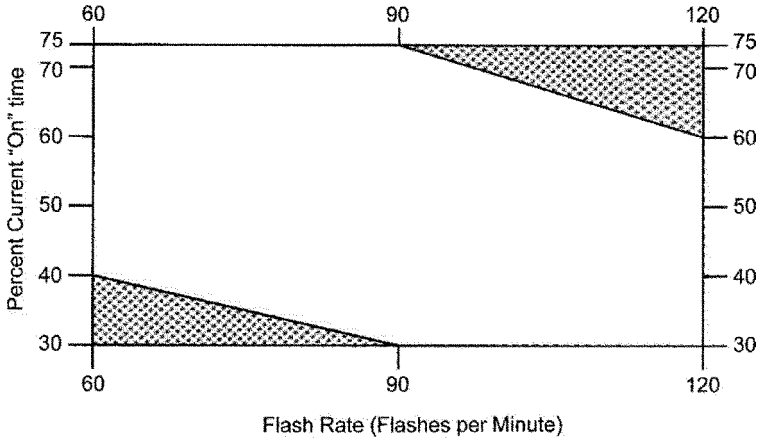
Approximately 24,282 MY 2020–2021 Freightliner Cascadia heavy motor vehicles manufactured between January 16, 2019, and March 27, 2020, are potentially involved.

III. Noncompliance

DTNA explains that the first noncompliance is that during an Advanced Brake Assist (ABA) event, the hazard warning signal in the subject vehicles, does not meet the flash rate required by paragraph S6.1.5.1 of FMVSS No. 108. Specifically, during an emergency braking (EB) stage of ABA events and if the vehicle is being operated at 20 kilometers per hour (km/h) (12 miles per hour (MPH)) or more, the hazard warning signal lights are actuated at a flash rate of 140 flashes per minute when the flash rate should be between 60 and 120 flashes per minute. In addition to the flash rate noncompliance, DTNA says that in specific operating circumstances, where the truck has progressed to the third and final phase of an ABA event, the system automatically activates the hazard warning lamps contrary to the definition of the vehicular hazard warning signal operating unit which states it is a driver controlled device.

IV. Rule Requirements

Paragraphs S4, S6.1.5.1, S9.6.2, S14.9.3.9.3, and Figure 2 of FMVSS No. 108 include the requirements relevant to this petition. Paragraph S4 defines the vehicular hazard warning signal operating unit as a driver-controlled device which causes all required turn signal lamps to flash simultaneously to indicate to approaching drivers the presence of a vehicular hazard. Paragraph S.6.1.5.1 requires that in all passenger cars, multipurpose passenger vehicles, trucks, and buses, the activation of the vehicular hazard warning signal operating unit must cause to flash simultaneously sufficient turn signal lamps to meet, as a minimum, the turn signal photometric requirements of this standard. Paragraph S9.6.2 requires that the vehicular hazard warning signal operating unit must operate independently of the ignition or equivalent switch and if the actuation of the hazard function requires the operation of more than one switch, a means must be provided for actuating all switches simultaneously by a single driver action. Paragraph S14.9.3.9.3 requires that the flash rate and percent current ''on'' time test for at least 17 of 20 samples comply with the following: (a) The performance of a normally closed type flasher must be within the unshaded portion of the polygon shown in Figure 2, or (b) The performance of a normally open type flasher must be within the entire rectangle including the shaded areas shown in Figure 2.



FLASHER PERFORMANCE CHART

FIGURE 2

V. Summary of DTNA's Petition

The following views and arguments presented in this section, ''V. Summary of DTNA's Petition,'' are the views and arguments provided by DTNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. DTNA described the subject noncompliances and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

DTNA explains the three phases of an ABA event as follows: First, there is the Optic Acoustic Warning (OAW), the Warn (Haptic) Braking (WB/HB), and then the EB. The first phase, OAW, ''warns the operator of a possible collision with a pop-up and audio alert only,'' and will move into the second phase, ''if the driver does not apply sufficient deceleration by applying service brakes.'' The WB/HB ''applies 50 percent deceleration to the vehicle in order to assist the driver in mitigating a possible collision.'' Then, DTNA states, ''[i]f the system deems it necessary'' it will start the EB phase (third phase) which would apply ''maximum braking force to assist the driver in bringing the truck to a complete halt.'' DTNA states that only during this third phase would ''the warning system in question engage.''

DTNA provides background information, detailing the development of its ABA system [1] and states that its findings show ''that an EB event is an extremely rare scenario that is visible only for a short period of time in only the rarest of extreme braking events.'' According to DTNA, the data ''conveys that an EB event has an extremely short occurrence with a negligible reaction time to notice the change in hazard warning signal flash rate.'' Further according to DTNA, the average EB event lasts ''less than 1 second'' and of ''millions of miles of recorded data'' the maximum EB event observed lasted ''less than 3 seconds.'' Specific to the noncompliant flash rate, DTNA says this data supports their assertion that ''the number of blink cycles between the maximum permissible flash rate and emergency braking flash rate on the subject vehicles is minimal.''

DTNA contends that ''[t]he flashing warning provides other vehicles with a safe indication of the aggressiveness of the braking.'' DTNA claims that NHTSA has found that ''flashing warning under certain extreme braking events may be regarded as a safer indicator for rear signaling.'' [2] DTNA also notes that the Federal Motor Carrier Safety Administration ''has granted an approval'' for hazmat hauler tanker trucks to use amber brake activated lights, following a 30-month study by Groendyke Transportation which found that a ''pulsating amber brake light reduced rear-end collisions by roughly 34%.''

Further, DTNA states that NHTSA has previously granted petitions for noncompliances similar to the noncompliant flash rate [3] where those noncompliances only occur ''under specific and rare conditions,'' [4] and ''were granted for short duration of occurrence'' [5]

DTNA states that it ''is not aware of any accidents, injuries, owner complaints or field reports'' in relation to the subject noncompliances.

On September 13, 2022, NHTSA contacted DTNA to further explain and discuss the automatic activation of the hazard warning lamps. DTNA clarified that ''based on analysis of prior agency interpretations,'' it believes that the ''limited technical parameters and operating conditions under which the hazard warning lamps would activate,'' does not constitute a noncompliance with FMVSS No. 108. NHTSA informed DTNA that the prior interpretations did not support DTNA's position because the subject vehicles ''have not come to a complete stop at the time the hazard warning lamps activate.'' As a result, DTNA amended its original petition to include the automatic activation of the hazard warning lamps as a noncompliance.

DTNA believes that this noncompliance is also inconsequential because the ''limited context in which the hazard lamps automatically activate ensure the message which the hazard warning lamps is communicating is clear and does not confuse other drivers about the meaning of the lamps.'' DTNA again explains the phases of its ABA system and says that if the driver does not disengage the ABA system, it ''will

[1] Details of DTNA's ABA development can be found in its petition at *https://www.regulations.gov/document/NHTSA-2020-0063-0002.*

[2] DTNA cites *Analyses of Rear-End Crashes and Near-Crashes in the 100-Car Naturalistic Driving Study to Support Rear-Signaling Countermeasure Development.* DOT HS 810 846 (October 2007).

[3] *See* General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance, 66 FR 32871 (June 18, 2001).

[4] *See* General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 7847 (February 22, 2018) and *General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013).

[5] *See* Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 84 FR 8151 (March 6, 2019), Maserati S.p.A and Maserati North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 1676 (January 13, 2016), and General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance, 61 FR 56734 (November 4, 1996).

apply the maximum braking force'' and cause the vehicle to come to a complete stop. When the emergency braking is activated in this phase while the subject vehicle is traveling at 20 mph or more ''the hazard warning lamps are automatically activated and flash at a rate of 140 Hz.'' Therefore, DTNA says, the automatic activation of the hazard warning lamps would not occur ''in stop and go traffic.'' DTNA also notes that after the subject vehicle ''comes to a complete stop, the hazard lamps revert to a standard flash rate'' and ''throughout the ABA event, the hazard warning signal operating unit can be manually engaged by the driver.''

DTNA then contends that the automatic activation of the hazard warning lamps is consistent with prior NHTSA interpretations in which it says, ''the agency has found automatic activation of the hazard warning signal operating unit to be appropriate in certain circumstances.'' DTNA claims that the November 18, 2016, interpretation letter to General Motors [6] supports its view. In that interpretation letter, DTNA says that NHTSA ''concluded that in the context of an adaptive cruise control system, the automatic activation of the hazard warning lamps was consistent with FMVSS 108 if the human driver failed to respond to the system's requests to regain control of the vehicle.'' DTNA argues that the automatic activation of the hazard warning lamps in the subject vehicles is consistent with the condition found in the interpretation letter to General Motors. *Id.*

DTNA claims that the automatic activation of the hazard warning lamps ''is consistent with the type of message the hazard lamps are intended to convey'' and consistent with other NHTSA precedents.[7]

DTNA concludes by expressing its belief that the subject noncompliances are inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliances existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–07825 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–59–P

[6] *https://www.nhtsa.gov/interpretations/16-1289-gm-hazard-innovative-28-apr-16-rsy.*

[7] *See* SAE J910, Jan. 1966; *see also* Letter to Sen. Richard Lugar (May 9, 2000).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0095; Notice 1]

Continental Tire the Americas, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Continental Tire the Americas, LLC, (CTA) has determined that certain Continental motorcycle tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles.* CTA filed a noncompliance report dated December 2, 2021, and subsequently petitioned NHTSA on December 22, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of CTA's petition.

DATES: Send comments on or before May 13, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer,

NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview

CTA has determined that certain Continental motorcycle tires from several different tire lines do not fully comply with the requirements of paragraph S6.5(b) of FMVSS No. 139, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds)* (49 CFR 571.119). CTA filed a noncompliance report dated December 2, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CTA subsequently petitioned NHTSA on December 22, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of CTA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Approximately 14,198 Continental motorcycle tires, size 100/80–16 M/C 50P, manufactured between July 2, 2018, and September 24, 2020, are potentially involved.

III. Noncompliance

CTA explains the noncompliance is that the tires contain unallowed symbols in the tire identification number (TIN) and, therefore, do not meet the requirements of 49 CFR 574.5(f) which results in a noncompliance with paragraph S6.5(b) of FMVSS No. 119. Specifically, the sidewalls of the subject tires are marked with a TIN that may contain one of the following unallowed symbols: G, I, O, Q, S, and Z.

IV. Rule Requirements

Paragraph S6.5(b) of FMVSS No. 119 includes the requirements relevant to this petition. Each tire must be marked on each sidewall with the TIN required by part 574. Specifically, part 574.5(f) states that the only symbols that manufacturers and retreaders are allowed to use in the tire identification number are: A, B, C, D, E, F, H, J, K, L, M, N, P, R, T, U, V, W, X, Y, 1, 2, 3, 4, 5, 6, 7, 8, 9, and 0.

V. Summary of CTA's Petition

The following views and arguments presented in this section, ''V. Summary of CTA's Petition,'' are the views and arguments provided by CTA. They have not been evaluated by the Agency and do not reflect the views of the Agency.

CTA begins its petition by describing the subject noncompliance and contending that it is inconsequential because the subject tires can still be registered with the unauthorized symbols and can be identified, in the event of a recall.

CTA explains that it uses a third-party company, Computerized Information and Management Services, Inc. (CIMS), who maintains ''a database of all CTA's tire registrations for the purpose of identifying purchasers of tires in the event of a future recall.'' Further, CTA states that the database can be searched for not only exact matches but also ''close matching database entries,'' which would mean the database can perform a search ''if an 'I' was misrepresented as a '1' or vice versa.''

CTA says that in the event of a recall, the subject tires can be identified in the U.S. Tire Manufacturers Association's tire recall search tool [1] because it uses an algorithm in which the unallowed letter can be used interchangeably with a corresponding allowed number, for example, ''G or 6, I or 1, O or 0, etc.''

CTA states that NHTSA has previously assigned a plant code containing an unauthorized letter to Continental Tire's location in Timisoara, Romania. In that case, the plant code contained the letter ''G'' which CTA believes ''does not cause any issues with tire registration and would not affect the registration search in the case of a recall.'' Therefore, CTA argues, the use of the unallowed symbols in the TIN of the subject tires will not affect tire registration or the identification of the TIN in the event of a recall.

CTA says that it has stopped the sale of the subject tires and ''has initiated the process of changing tire curing molds to compliant DOT TIN's'' and that ''the mold change dates will be documented in the CTA specification system for future traceability.'' CTA also says that it is taking action to prevent the reoccurrence of the subject noncompliance by modifying its sidewall specification system to include ''a control point before a DOT TIN can be released for production.'' Additionally, CTA says that it will comply with the new 13 character TIN requirement by including a 3 character assigned plant code and the 6 digit manufacturer code that will be ''automatically generated by the specification system, which assumes that only authorized symbols are used.''

CTA concludes its petition by stating that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that CTA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CTA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–07827 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–59–P

[1] *https://recallinfo.ustires.org/.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before May 12, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 4, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21349–N	Veolia Es Technical Solutions LLC	173.301(f)(1)	To authorize the one-time, one-way transportation in commerce of DOT 39 cylinders that are not equipped with pressure relief devices for the purpose disposal. (mode 1)
21350–N	The National Reconnaissance Office	173.185(a)(1)	To authorize the transportation in commerce of low production lithium batteries contained in equipment (spacecraft). (mode 4)
21351–N	Bolloré Logistics Germany GmbH	172.101(j), 172.300, 172.400, 173.301(f)(1), 173.302a(a)(1), 173.185(a)(1).	To authorize the transportation in commerce of specially designed non-DOT specification in which prototype and low production lithium ion batteries contained in equipment (spacecraft) that have not completed all UN tests and exceed 35 kg net weight by cargo-only aircraft and articles containing non-flammable, toxic gas, n.o.s. (contains ammonia, anhydrous) within the equipment are being shipped for use in specialty applications. (mode 4)
21352–N	Veolia North America Regeneration Services, LLC.	173.244(a)(2), 173.31(e)(2)(ii), 179.22(e).	To authorize the transportation in commerce of certain PIH materials in 105J500W specification tank cars that were originally manufactured prior to March 16, 2009 and have been modified to meet the current specification requirements for DOT 105H500W tank cars. (mode 2)
21353–N	Lanxess Canada Co	173.24(f)(1)(i), 173.32(e)(1)	To authorize the transportation in commerce of a defective portable tank, containing a residue of a Division 4.2 material, via motor vehicle. (mode 1)

[FR Doc. 2022–07898 Filed 4–12–22; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before May 13, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline

and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 4, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
12184–M	Weldship LLC	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213.	To modify the special permit to clarify the packaging testing requirements.
14206–M	Hexagon Digital Wave LLC	180.205, 172.203(a), 172.301(c).	To modify the special permit to authorize DOT–SP 14157 and DOT–SP 13488 cylinders.
14287–M	Troxler Electronic Laboratories, Inc.	173.465, 173.410, 173.411, 173.412, 173.415.	To modify the special permit to authorize additional portable nuclear gauges.
16410–M	Snap-on Incorporated	172.301(c), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(3)(i).	To modify the special permit to authorize lithium ion or metal cells or batteries conforming to 49 CFR 173.185(c)(iv).
21163–M	United Initiators, Inc	178.345–10(b)(1)	To modify the special permit to clarify the synopsis and to authorize customers to load and unload the packagings.
21203–M	Daklapack US Inc	173.199(a)(1)	To modify the special permit to authorize the use a QR code in lieu of carrying a copy of the special permit aboard each motor vehicle and cargo-only aircraft and the manufacture of the packaging and to clarify end-user requirements.
21302–N	Taylor-Wharton Malaysia Sdn. Bhd.	173.316	To authorize the manufacture, mark, sale, and use of a specification DOT 4L cylinder for the transportation in commerce of the methane, refrigerated liquid.
21304–N	Freewire Technologies, Inc	172.101(j), 173.24(e)(4)	To authorize the transportation in commerce of lithium batteries contained in equipment, that exceed 35 kg net weight, by cargo-only aircraft.
21308–N	Micropore, Inc	173.240(d)	To authorize the transportation in commerce of lithium hydroxide in non-DOT specification packaging by ground transport.
21314–N	Samsung SDI America, Inc	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
21317–N	Spaceflight, Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype or low production lithium ion batteries contained in equipment (spacecraft).

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
7765–M	Cobham Mission Systems Orchard Park Inc.	173.302a(a)(1)	To modify the special permit to remove certain part numbers and to increase the maximum service pressure.
21206–N	Pacira Cryotech, Inc	171.23(a)(2)(iv), 173.304(f)(1), 173.304(f)(2).	To authorize the transportation in commerce of small cartridges manufactured to ISO 11118, and are not equipped with pressure relief devices, by air.
21279–M	Davey Bickford USA, Inc	173.56(b)	To modify the special permit to authorize passenger-carrying aircraft as a mode.
21286–N	BASF Corporation	180.605(h)(3)	To authorize the requalification of portable tanks without requiring a DAA to witness the testing.
21325–N	Western International Gas & Cylinders, Inc.	171.12(a)(4)	To authorize the requalification of acetylene cylinders authorized by Transport Canada but are not authorized for transport of hazardous materials in the United States.

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21201–N	Mitsubishi Motors North America, Inc.	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft.

SPECIAL PERMITS DATA—WITHDRAWN—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21338–N	Air Resources Helicopters Inc	172.101(a)	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 cargo-only aircraft (rotorcraft external load operations) transporting hazardous materials attached to or suspended from the aircraft, and Part 135, as applicable, in remote areas of the US only, without being subject to certain hazard communication requirements, quantity limitations and certain loading and stowage requirements.
21348–N	FAZUA GmbH	173.185(a)(1)	To authorize the transportation in commerce of prototype lithium batteries by cargo-only aircraft.

[FR Doc. 2022–07899 Filed 4–12–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before April 28, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 04, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
8995–M	BASF Corporation	173.315(a), 174.63(c)(1)	To modify the special permit to authorize an additional hazardous material. (modes 1, 2, 3).
9998–M	Accumulators, Inc	173.302(a)	To modify the special permit to authorize additional packagings. (modes 1, 2, 3, 4).
10814–M	Spellman High Voltage Electronics Corporation.	173.302a	To modify the special permit to update the reference drawings in the special permit. (modes 1, 2, 3, 4, 5).
20356–M	Tesla, Inc	172.101(j)	To modify the special permit to authorize additional lithium ion batteries. (mode 4).
20493–M	Tesla, Inc	172.101(j)	To modify the special permit to include an additional cell type within the authorized lithium ion batteries. (mode 4).
20881–M	Arkema Inc	172.102(c)(7), 173.201(c)	To modify the special permit to authorize additional tanks. (mode 1).
20942–M	Better Horse Inc	172.101(i), 172.200(a), 172.320(a), 172.400(a), 172.500(a), 173.60(a), 173.63(b).	To modify the special permit to include IMDG Code regulatory relief in the special permit. (modes 1, 2, 3).

[FR Doc. 2022–07901 Filed 4–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

2022 Terrorism Risk Insurance Program Data Call

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Data collection.

SUMMARY: Pursuant to the Terrorism Risk Insurance Act of 2002, as amended (TRIA), insurers that participate in the Terrorism Risk Insurance Program (TRIP

or Program) are directed to submit information for the 2022 TRIP Data Call, which covers the reporting period from January 1, 2021 to December 31, 2021. Participating insurers are required to register and report information in a series of forms approved by the Office of Management and Budget (OMB). All insurers writing commercial property and casualty insurance in lines subject to TRIP, subject to certain exceptions identified in this notice, must respond to this data call no later than May 16, 2022.

DATES: Participating insurers must register and submit data no later than May 16, 2022.

ADDRESSES: Participating insurers will register through a website that has been established for this data call. After registration, insurers will receive data collection forms through a secure file transfer portal, and they will submit the requested data through the same secure portal. Participating insurers can register for the 2022 TRIP Data Call at *https://tripsection111data.com.* Additional information about the data call, including sample data collection forms and instructions, can be found on the TRIP website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.*

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–2922; Sherry Rowlett, Program Analyst, Federal Insurance Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–1890; Jeremy Pam, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, (202) 622–7009; or Saurav Banerjee, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, (202) 622–5330. Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA [1] created the Program within the U.S. Department of the Treasury (Treasury) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private market to stabilize and build insurance capacity to absorb any future losses for terrorism events. The Program has been reauthorized on a number of occasions, and was most recently extended until December 31, 2027.[2] TRIA requires the Secretary of the Treasury (Secretary) to collect certain insurance data and information from insurers on an annual basis regarding their participation in the Program.[3] TRIA also requires the Secretary to prepare a biennial report on the effectiveness of the Program (Effectiveness Report).[4] The Effectiveness Report must be submitted to Congress by June 30, 2022. The Federal Insurance Office (FIO) is authorized to assist the Secretary in the administration of the Program,[5] including conducting the annual data call and preparing reports and studies required under TRIA.

As discussed further below, there are certain changes to the data collection forms that are being used this year as compared to those that were used during the 2021 TRIP Data Call. FIO solicited public comment concerning these forms,[6] and received a number of comments concerning the proposed changes. FIO's evaluation of those comments, and the steps it has taken in response to the comments, are addressed below. The forms were then submitted for approval to the Office of Management and Budget (OMB), pursuant to the requirements of the Paperwork Reduction Act. The data collection forms have now been approved for use by OMB under Control Number 1505–0257 for a period ending March 31, 2025.[7]

II. Elements of 2022 TRIP Data Call

For purposes of the 2022 TRIP Data Call, FIO, state insurance regulators, and the National Association of Insurance Commissioners (NAIC) will again use the consolidated data call mechanism first developed for use in the 2018 TRIP Data Call. This approach relies on four joint reporting templates, to be completed by Small Insurers, Non-Small Insurers, Captive Insurers, and Alien Surplus Lines Insurers, each as defined below. The use of joint reporting templates is designed to satisfy the objectives of both Treasury and state insurance regulators, while also reducing burden on participating insurers. State insurance regulators or the NAIC will provide separate notification regarding the reporting of information into the state reporting portal, including any reporting requirements to state insurance regulators that are distinct from the Treasury requirements. Insurers subject to the consolidated data call that are part of a group will report on a group basis, while those that are not part of a group will report on an individual company basis.

A. Changes to the 2021 Reporting Templates

In November 2021, Treasury proposed a number of changes to the existing data collection templates for use in the 2022 TRIP Data Call; those changes related to the information sought specifically from captive insurers, as well as from any insurers writing cyber insurance.[8] In its Notice, Treasury expressly sought comments concerning these proposed changes. In response to the Notice, Treasury received eight written comments.[9] Those comments address issues concerning the manner and subject of the data collection. The suggestions made in those comments,

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116–94, 133 stat. 2534.

[3] TRIA, sec. 104(h)(1). Treasury regulations also address the annual data collection requirement. *See* 31 CFR 50.51, 50.54.

[4] TRIA, sec. 104(h)(2).

[5] 31 U.S.C. 313(c)(1)(D).

[6] Terrorism Risk Insurance Program 2022 Data Call, 86 FR 64600 (November 18, 2021).

[7] Office of Information and Regulatory Affairs, Office of Management & Budget, OMB Control No. 1505–0257, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202202-1505-002.*

[8] Terrorism Risk Insurance Program 2022 Data Call, 86 FR 64600 (November 18, 2021).

[9] Seven comments were received in response to Treasury's November 2021 Notice, from the Centers for Better Insurance LLC (December 10, 2021) (CBI Comments), the Chaucer Group (January 18, 2022) (Chaucer Comments), Underwriters at Lloyd's, London (January 18, 2022) (Lloyd's Comments), the National Association of Mutual Insurance Companies (January 19, 2022) (NAMIC Comments), the American Property Casualty Insurance Association (January 19, 2022) (APCIA Comments), the National Risk Retention Association (January 19, 2022) (NRRA Comments), and the Vermont Captive Insurance Association, the Captive Insurance Companies Association, and the Captive Insurance Council of the District of Columbia (consolidated submission) (January 19, 2022) (VCIA/CICA/CICDC Comments). These comments are available at *https://www.regulations.gov/document/TREAS-TRIP-2021-0020-0001/comment.* In addition, NAMIC submitted an additional comment letter dated March 9, 2022 in response to the separate **Federal Register** Notice (87 FR 8941 (February 16, 2022)) published by Treasury in connection with Paperwork Reduction Act requirements. That comment is available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202202-1505-002,* and addresses the same issues as those identified in NAMIC's initial comment letter.

and Treasury's responses, are summarized below.

Captive Insurer Reporting Comments

One comment that addressed the proposed data collection revisions concerning captive insurers did not object to any of the captive insurer changes; rather, it suggested additional changes to require responding captive entities to specify their type of captive insurer (*e.g.,* pure captive, protected cell captive, etc.).[10] Because of the type of analysis Treasury performs with respect to the captive insurers in connection with the Program, such further detail would not assist in Treasury's evaluation of the exposure posed to the Program by captive insurers, and Treasury declines to make the further proposed changes. In addition, the commenter also proposed the addition of more granular questions than Treasury has proposed with regard to standalone coverage for nuclear, biological, chemical, and radiological (NBCR) terrorism risk versus conventional terrorism risk issued by captive insurers, as well as associated reinsurance.[11] Treasury believes that the level of detail originally proposed will provide sufficient information regarding the use of captives to provide NBCR coverage. Therefore, Treasury declines to make the proposed changes. To the extent further analysis of the data obtained by Treasury suggests that additional changes are warranted, Treasury can address such changes at a later time.

Two comments received from captive insurer trade associations indicated that they do not oppose the changed reporting requirements (both those specific to captive insurers, as well as those addressing cyber insurance).[12] However, each commenter noted the increasing burden they claim is imposed by the data collection requirements on captive insurers, cautioning that such burdens could become unsustainable for such entities. The commenters also stated that the data that will be produced by these entities in response to the data collection is highly confidential.[13] Treasury is mindful of the burden imposed by data collection requirements and will continue to seek to minimize this burden as appropriate, consistent with its stewardship of the Program and reporting requirements to Congress. To that end, Treasury confirms (as requested by the commenters) that it will continue to excuse from reporting requirements captive insurers that do not write any terrorism risk insurance subject to the Program (whether on a standalone or embedded basis), and that it will continue to collect information through an outside data aggregator that provides the information to Treasury in an anonymized, aggregated format.

Cyber Insurance Reporting Comments

Four additional comments were received that focused upon the proposed cyber insurance reporting changes—two from insurance trade associations,[14] and two from or on behalf of companies or syndicates operating in the alien surplus lines insurance market.[15] These comments raise the following issues, which Treasury summarizes—along with its responses—as follows:

Two of the commenters questioned whether there has been sufficient coordination with state regulators for the newly-proposed data elements.[16] Section 104(h)(4) of the Act states that Treasury shall coordinate with state regulators in advance ''to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities.'' Among other things, Treasury reviewed existing state cyber insurance data calls and coordinated with the NAIC with regard to the newly-proposed data elements. Treasury has determined that the newly-proposed data elements (information by policyholder size (Cyber Worksheet, Lines 12–17), cyber policy limits specific to cyber extortion and ransomware (Cyber Worksheet, Lines 21–24), and cyber-related loss payments specific to cyber extortion and ransomware (Cyber Worksheet, Lines 25–30)) are not currently collected by state regulators or available from publicly-available sources. Treasury coordinated as required under Section 104(h)(4) of the Act respecting these newly-proposed data elements. Additionally, Treasury issued for public comment a notice describing the proposed changes for the TRIP data collection; no commenters suggested that the information sought by Treasury was available from publicly-available sources. Also, state regulators (who have not previously requested this information) will be using the same reporting templates as Treasury is authorized to use for the 2022 data call for purposes of the parallel state terrorism risk insurance collection that state regulators have conducted on a coordinated basis with Treasury since 2018. This collaborative approach to the TRIP data collection has resulted in significant efficiencies for reporting insurers.

Two of the commenters raised questions as to whether the collection of information relating to cyber insurance written in non-Program eligible lines is within the scope of the Secretary's authority under the Act.[17] These comments, if accepted, would curtail the Secretary's ability to determine the effectiveness of the Program, which is the purpose of data collection under Section 104(h) of the Act. While Treasury has determined that cyber risk insurance is within the scope of the Act if written in Program-eligible lines of insurance (see 31 CFR 50.4(w)(1)), there is some cyber insurance that is written and reported as professional liability insurance, which is a line of business that, by statute, is not subject to the Program. Evaluating how this Program exclusion affects the Program's scope of coverage requires Treasury to understand how much cyber insurance is written outside of Program-eligible lines, which could inform Treasury and, by extension, Congress regarding the potential need to consider changes to Program regulations or the Act itself. Congress already indicated the need for evaluation of the Act's scope with regard to cyber insurance when it instructed the Government Accountability Office (GAO) in Section 502(d) of the 2019 TRIP Reauthorization Act (Pub. L. 116–94, 133 Stat. 2534) to conduct a study that addresses, among other things, ''recommendations on how Congress could amend the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) to meet the next generation of cyber threats.'' Treasury believes that the newly-proposed data elements are within the scope of the Secretary's authority to obtain information relating to the effectiveness of the Program, which encompasses the collection and analysis of data regarding this emerging threat.

Each of the four commenters indicated that not all insurers during the insurance placement process in calendar year 2021 were electronically gathering all of the newly-proposed data elements. These commenters also stated that they therefore would be unable to report such information by May 2022, at least not without a costly manual review

[10] CBI Comments at 3–4.

[11] *Id.* at 4–6.

[12] VCIA/CICA/CICDC Comments at 2; NRRA Comments at 1–2.

[13] *Id.*

[14] NAMIC Comments; APCIA Comments.

[15] Chaucer Comments; Lloyd's Comments.

[16] Lloyd's Comments at 1; APCIA Comments at 1.

[17] Lloyds's Comments at 1; NAMIC Comments at 2; *see also* APCIA Comments at 1 (noting that ''Treasury is now proposing to collect non-terrorism cyber insurance data for the first time'').

of files or, in some cases, by re-engaging with the policyholder to obtain the additional information. The comments from three of the commenters [18] do not say or imply that all insurers would be presented with these issues, but only that some of them would face these issues. Similar questions were also raised by these commenters as to whether electronic systems could be updated in a timely fashion to allow for the electronic collection and reporting of the newly-proposed data elements. The fourth commenter also indicated that it had similar issues in terms of the collection of certain of the data elements, while noting that it had modified its policy administration systems to ensure that the newly-proposed data elements would be collected and available for reporting in 2023, in connection with calendar year 2022 data.[19] In view of these purported obstacles, all of the commenters requested that production of the newly-proposed data elements not be made mandatory for purposes of the 2022 data call (or even in some cases for purposes of the 2023 data call).

Treasury is mindful of the expense and burden [20] posed for participating insurers by the Act's data collection requirements and has in the past taken steps to construct the data calls for the Program in such a way as to minimize that burden, to the greatest extent practicable consistent with the goals of this statutorily-mandated data collection. At the same time, Treasury is obligated under the Act to continue to assess the effectiveness of the Program, including whether there is available and affordable insurance in the market that could respond to an act of terrorism, which includes cyber insurance. Treasury will seek to balance the potential reporting difficulties identified by commenters against its mandate to collect information regarding cyber insurance by modifying its proposed instructions for purposes of the 2022 Program data call to confirm that insurers that are unable in good faith to report the newly-proposed data elements, because such information is currently unavailable, will not be penalized for failing to do so. All insurers that provide cyber insurance should continue to respond to the general premium and limits questions that have been posed in the prior collections and which have not changed. To the extent an insurer is able to report the newly-proposed data elements, it should do so in the FY22 data call. A reporting insurer that has further questions as to how to provide the proposed information for the 2022 Data Call may also contact Treasury, so that the two parties can discuss how to most effectively achieve this balance. Treasury has modified the proposed instructions for the data call to reflect this approach.

Two commenters questioned the collection of certain data elements, namely, premium and number of policies information by policyholder size, measured by number of employees (in three specified categories) (Cyber Worksheet, Lines 12–17).[21] The commenters questioned the availability of the information of policyholder size by number of employees (at least outside workers' compensation insurance lines, not relevant here), and whether it is an appropriate metric for evaluating the risk exposure presented to insurers under cyber insurance policies. While one of the commenters identified other potential metrics that might be used instead, such as premium volume or revenue, it ultimately concludes that none of these would be an appropriate metric to assess cyber risk either, at least on a stand-alone basis, and that as a result Treasury should not collect any information.[22] However, Treasury is seeking the information by policyholder size classification not only to assess the risk exposure presented to insurers by these policies, but also to evaluate whether (or to what extent) certain categories of policyholders are taking up cyber risk insurance, and in what amounts, in order to evaluate the effectiveness of the Program. Number of employees is an accepted proxy for defining the size of entities for insurance purposes.[23] The employee number categories utilized by Treasury are also consistent with the size categories used by the NAIC in its recent data calls for business interruption losses associated with COVID–19, in order to evaluate the scope of businesses that had actually availed themselves of business interruption coverage.

Finally, certain commenters addressed various interpretive issues concerning the questions posed by Treasury in the draft template. The newly-proposed data elements use the terminology typically used in state and NAIC data calls, such that reporting insurers should be familiar with the information Treasury is requesting. While Treasury believes that the language of the revised templates and associated instructions regarding these issues are clear, it will be available, as in past years, to respond to any interpretive questions as to specific data elements for specific insurers as the data call proceeds.

As noted above, Treasury engaged with state insurance regulators and the NAIC with regard to these issues in order to avoid duplication of effort. State regulators also intend to rely upon these proposed reporting templates, including for the newly-proposed data elements that they have not previously collected, for the majority of the information that they collect from participating insurers.

B. Reporting of Workers' Compensation Information

The TRIP Data Calls request certain information relating to workers' compensation insurance. For the 2022 TRIP Data Call, Treasury will again work with the National Council on Compensation Insurance (NCCI), the California Workers' Compensation Insurance Rating Bureau (California WCIRB), and the New York Compensation Insurance Rating Board (NYCIRB) to provide workers' compensation data relating to premium and payroll information on behalf of participating insurers, either directly or through other workers' compensation rating bureaus. The data aggregator used by Treasury will provide such insurers with reporting templates that do not require them to report this workers' compensation data. Reporting insurers that write only workers' compensation policies are still required to register for the 2022 TRIP Data Call and provide

[18] Lloyd's Comments at 1–2; NAMIC Comments at 2, 4–6; APCIA Comments at 1–2.

[19] Chaucer Comments at 1.

[20] Treasury addressed in its November 2021 notice proposing changes to the data call the estimated incremental burden associated with the proposed changes. *See* Terrorism Risk Insurance Program 2022 Data Call, 86 FR 64600, 64603 (November 18, 2021). Treasury received one comment from a trade association indicting that ''some'' of its members advised that the Treasury estimate was ''significantly understated,'' with only one of the members providing a specific estimate that up to 30 hours of additional effort (instead of the 10 estimated by Treasury) would be required to respond to the new cyber worksheet requirements. *See* APCIA Comments at 2. No other comments were received regarding the level of burden required. Although Treasury will not modify its burden estimate for the entire industry based upon this single comment, which may not be representative of the experience of responding insurers overall, it will monitor the issue during the 2022 Data Call and revise its estimates as necessary going forward based upon that experience. In addition, since some insurers (based upon the comments) may not be able to report such information this year, Treasury's estimates as set originally calculated in November 2021 may overstate the burden in this first year of the expanded collection.

[21] APCIA Comments at 2; NAMIC Comments at 4.

[22] APCIA Comments at 2.

[23] *See* GAO, Cyber Insurance: Insurers and Policyholders Face Challenges in an Evolving Market (GAO–21–477) (May 2021) at 6 n.12, *https://www.gao.gov/assets/gao-21-477.pdf.*

general company information and data related to private reinsurance. The data received from NCCI, the California WCIRB, and the NYCIRB will be merged with the information provided by the insurers.

C. Reporting Templates

Except for the changes discussed above relating to Captive Insurers in particular and for cyber insurance in general, there are no other material changes to the reporting templates used in the 2021 TRIP Data Call.[24] Each category of insurer is required to complete the same worksheets that they completed in the 2021 TRIP Data Call. The same reporting exceptions apply this year as applied in the 2021 TRIP Data Call, as specified further below in the discussions for each category of insurer.

Various worksheets used in the 2022 TRIP Data Call seek certain information relating to workers' compensation insurance. NCCI, the California WCIRB, and the NYCIRB will complete the workers' compensation elements of these worksheets on behalf of reporting insurers. Further information concerning the reporting templates for each category of insurer, and the individual worksheets contained within each, can be found in the instructions for the reporting templates for each category of insurer. The individual reporting templates and worksheets will also be addressed in the training webinars discussed below.

For the 2022 TRIP Data Call, an insurer will qualify as a Small Insurer if it had both 2020 policyholder surplus of less than $1 billion and 2020 direct earned premiums in TRIP-eligible lines of insurance of less than $1 billion.[25] Of this group, Small Insurers with TRIP-eligible direct earned premiums of less than $10 million in 2021 will be exempt from the 2022 TRIP Data Call.[26] Neither Captive Insurers nor Alien Surplus Lines Insurers are eligible for this reporting exemption. Insurers defined as Small Insurers for the 2022 TRIP Data Call will report the same information to Treasury and to state insurance regulators (in each case on a group basis), except as state insurance regulators may separately direct for purposes of the state data call.

The Non-Small Insurer template will be completed by insurance groups (or individual insurers not affiliated with a group) that are not subject to reporting on the Captive Insurer or Alien Surplus Lines Insurer reporting templates, and had either a 2020 policyholder surplus of greater than $1 billion or 2020 direct earned premiums in TRIP-eligible lines of insurance equal to or greater than $1 billion. Insurers defined as Non-Small Insurers for the 2022 TRIP Data Call will report the same information to Treasury and to state insurance regulators (in each case on a group basis), except as state insurance regulators may separately direct for purposes of the state data call.

Captive Insurers are defined in 31 CFR 50.4(g) as insurers licensed under the captive insurance laws or regulations of any state. Captive Insurers that wrote policies in TRIP-eligible lines of insurance during the reporting period (January 1, 2021 to December 31, 2021) are required to register and submit data to Treasury, unless they did not provide their insureds with any terrorism risk insurance (either on standalone basis, or embedded in policies providing coverage for risks other than terrorism) subject to the Program.

Alien Surplus Lines Insurers are defined in 31 CFR 50.4(o)(1)(i)(B) as insurers not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but that are eligible surplus line insurers listed on the NAIC Quarterly Listing of Alien Insurers. Alien Surplus Lines Insurers that are part of a larger group classified as a Non-Small Insurer or a Small Insurer should report to Treasury as part of the group, using the appropriate template. Therefore, the Alien Surplus Lines Insurer template should be used only by an Alien Surplus Lines Insurer that is not part of a larger group subject to the 2022 TRIP Data Call.

D. Supplemental Reference Documents

Treasury will continue to make available on the TRIP data collection website[27] documents providing a complete ZIP code listing for areas subject to reporting on the Geographic Exposures (Nationwide) Worksheet, as well as several hypothetical policy reporting scenarios.

E. Training Webinars

As in prior years, Treasury will hold four separate training sessions corresponding to the four reporting templates that will be used by insurers (Small Insurers, Non-Small Insurers, Captive Insurers, and Alien Surplus Lines Insurers). The webinars will be held on April 20 and April 21, 2022 to assist reporting insurers in responding to the 2022 TRIP Data Call, with each webinar focusing on a specific reporting template. Specific times and details concerning participation in the webinars will be made available on the TRIP data collection website, and recordings of each webinar will be made available on the website following each training session.

III. 2022 TRIP Data Call

Treasury, through an insurance statistical aggregator, will accept group or insurer registration forms through *https://tripsection111data.com.* Registration is mandatory for all insurers participating in the 2022 TRIP Data Call. Upon registration, the aggregator will transmit individualized data collection forms (in Excel format) to the reporting group or insurer via a secure file transfer portal. The reporting group or insurer may transmit a complete data submission via the same portal using either the provided Excel forms or a .csv file.[28]

Copies of the instructions and data collection forms are available on Treasury's website in read-only format. Reporting insurers will obtain the fillable reporting forms directly from the data aggregator only after registering for the data collection process.

Reporting insurers are required to register and submit complete data to Treasury no later than May 16, 2022.[29] Because of the statutory reporting deadline for Treasury's 2022

[24] There is a new modeled loss scenario identified in the Reinsurance Worksheet that will be used in connection with the modeled loss questions (which have not changed from those posed in prior data collections). The modeled loss questions must be completed by non-small insurers, alien surplus lines insurers, and captive insurers. As in prior years, small insurers complete a separate Reinsurance Worksheet that does not contain modeled loss questions.

[25] Small Insurers are defined in 31 CFR 50.4(z) as insurers (or an affiliated group of insurers) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger for the current year, and whose direct earned premiums in TRIP-eligible lines for the preceding year are also less than five times the Program Trigger for the current year. Accordingly, for the 2022 TRIP Data Call (covering the 2021 calendar year), an insurer qualifies as a Small Insurer if its 2020 policyholder surplus and 2020 direct earned premiums are less than five times the 2021 Program Trigger of $200 million.

[26] Individual insurers with less than $10 million in direct earned premiums in TRIP-eligible lines that are part of a larger group must still report as part of the group as a whole if the group's direct earned premiums in these lines are over $10 million.

[27] See *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.*

[28] Specifications for submission of data using a .csv file will be provided to the insurer by the aggregator.

[29] Under 31 CFR 50.51(a), data is to be provided to Treasury no later than May 15 in each calendar year; as May 15 falls on a Sunday in 2022, the due date is May 16, 2022.

Effectiveness Report to Congress, no extensions will be granted. Reporting insurers can ask the data aggregator questions about registration, form completion, and submission at *tripsection111data@iso.com*. Reporting insurers may also submit questions to the Treasury contacts listed above. Questions regarding submission of data to state insurance regulators should be directed to the appropriate state insurance regulator or the NAIC.

All data submitted to the aggregator is subject to the confidentiality and data protection provisions of TRIA and the Program Rules, as well as to Section 552 of title 5, United States Code, including any exceptions thereunder. In accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521), the information collected through the web portal has been approved by OMB under Control Number 1505–0257. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Steven E. Seitz,

Director, Federal Insurance Office.

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

National Credit Union Administration

12 CFR Parts 3, 4, 6, et al.

Rules of Practice and Procedure; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 4, 6, 19, 108, 109, 112, and 165

[Docket ID OCC–2021–0007]

RIN 1557–AE33

FEDERAL RESERVE SYSTEM

12 CFR Parts 238 and 263

[Docket No. R–1766]

RIN 7100–AG26

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AF10

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

[NCUA 2021–0079]

RIN 3133–AF37

Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are proposing changes to the Uniform Rules of Practice and Procedure (Uniform Rules) to recognize the use of electronic communications in all aspects of administrative hearings and to otherwise increase the efficiency and fairness of administrative adjudications. The OCC, Board, and FDIC are also proposing to modify their agency-specific rules of administrative practice and procedure (Local Rules). The OCC also proposes to integrate its Uniform Rules and Local Rules so that one set of rules applies to both national banks and Federal savings associations and to amend its rules on organization and functions to address service of process.

DATES: Comments must be received on or before June 13, 2022.

ADDRESSES: Comments should be directed to: *OCC:* Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Uniform Rules of Practice and Procedure'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

☐ *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2021–0007'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

☐ *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

☐ *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2021–0007'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

☐ *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2021–0007'' in the Search Box and click ''Search.'' Click on the ''Documents'' tab and then the document's title. After clicking the document's title, click the ''Browse Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Documents Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1766 and RIN 7100–AG26 by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AF10 by any of the following methods:

- *FDIC Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF10 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/,* including any personal information provided.

NCUA: You may submit comments, identified by RIN 3133–AF37 by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments for docket number NCUA–2021–0079.
- *Fax:* (703) 518–6319. Use the subject line ''[Your name] Comments on ''Uniform Rules of Practice and Procedure'' on the transmission cover sheet.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Use the same address as for mailed comments.

Public Inspection: You can view all public comments on the NCUA website at: *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: MaryAnn Nash, Counsel, and Heidi Thomas, Special Counsel, Chief Counsel's Office, (202) 649–5490. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services. *Board:* David Williams, Associate General Counsel, *david.williams@frb.gov,* (202) 452–3973, and Héctor G. Bladuell, Senior Counsel, Legal Division, *hector.g.bladuell@frb.gov,* (202) 452–2491. *FDIC:* Heather M. Walters, Counsel, Legal Division, *hewalters@fdic.gov,* (202) 898–6729 and Michael P. Farrell, Counsel, Legal Division, *mfarrell@fdic.gov,* (202) 898–3853. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869. *NCUA:* Damon P. Frank, Senior Trial Attorney, and John H. Brolin, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

Section 916 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 (1989), required the Agencies, together with the Office of Thrift Supervision (OTS), to develop uniform rules and procedures for administrative hearings. In August 1991, the Agencies and OTS each adopted final Uniform Rules as well as Local Rules specific to each agency.[1] Based on the experience gained in administrative hearings, the Agencies, together with OTS, modified the Uniform Rules and Local Rules in 1996.[2]

The Uniform Rules and Local Rules have remained largely unchanged since the 1996 amendments, while the practice of administrative hearings has changed fundamentally with the introduction of electronic communication and transmission. The current Uniform Rules were promulgated at a time when the Agencies accepted only paper pleadings. However, beginning in 2005, the Office of Financial Institution Adjudication (OFIA) established a dedicated electronic mailbox to accept electronic pleadings and service and, by 2006, paper pleadings were virtually eliminated in administrative hearings. Without rules in place to address electronic pleadings, the Administrative Law Judges (ALJs) opted to dictate procedures pertaining to electronic filing and other items on an ad hoc basis in their scheduling orders.

The Agencies have identified sections of the Uniform Rules that should be modified to recognize electronic pleadings and communications in administrative hearings and other sections that require modification based on the experience of the Agencies in administrative litigation. The Agencies also propose to remove the remaining references to the Office of Thrift Supervision (OTS), which was abolished in 2011.[3] In addition, the OCC, Board, and FDIC propose to amend certain sections of their Local Rules that they believe should be updated, improved, or clarified. Furthermore, the OCC proposes to consolidate its uniform and local rules by applying part 19 to both national bank- and Federal savings association-related proceedings and investigations and removing its separate enforcement-related rules for Federal savings associations, 12 CFR parts 108, 109, 112, and 165. Finally, the OCC proposes to amend subpart A of 12 CFR part 4, Organization and Functions, to add a new § 4.8 that would address service of process. The Agencies intend that any final rules issued in connection with this rulemaking will only apply to actions filed after the effective date of any final rule.

The Agencies invite comments on all aspects of this joint proposed rule. Comments on the Local Rules should be sent only to the appropriate agency.

II. Section-by-Section Discussion of Proposed Amendments to the Uniform Rules

General Comments

The text of the proposed amendments to the Uniform Rules appears at the end of the preamble. Agency-specific proposed amendments to the Uniform Rules and Local Rules appear in the instructions below. Where appropriate, the Agencies propose to replace gender references such as ''him or her,'' ''his or her,'' and ''himself or herself'' with gender neutral terminology. Consistent with **Federal Register** drafting guidelines,[4] the Agencies also propose to replace the word ''shall'' throughout the rule with the terms ''must,'' ''will,'' or other appropriate language. The Agencies are also proposing to use the abbreviation ''ALJ'' for ''administrative law judge,'' as this abbreviation is commonly used and understood, and using this abbreviation will reduce the length of the rules. These changes are proposed throughout the Uniform Rules and will not be discussed further in the individual sections below.

[1] The Agencies, together with the OTS, issued a joint notice of proposed rulemaking on June 17, 1991 (56 FR 27790). Each agency issued a final rule on the following dates: OCC on August 9, 1991 (56 FR 38024); Board on August 9, 1991 (56 FR 38052); FDIC on August 9, 1991 (56 FR 37968); and NCUA on August 8, 1991 (56 FR 37767). The OTS, whose rules and procedures were transferred to the OCC in 2011, published its rules on August 12, 1991 (56 FR 38317). The Agencies' rules are codified at 12 CFR part 19, subpart A (OCC); 12 CFR part 263, subpart A (Board); 12 CFR part 308, subpart A (FDIC); and 12 CFR part 747, subpart A (NCUA).

[2] 61 FR 20330, May 6, 1996.

[3] The FDIC removed references to the OTS and updated its definitions by Final Rule on Jan. 30, 2015 (80 FR 5009). The Board similarly removed references to the OTS from its definitions on September 13, 2011 (76 FR 56603).

[4] National Archives, **Federal Register** Writing Resources for Federal Agencies: Drafting Legal Documents, *https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html.*

Section ____.1 Scope

Section ____.1 lists the types of adjudicatory proceeding to which the Uniform Rules apply. To the extent necessary, the Agencies propose to update the list of civil money penalty proceedings covered by the Uniform Rules described in § ____.1(e) to include section 5, section 9, and section 10 of the Home Owners' Loan Act (HOLA).[5] These sections of the HOLA are applicable to Federal savings associations now supervised by the OCC, State-chartered savings associations now supervised by the FDIC, and savings and loan holding companies supervised by the Board. The Agencies also propose to add references to ''the former Office of Thrift Supervision'' in § ____.1(e)(10), to clarify that the Uniform Rules will apply to civil money proceedings for violations of orders issued, written agreements executed, and conditions imposed in writing by OTS.

Section____.3 Definitions

Section ____.3 of the Uniform Rules includes definitions applicable to the Uniform Rules and, unless otherwise specified, the Local Rules. The Agencies propose adding a definition of the term ''electronic signature'' in § ____.3. The Agencies are proposing that electronic signatures be used to satisfy the good faith certification requirement in § ____.7 and, therefore, are including a definition of the term ''electronic signature'' in this section. The OCC, Board, and FDIC are proposing to replace the definition of violation in § ____.3 with a cross-reference to the identical definition in section 3(v) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1813(v). To the extent necessary, the Agencies also propose to remove the legacy reference to the Office of Thrift Supervision both in the definition of ''OFIA'' and the definition of ''Uniform Rules'' in § ____.3.

The OCC proposes to add the term ''Federal savings association'' to its definition of ''institution'' in order to make the Uniform Rules and the OCC's Local Rules in part 19 of title 12 applicable to Federal savings associations, which have been regulated by the OCC since 2011.[6]

The Board proposes to add ''nonbank financial companies'' and ''financial market utilities'' designated by the Financial Stability Oversight Council to its definition of ''institution'' to clarify that the Uniform Rules are applicable to these entities, which are supervised by the Board pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[7] In addition, the Board proposes to clarify that organizations operating under section 25A of the Federal Reserve Act, Federal and state ''branches,'' as well as ''agencies'' as defined in section 1(b) of the International Banking Act, and ''any other entity subject to the supervision of the Board,'' are included in its definition of ''institution.'' The Board also proposes to replace the word ''savings association'' with ''depository institution'' in 12 CFR 263(f)(6) to conform this language to the language in 12 U.S.C. 1818(b)(3).

Section ____.5 Authority of the Administrative Law Judge (ALJ)

Section ____.5 of the Uniform Rules addresses the authority of the ALJ. The Agencies propose to amend § ____.5(b)(2) to add the term ''other orders'' to the list of specific orders an ALJ is authorized to issue, quash, or modify. The Agencies are proposing this change to clarify that the authority of the ALJ to issue orders is not limited to subpoenas, subpoenas *duces tecum,* and protective orders and may include other types of orders that are not enumerated in this section. The Agencies also propose to amend § ____.5(b)(11) to change the term ''presiding officer'' to ''ALJ'' in order to avoid confusion and clarify that the ALJ has the powers necessary and appropriate to discharge the duties of this role.

Section ____.6 Appearance and Practice in Adjudicatory Proceedings

Section ____.6 of the Uniform Rules addresses appearance and practice in adjudicatory proceedings. The Agencies propose to amend § ____.6(a)(2) to state simply that an individual may appear on their own behalf. In making this change, the Agencies would eliminate the additional language that is duplicative and unnecessary to the meaning of the provision. The Agencies also propose to amend § ____.6(a)(3) to include a requirement that a notice of appearance include a written acknowledgment that the individual has reviewed and will comply with the Uniform Rules and Local Rules. The Agencies propose to add this requirement in order to ensure that representatives appearing in the proceeding are informed of the rules that govern the proceedings.

Section ____.7 Good Faith Certification

Section ____.7 of the Uniform Rules addresses the requirement for good faith certification for every filing or submission of record following the issuance of a notice. The Agencies propose to amend § ____.7(a) to require that the counsel of record, including an individual who acts as their own counsel, include a mailing address, an electronic mail address, and a telephone number with every certification. The Agencies also propose to amend this section to permit electronic signatures to satisfy the signature requirements of the certification. These proposed changes to the rules conform the rules to the current practice of electronic filing.

Section ____.9 Ex Parte Communications

Section ____.9 of the Uniform Rules addresses *ex parte* communications in administrative proceedings. The Agencies propose to amend § ____.9(c) to clarify that upon the occurrence of *ex parte* communication, the ALJ or the Agency Head must determine whether any action in the form of sanctions should be taken concerning the *ex parte* communication. The Agencies also propose to amend § ____.9(e)(1) to better align it with section 5 of the Administrative Procedure Act, 5 U.S.C. 554(d). Specifically, the Agencies propose to add language stating that the ALJ may not consult with a person or party on a fact in issue without giving all parties notice and an opportunity to participate and may not be responsible to or subject to the supervision or direction of an employee agent engaged in the performance of investigative or prosecuting functions for any of the Agencies. Finally, the Agencies propose to amend § ____.9(e)(2) to refer to administrative or judicial proceedings rather than public proceedings. The Agencies are proposing this change to better describe the type of proceedings subject to the rule.

Section ____.10 Filing of Papers

Section ____.10 of the Uniform Rules addresses the requirements for the filing of papers. The Agencies propose to amend and renumber § ____.10(b) to remove an outdated section on rules governing transmission by electronic media and replace it with a section stating that filing may be accomplished by electronic mail or other electronic means designated by the Agency Head or the ALJ. The Agencies further propose to amend § ____.10(b) to eliminate references to specific carriers and names of mail delivery services and

[5] The Board made these updates on September 13, 2011 (76 FR 56603).

[6] As described elsewhere in this **SUPPLEMENTARY INFORMATION,** the OCC is proposing to remove its Uniform Rules and Local Rules applicable to Federal savings associations, parts 108, 109, 112, and 165 of title 12.

[7] Public Law 111–203, 124 Stat. 1376 (2010).

instead refer generally to same day courier services and overnight delivery services. The Agencies propose to amend § ____.10(c), which addresses the formal requirements as to papers filed, to require papers to include the mailing address, electronic mail address, and telephone number of the counsel or party making the filing. Finally, the Agencies propose to strike § ____.10(c)(4), which requires the filing of an original and one copy of each filing. The Agencies believe this requirement is no longer necessary, especially given that the vast majority of papers are filed electronically, consistent with current adjudicatory practice. The Agencies also propose to retain the existing methods of filing by paper, such as personal service, same day courier, overnight delivery, and mail, and have modified the descriptions of those methods to conform to current terminology and standards for delivery.

Section ____.11 Service of Papers

Section ____.11 of the Uniform Rules addresses the requirements for service of papers. The proposed modifications to § ____.11 are intended to provide for electronic filing, where appropriate, and simplify and update the descriptions for other, non-electronic, means of filing. The Agencies propose to amend § ____.11(b) to add service by electronic mail or other electronic means as a method for serving papers, consistent with current practice. The Agencies also propose to retain the existing methods of service by paper, such as personal service, same day courier, overnight delivery, and mail, and have replaced references to specific carriers and delivery services with general references to same day courier service and overnight delivery service. The Agencies also propose to amend § ____.11(c)(1) to require that all papers required to be served by the Agency Head or the ALJ upon a party that has appeared in the proceeding will be served by electronic mail or other electronic means designated by the Agency Head or the ALJ. For parties that have not appeared in the proceeding in accordance with § ____.6, the Agencies have preserved the option for non-electronic methods of service. The Agencies propose to modify the descriptions of some of those methods to conform to current terminology and standards for delivery. Finally, in § ____.11(d), the Agencies propose to generally retain the existing methods for the service of subpoenas with appropriate modifications to the descriptions of the methods to conform to current terminology and standards for delivery.

Section ____.12 Construction of Time Limits

Section ____.12 of the Uniform Rules addresses the construction of time limits. The Agencies propose to amend § ____.12(b), which addresses when papers are deemed to be filed or served, to provide that in the case of transmission by electronic mail or other electronic means, filing and service are deemed to be effective upon transmittal by the serving party. The Agencies also propose to retain the existing times for non-electronic methods of filing and service and update the descriptions of these methods to make them consistent with the updated descriptions in §§ ____.10 and ____.11. The Agencies propose to amend § ____.12(c), which addresses the calculation of time for service and filing of responsive papers, to provide that in the case of service by electronic mail or other electronic means, the time limits are calculated by adding one calendar day to the prescribed period. The Agencies further propose to modify the rule to provide for the addition of two calendar days, rather than one, in the case of service by overnight delivery service and retain the rule providing for the addition of three calendar days for service made by mail.

Section ____.14 Witness Fees and Expenses

Section ____.14 of the Uniform Rules addresses witness fees and expenses in administrative proceedings. The Agencies propose to amend § ____.14 to clarify the general rule, in § ____.14(a), that all witnesses, including an expert witness who testifies at a deposition or hearing, will be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party. The Agencies further propose to add language in § ____.14(b) to clarify that the Agencies are not required to pay witness fees and mileage for testimony by a party. The Agencies propose to retain existing language governing the timing of witness payments in a new § ____.14(c).

Section ____.15 Opportunity for Informal Settlement

Section ____.15 of the Uniform Rules addresses the rules and process for informal settlement once a proceeding has been initiated. The Agencies propose to revise the language of this section to more plainly express the existing rule that an offer or proposal for informal settlement may only be made to Enforcement Counsel.

Section ____.18 Commencement of Poceeding and Contents of Notice

Section ____.18(a) of the Uniform Rules governs the commencement of administrative proceedings. The Agencies propose to amend § ____.18(a)(ii) to provide that Enforcement Counsel serves the notice upon the respondent to begin proceedings.[8] The Agencies also propose to amend this section to provide that Enforcement Counsel may serve the notice upon counsel for the respondent, rather than the respondent, provided that counsel for the respondent has confirmed that counsel represents the respondent in the matter and will accept service of the notice on behalf of the respondent. By requiring counsel to confirm representation of a respondent, the Agencies hope to clarify when it is appropriate to serve notice on an individual who purports to represent the respondent. The Agencies propose to amend § ____.18(a)(iii) to make it clear that Enforcement Counsel files the notice with OFIA.[9]

Section ____.18(b) of the Uniform Rules addresses the contents of the notice in administrative proceedings. The Agencies propose to amend § ____.18(b) to provide that notice pleading applies in administrative proceedings, meaning that a notice need only provide a short and plain statement of the claim(s) showing that the Agency is entitled to relief. The Agencies further propose to make a technical change to § ____.18(b)(2) to change the description from ''a statement of the matters of fact or law showing the [Agency] is entitled to relief'' to simply ''matters of fact or law showing that the [Agency] is entitled to relief.'' The Agencies believe the reference to ''a statement'' in this section has no substantive meaning and, thus, propose to remove it.

Section ____.19 Answer

Section ____.19 of the Uniform Rules sets out the requirements for an answer in an administrative proceeding. The Agencies propose to amend § ____.19(c)(2) to provide that if a respondent fails to request a hearing as required by law within the applicable time frame, the notice of assessment constitutes a final and unappealable order, in accordance with 12 U.S.C. 1818(i)(2)(E)(ii) and 12 U.S.C.

[8] The FDIC has already made this change in its version of the Uniform Rules in connection with amendments that became effective on January 12, 2021.

[9] The NCUA proposes to delete the reference to change-in-control proceedings from part 747 under 12 U.S.C. 1817(j), which does not apply to credit unions or the NCUA. The NCUA proposes the same deletion under § ____.33.

1786(k)(2)(E)(ii), without further action by the ALJ. In the past, there has been confusion about whether any additional action on the part of the ALJ is required in this situation, and the proposed language clarifies that no further action is necessary.

Section ____.24 Scope of Document Discovery

Section ____.24 of the Uniform Rules addresses the scope of discovery in an administrative proceeding and § ____.24(a) addresses limitations on discovery. The Agencies propose to update the definition of the term ''documents'' in § ____.24(a)(1) to include not only writings, drawings, graphs, charts, photographs, and recordings, but electronically stored information and data or data compilations stored in any medium from which information can be obtained. This expanded definition of the term ''document'' is necessary to account for the range of digital information now available. The Agencies further propose to amend § ____.24(a)(3) to clarify that discovery by the use of either interrogatories or requests for admission is not permitted. The Agencies propose to move the paragraph on relevance currently in § ____.24(b) to a new paragraph § ____.24(a)(4) because that provision functions as a limitation on discovery. The Agencies propose to amend § ____.24(c) to clarify the list of privileges applicable to otherwise discoverable documents. In addition to the attorney-client privilege and the work-product doctrine, the proposed language would also specifically identify the bank examination privilege and the law enforcement privilege and exclude those privileged documents from discovery. Finally, the Agencies propose to add language to § ____.24(d) to provide that document discovery, including all responses to discovery requests, must be completed by the date set by the ALJ and no later than 30 days prior to the date scheduled for the commencement of the hearing. This proposed language recognizes the role of the ALJ in establishing a schedule for discovery while also providing for discovery to be completed earlier in the hearing process.

Section ____.25 Request for Document Discovery by Parties

Section ____.25 of the Uniform Rules addresses requests for document discovery from parties in administrative proceedings. The Agencies propose to reorganize the section to improve clarity and make additional changes. The Agencies propose to replace the heading ''General rule'' with ''Document requests'' in § ____.25(a) to better identify the subject matter of the section. The Agencies propose to amend § ____.25(a) to add a paragraph (1) stating that a party may serve on another party a request to not only produce discoverable documents but to permit the requesting party or its representative to inspect or copy discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. It has been the practice of parties in administrative proceedings to permit the inspection and copying of discoverable documents, and the proposed language formalizes that practice under the rules. The Agencies propose to include language to provide that a party responding to a request for inspection may produce copies of documents or electronically stored information instead of permitting inspection. In many cases, providing documents or electronically stored information directly is more efficient than permitting inspection, and the proposed amendment preserves the right of a responding party to make that choice. The Agencies further propose to add a new paragraph (2) to simplify the language that previously appeared in § ____.25(b) regarding the identification of documents to be produced. The proposal would require that the request describe with reasonable particularity each item or category of items to be inspected and specify a reasonable time, place, and manner for the inspection or production.

The Agencies propose to amend the rules governing production or copying, as set out in a new § ____.25(b)(1), to require that, unless a particular form is specified by the ALJ or agreed upon by the parties, the producing party must produce copies of documents as they are kept in the usual course of business or organized to correspond to the categories of the request, and produce electronically stored information in a form in which it is ordinarily maintained or in a reasonably usable form. The Agencies recognize that the ways in which electronically stored information may be stored and transmitted may change over time and are adopting the reasonably usable standard for electronically stored information to provide flexibility.

The Agencies propose to simplify the rules associated with the costs of document production in a new § ____.25(b)(2), which would require the producing party to pay its own costs to respond to a discovery request unless otherwise agreed by the parties. This proposed language would eliminate the earlier requirement that a requesting party prepay the producing party for certain costs while also allowing the parties to agree to share costs, as appropriate in a particular case.

The Agencies propose to modify the time limits for motions to limit discovery in § ____.25(d). In § ____.25(d)(1), the Agencies propose to extend the time limit for a party to object to a discovery request from within ten to within 20 days of being served with such a request. In § ____.25(d)(2), the Agencies propose to extend the time limit for a party to file a written response from within five to within ten days of service of the motion. Additional time allows the parties to digest such requests and engage with each other to narrow the scope of the request before having to file a motion with the ALJ. The Agencies believe that parties making motions to limit discovery and responding to motions to limit discovery will benefit from additional time to review and respond to such requests.

Finally, the Agencies propose to amend § ____.25(e) to specify the available privileges that may be asserted in connection with a request for production. The section includes attorney-client privilege, attorney work-product doctrine, bank examination privilege, law enforcement privilege, any government deliberative process privilege, other privileges of the Constitution, any applicable act of Congress, and other principles of common law as grounds for withholding documents.

Section ____.26 Document Subpoenas to Non-Parties

Section ____.26 of the Uniform Rules addresses document subpoenas to third parties in administrative proceedings. The Agencies propose to amend § ____.26(b)(1) to provide that a person to whom a document subpoena is directed may file a motion to quash or modify such subpoena with the ALJ. This amendment clarifies to whom the motion to quash should be directed.

Section ____.27 Deposition of Witness Unavailable for Hearing

Section ____.27 of the Uniform Rules addresses the deposition of witnesses unavailable for an administrative hearing. The Agencies propose to amend § ____.27(a)(2) to require that the application for a subpoena state the manner in which the deposition is to be taken, in addition to the time and place, and provide explicitly that a deposition may be taken by remote means. These changes modernize the rules and conform the rules to existing practice. The Agencies propose to simplify

§ ____.27(a)(4) by eliminating unnecessary language related to where subpoenas may be served. In order to further provide for remote depositions, the Agencies propose to amend § ____.27(c)(1) to provide that a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the deponent, by stipulation of the parties or order by the ALJ. The Agencies further propose to amend § ____.27(d) to clarify that if a subpoenaed person fails to comply with any subpoena issued pursuant to this section the aggrieved party may apply to the appropriate United States district court for an order requiring compliance with the portions of the subpoena with which the subpoenaed party has not complied. Finally, the Agencies are making a correction to an inaccurate cross-reference in the rule. The cross reference to paragraph (c)(3) has been changed to correctly reference paragraph (c)(2).

Section ____.29 Summary Disposition

Section ____.29 of the Uniform Rules addresses summary disposition. The Agencies propose to modify § ____.29(c) to provide that a request for a hearing on a motion must be made in writing. This change will formalize the process of requesting a hearing and increase the clarity of the process.

Section ____.31 Scheduling and Prehearing Conferences

Section ____.31 of the Uniform Rules addresses scheduling and prehearing conferences. The Agencies propose to amend § ____.31(a) to clarify that the prehearing conference must be set within 30 days of service of the notice or an order commencing a proceeding and eliminate the option in the current rule for the parties to agree on another time. The Agencies also propose to add language to clarify that it is a schedule for discovery, and not actual discovery, that the parties may determine at the scheduling conference. Finally, the Agencies propose to eliminate references to ''telephone'' conferences in order to make the provision more technologically neutral.

Section ____.32 Prehearing Submission

Section ____.32 of the Uniform Rules addresses prehearing submissions. The Agencies propose to amend § ____.32(a) to extend the time for a party to file prehearing submissions with the ALJ from 14 days to 20 days before the start of the hearing. The Agencies propose this change to give the parties more flexibility in completing their filings. The Agencies propose to further amend § ____.32 to update the required prehearing submissions. The Agencies propose to amend § ____.32(a)(1) to require the submission of a prehearing statement that states the party's position with respect to the legal issues presented, the statutory and case law upon which the party relies, and the facts the party expects to prove at the hearing. The Agencies propose to amend § ____.32(a)(2) to require that the final list of witnesses include the name, mailing address, and electronic mail address for each witness and to clarify that the list of witnesses need not identify the exhibits to be relied upon by each witness at the hearing and that the list of exhibits should be a list of exhibits expected to be introduced at the hearing.

Section ____.35 Conduct of Hearings

Section ____.35 of the Uniform Rules addresses the conduct of administrative hearings. The Agencies propose to add a new § ____.35(c) to provide rules governing electronic presentations in a hearing. The new language provides that the ALJ may direct the use of, or any party may use, an electronic presentation during the hearing. If an ALJ requires an electronic presentation, each party will be responsible for their own presentation or related costs unless the parties agree to another manner in which to allocate responsibilities and costs. This new language is necessary to account for electronic presentations that are not addressed in the existing rules but are used routinely in hearings.

Section ____.36 Evidence

Section ____.36 of the Uniform Rules sets forth the rules governing evidence in an adjudicatory proceeding. The Agencies propose to amend § ____.36(b)(2) to refer to ''direct questioning'' rather than ''direct interrogation'' of witnesses in order to clarify, in plain language, the meaning of this section.

III. Section-by-Section Summary and Discussion of Proposed Amendments to the Local Rules of Each Agency

A. Proposed Amendments to the OCC Local Rules

Part 19, subparts B through P, address local rules of practice and procedure specific to OCC investigations, hearings before the OCC, and other OCC-related proceedings involving national banks. The corresponding rules for Federal savings association-related proceedings and investigations, transferred from the former OTS to the OCC by the Dodd-Frank Act, are set forth at 12 CFR parts 108, 109, 112, and 165. Many of the national bank and Federal savings association-related provisions are similar, but in some cases no corresponding rule exists or one set of rules provides more specificity than the other. The proposed rule would consolidate these rules by applying part 19 to both national bank- and Federal savings association-related proceedings and investigations and remove parts 108, 109, 112, and 165. The proposed rule also would amend the local rules to add certain provisions of the Federal savings association rules that are not currently included in part 19 but that the OCC believes should apply to both Federal savings associations and national banks. In addition, the OCC proposes to reorganize certain rules in part 19, including subparts D, E, F, and G relating to actions under the Federal securities laws; add new provisions addressing the Equal Access to Justice Act (EAJA); and add a new subpart O addressing the forfeiture of a national bank, Federal savings association, or Federal branch and agency charter or franchise for certain money laundering or cash transaction offenses. As set forth in proposed subpart R, the revised consolidated rules would apply to adjudicatory actions filed on or after the effective date of the final rule resulting from this proposal.

The proposed amendments to the OCC's local rules are discussed below.

Subpart B—Procedural Rules for OCC Adjudications

19.100—Filing Documents

Sections 19.100 and 109.104(g) require that all filings with or referred to the Comptroller or ALJ in any proceeding under parts 19 or 109, respectively, be filed with the OCC Hearing Clerk. The two provisions are substantively the same except that § 19.100 provides a more detailed description of the types of filings to which the rule applies. As a result of the proposed application of part 19 to Federal savings associations and removal of part 109, § 19.100 also would apply to filings in Federal savings association-related proceedings. Furthermore, the proposed rule would amend § 19.100 to remove the OCC filing street address and to require the filing to be made in a manner prescribed by § 19.10(b) and (c). Section 19.10(b) and (c) prescribe the permissible filing methods and list form and content requirements for filing papers with the OCC. As amended by this proposal, filings would be permitted by electronic mail or other electronic means designated by the Comptroller or the

ALJ. Lastly, the proposal would amend the current provision to clarify that the materials filed include any attachments or exhibits to the listed documents.

19.101 Delegation to OFIA

Both §§ 19.101 and 109.101 provide that an ALJ at the Office of Financial Institution Adjudication (OFIA) will conduct actions brought under the respective subpart A rules. As a result of the proposed application of part 19 to Federal savings associations, § 19.101 would apply to adjudicatory actions brought against either national banks or Federal savings associations. The proposal would make one stylistic revision to § 19.101 to remove the passive sentence structure.

19.102 Civil Money Penalties

The proposed rule would add a new § 19.102 that would incorporate parts of § 109.103(b), which provides rules for the payment of civil money penalties. The national bank rules do not address this topic with specificity, and the OCC has determined that these provisions, which clarify when parties must pay civil money payments, should be applicable to both national banks and Federal savings associations. As a result of this amendment, respondents would be required to pay civil money penalties assessed pursuant to subpart A of part 19 within 60 days after the issuance of the notice of assessment, unless the OCC requires a different time for payment. If a respondent has made a timely request for a hearing to challenge the assessment of the penalty, the respondent would not be required to pay the penalty until the OCC has issued a final order of assessment. In such instances, the respondent would be required to pay the penalty within 60 days of service of the final order unless the OCC requires a different time for payment.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

Subpart C of part 19 includes the rules applicable in hearings brought against any institution-affiliated party [10] who the OCC has suspended or removed from office or prohibited from further participation in the affairs a depository institution pursuant to section 8(g) of the FDIA (12 U.S.C. 1818(g)). Part 108 applies similar rules to officers, directors, or other persons participating in the conduct of the affairs of a Federal savings association, Federal savings association subsidiary, or affiliate service corporation, although part 108 differs slightly on certain procedural issues. As described below, the proposed rule would amend subpart C to incorporate certain provisions of part 108 that would be helpful to the OCC in these adjudicatory actions, specifically apply amended subpart C to both national banks and Federal savings associations, and remove part 108. Although part 108 does not use the term ''institution-affiliated party,'' the OCC believes that the scope of part 108 is similar in substance to this term as defined in § 19.3 by reference to the FDIA.

19.110 Scope

The proposed rule would amend § 19.110 to include a definitions section for subpart C similar to the one for Federal savings associations in § 108.2 to enhance the understanding and application of the rule and simplify the rule text. New § 19.110(b) would define ''petitioner'' to mean an individual who has filed a petition for informal hearing under subpart C; ''depository institution'' to mean any national bank, Federal savings association, or Federal branch of a foreign bank; and ''OCC Supervisory Office'' to mean the Senior Deputy Comptroller or Deputy Comptroller of the OCC department or office responsible for supervision of the depository institution, or, in the case of an individual no longer affiliated with a particular depository institution, the Deputy Comptroller for Special Supervision. Furthermore, the proposal would label the existing paragraph in § 19.110 as paragraph (a), Scope, and retitle the section heading to account for the addition of definitions.

19.111 Suspension, Removal, or Prohibition

The proposed rule would reorganize § 19.111 into paragraphs; retitle the section heading, as well as the subpart, to clarify that it applies to institution-affiliated parties and remove passive sentence structure. In newly designated § 19.111(a), the proposal would correct an omission in current § 19.111, which provides that the Comptroller may serve a notice of suspension or order of removal or prohibition pursuant to 12 U.S.C. 1818(g) on an institution-affiliated party and must serve a copy of this notice or order on the appropriate depository institution. Because 12 U.S.C. 1818(g) also provides for a notice of prohibition, the proposed rule would add a reference to this notice of prohibition to this paragraph. In addition, § 108.4 provides for method of service by the Comptroller. Like § 108.4, newly designated § 19.111(a) would specify the manner of service by the Comptroller, providing that the Comptroller serve the notice or order in the manner set forth in § 19.11(c), Service of papers. The OCC also proposes to move the information regarding a request for a hearing by the institution-affiliated party to a separate paragraph § 19.111(b); add the ability to send the hearing request by same day courier service or overnight delivery service, in addition to by certified mail or by personal service with a signed receipt as provided under the current rule; and add the caveat that this submission rule applies unless instructed otherwise by the Comptroller. This proposed revision also utilizes the newly defined term ''OCC Supervisory Office.''

In addition, the proposed rule would include in § 19.111(b)(2) a provision similar to § 108.5(b) that requires an institution-affiliated party in a request for a hearing to admit or deny each allegation, or state that they lack sufficient information to admit or deny each allegation, which would be treated as a denial. Proposed § 19.111(b)(2) also provides that denials must fairly meet the substance of each allegation denied and that general denials are not permitted; when the institution-affiliated party denies part of an allegation, that part must be denied and the remainder specifically admitted; and any allegation in the notice or order which is not denied is deemed admitted for purposes of the proceeding. Furthermore, similar to § 108.5(c), proposed § 19.111(b)(2) provides that the request must state with particularity how the institution-affiliated party intends to show that its continued service to or participation in the affairs of the institution would not pose a threat to the interests of the institution's depositors or impair public confidence in any institution. The OCC believes that adopting these provisions from the

[10] ''Institution-affiliated party,'' as defined in § 19.3 by reference to section 3(u) of the FDIA (12 U.S.C. 1813(u)), means: (1) Any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution; (2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under 12 U.S.C. 1817(j); (3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency who participates in the conduct of the affairs of an insured depository institution; and (4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

Federal savings association rule should help narrow the issues to be contested and make this rule more consistent with the adjudicatory rule in § 19.19.

Furthermore, the proposed rule would add the default provision included in § 108.8 to § 19.111, as new paragraph (c). Under this new paragraph, if the institution-affiliated party fails to timely file a petition for a hearing pursuant to § 19.111(b); fails to appear at a hearing either in person or by attorney, or fails to submit a written argument where oral argument has been waived pursuant to § 19.112(c), the notice of suspension or prohibition would remain in effect until the information, indictment, or complaint is finally disposed of and the order of removal or prohibition would remain in effect until terminated by the OCC. The OCC believes the application of this provision to national banks should clarify that there are consequences if a petitioner fails to appear or fails to answer.

19.112 Informal Hearing

The proposal would make a number of changes to § 19.112, which provides the procedures for informal suspension or removal hearings before the OCC involving an institution-affiliated party. In § 19.112(a), the proposal would update the name of the OCC's Enforcement and Compliance Division to OCC Enforcement. The proposal also would remove the requirement in this paragraph that the OCC Supervisory Office notify the appropriate OCC District Counsel of the hearing, as this is an unnecessary step.

In § 19.112(c)(2), the proposal would add language to clarify that, when responding to a petitioner's submissions, the OCC would serve other parties in the manner set forth in § 19.11(c).

In § 19.112(d), the proposal would amend paragraph (d)(2), which provides that the informal hearing is not governed by formal rules of evidence, to clarify that these inapplicable formal rules of evidence include the Federal Rules of Evidence, as provided in § 19.36. The proposal also would clarify paragraph (d)(3)(i) by breaking up the first sentence into two sentences. In paragraph (d)(3)(ii), the proposal would provide that the presiding officer may require, instead of permit as in the current paragraph, a shorter time period in which the parties may request oral testimony or witnesses at a hearing, which is the more accurate action for a presiding officer. As in § 19.27(c), the proposal also would amend § 19.112(d)(3)(ii) to provide that, by stipulation of the parties or by order of the presiding officer, a court reporter or other authorized person may administer the required oath to a witness remotely without being in the physical presence of the witness. This amendment would update the current oath requirement for witnesses to account for remote proceedings and conform this provision to § 19.112(d)(4), which permits electronic presentations at the hearing. In paragraph (d)(3)(iii), the proposal would make technical changes to the different actions a presiding officer may take related to a suspension or prohibition based on an indictment, information, or complaint and a removal or prohibition with respect to a conviction or pre-trial diversion program to better reflect 12 U.S.C. 1818(g). Throughout paragraph (d) the proposal would make technical corrections by replacing ''appointed OCC attorney'' with ''OCC.''

The proposed rule also would add a new paragraph (d)(4) to § 19.112 to provide rules governing electronic presentations in the course of a hearing. As in proposed § 19.35(c), this provision would provide that, based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If the presiding officer requires an electronic presentation, each party would be responsible for its own presentation or related costs unless the parties agree to allocate presentation responsibilities and costs differently. This new language is necessary to account for the routine use of electronic presentations in hearings that existing rules do not address.

Throughout § 19.112, the proposal would utilize the newly defined term ''OCC Supervisory Office'' and remove passive sentence structure.

19.113 Recommended and Final Decisions

The proposed rule would make a number of changes to § 19.113, which provides the procedures for decisions by the presiding officer and the OCC. The proposal would update § 19.113(c) to permit the Comptroller to notify the petitioner of a decision by electronic mail or other electronic means, if the petitioner consents, instead of by registered mail. The proposal also would make technical changes to paragraph (c) by replacing ''when'' with ''if'' in describing whether the petitioner has waived an oral hearing, replacing the ''must'' with ''will'' in describing the Comptroller's notification of the decision, and replacing the ''and'' with ''or'' in describing the actions that the Comptroller may affirm, terminate, or modify in its final decision. In § 19.113(d), the proposal would clarify that there could be more than one charge against an institution-affiliated party. In § 19.113(f), the proposal would remove the passive sentence structure. Lastly, the proposal would add headings to each paragraph.

Subparts D Through G—Actions Under the Federal Securities Laws

Subparts D, E, F, and G of part 19 set forth the procedures applicable to actions taken by the OCC with respect to banks pursuant to various provisions of the Federal securities laws, including the Securities Exchange Act of 1934 (Exchange Act). Specifically, subpart D addresses exemption hearings under section 12(h) of the Exchange Act, subpart E addresses disciplinary proceedings, subpart F addresses civil money penalties, and subpart G addresses cease and desist authority. Although these Federal securities laws also apply to Federal savings associations, there are no comparable provisions in OCC regulations for Federal savings associations. Instead, the former OTS relied on the authority granted under the Exchange Act for these actions rather than incorporating the authority into its rules and specified in § 109.100(c) that the Uniform Rules of Practice and Procedure in part 109, subpart A applied to proceedings under the Exchange Act. The OCC proposes to amend the rules in subparts D, E, F, and G to apply to Federal savings associations and to make other changes, described below. To streamline the rules, the OCC also proposes to combine subparts D, E, F, and G into one subpart D entitled ''Actions under the Federal Securities Laws,'' reserve subparts E, F and G; and remove § 109.100(c).

19.120 Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

The proposed rule would move the provisions in subpart D of part 19 to a new § 19.120. Current subpart D governs informal hearings by the Comptroller to determine whether, pursuant to authority in sections 12(h) and (i) of the Exchange Act (15 U.S.C. 78*l*(h) and (i)), to exempt an issuer or a class of issuers from the provisions of sections 12(g), 13, or 14 of the Exchange Act (15 U.S.C. 78*l*(g), 78m or 78n) or whether to exempt any officer, director, or beneficial owner of securities of an issuer from section 16 of the Exchange Act (15 U.S.C. 78p). This subpart currently covers issuers that are banks whose securities are registered pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78*l*(g)). In addition to proposing to apply this provision to issuers that

are Federal savings associations, the OCC proposes the following changes.

Specifically, the proposal would clarify in proposed § 19.120(a) that this section would apply to national bank and Federal savings association issued securities that may be subject to registration in addition to those securities already registered. This change would permit a national bank or Federal savings association to obtain an exemption from the OCC in advance of registering.

The OCC also proposes that when an applicant provides a copy of its newspaper notice of an exemption hearing to its shareholders pursuant to § 19.120(c) it must do so in the same manner as is customary for shareholder communications, which could be through electronic means. This change should make it easier and less burdensome to comply with this notice requirement.

In addition, as in proposed §§ 19.35(c) and 19.112(d)(4), the proposed rule would add a provision, § 19.120(d)(8), governing electronic presentations in the course of an Exchange Act-related hearing. This provision would provide that, based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If the presiding officer requires an electronic presentation during the hearing, each party would be responsible for its own presentation and related costs unless the parties agree to another manner by which to allocate presentation responsibilities and costs. As indicated above, this new language is necessary to account for the routine use of electronic presentations in hearings that the existing rule does not currently address. The proposed rule would make a conforming change in § 19.120(d)(6) that would allow, by stipulation of the parties or by order of the presiding officer, a court reporter or other authorized person to administer the required oath to a witness remotely without being in the physical presence of the witness. Furthermore, the proposed rule would clarify in proposed § 19.120(d)(9) that a transcript of the hearing may be provided by electronic means.

Lastly, the OCC proposes technical changes to § 19.120. The proposed rule would make minor, non-substantive changes in provisions redesignated as paragraphs (b) and (c), remove passive sentence structure in text redesignated as paragraph (d)(9), allow for more than one applicant in provisions redesignated as paragraphs (d)(4) and (5) and (e), and change references in this section to the ''Securities and Corporate Practices Division'' to ''Bank Advisory'' to reflect the reorganization of the OCC's Law Department.

19.121 Disciplinary Proceedings Involving the Federal Securities Laws

The proposed rule would move the provisions in subpart E of part 19 to a new § 19.121. Current subpart E governs proceedings by the Comptroller to determine whether to take disciplinary actions against banks that are transfer agents, municipal securities dealers, government securities brokers, government securities dealers, or persons associated with or seeking to become associated with these institutions.[11] The proposal would apply this section to Federal savings associations by defining ''bank'' to mean a national bank or Federal savings association, and, when referring to a government securities broker or government securities dealer, a Federal branch or agency of a foreign bank. In addition, the proposed rule would define ''transfer agent,'' ''municipal securities dealer,'' ''government securities broker,'' ''government securities dealer,'' and person associated with a person engaged in these activities or with a bank engaged in these activities by cross-referencing to definitions in the Exchange Act. The proposal also makes conforming changes to these defined terms throughout the section. The OCC also is proposing technical changes to terms used in this section to correlate them more closely with terms used in the Exchange Act, including the addition to the scope of § 19.121 of any person seeking to become associated with a government securities broker or government securities dealer. Furthermore, the OCC proposes to remove the reference to the Comptroller's delegate in redesignated paragraph (a)(2). The definition of ''Comptroller'' in § 19.3, which applies to § 19.121, includes a person delegated to perform the functions of the Comptroller of the Currency. Therefore, this reference is unnecessary. Lastly, the OCC proposes a clarifying change to replace the term ''party'' with the more accurate term ''respondent'' in redesignated paragraphs (b)(1) and (c)(2).

[11] Pursuant to sections 3(a)(34)(G)(i) and 15C(c)(2)(A) of the Exchange Act (15 U.S.C. 78c(a)(34)(G)(i) and 78o–5(c)(2)(A), the OCC also may take disciplinary actions against Federal branches and agencies of foreign banks that are government securities brokers or government securities dealers or persons associated with or seeking to become associated with these entities.

19.122 Civil Money Penalty Authority Under Federal Securities Laws

The proposed rule would move the provisions in subpart F of part 19 to a new § 19.122. Current subpart F governs proceedings by the Comptroller to determine whether to impose a civil money penalty against banks that are transfer agents, municipal securities dealers, government securities brokers, government securities dealers, or persons associated with or seeking to become associated with these institutions.[12] As with proposed § 19.121, the proposed rule would apply this provision to Federal savings associations by defining ''bank'' to mean a national bank or Federal savings association and, when referring to a government securities broker or government securities dealer, a Federal branch or agency of a foreign bank. The OCC also proposes to define ''transfer agent,'' ''municipal securities dealer,'' ''government securities broker,'' ''government securities dealer,'' and person engaged in these activities or person associated with a bank engaged in these activities by cross-referencing to definitions in the Exchange Act. Lastly, as with proposed § 19.121, the OCC has made other technical changes to terms used in this section to correlate them more closely with terms used in the Exchange Act, including the addition of persons seeking to become associated with a government securities broker or government securities dealer to the scope of this section.

19.123 Cease and Desist Authority Under Federal Securities Laws

The proposed rule would move the provisions in subpart G of part 19 to a new § 19.123. Current subpart G governs proceedings by the Comptroller to determine whether to initiate cease-and-desist proceedings against a national bank for violations of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78*l,* 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p) or implementing regulations. The proposed rule would apply this provision to both national banks and Federal savings associations. It also would update this provision by adding violations enacted by, or rules or regulations enacted thereunder, the Sarbanes-Oxley Act in 2002, as amended,[13] specifically sections 301 [14] (audit committees), 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain

[12] *Id.*

[13] Public Law 107–204, 116 Stat. 745 (2002).

[14] Adding section 10A(m) to the Exchange Act.

bonuses and profits), 306 (insider trades during pension fund blackout periods), 401(b) (accuracy of financial reports), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) [15] (15 U.S.C. 78j–1(m), 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

Subpart H—Change in Bank Control

The Change in Bank Control Act (CBCA), which added section 7(j) to the FDIA (12 U.S.C. 1817(j)) and which the OCC has implemented at 12 CFR 5.50, provides that no person may acquire control of an insured depository institution unless the appropriate Federal bank regulatory agency has been given prior written notice of the proposed acquisition. If, after investigating and soliciting comment on the proposed acquisition, the agency disapproves the acquisition, the agency must mail a written notification to the filer within three days of the decision. The filer may then request an agency hearing on the proposed acquisition within 10 days of receipt of the disapproval notice. The Uniform Rules in part 19, subpart A, and part 109, subpart A, apply to hearings for filers whose proposed acquisition of a national bank or Federal savings association, respectively, under the CBCA has been disapproved by the OCC. Subpart H of part 19 provides additional hearing procedures for insured national banks. Section 5.50, which applies to both national banks and Federal savings associations, directs filers who wish to pursue a hearing for a disapproval decision to part 19, subpart H. However, subpart H refers only to national banks.

Because 12 CFR 5.50 applies to both national banks and Federal savings associations, the proposed rule would amend subpart H by adding language that would make it specifically applicable to Federal savings associations in addition to national banks. Furthermore, because 12 CFR 5.50 applies to both *insured and uninsured* institutions and refers all filers who have been disapproved under § 5.50 to the part 19 procedures, the proposed rule would amend subpart H to make it also applicable to uninsured institutions. In addition, the proposed rule would streamline subpart H by removing a description of the CBCA disapproval process and instead cross-referencing to 12 CFR 5.50 in the scope of § 19.160 and removing current paragraph (a) in § 19.161, which contains provisions relating to disapproval notification that are duplicative of 12 CFR 5.50(f). The proposal also would add section headings to § 19.160 and revise the section heading in § 19.161.

Subpart I—Discovery Depositions and Subpoenas

Subpart I of part 19 and § 109.102 address the rules applicable to discovery depositions and subpoenas relating to national banks and Federal savings associations, respectively. These provisions are substantively similar but have slightly different wording. The proposed rule would apply part 19, subpart I to Federal savings associations and remove § 109.102. The OCC also proposes further changes to subpart I. In § 19.170(a) and (d), the proposal revises the phrase ''direct knowledge of matters that are non-privileged, relevant, and material to the proceeding'' to ''direct knowledge of matters that are non-privileged and of material relevance to the proceeding.'' This change would clarify that persons being deposed have information of material relevance to the proceeding and would be consistent with the requirements for document discovery in current and proposed § 19.24(b). Furthermore, the proposal would amend paragraph (a) to specify that a party also may take a deposition of a hybrid fact-expert witness in addition to an expert and a person, including another party, who has direct knowledge of matters that meet the standards of the paragraph, labeled as a ''fact witness'' by this amendment. This amendment would define a hybrid fact-expert witness as a fact witness who also will provide relevant expert opinion testimony based on the witness's training and experience.

The proposal also adds a new paragraph (a)(1) to § 19.170 to require a party to produce an expert report for any testifying expert or hybrid fact-expert witness before the witness's deposition and that, unless otherwise provided by the ALJ, the party must produce such report at least 20 days prior to the deposition. This new provision would ensure that a deposing party has the benefit of the expert report prior to the deposition of an expert or hybrid fact-expert witness and that the deposing party has sufficient time to review the report prior to the deposition. Furthermore, new paragraph (a)(2) of § 19.170 would provide that respondents, collectively, are limited to a combined total of five depositions from all fact witnesses and hybrid fact-expert witnesses. This paragraph also would provide that Enforcement Counsel has the same deposition limit. This limit in the number of depositions would add efficiencies to the discovery process and prevent deposition requests from delaying the completion of the proceeding. Lastly, proposed § 19.170(a)(2) provides that a party is entitled to take a deposition of each expert witness designated by an opposing party. This provision would codify the right of a party to depose the opposing party's designated expert witness.

The proposal would amend § 19.170(b) to require that a deposition notice provide the manner for taking the deposition in addition to the time and place. In addition, the proposal would add language to § 19.170(b) to indicate that a deposition notice may require the witness to be deposed at any place within a State, territory, or possession of the United States or the District of Columbia in which that witness resides or has a regular place of employment or such other convenient place as agreed by the noticing party and the witness. Paragraph (b) also would permit the parties to stipulate, or the ALJ to order, that a deposition be taken by telephone or other remote means. The OCC believes these changes would make it easier and perhaps less costly for parties to obtain, and witnesses to provide, depositions, thereby improving the fact-finding process.

In § 19.170(c), the proposal would provide that a party may take depositions no later than 20 days before the scheduled hearing date, instead of 10 days as in the current rule, except with permission of the ALJ for good cause shown. Increasing this time before a hearing will allow all parties more time to prepare for the hearing.

As elsewhere in this proposal, the OCC proposes to amend § 19.170(d), Conduct of a deposition, to provide that, by stipulation of the parties or by order of the ALJ, a court reporter or other authorized person may administer the required oath to a deponent remotely without being in the physical presence of the deponent. This amendment would update the current oath requirement for witnesses to account for remote proceedings and conform this provision to § 19.170(b)(ii), which allows depositions to be taken by telephone or other remote means.

The proposal would update § 19.170(e)(1)(i) to allow for the witness's testimony to be recorded by electronic means such as by a video recording device. The current rule only allows for recording by a stenotype machine and electronic sound recording device. The proposed change would update the rule to reflect new

[15] 15 U.S.C. 78j–1(m), 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

technology and add flexibility to the testimony process.

Lastly, the proposal would make a non-substantive change to the heading in paragraph (a) and change the heading of paragraph (g) from ''Fees'' to ''Expenses'' to more accurately describe the subject of the paragraph.

With respect to § 19.171, the proposal would amend paragraph (a) to correct a cross-reference and conform the reference to a place located in the United States to that used elsewhere in part 19. The proposal also would amend paragraph (b)(2), which requires the party serving a subpoena to file proof of service with the ALJ, to provide that this proof of service is not required if so ordered by the ALJ. The OCC is proposing this change because, in some OCC proceedings, the ALJ indicated they did not wish to receive this proof of service. Finally, the proposal would amend paragraph (c) to provide that any party, in addition to a person named in a subpoena, may file a motion to quash or modify the subpoena. This amendment would ensure that a party has the right to seek to quash or modify a third-party deposition subpoena.

Subpart J—Formal Investigations

Subpart J of part 19 and part 112 address formal investigations against national banks and Federal savings associations, respectively. The proposed rule would amend subpart J to make it applicable to both national banks and Federal savings associations and remove part 112. Unlike the Federal savings association rule at § 112.7(b), subpart J does not include a provision specifically providing for motions to quash subpoenas. The OCC has determined that it is neither necessary nor appropriate to include this provision because the recipient may challenge investigative subpoenas in Federal court. However, the proposal would add a new paragraph (c) to § 19.184 of subpart J that is similar to the Federal savings association rule at § 112.7(c). This new paragraph would permit subpoenas that require the attendance and testimony of witnesses or the production of documents, including electronically stored information, to be served on any person or entity within any State, territory, or possession of the United States or the District of Columbia or as otherwise provided by law. This proposed provision also would subject foreign nationals to subpoenas if service is made upon a duly authorized agent located in the United States or in accordance with international requirements for service of subpoenas. The existing rule for national banks is not clear on service of foreign nationals, and the adoption of specific language from the Federal savings association rule should eliminate the disputes that previously have arisen on this issue. Furthermore, the addition of language regarding international subpoena requirements would codify existing OCC practice.

The OCC also proposes further changes to subpart J. First, the OCC is proposing to amend § 19.181, Confidentiality of formal investigations. Currently, this provision provides that information or documents obtained in the course of a formal investigation are confidential and may be disclosed only in accordance with the provisions of 12 CFR part 4. The OCC proposes to describe in more detail the information or documents that are confidential to better ensure the confidentiality of formal investigations. Specifically, proposed § 19.181 would state that the entire record of any formal investigative proceeding, including the resolution or order of the Comptroller authorizing or terminating the proceeding; all subpoenas issued by the OCC during the investigation; and all information, documents, and transcripts obtained by the OCC in the course of a formal investigation, are confidential and may be disclosed only in accordance with the provisions of part 4. The proposal also would add that this information may be disclosed pursuant to the OCC discovery obligations under subpart A of part 19.

Second, the OCC proposes to amend § 19.182, Order to conduct a formal investigation, to clarify the list of actions persons authorized to conduct an investigation may take. Currently, this section provides that these persons may, among other things, issue subpoenas *duces tecum,* administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. The proposal would add that these authorized persons also may take or cause to be taken testimony under oath, issue subpoenas other than subpoenas *duces tecum,* and modify subpoenas. This amendment would make this section more consistent with the powers enumerated in the relevant underlying statutes, including 12 U.S.C. 1818(n) and 1820(c). The proposal also would make a technical correction to indicate that authorized persons may administer affirmations rather than receive affirmations. Section 19.182 also currently provides that, upon application and for good cause, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings. The proposal would clarify that the Comptroller may also terminate the order. Finally, the proposal would amend § 19.182 to specifically indicate that the persons conducting the investigation are empowered by the Comptroller to do so.

Third, the proposed rule would amend § 19.183, Rights of witnesses. Current paragraph (a) provides that any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation must, on request, be shown the order initiating the investigation. The proposal would amend this provision to provide that such persons may not retain copies of the order without first receiving written approval of the OCC. This amendment would ensure the confidentiality of the order.

Current paragraph (b) of § 19.183 provides that a person testifying in a formal investigation may be accompanied, represented, and advised by counsel, and indicates that this right to counsel means that the attorney may be present at all times while the person is testifying and that the attorney may, among other things, question the person briefly at the conclusion of the testimony to clarify answers and make summary notes during the testimony solely for use of the person testifying. The proposal would amend this description of permissible attorney activities to provide that the attorney's questioning of the person may be on the record. This change would ensure a more complete formal record of the proceeding. In addition, the proposal would provide that the notes taken by the attorney during testimony may be used solely in representing the person. This change would allow the attorney to use these notes and not restrict use of the notes to the person testifying thereby enabling the attorney to better represent their client.

Current paragraph (c) of § 19.183 provides that any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other witness. The proposal would amend this provision to specify that such person and counsel may be excluded during the testimony of any other person at the discretion of the OCC or the OCC's designated representative. Furthermore, the proposal would provide that neither attorney(s) for the institution(s) affiliated with the testifying person nor attorneys for any other interested persons have any right to be present during the testimony of any person not personally represented by such attorney. These changes would ensure the confidentiality and integrity

of the proceeding by mitigating conflicts of interest and clarify that it is the OCC or OCC's designated representative who makes the decision on exclusion.

Current paragraph (d) of § 19.183 provides that any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation. The proposal would remove the burden of proving ''cause'' included in this provision, as the OCC finds this unnecessary. The proposal also would eliminate the language that limits the release of the transcript pending completion of the investigation because the reasons for not disclosing the transcript may persist beyond the conclusion of any pending investigation.

Paragraph (e) of § 19.183 provides that any designated representative conducting an investigative proceeding must report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist, or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. As this paragraph does not pertain to rights of witnesses, and to make clear that this provision applies to all formal investigations covered by subpart J, the OCC proposes to redesignate this paragraph as a new § 19.185. In redesignated § 19.185, the OCC proposes replacing the phrase ''has been guilty of'' with ''has engaged in.'' The phrase ''has been guilty of'' is unclear in the context of this rule. Furthermore, the OCC does not believe it is appropriate for a person to be found guilty of this behavior before the designated representative reports this person to the OCC. With this change, the OCC may investigate or take other action with respect to this individual to ensure the fairness and accuracy of the proceeding in a more timely manner. This change also conforms the scope of this provision with the scope of a similar provision, § 19.197, which involves the reporting of certain conduct of an individual practicing before the OCC.

Fourth, the proposal would amend § 19.184, Service of subpoena and payment of witness expenses, by removing the specific language in paragraph (b) regarding the payment of witnesses and instead cross-reference to the more detailed rule for witness payments contained in revised § 19.14, discussed previously.

Lastly, the OCC proposes technical changes to subpart J. The proposal would replace references to ''the Comptroller'' with ''the OCC'' in § 19.183(b) and (d) and in redesignated § 19.185 and replace the term ''representatives'' with ''designated representatives'' in § 19.183(d)'' to align the provisions more closely with the statute. The proposal also would remove the references to the ''Comptroller's delegate'' in §§ 19.180 and 19.182 as the definition of ''Comptroller'' in § 19.3, which applies to subpart J, includes a person delegated to perform the functions of the Comptroller of the Currency. In addition, the proposal would add reference to Federal branches and agencies in § 19.180 to more completely describe those entities that are subject to the OCC's examination authority. Finally, the proposal would add section headings to § 19.183.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

Subpart K of part 19 contains rules relating to parties and representational practice before the OCC. The OCC is proposing mostly technical changes to this subpart.

First, in § 19.190, Scope, the proposal would make a confirming change to a cross-reference to reflect this rulemaking's proposed amendments to subpart D.

Second, the proposal would amend the definition of ''practice before the OCC'' in paragraph (a) of § 19.191, Definitions. Currently, the OCC defines the term to include any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the OCC. The proposed rule would clarify this statement so that it applies to both written and oral presentations. Section 19.191(a) also provides that the term ''practice before the OCC'' does not include work prepared for a bank solely at its request for use in the ordinary course of its business. The proposal would amend this statement so that it also includes work prepared for a Federal savings association and a Federal branch or agency of a foreign bank, and change ''bank'' to ''national bank.'' These changes are part of the OCC's application of part 19 to Federal savings associations and the OCC's specific inclusion of Federal branches and agencies in part 19 to clarify the application of part 19 to all entities supervised by the OCC.

Third, the proposal would amend § 19.194, Eligibility of attorneys and accountants to practice, by removing the phrase ''who is qualified to practice as an attorney'' in paragraph (a) and the phrase ''who is qualified to practice as a certified public accountant or public accountant'' in paragraph (b). Section 19.191 defines the terms ''attorney'' and ''accountant'' and these definitions reference qualification requirements. Therefore, these phrases are superfluous.

Fourth, the proposal would amend § 19.196, Disreputable conduct, which provides a nonexclusive list of disreputable conduct for which an individual may be censured, debarred, or suspended from practice before the OCC. Paragraph (d) of this section includes on this list disbarment or suspension from practice as an attorney or as a certified public accountant or public accountant by any duly constituted authority of any State, possession, or commonwealth of the United States or the District of Columbia for the conviction of a felony or misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, where the conviction has not been reversed on appeal. The proposed rule would delete the phrase ''in matters relating to the supervisory responsibilities of the OCC'' so as not to limit the felony or misdemeanor conviction to only OCC-related matters. The OCC believes that an individual engaged in any of the conduct listed in this section, whether or not related to OCC supervisory matters, should not practice before the OCC.

Fifth, the proposal would replace the reference to the OTS in § 19.196(g) with ''the former OTS,'' as the OTS no longer exists.

Sixth, the proposal would amend § 19.197, which provides the standards and rules for initiating disciplinary proceedings. Paragraph (a) of this section provides that an individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension, or debarment under § 19.192 (such as contemptuous conduct, materially injuring or prejudicing another party, violating a law or order, or unduly delaying proceedings) may report this conduct to the OCC or a person delegated to receive this information by the Comptroller. The OCC is proposing to broaden the application of this paragraph to conduct under all of subpart K, which includes incompetence (§ 19.195) and

disreputable conduct (§ 19.196), instead of conduct only under § 19.192. The OCC believes that an individual found to be incompetent or to have engaged in disreputable conduct also should be subject to a disciplinary proceeding under this section.

Seventh, the proposal would amend § 19.198, Conferences, to add the terms ''censure'' in paragraph (a) and ''debarment'' in paragraph (b) to correct missing references. The proposal also would change the heading on § 19.198(b) from ''Resignation or voluntary suspension'' to ''Voluntary suspension or debarment'' so that it more accurately reflects the subject of the paragraph.

Eighth, the proposal would amend paragraph (a) of § 19.200, which provides that if the final order against the respondent is for debarment, the individual may not practice before the OCC unless otherwise permitted to do so by the Comptroller, by clarifying that the Comptroller's permission to permit such practice is pursuant to § 19.201. Section 19.201 provides that the Comptroller may entertain a petition for reinstatement after the expiration of the time period designated in the order of debarment and that the Comptroller may grant reinstatement only if satisfied that the petitioner is likely to act in accordance with part 19 and if granting reinstatement would not be contrary to the public interest. Section 19.201 further provides that any request for reinstatement is limited to written submissions unless the Comptroller, in their discretion, affords the petitioner a hearing. The amendment merely confirms that a debarred respondent only may be reinstated pursuant to the process set forth in § 19.201. It makes no substantive change. The proposal also would revise the heading of § 19.200 to reflect the order of topics covered by the section.

Ninth, the proposal would remove the references to the ''Comptroller's delegate'' in §§ 19.197(b) and (c), 19.199, and 19.200(d) as the definition of ''Comptroller'' in § 19.3, which applies to subpart K, includes a person delegated to perform the functions of the Comptroller of the Currency.

Finally, the proposal would make several minor, nonsubstantive wording changes throughout subpart K.

Subpart L—Equal Access to Justice Act

In general, EAJA,[16] codified at 5 U.S.C. 504, authorizes the payment of attorney's fees and other expenses to eligible parties who prevail over the United States in certain adversary adjudications, absent a showing by the government that its position was substantially justified or that special circumstances make an EAJA award unjust. EAJA requires each agency to issue rules that establish uniform procedures for the submission and consideration of applications for an EAJA award.[17] The OCC currently meets this requirement in subpart L of part 19, which provides that EAJA implementing regulation promulgated by the U.S. Department of the Treasury (Treasury), set forth at 31 CFR part 6, are applicable to formal adjudicatory proceedings under part 19. The OCC is proposing to delete the cross-reference to the Treasury regulation and amend subpart L to set forth EAJA regulations specifically applicable to certain OCC adversary adjudications conducted under part 19.

The OCC has based proposed subpart L on the revised model rule implementing EAJA published in 2019 by the Administrative Conference of the United States (ACUS) (Model Rule).[18] As discussed below, the OCC has customized the proposed rule in certain places to reflect the OCC's procedures in adversary adjudications, reorganized a few provisions included in the Model Rule, made other changes based on the Treasury EAJA rule as well as the EAJA rules of the Board and FDIC[19] and made non-substantive grammatical or stylistic changes. Although the Treasury, Board, and FDIC EAJA rules are based on earlier versions of the ACUS model rule, the OCC believes that these provisions remain useful and clarify the application of EAJA to OCC adversary proceedings.

Authority and scope; waiver. Proposed § 19.205 describes the general purpose and scope of EAJA. Specifically, an eligible party may receive an award of attorney fees and other expenses when it prevails over an agency in certain administrative proceedings (adversary adjudications) unless the agency's position was substantially justified or special circumstances make an award unjust. Furthermore, as provided in the Treasury regulations, and as determined by EAJA caselaw, this proposed provision provides that no presumption under this subpart arises that the agency's position was not substantially justified because the agency did not prevail.[20]

The proposed rule does not contain the provision in the Model Rule that permits an eligible party, even if not a prevailing party, to receive an award under EAJA when it successfully defends against an excessive demand made by the agency. Although EAJA permits excessive demand awards, EAJA specifically provides that excessive demand awards be paid ''only as a consequence of appropriations provided in advance.''[21] Because the OCC is not an appropriated agency and instead receives its funding through assessments on the institutions it regulates, the OCC believes that this EAJA excessive demand provision does not apply to the OCC. Consequently, the OCC's proposed EAJA rule does not include provisions in the Model Rule specifically related to excessive demand awards.

As provided in proposed § 19.205(b), the OCC has determined that proceedings listed in §§ 19.1, 19.110, 19.120, 19.190, 19.230, and 19.241 meet the EAJA definition of ''adjudicatory adjudications'' and are covered by subpart L.

Paragraph (c) of § 19.205 provides that after reasonable notice to the parties, the presiding officer or OCC may waive, for good cause shown, any provision contained in subpart L as long as the waiver is consistent with the terms and purpose of the EAJA. Although this provision is not included in the ACUS model rule, the OCC finds that this provision would provide useful discretion to the presiding officer and the OCC, as relevant, during the EAJA process and would provide for the smoother conduct of EAJA proceedings should Congress subsequently amend EAJA and the OCC has not yet updated its corresponding EAJA implementing regulations.

Definitions. Proposed § 19.206 sets forth definitions of terms used in this subpart. Unless otherwise noted, these

[16] Public Law 96–481, title II, sec. 203(a)(1), (c) (1980), revived and amended Public Law 99–80, sec. 1, 6 (1985).

[17] 5 U.S.C. 504(c)(1). EAJA also requires that each agency issue its EAJA rule after consultation with the Chairman of ACUS. 5 U.S.C. 504(c)(1). Pursuant to instructions provided by ACUS in the preamble to the Model Rule, the OCC will notify the Office of the Chairman of ACUS of the proposed rule and will consider any comments provided by ACUS when drafting a final rule. *See* 84 FR 38934.

[18] 84 FR 38934 (Aug. 18, 2019). ACUS originally issued an EAJA model rule in 1981 (46 FR 32900 (June 25, 1981)) and previously revised its model rule in 1986 (51 FR 16659 (May 6, 1986) (previously codified at 1 CFR 315)). ACUS issued its model rule to assist agencies when adopting their EAJA rules and encourages agencies to set out and implement this model rule as part of their own EAJA rules. *Id.* The Treasury EAJA rule is based on the 1981 EAJA model rule.

[19] 12 CFR 263, subpart G (Board) and 12 CFR 308, subpart P (FDIC). Both the Board and FDIC EAJA rules are based on the earlier versions of the ACUS model rule.

[20] *See* 31 CFR 6.5. *See also, e.g., Pierce* v. *Underwood,* 487 U.S. 552 (1988); *Miles* v. *Bowen,* 632 F. Supp. 282 (M.D. Ala. 1986).

[21] 5 U.S.C. 504(a)(4).

definitions are substantively identical to the definitions in the Model Rule and based on the definitions in EAJA.

Paragraph (a) would define ''adversary adjudication'' to mean an adjudication under 5 U.S.C. 554 in which the position of the OCC is represented by Enforcement Counsel.[22] With certain exceptions, section 554 applies to adjudications required by statute to be determined on the record after opportunity for an agency hearing.[23] 19.230, and 19.241. Unlike EAJA and the Model Rule, the OCC's proposed definition would not specifically exclude from this definition adjudications related to setting rates, licensing decisions, contract appeals, and the Religious Freedom Restoration Act of 1993.[24] These categories of adjudications are not covered by part 19 and therefore a specific exclusion in the OCC rule is not necessary.

Paragraph (b) would define ''final disposition'' as the date on which a decision or order disposing of the merits of the proceeding, or any other complete resolution of the proceeding such as a settlement or voluntary dismissal becomes final and unappealable, both within the OCC and to the courts.[25]

Paragraph (c) would define ''party'' to mean a party, defined in 5 U.S.C. 551(3),[26] that is (1) an individual whose net worth did not exceed $2,000,000 at the time that the adversary adjudication was initiated or (2) any owner of an unincorporated businesses, or any partnership, corporation, unit of local government or organization with a net worth not exceeding $7,000,000 and no more than 500 employees at the time that the adversary adjudication was initiated, except that the net worth limitation does not apply to certain tax-exempt organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act.[27] This proposed definition also provides that the net worth and number of employees of the applicant and, where appropriate, any of its affiliates must be aggregated when determining the applicability of this definition. The OCC is including this aggregation provision, which is not included in the Model Rule, because, as discussed below, the OCC is proposing to require information on affiliates for certain parties.

Paragraph (d) would define ''position of the OCC'' to mean the OCC's position in an adversary adjudication as well as the action or failure to act by the OCC upon which the adversary adjudication is based. This paragraph also would provide that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication if the party has unreasonably drawn out the proceeding.[28]

Paragraph (e) would define ''presiding officer'' as an official, whether an administrative law judge or otherwise, that presided over the adversary adjudication or the official presiding over an EAJA proceeding.[29] As noted below in proposed § 19.207, upon receipt of an EAJA application, the OCC will, to the extent feasible, refer the matter to the official who heard the underlying adversary adjudication.

Application requirements. Proposed § 19.207 sets out application requirements for a party seeking an award under EAJA. This section would require a party to file an application with the OCC within 30 days after the OCC's final disposition of the adversary adjudication. It would require the application to include (1) the identity of the applicant and the adjudicatory proceeding for which an award is sought; (2) a showing that the applicant has prevailed and identification of the OCC position that the applicant alleges was not substantially justified; (3) the basis for the applicant's belief that the position was not substantially justified; (4) unless the applicant is an individual, the number of employees of the applicant and a brief description of the type and purpose of the organization or business; (5) a showing of how the applicant meets the definition of ''party'' under proposed § 19.206(e), including documentation of net worth pursuant to proposed § 19.208; (6) documentation of the fees and expenses sought per proposed § 19.209; (7) signature by the applicant or the applicant's authorized officer or attorney; (8) any other matter the applicant wishes the OCC to consider in determining whether and in what amount an award should be made; and (9) written verification under penalty of perjury that the information contained in the information provided is true and correct. These application requirements are based on § 3.01 of the Model Rule,[30] except for the provision, taken from the Treasury rule,[31] providing that the applicant may include other matters for the OCC to consider. The OCC believes that this further information could assist the presiding officer when reviewing the EAJA claim and, by including this information at the application stage, may make the EAJA process more efficient.

Although not included in EAJA or the Model Rule, proposed § 19.207(c) provides that, upon receipt of an EAJA application, the OCC will to the extent feasible refer the matter to the official who heard the underlying adversary adjudication. The OCC is proposing this provision because it believes that the official presiding over the adversary proceeding subject to the EAJA application is in the best position to review the EAJA application, and that this referral directive should be included in the proposed rule for clarity.

Net worth exhibit. Proposed § 19.208 requires specific net worth documentation to accompany certain EAJA applications. This documentation is necessary to determine whether the applicant meets the definition of ''party'' under proposed § 19.206(c) and therefore be eligible for an EAJA award. Paragraph (a) would require an applicant, other than an applicant that is a non-profit or a cooperative association, to provide with its EAJA application a detailed exhibit of the applicant's, and where applicable, any of its affiliates' net worth at the time the adversary adjudication was initiated. Unless otherwise required, this paragraph would permit this exhibit to be in any form convenient to the applicant that provides full disclosure of the applicant's and affiliates' assets and liabilities sufficient to determine whether the applicant qualifies under

[22] *See* 5 U.S.C. 504(b)(1)(C) and § 2.01(b) of the Model Rule.

[23] Section 554 of title 5 does not apply to: (1) A matter subject to a subsequent trial of the law and the facts de novo in a court; (2) the selection or tenure of an employee, except a [sic] administrative law judge appointed under section 3105 of this title; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; or (6) the certification of worker representatives. 5 U.S.C. 504(a).

[24] EAJA and the Model Rule specifically (i) exclude an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license, (ii) any appeal of a decision made pursuant to section 7103 of title 41 before an agency board of contract appeals as provided in section 7105 of title 41, (iii) any hearing conducted under chapter 38 of title 31, and (iv) the Religious Freedom Restoration Act of 1993.

[25] *See* § 2.01(e) of the Model Rule.

[26] Section 551(3) defines ''party'' to include a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

[27] *See* 5 U.S.C. 504(b)(1)(B) and § 2.01(f) of the Model Rule.

[28] *See* 5 U.S.C. 504(b)(1)(E) and § 2.01(g) of the Model Rule.

[29] *See* the definition of ''adjudicative officer'' in 5 U.S.C. 504(b)(1)(D) and § 2.01(a) of the Model Rule. The OCC has chosen to use the term ''presiding officer'' instead of ''adjudicative officer'' as that is the term used elsewhere in part 19.

[30] *See also* 5 U.S.C. 504(a)(2).

[31] 31 CFR 6.8(d).

the standards of this subpart. Furthermore, this paragraph would permit a presiding officer to require an applicant to file additional information to determine its eligibility for an award. These net worth exhibit requirements are taken from § 3.02 of the Model Rule, except that the proposal would require the net worth information from affiliates, where appropriate. Because of the structure and interrelatedness of many financial institutions, the OCC believes that affiliate net worth will often prove relevant when determining eligibility for an EAJA award. The OCC notes that the EAJA rules issued by Treasury, the Board, and the FDIC require net worth information from affiliates to determine eligibility under EAJA.[32]

Proposed § 19.208 also includes further provisions included in the Board's and the FDIC's EAJA regulation but not included in the Model Rule.[33] These provisions provide more detailed information as to what the OCC will accept in satisfaction of the net worth exhibit requirement or pertain specifically to national banks and Federal savings associations. Specifically, paragraph (a)(1) would permit the use of unaudited financial statements for individual applicants as well as certain financial statements or reports submitted to a Federal or State agency for determining individual net worth, unless the presiding officer or the OCC otherwise requires. For applicants or affiliates that are not banks or savings associations, paragraph (a)(2) provides that net worth will be considered to be the excess of total assets over total liabilities as of the date the underlying proceeding was initiated. For banks and savings associations, paragraph (a)(3) would require the submission of a Consolidated Report of Condition and Income (Call Report) and would provide that net worth would be the total equity capital as reported in the Call Report filed for the last reporting date before the initiation of the proceeding.

Similar to § 3.02 of the model rule, paragraph (b) would provide that the net worth exhibit will be included in the public record of the proceeding unless an applicant believes that there are legal grounds for withholding it from disclosure and requests that the documents be filed under seal or otherwise treated as confidential.

Documentation of fees and expenses. As provided in the § 3.03 of the Model Rule, proposed § 19.209 would require applications to be accompanied by adequate documentation of the fees and other expenses incurred after initiation of the adversary adjudication. This information is necessary to determine any EAJA award. Specifically, this section would require a separate itemized statement for each professional firm or individual whose services are covered by the application showing the hours spent in connection with the proceeding by each individual, a description of the specific services provided, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. This section also would authorize a presiding officer to require an applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.

Unlike the Model Rule, this provision also provides that an application seeking an increase in fees to account for inflation pursuant to proposed § 19.215(d)(1)(i), discussed below, also must include adequate documentation of the change in the consumer price index for the attorney or agent's locality.

Filing and service of documents. As in § 4.01 of the Model Rule, proposed § 19.210 requires that applications for an award, or any accompanying documentation related to an application, be filed and served on all parties to the proceeding in accordance with § 19.11, Service of papers, except for confidential information pursuant to proposed § 19.208(b).

Answer to application. As provided in § 4.02 of the Model Rule, proposed § 19.211 provides that Enforcement Counsel may file an answer to an EAJA application within 30 days after service of the application except in cases involving settlement negotiations under proposed § 19.213. This section would provide that failure to file an answer within 30 days may be treated as consent to the award requested unless Enforcement Counsel requests an extension of time for filing or files a statement of intent to negotiate a settlement under proposed § 19.213. This section would require the answer to explain in detail any objections to the award requested and identify the facts supporting Enforcement Counsel's position. For any facts not already in the record of the proceeding, Enforcement Counsel would be required to provide supporting affidavits or a request for further proceedings under proposed § 19.214 with the answer. Unlike the Model Rule, proposed § 19.211 does not include information related to settlement negotiations and instead cross-references to § 19.213, which discusses settlement of an EAJA award. The OCC believes that, for ease of use, all settlement provisions should be included in the same section of the regulation.

Reply. As in § 4.03 of the Model Rule, proposed § 19.212 would permit an applicant to reply within 15 days after service of an answer. For facts not already in the record, the applicant would be required to provide supporting affidavits or a request for further proceedings pursuant to § 19.214 with the answer.

Settlement. As in § 4.04 of the Model Rule, proposed § 19.213 would provide that the applicant and Enforcement Counsel may agree to a proposed settlement before final action on the application, either in connection with a settlement of the underlying proceeding or after conclusion of an underlying proceeding, in accordance with the OCC's standard settlement procedure pursuant to § 19.15, Opportunity for informal settlement. In a case where a prevailing party and Enforcement Counsel agree on a proposed settlement of an award before an EAJA application has been filed, this section would require the application to be filed with the proposed settlement. Proposed § 19.213 also would clarify that, if a proposed settlement of an underlying proceeding provides for each side to pay its own expenses and the settlement is accepted, no application under this subpart may be filed. However, this section differs from § 4.04 of the Model Rule by including a provision the Model Rule includes in its section relating to an answer to an application, § 4.02. Specifically, proposed § 19.213 would specify that, if after an application is submitted, Enforcement Counsel and the applicant believe that they can reach a settlement, they may file a joint statement of their intent to negotiate a settlement. Filing this statement would extend the time for filing an answer under proposed § 19.211 for an additional 30 days. Further extensions could be granted by the presiding officer at the joint request of the applicant and Enforcement Counsel. As indicated above, the OCC believes that this provision is better placed in § 19.213 so that all settlement information is included in the same section of the regulation.

Further Proceedings. Ordinarily, the determination of an EAJA award would be made on the basis of the written record. However, proposed § 19.214(a) would permit an applicant or Enforcement Counsel to request the

[32] *See* 31 CFR 6.4(f) (Treasury); 12 CFR part 263.105 (Board); and 12 CFR part 308.177 (FDIC).

[33] *Id.*

filing of additional written submissions, an informal conference, oral argument, discovery, or an evidentiary hearing with respect to issues other than whether the OCC's position was substantially justified, such as issues involving the applicant's eligibility or substantiation of fees or expenses. The presiding officer may permit these further proceedings if necessary for a full and fair decision on the application. The presiding officer also may order these additional proceedings on its own initiative. In addition, paragraph (a) would require that further proceedings be held as promptly as possible so as not to delay resolution of the EAJA application. The proposed rule lists applicant eligibility or substantiation of fees and expenses as examples of permissible issues for further proceedings. Paragraph (a) is based on § 4.05 of the Model Rule. However, proposed § 19.214 does not contain the Model Rule's statement regarding the basis for a decision on whether the OCC's position was substantially justified. The OCC believes it is more appropriate to include this statement in § 19.215, Decisions. In addition, to list all possible further proceedings available more completely, the proposed rule also permits the applicant or Enforcement Counsel to request an informal conference, which is not listed in the Model Rule.

As in § 4.05 of the Model Rule, paragraph (b) of proposed § 19.214 would require that any request for further proceedings specifically identify the information sought or any disputed issues and explain why additional proceedings are necessary to resolve the issues.

Decision. The OCC's proposed section on EAJA decisions, § 19.215, is based on 5 U.S.C. 504(a)(3) and in part on § 4.06 of the Model Rule. Proposed paragraph (a) of § 19.215 provides that a presiding officer must base its decision on whether the position of the OCC was substantially justified on the administrative record as a whole of the adversary adjudication for which fees and other expenses are sought. The Model Rule includes this provision in its section on further proceedings, § 19.214. However, the OCC believes this requirement better belongs in the section of the rule outlining EAJA decisions because it provides parameters for the presiding officer's decision.

As in § 4.06 of the Model Rule, proposed paragraph (b) of § 19.215 would mandate the timing of the presiding officer's decisions. It would require the presiding officer to issue a recommended decision in writing on an EAJA application within 90 days after the time for filing a reply or within 90 days of the completion of further proceedings held pursuant to proposed § 19.214.[34]

Also, as in § 4.06 of the Model Rule, proposed paragraph (c) of § 19.215 provides that a decision must include written findings and conclusions on an applicant's eligibility and status as a prevailing party. The decision must also include, if applicable, an explanation of the reasons for any difference between the amount requested and the amount awarded, findings on whether the OCC's position was substantially justified, whether the applicant unduly and unreasonably protracted the proceedings, or whether special circumstances would make an award unjust. Paragraph (c) differs from § 4.06 of the Model Rule in that it includes language taken from § 4.05 of the Model Rule. Specifically, paragraph (c) provides that the presiding officer must determine whether or not the position of the OCC was substantially justified on the basis of the administrative record as a whole of the adversary adjudication for which fees and other expenses are sought.

Proposed paragraph (d) of § 19.215 would provide the requirements for EAJA decisions. Paragraphs (d)(1), (2) and (3) of proposed § 19.215 are not included in the Model Rule but are based on the EAJA statute, provisions included in the FDIC and Board EAJA rules,[35] and provisions included in the prior ACUS model rule that ACUS determined were largely substantive matters beyond the Conference's statutory charge.[36] The OCC believes that these provisions provide important details on the basis for EAJA award amounts that should apply to all EAJA applications and be included in its EAJA regulation.

Specifically, proposed § 19.215(d)(1) provides that EAJA awards may include the reasonable expenses of expert witnesses; the reasonable cost of any study, analysis, report, test, or project; and reasonable attorney or agent fees incurred after initiation of the adversary adjudication subject to the EAJA application. This paragraph also provides that the presiding officer will base awards on prevailing market rates for the kind and quality of the services furnished, even if the services were provided without charge or at reduced rate to the applicant. However, no award for the fee of an attorney or agent under this subpart may exceed the hourly rate specified in EAJA (5 U.S.C. 504(b)(1)(A)) except, as permitted by EAJA, to account for inflation as requested by the applicant and documented in the EAJA application or if a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.[37] Pursuant to EAJA, this paragraph also would prohibit an award for expert witness fees that exceed the highest rate paid for expert witnesses by the OCC.[38]

Proposed § 19.215(d)(2) would provide factors the presiding officer should consider in determining the reasonableness of the attorney, agent, or expert witness fees. These factors are: (1) If in private practice, the attorney's, agent's, or witness's customary fee for similar services; (2) if an employee of the applicant, the fully allocated cost of the attorney's, agent's, or witness's services; (3) the prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily perform services; (4) the time actually spent in the representation of the applicant; (5) the time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and (6) any other factors as may bear on the value of the services provided.

Proposed § 19.215(d)(3) would provide parameters for the award of costs for any study, analysis, report, test, project, or similar matter. Specifically, the presiding officer may award the reasonable cost of these services prepared on behalf of the applicant to the extent that the charge for the service does not exceed the prevailing rate for similar services and the presiding officer finds that the service was necessary for preparation of the applicant's case.

As in § 4.06 of the Model Rule, proposed paragraph (d)(4) would permit a presiding officer to reduce the amount to be awarded or deny an award to the extent that the party during the proceedings engaged in conduct that unduly and unreasonably protracted final resolution of the matter in controversy. Unlike § 4.06 of the Model Rule, paragraph (d)(4) also would permit the presiding officer to reduce or deny the award if special circumstances would make the award sought unjust. This provision is included in 5 U.S.C. 504(a)(1) and in the Treasury rule[39] and is noted in the authority and scope section of this rule, proposed

[34] The Model Rule provides that an agency may determine the specific time period for this section.

[35] 12 CFR 263.106, 308.175.

[36] *See* 84 FR 38934.

[37] 5 U.S.C. 504(b)(1)(A).

[38] *Id.*

[39] *See* 31 CFR 6.14.

§ 19.205(a). The OCC believes it would be helpful to include it in § 19.215 as this section is specifically related to the decision making of the presiding officer.

Finally, proposed paragraph (e) of § 19.215 would provide that the Comptroller will issue a final decision on the EAJA application or remand the application to the presiding officer for further proceedings in accordance with § 19.40, Review by the Comptroller. This provision is not included in the Model Rule. However, the OCC believes for clarity and completeness that its proposed EAJA rule should specify the final agency action on the EAJA application, as delineated in part 19.

Agency review. As in § 4.07 of the Model Rule, proposed § 19.216 allows an applicant or Enforcement Counsel to seek review of the presiding officer's decision on the EAJA application, in accordance with § 19.39, Exceptions to recommended decision. However, proposed § 19.216 does not include the provision in the Model Rule that permits the agency to review the decision on its own initiative. The OCC does not believe that this provision is necessary because the proposed rule includes a separate provision in § 19.215(d) that is not included in the Model rule that provides for a final decision on the EAJA application by the Comptroller or the Comptroller's remand of the application to the presiding officer for further proceedings.

Judicial review. As provided by 5 U.S.C. 504(c)(2) and in § 4.08 of the Model Rule, proposed § 19.217 provides for judicial review of final OCC decisions on awards in accordance with 5 U.S.C. 504(c)(2).

Stay of decision concerning award. As in § 4.09 of the Model Rule, proposed § 19.218 provides for an automatic stay of an EAJA proceeding until the OCC's final disposition of the decision on which the application is based and either the time period for judicial review has expired, or if judicial review is sought, final disposition is made by a court and no further judicial review is available.

Payment of award. As in § 4.10 of the Model Rule, proposed § 19.219 provides that an applicant seeking payment of an award must submit to the OCC's Litigation Group a copy of the final decision granting the award accompanied by a certification that the applicant will not seek review of the decision in the United States courts. This proposed section also would provide that the OCC pay any amount owed to an applicant within 90 days.

Subpart M—Procedures for Reclassifying an Insured Depository Institution Based on Criteria Other Than Capital

Subpart M of part 19 and 12 CFR 165.8 set out procedures for reclassifying a national bank or Federal savings association, respectively, to a lower capital category based on criteria other than capital, pursuant to section 38 of the FDIA (12 U.S.C. 1831o) and the prompt corrective action rule, 12 CFR part 6. These procedures are substantively the same, and the proposed rule would amend subpart M to include Federal savings associations in addition to national banks and remove § 165.8. As this subpart currently also applies to insured Federal branches of foreign banks, the proposed rule would specifically include insured Federal branches in the scope section. Specifically, the proposal would replace the term ''bank'' each time it appears in subpart M with the term ''insured depository institution,'' and define this term to mean an insured national bank, an insured Federal savings association, an insured Federal savings bank, and an insured Federal branch of a foreign bank. The proposal also would replace the incorrect reference to subpart M with a reference to part 6 in § 19.220. In addition, the proposal would make a conforming change to § 19.221(b)(3) to replace the phrase ''a written appeal of the proposed classification'' with ''a written response to the proposed reclassification,'' which is the terminology used elsewhere in this section. Furthermore, as in proposed §§ 19.35, 19.112, and 19.120, the OCC proposes to add a new paragraph (3) to § 19.221(g) to provide rules governing electronic presentations in the course of a hearing. Specifically, this provision would provide that, based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If required by the presiding officer, each party would be responsible for its own presentation and related costs unless the parties agree otherwise. As indicated previously, this new language is necessary to account for the routine use of electronic presentations that current part 19 does not address. The OCC also proposes a conforming change in paragraph (g)(2) that would allow, by stipulation of the parties or by order of the presiding officer, a court reporter or other authorized person to administer the required oath to a witness remotely without being in the physical presence of the witness. Additionally, the proposal would revise the heading to subpart M to include insured depository institutions and to describe the subject of the subpart more accurately. Lastly, the proposal would make technical changes to 12 CFR 6.3, 6.4, and 6.5 to remove the separate references to § 165.8 with respect to savings associations.

Subpart N—Order To Dismiss a Director or Senior Executive Officer

Subpart N of part 19 and 12 CFR 165.9 set out procedures associated with an order to dismiss a director or senior executive officer of a national bank or Federal savings association, respectively, pursuant to an order issued under section 38 of the FDIA (12 U.S.C. 1831o) and, with respect to national banks, the prompt corrective action rule, 12 CFR part 6. Subpart N and § 165.9 are substantively the same, and the proposed rule would apply subpart N to Federal savings associations in addition to national banks and remove § 165.9. The proposal also would replace the term ''bank'' each time it appears in § 19.230 with the term ''insured depository institution'' and define the term based on section 3 of the FDIA (12 U.S.C. 1813(c)(2)) to mean an insured national bank, an insured Federal savings association, an insured Federal savings bank, or an insured Federal branch of a foreign bank.

The OCC also is proposing to amend paragraph (b) of § 19.231 This paragraph provides that a director or senior executive officer who has been served with a directive for dismissal has 10 calendar days to file a written request for reinstatement, unless the OCC allows further time as requested of the Respondent. The proposal would provide that failure by the Respondent to file this request within the specified time period will constitute a waiver of the opportunity to respond and consent to the dismissal. The OCC is proposing to add this statement to the rule to clarify the result of a failure to request reinstatement. The OCC also is proposing a stylistic revision to § 19.231(b) to remove passive sentence structure.

In addition, the proposal would amend § 19.231(c), which requires that the OCC issue an order directing an informal hearing to commence no later than 30 days after receipt of the request for a hearing unless the respondent requests a later date. The proposed amendment would provide that a later hearing date may occur only if permitted by the OCC, and, therefore, the request for an extension would not be automatically approved. This change would allow the OCC some discretion as

to how far into the future a hearing may take place.

The OCC also proposes to amend § 19.231(d) to provide rules governing electronic presentations in the course of a hearing. Specifically, this provision would provide that, based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If required by the presiding officer, each party would be responsible for its own presentation and related costs unless the parties agree otherwise. This new language is necessary to account for the routine use of electronic presentations that current part 19 does not address. The OCC also proposes a conforming change in § 19.231(d)(5) that would allow, by stipulation of the parties or by order of the presiding officer, a court reporter or other authorized person to administer the required oath to a witness remotely without being in the physical presence of the witness. The proposed rule also would make a clarifying change in paragraph (d)(1), Hearing procedures. Among other things, this paragraph provides that a Respondent has the right to introduce relevant written materials and to present oral argument. The proposal would clarify that these written materials and oral arguments would be made at the hearing. This clarification ensures that the Respondent is aware that this right is provided during the hearing and not outside of the hearing context. The proposed rule also would move the sentence regarding oral testimony and witnesses in paragraph (d)(1) to paragraph (d)(5) to better organize paragraph (d) and add paragraph headings.

Furthermore, the proposal would revise the heading of subpart N to describe the subject of the subpart more accurately.

Lastly, the proposal would make technical changes to 12 CFR 6.6 to remove the separate reference to § 165.9 with respect to Federal savings associations.

Because §§ 165.8 and 165.9 are the only sections in current part 165, the proposal would remove part 165 in its entirety.

Subpart O—Civil Money Penalty Inflation Adjustments

Subpart O of part 19 and § 109.103 provide the statutorily required formula to calculate inflation adjustments for civil money penalties assessed against national banks and savings associations, respectively. These sections also indicate that the OCC will publish, on or before January 15 of each calendar year, an annual notice in the **Federal Register** of the maximum penalties the OCC may assess. The OCC is proposing to retain subpart O and remove § 109.103. No amendments are necessary to apply subpart O to Federal savings associations. The proposal would amend the section heading to be more descriptive and make a stylistic revision in paragraph (a) to remove passive sentence structure.

Subpart Q—Forfeiture of Franchise for Money Laundering or Cash Transaction Reporting Offenses

Twelve U.S.C. 93(d)(1) requires the Comptroller, after receiving notification from the U.S. Attorney General of a conviction of a criminal offense under section 1956 or 1957 of title 18 (18 U.S.C. 1956, 1957) or under section 5322 or 5324 of title 31 (31 U.S.C. 5322, 5324), to issue to the convicted national bank or Federal branch or agency of foreign bank a notice of the Comptroller's intent to terminate all rights, privileges and franchises of the bank or Federal branch or agency and to schedule a pretermination hearing. The offenses include financial crimes, including money laundering (18 U.S.C. 1956), engaging in monetary transactions in criminally derived property (18 U.S.C. 1957), and structuring transactions to evade reporting requirements (31 U.S.C. 5324). Twelve U.S.C. 1464(w) imposes the same requirement with respect to convicted Federal savings associations.

Part 19 currently does not include specific procedures for a charter pretermination hearing. The OCC proposes adding a new subpart Q that sets forth APA compliant procedures for pretermination hearings, which will be conducted before a presiding officer appointed by the Comptroller. The proposed procedures are largely analogous to the deposit insurance termination hearing procedures instituted by the FDIC and NCUA for insured State depository institutions and Federally insured credit unions, respectively, that are convicted of the same offenses.

Specifically, proposed § 19.250 makes subpart A applicable, except as provided in new subpart Q, to proceedings by the Comptroller to determine whether, pursuant to 12 U.S.C. 93(d) or 12 U.S.C. 1464(w), as applicable, to terminate all rights, privileges, and franchises of a national bank, Federal savings association, or Federal branch or agency convicted of a criminal offense under 18 U.S.C. 1956 or 1957 or 31 U.S.C. 5322 or 5324.

Proposed § 19.251(a) provides that, after receiving written notification from the U.S. Attorney General of a conviction of a criminal offense under sections 18 U.S.C. 1956 or 1957 or 31 U.S.C. 5322 or 5324, the Comptroller will issue a written notice of intent to terminate all rights, privileges and franchises to the convicted national bank, Federal savings association, or Federal branch or agency and schedule a pretermination hearing. Proposed § 19.251(b) details the requisite contents of the notice and proposed § 19.251(c) provides that failure to answer the notice would be deemed consent to the termination and that the Comptroller may order the termination. The proposed notice of intent to terminate is similar to the notice in § 19.18 except that the subpart Q notice of intent would list the basis of termination pursuant to factors listed in proposed § 19.253 instead of the statement of matters of fact or law; the time within which to file an answer in response to the notice of intent will be established by the presiding officer instead of by law or regulation; and the answer must be filed with the OCC instead of with OFIA. Proposed § 19.251(d) provides that the OCC will serve the notice upon the national bank, Federal savings association, or Federal branch or agency in the manner set forth in § 19.11(c).

Proposed § 19.252 provides that the Comptroller will designate a presiding officer to conduct the pretermination hearing. The presiding officer would have the same powers set forth in § 19.5, including the discretion necessary to conduct the pretermination hearing in a manner that avoids unnecessary delay. Proposed § 19.252 also provides that the presiding officer may limit the use of discovery and limit opportunities to file written memoranda, briefs, affidavits, or other materials or documents to avoid relitigating facts already stipulated to by the parties, conceded to by the institution, or otherwise already firmly established by the underlying criminal conviction.

Proposed § 19.253 provides the factors the Comptroller will take into account when determining whether or not to terminate a franchise as set forth in 12 U.S.C. 93(d)(1)(C)(2) and 1464(w)(1)(C)(2). The factors are the extent to which directors or senior executive officials knew of or were involved in the criminal offense; the extent to which the offense occurred despite the existence of policies and procedures within the institution designed to prevent the occurrence of the offense; the extent to which the institution fully cooperated with law enforcement authorities regarding the

investigation of the offense; the extent to which the institution has implemented additional internal controls since the commission of the offense to prevent a reoccurrence; and the extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

Lastly, proposed § 19.254 delineates the right of judicial review under 12 U.S.C. 1818(h) of a termination order as required by 12 U.S.C. 93(d)(1)(C) and 1464(w)(1)(C).

Subpart R—Effective Date

The OCC is proposing a new subpart R to part 19 to address questions about the effective date of the amendments to part 19 and their application to proceedings and investigations in progress. Specifically, subpart R provides that the rules of practice and procedure set forth in subparts A through E and H, I, J, L, M, N, P, and Q (as revised or added by this rulemaking) would apply to adjudicatory proceedings initiated on or after the effective date of a final rule. Rules applicable to national banks, Federal savings associations, or Federal branches and agencies in effect prior to this effective date would continue to govern actions initiated and in process prior to this effective date. This timing would ensure that parties to adjudicatory proceedings involving national banks, Federal savings associations, or Federal branches and agencies would have adequate notice of the rules governing those proceedings.

Technical Changes

The proposed rule would make technical changes throughout parts B through P by (1) replacing the word ''shall'' with ''must,'' ''will,'' or other appropriate language, which is the more current rule writing convention for imposing an obligation and is the recommended drafting style of the **Federal Register**; (2) conforming citation styles and providing more detailed references to the cited statutes; (3) conforming abbreviations, including replacing the use of the term ''administrative law judge'' with ''ALJ; (4) replacing gender references such as ''him,'' ''his'' or ''her'' with gender neutral terminology; and (5) and making other non-substantive grammatical, clarifying, organizational, and stylistic changes. The proposal also makes a technical change to 12 CFR 3.405 to correct the reference to part 19 and remove the reference to part 109 with respect to savings associations because this rulemaking proposes to remove part 109 and apply part 19 to Federal savings associations.

B. Proposed Amendments to the Board's Local Rules

Part 263, subparts B through J, contain rules specific to Board proceedings. The Board proposes several amendments to subpart B that supplement the Uniform Rules, the creation of a new subpart K establishing rules governing all Board formal investigations, and the elimination of subpart L of Regulation LL (12 CFR part 238), which would be replaced by the new subpart K. The proposed amendments are described below. The Board invites comments on all aspects of this proposal.

Subpart B—Board Local Rules Supplementing the Uniform Rules

Technical Changes

The proposal makes three general non-substantive changes to the language of the Board's Local Rules (12 CFR 265.50–263.56). First, consistent with **Federal Register** drafting guidelines, the proposal replaces the word ''shall'' throughout the Local Rules with the terms ''must,'' ''will,'' or other appropriate language. Second, the proposal replaces gender specific references with gender neutral language. And third, the proposal replaces the term ''administrative law judge'' with the abbreviation ''ALJ'' as this shortened form is commonly used and understood. These changes are proposed throughout the Local Rules and will not be discussed in the individual sections below.

Section 263.52 Address for Filing

The proposal adds a second sentence providing an electronic mail address (*OSEC-Litigation@frb.gov*) for papers to be filed electronically with the Secretary of the Board. The Board recognizes that electronic filings have become more frequent and deems it appropriate to identify the electronic mail address that must be used to file papers electronically with the Board.

Section 263.53 Discovery Depositions

The proposal makes four changes to this section to provide for the increasing frequency of depositions by remote means. First, the proposal changes § 263.53(b) to require parties to state in the application the manner (*e.g.,* remote means, in person) in which the deposition is to be taken, in addition to the place and time. Second, the proposal changes § 263.53(c) to include the proposed manner of the deposition as a factor to be considered by the ALJ in determining whether a deposition is unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome. Third, the proposal adds that a deposition subpoena may require the witness to be deposed where the witness resides or has a regular place of employment, by remote means, or such other convenient place or manner as the ALJ fixes. This language is consistent with § 263.27(a)(2) and provides explicitly for depositions by remote means. And fourth, the proposal adds a sentence in § 263.53(f) indicating that, by stipulation of the parties or order by the ALJ, a deponent may be sworn remotely and is not required to be in the physical presence of the person administering the oath. The Board believes these changes would facilitate discovery by making depositions more flexible and less burdensome.

Section 263.55 Board as Presiding Officer

Section 263.55 authorizes the Board to designate itself, one or more of its members, or an authorized officer, to act as presiding officer in a formal hearing. The proposal adds a sentence clarifying that when such designations occur, the authority of the Board or its designee will include all the authority provided to an ALJ under the rules governing formal hearings. This ensures that the authority of the Board or its designee will include all powers vested in the ALJ by the language of the rules.

Section 263.57 Sanctions Related to Conduct in Adjudicatory Proceedings

Several sections of the Uniform Rules authorize the ALJ to impose sanctions for particular types of misconduct.[40] However, the Uniform Rules do not specify the rules and procedures governing the sanctions available where a party generally engages in contemptuous conduct. Sanctions provisions are instead found in the local rules of other banking regulators.[41] To date, the Board has not adopted a similar sanctions provision. The proposal fills this void by adding a new section establishing the rules governing the imposition of sanctions against parties or persons participating in administrative adjudicatory proceedings. The proposed new section: (a) Explicitly authorizes the ALJ to impose sanctions against parties or persons; (b) describes the sanctions the ALJ may impose; (c) describes

[40] *See, e.g.,* 12 CFR 263.6(b) (authorizing the exclusion or suspension of counsel for misconduct); 12 CFR 263.9 (authorizing various sanctions against a party or counsel for *ex parte* communications); 12 CFR 263.23(e) (authorizing sanctions for dilatory conduct).

[41] *See* 12 CFR 308.108 (FDIC); 12 CFR 19.192 (OCC).

procedures for imposing sanctions: And (d) establishes that the ALJ or the Board may impose other sanctions authorized by applicable statute or regulation.

First, subsection (a) establishes that the ALJ may impose sanctions against any party or person who violates a statute, regulation, or order. In addition, sanctions may only be imposed where such violation constitutes contemptuous conduct, materially injures another party, amounts to a clear and unexcused violation, or unduly delays the proceedings.

Second, subsection (b) describes the sanctions the ALJ may impose against parties or persons. Appropriate sanctions include: (1) Issuing an order making findings against a party; (2) rejecting or striking testimony or other evidence offered by a party; (3) precluding the party from contesting specific issues or findings, offering or challenging certain evidence, or making late filings or conditioning such late filings; (4) assessing reasonable expenses incurred by the other party as a result of the misconduct; and (5) excluding the party or person from the adjudicatory proceeding. This list is non-exhaustive. As expressed in subsection (d), the ALJ or the Board may impose other sanctions authorized by an applicable statute or regulation.

Third, subsection (c) describes procedures for imposing and reviewing sanctions. First, sanctions could be imposed upon the motion of any party or upon the ALJ's own motion, although the ALJ would be required to submit to the Board any sanction that includes a final order on the merits. Second, no sanction beyond refusal to accept late filings may imposed without affording the party or person to be sanctioned the opportunity to be heard. And third, an order imposing sanctions would be subject to interlocutory review like any other order. Finally, subsection (d) clarifies that an ALJ or the Board may also impose any other restriction or sanction authorized by another applicable statute or regulation.

The Board believes that this new proposed section promotes fairness and transparency in adjudicatory proceedings by providing clear standards governing the authority of the ALJ to manage the conduct of the proceedings when presented with contemptuous conduct.[42] In addition, because this proposed section is modeled on the sanctions provisions already adopted by other banking regulators, it promotes uniformity in the rules of banking regulators.

Subpart K—Formal Investigative Proceedings

Under section 8(n) of the Federal Deposit Insurance Act and other statutory provisions, the Board has authority to conduct formal investigations, including authority to administer oaths, take depositions, and issue subpoenas in connection with the Board's examination and enforcement authority.[43] In 2011, the Board adopted regulations previously issued by the OTS which govern formal investigations of savings and loan holding companies and their subsidiaries under Home Owners' Loan Act.[44] These regulations, which are found in subpart L of Regulation LL (12 CFR part 238), do not govern formal investigations of other banking institutions or individuals under the Board's jurisdiction. While the Board has long-standing practices concerning the conduct of formal administrative investigations involving other banking organizations or individuals within its jurisdiction, these practices have heretofore not been incorporated in regulations governing such formal investigations.

The Board now proposes to codify and clarify its long-standing practices concerning the conduct of formal administrative investigations and promulgate rules governing all formal investigations of organizations and individuals within the Board's jurisdiction. The proposal deletes subpart L of Regulation LL and replaces it with a new section (subpart K to 12 CFR part 263). This new section establishes a single set of rules governing formal investigations for all Board-regulated organizations, including but not limited to state member banks, foreign banks, bank holding companies and their subsidiaries, savings and loan holding companies and their subsidiaries, Edge Act and agreement corporations, nonbank financial companies that the Financial Stability Oversight Council has determined should be supervised by the Board pursuant to section 113 of the Dodd-Frank Act (nonbank financial companies) or any subsidiaries of such companies,[45] and any other entity or individual that the Board has authority to investigate or bring an enforcement action against. Proposed subpart K would govern only the conduct of formal investigations; administrative adjudicatory proceedings would continue to be governed by the Board's Uniform Rules and Local Rules (subparts A and B of 12 CFR 263).

Proposed subpart K is modeled on the investigative procedures of other Federal financial industry enforcement agencies, including the FDIC and OCC. Like the existing rules of these agencies, proposed subpart K would, among other things, define a formal investigative proceeding by the Board and its scope; delineate some of the powers of the Board's designated representatives conducting formal investigative proceedings; require the confidentiality of formal investigative proceedings; provide for certain rights of witnesses in formal investigative proceedings; and establish investigative subpoena procedures.

The proposed rules authorize the Board or the General Counsel or the General Counsel's designee (in accordance with 12 CFR 265.6) to commence a formal investigation by issuing an order of investigation which designates both the purpose of the investigation and the ''designated representatives'' of the Board. These designated representatives would be authorized to administer oaths, to take and preserve testimony under oath, and to issue subpoenas *ad testificandum* and subpoenas *duces tecum* and to apply to the appropriate court to enforce such subpoenas.

The proposed rules also set forth the rights of persons from whom the Board seeks to compel information in a formal investigation. Specifically, the proposed rules describe a person's right to counsel during investigative testimony, an attorney's ability to advise and question a witness during investigative testimony, and the ability of a witness to obtain a copy of any testimony the witness provided. The proposed rules would also require the confidentiality of formal investigative proceedings and generally require sequestration of witnesses.

Proposed subpart K generally incorporates the substantive provisions currently contained in subpart L of Regulation LL with two major exceptions. First, the proposed subpart

[42] The Board believes that the power to impose sanctions is inherent in the ALJ's power to ''regulate the course of a proceeding,'' 5 U.S.C. 556(c)(5), and to ''do all things necessary and appropriate to discharge the duties of a presiding officer.'' 12 CFR 263.5(b)(11).

[43] 12 U.S.C. 1818(n).

[44] In 2011, pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') (12 U.S.C. 5412), the responsibility for the supervision and regulation of savings and loan holding companies and their non-savings association subsidiaries transferred from the former-OTS to the Board. Shortly thereafter, the Board adopted an interim final rule that provided for the corresponding transfer of certain OTS regulations necessary for the Board to administer the statutes relating to supervision of savings and loan holding companies, including provisions governing formal investigative proceedings set forth at subpart L of Regulation LL (12 CFR 238.111–117) (*see* 76 FR 56508 (September 13, 2011)).

[45] 12 U.S.C. 5323; 12 U.S.C. 5362.

K does not include provisions (currently found in 12 CFR part 238.117(b)) providing for the filing and resolution of applications seeking to quash or modify subpoenas within 10 days of their service. Since the Board already vests with the General Counsel or his or her designee the authority to quash, modify, or revoke subpoenas that have been issued,[46] any person or entity to whom a subpoena is directed may seek a modification or revocation of a subpoena by application to the General Counsel. A separate procedure is not necessary.

Second, the proposed subpart K provides that the officer supervising a formal investigative proceeding may, in certain circumstances, deny a written request for a copy of a transcript. Both subpart L of Regulation LL and the proposed rules (see 12 CFR part 238.114 and proposed rule 263.456(b)) provide that a witness may inspect a copy of the transcript without retaining a copy. Similarly, both subpart L of Regulation LL and the proposed rules (see 12 CFR part 238.114 and proposed rule 263.456(c)) provide that any request for a copy of a transcript may be denied. Although subpart L of Regulation LL vests the Board with the authority to deny a witness's request to inspect a copy of a transcript (see 12 CFR part 238.114), proposed subpart K vests the officer supervising a formal investigative proceeding with the authority to deny such request if provision of the transcript may infringe the privacy of third persons involved in the investigation, or impede or interfere with the conduct of any Board investigation.

The proposed subpart K also reorganizes or re-orders provisions currently found in subpart L of Regulation LL. For example, subpart L of Regulation LL had a separate provision regarding transcripts of investigative testimony (12 CFR part 238.114) that provides, among other things, that a witness may inspect the transcript of the witness's testimony. Proposed subpart K instead places the provision to permit inspection of a transcript of a witness's testimony in the proposed rule concerning the rights of witnesses (see proposed subpart K rule 263.456). Other provisions of proposed subpart K conform provisions of subpart L of Regulation LL to current practices followed in Board investigations. For example, proposed subpart K rule 263.457, governing service of subpoenas in formal investigations, conforms to the current rules governing service of subpoenas in adjudicatory proceedings, 12 CFR part 263.11(d). These technical modifications are not intended to affect the substantive rights of parties.

In summary, proposed subpart K clarifies and centralizes the Board's existing investigative practices by codifying those procedures uniformly across all Board formal investigations.

C. Proposed Amendments to the FDIC's Local Rules

When the Uniform Rules were adopted in 1991, each Agency also adopted Local Rules to address procedures to supplement the Uniform Rules or otherwise facilitate the processing of administrative enforcement actions within an Agency. The Local Rules at issue here are set forth at 12 CFR part 308, subpart B: General Rules of Procedure, and supplement the Uniform Rules and procedures set forth in 12 CFR part 308, subpart A.

The FDIC requests comment on proposed amendments to the FDIC's Local Rules at subpart B. These revisions are intended to enhance the Uniform Rules and to further modernize and streamline the discovery process in administrative enforcement actions brought by the FDIC. The FDIC proposes changes that reflect the current processes and procedures routinely ordered by the administrative law judges (ALJs) that mirror procedures followed in the Federal court system. The FDIC also proposes to add new provisions regarding modern discovery practices, depositions, and disclosure of expert witness testimony to promote cooperation, fairness, and transparency.

Since the Local Rules were last updated, the development and utilization of electronically stored information has drastically increased the amount of potentially discoverable materials. In 2015, the Federal Rules of Civil Procedure (FRCP) were amended, in part, to address concerns regarding the volume of available materials and the effort and expense in processing those materials for discovery purposes. Although neither the FRCP, nor the Federal Rules of Evidence, apply to administrative proceedings at the FDIC, they do provide guidance and direction. Additionally, the FRCP are thoroughly vetted and considered to be best practices and procedures by the legal community. The FDIC is not adopting the FRCP; however, there are certain best practices and procedures that the FDIC believes would be advantageous to all parties to the administrative proceedings. Over the past few years, the ALJs have implemented, on a case-by-case basis, certain case management orders related to discovery procedures and requirements that mirror certain provisions of the FRCP. The FDIC wishes to formalize these procedures in the Local Rules to provide notice and clarity of the discovery rules applicable to administrative proceedings.

Similar to the changes in the Uniform Rules, the FDIC also proposes to update the language throughout its Local Rules to reflect the modernized language used in rulemaking. Where appropriate, the FDIC proposes to replace the term ''shall'' with ''must'' or ''will'' to reflect the current convention for a legal requirement and changes made to the FRCP in 2000. Additionally, the FDIC proposes to provide shortened references to ''administrative law judge'' (ALJ) and ''electronically stored information'' (ESI) because the shortened terms are well understood and the repetition of the shortened terms reduces the length of the regulations. These changes are proposed throughout the Local Rules and will not be discussed further in the individual sections below.

Section 308.102 Authority of Board of Directors and Administrative Officer

Section 308.102 contains minor changes to reflect the current internal organization of the FDIC.

Section 308.103 Assignment to Administrative Law Judge (ALJ)

Section 308.103 is being renamed to better reflect additional changes to how matters are currently assigned to an ALJ.

Section 308.104 Filings With the Board of Directors

Section 308.104 provides an electronic mail address for the FDIC's Administrative Officer, who is the official custodian of the record for administrative proceedings, and with whom all parties must file an electronic copy of all pleadings.

Section 308.107 Supplemental Discovery Rules

Section 308.107 is being renamed to reflect the updates to the FDIC's discovery processes to include modern discovery practices and procedural orders issued by the ALJs and to allow for limited depositions.

Section 308.107(a) Scope of Discovery

Section 308.107(a) is a new section that describes the permitted scope of discovery. The FDIC proposes to adopt the concept of ''proportionality'' in discovery production and set forth limits on ESI, both of which were added to the FRCP in 2015. Because the FDIC maintains the data collected from failed insured depository institutions in its

[46] *See* 12 CFR part 265.6.

role as Receiver, it has custody and control of voluminous amounts of failed bank data. Generally, the vast majority of this information would not be materially relevant to an administrative enforcement proceeding. Instituting a requirement that discovery be proportional will decrease unnecessary expenditures and promote a more efficient process for all parties to the administrative proceedings.

Section 308.107(b) Joint Discovery Plan

Section 308.107(b) sets forth the FDIC's proposal to add a Joint Discovery Plan to the discovery process. Currently, the ALJs routinely require both parties agree to an ESI Plan that governs the production of ESI. The FDIC proposes to combine the current practice with certain provisions similar to the FRCP Rule 26(f)(3). This new section would require the parties to meet and confer at the beginning of the discovery process to facilitate communication and cooperation on discovery matters. The purpose is to develop a Joint Discovery Plan that meets the parties' needs, decreases discovery disputes, encourages collegiality, and conserves resources. If necessary, this section provides a mechanism for resolution of discovery disputes.

Section 308.107(c) Document and Electronically Stored Information (ESI) Discovery

Section 308.107(c) was created to integrate the proposed provisions of the Local Rules with the Uniform Rules. Additionally, the provisions related to the production of documents now include modern concepts from the FRCP related to the production of ESI.

Section 308.107(d) Expert Witness Disclosures

Section 308.107(d) is a new section mirroring the 1993 updates to the FRCP 26(a)(2) that describe the proposed disclosures for expert witness testimony. The vast majority of modern administrative enforcement proceedings involve expert testimony; however, there are currently no rules governing how expert testimony is fairly and properly disclosed to the opposing party. As a result, the ALJs began issuing orders, on a case-by-case basis, requiring disclosure of expert testimony similar to the requirements set forth in FRCP 26(a)(2). The FDIC proposes to incorporate these expert witness disclosure requirements into the written rules to improve transparency and promote fairness. Similar to the 1993 and 2010 revisions to the FRCP 26(a)(2), § 308.107(d) provides two categories of expert witnesses with two different levels of required disclosures. Section 308.107(d)(2)(i) is intended for professional experts who generally do not work for a party but are specifically engaged for the purpose of providing expert testimony. Section 308.107(d)(2)(ii) is intended to cover those individuals whose expertise comes from the person's regular course of business such as, a commissioned bank examiner or bank personnel, who will be offered as an expert witness at the hearing. Consistent with the FRCP 26(a)(2), these rules are intended as disclosure requirements. Similar to the Federal rules of evidence and case law, these documents are prior written disclosures of future opinion testimony to be offered at the hearing to assist the ALJ. Neither category of written disclosures is intended to serve as substitutes for expert witness testimony at the hearing. Moreover, occasionally the ALJ orders mandated more disclosure from expert witnesses than the FRCP 26(a)(2) required. The FDIC believes that the FRCP 26(a)(2) created a two-tier system for disclosure that represents a legitimate and reasonable divide between the two categories of expert witnesses. Those individuals who are not in the business of providing professional expert testimony do not need to provide a heightened level of disclosures. As the Federal Rules Committee notes stated in the 2010 Amendments ''[c]ourts must take care against requiring undue detail, keeping in mind that these witnesses have not been specially retained and may not be as responsive to counsel as those who have.''

Section 308.107(e) Depositions

Section 308.107(e) is a new section that provides for the possibility of depositions during the discovery process in cases where such discovery is appropriate. The FDIC does not currently allow for deposition discovery in its enforcement matters, and parties are not legally entitled to take depositions in administrative actions under the Administrative Procedure Act.[47] Nonetheless, the FDIC has observed that the OCC, the Board, and other Federal agencies have voluntarily provided respondents in administrative proceedings with an opportunity for limited depositions in appropriate cases.[48] For these reasons, the FDIC proposes adding the option for the parties to pursue limited depositions of individuals with direct knowledge of facts relevant to the proceeding and individuals designated as an expert in cases where such discovery is appropriate and proportional to the needs of the case.

Under § 308.107(e)(1), the FDIC is proposing limitations to ensure that any depositions that do take place do not cause undue delay or burden. Under the FDIC's proposed rules, any deposition discovery would be limited by the requirement that discovery be proportional to the needs of the case, as required for all discovery under § 308.107(a). Additionally, depositions would only be allowed where the information sought from the depositions cannot be obtained from another source that is more convenient, less burdensome, or less expensive. Finally, the FDIC is proposing that, in the absence of extraordinary circumstances, depositions will be limited to individuals expected to testify at the hearing. The FDIC believes that the limitations proposed strike an appropriate balance between the potential for a demonstrable need for depositions in some cases and the interest in resolving cases efficiently.

The remainder of the § 308.107(e) sets forth various procedural rules that will apply to any deposition discovery, including notices, transcription, timing and duration of depositions. These provisions are largely adapted from procedures under the FRCP and those used by the OCC and the Board.

Section 308.107(f) Discovery Motions

Section 308.107(f) is a new section aimed at clarifying certain matters related to discovery motions. Section 308.107(f)(1) clarifies that the ALJ must limit inappropriate discovery either on motion, or on their own initiative. Section 308.107(f)(2) provides that parties may move to terminate depositions that are being conducted in bad faith or an inappropriate manner. Section 308.107(f)(3) clarifies that the provisions of § 308.25(f), governing motions to compel document discovery, apply equally to all motions to compel discovery.

[47] *See, e.g., Starr Comm'r of Internal Revenue,* 226 F.2d 721,722 (7th Cir. 1955), *cert. denied,* 350 U.S. 993 (1955); *McClelland* v. *Andrus,* 606 F.2d 1278, 1285 (D.C. Cir. 1979); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enforcement Administration,* 881 F.3d 823, 834 (C.A.11, 2018).

[48] Until recently, the rules of practice governing administrative actions before the Securities and Exchange Commission (SEC) were similar to those in the Uniform Rules, allowing for the taking of depositions only upon a showing that a deponent will be unlikely to be able to attend and testify at a hearing. In 2016, the SEC amended its rules of practice to remove this restriction and to allow parties with broader, albeit still limited, access to depositions in administrative proceedings. 81 FR 50211 (July 13, 2016).

IV. Discussion of OCC Changes to Part 4, Service of Process

The OCC proposes to amend subpart A of 12 CFR part 4, Organization and Functions, to add a new § 4.8 that would address service of process. This new provision would put private parties on notice of the established process they should use in serving the OCC, Comptroller, or officers or employees of the OCC in a private action. Codifying this process in the rule should help avoid possible confusion as to where and how private parties serve the OCC, Comptroller, or officers or employees of the OCC, which should ensure that the OCC has adequate notice to respond to a complaint or other filing. The proposal provides that ''officers'' are officials who are not employees of the OCC, such as an ALJ.

Specifically, proposed § 4.8(a) provides that paragraphs (b), (c), and (d) of this section apply to service of process upon the OCC, the Comptroller acting in his official capacity, officers or employees of the OCC who are sued in their official capacity, and officers or employees of the OCC who are sued in an individual capacity for an act or omission occurring in connection with duties performed on the behalf of the OCC. Proposed § 4.8(b) provides that service of process for actions in Federal courts should be made upon the OCC, the Comptroller, or officers or employees of the OCC by serving the United States under the procedures set forth in the Federal Rules of Civil Procedure governing the service of process upon the United States and its agencies, corporations, officers, or employees.[49] Proposed § 4.8(c) provides that service of process for actions brought in State courts should be made upon the OCC, the Comptroller, or officers or employees of the OCC by sending copies of the summons and complaint by registered or certified mail to the Chief Counsel, Office of the Comptroller of the Currency, Washington, DC 20219. Proposed § 4.8(c) also encourages parties to provide copies of the summons and complaint to the appropriate United States Attorney in accordance with the procedures set forth in the Federal Rules of Civil Procedure governing the service of process upon the United States and its agencies, corporations, officers, or employees.[50] Proposed § 4.8(d) provides that only the Washington, DC headquarters office of the OCC is authorized to accept service of a summons or complaint and that the OCC, the Comptroller, or officers or employees of the OCC should be served with a copy of the summons or complaint at the Washington, DC headquarters office in accordance with § 4.8(b) or (c). This provision would clarify that a summons or complaint should not be sent to another office of the OCC.

Finally, proposed § 4.8(e) provides that the OCC is not an agent for service of process upon a national bank, Federal savings association, or Federal branch or agency of a foreign bank. Instead, it directs parties to serve a summons or complaint upon the institution in accordance with the laws and procedures for the court in which the action has been filed. The OCC intends this provision to prevent further instances of parties attempting to serve a national bank through the OCC.

V. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA)[51] requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less)[52] or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 1,122 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks, collectively banks), of which 669 are small entities.[53] The rule could impact any OCC-supervised institution, including any of these small entities. However, it is unlikely that the proposed rule, if implemented, would impact more than a *de minimis* number of OCC-supervised institutions in any given year.[54] Furthermore, the proposed rule would facilitate the orderly determination of administrative proceedings and its proposed changes are primarily updates and clarifications of administrative procedure and in general reflect current practices. Therefore, the OCC concludes that the proposed rule would not impose more than minimal costs on institutions that may be impacted. Because the OCC estimates that expenditures, if any, associated with the proposed rule would be *de minimis,* the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, an IRFA is not required.

Board: The RFA generally requires an agency to consider the impact of the agency's proposed rules on small entities and to conduct an IRFA of any rule subject to notice-and-comment rulemaking requirements, unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[55] An IRFA must contain (1) a description of the reasons why action by agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

As stated in this notice of proposed rulemaking, the Agencies are proposing amendments to the Uniform Rules and to their local rules to recognize the use of electronic communications in all aspects of administrative hearings and to otherwise increase the efficiency and fairness of administrative adjudications. In addition, the Board is proposing to establish a single set of rules governing all formal investigations. The proposed rules only establish procedures

[49] *See* Rule 4(i) of the Federal Rules of Civil Procedure.

[50] *Id.*

[51] 5 U.S.C. 601 *et seq.*

[52] *See* the SBA's size thresholds for commercial banks and savings institutions, and trust companies, 13 CFR 121.201.

[53] Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2020, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the SBA's *Table of Size Standards.*

[54] Based on activity during the past five years, approximately 23 banks (an average of less than 5 per year) would be impacted by the proposed changes to part 19 subparts A, B, C, I, L, and M. Furthermore, during the past five years the OCC has not received any Equal Access to Justice Act (EAJA) applications from a bank for the payment of attorney's fees.

[55] 5 U.S.C. 601–612.

governing Board formal investigations and adjudicatory proceedings. The proposed rules would not impose any requirement on regulated entities, and regulated entities would not need to take any action in response to the proposed rules. As such, the proposed rules will not have a significant economic impact on a substantial number of small entities. The proposed rules will not duplicate, overlap with, or conflict with other Federal rules, as they would only apply to Board formal investigations and administrative adjudications. Finally, the Board believes there are no significant alternatives to the proposed rules. The Board welcomes comments on this analysis.

FDIC: The RFA requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[56] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[57] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

As of the quarter ending March 31, 2021, the FDIC supervised 3,215 depository institutions,[58] of which 2,333 were considered small for the purposes of the RFA.[59] As previously discussed, the Agencies are proposing changes to the Uniform Rules to recognize the use of electronic communications in all aspects of administrative hearings and to otherwise increase the efficiency and fairness of administrative adjudications. The FDIC is also proposing to modify the Local Rules of administrative practice and procedure. If adopted, the proposed amendments would apply to administrative proceedings held by the FDIC and would not impose any requirement on regulated entities. Further, the FDIC typically brings less than five formal administrative proceedings annually. Finally, the proposed amendments are primarily updates and clarifications of administrative procedure and impose no significant additional burdens on small entities. Therefore, the FDIC concludes that the proposed rule will not have a significant impact on a substantial number of small entities. For the reasons described above and pursuant to 5 U.S.C. 605(b), the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

NCUA: The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include Federally insured credit unions with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The proposed rule would amend the Uniform Rules to recognize the use of electronic communications in all aspects of administrative hearings and to otherwise increase the efficiency and fairness of administrative adjudications. The proposed changes consist of updates and clarifications of administrative procedure and impose no significant new burdens on credit unions, parties to administrative actions, or counsel. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[60] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule. The Board reviewed the rule under the authority delegated to the Board by OMB.

C. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995.[61] Under this analysis, the OCC considered whether the proposal includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($158 million as adjusted for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

As discussed above, the OCC estimates that expenditures, if any, associated with the proposed rule would be *de minimis.* Therefore, the OCC concludes that the proposed rule would not result in an expenditure of $158 million or more annually by State, local, and tribal governments, or by the private sector. Because the proposed rule does not trigger the UMRA cost threshold, the OCC has not prepared the written statement described in section 202 of the UMRA.

D. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[62] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the OCC, Board, and FDIC must consider, consistent with principles of safety and

[56] 5 U.S.C. 601, *et seq.*

[57] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[58] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[59] FDIC Call Report data, March 31, 2021.

[60] 44 U.S.C. 3501–3521.

[61] 2 U.S.C. 1532.

[62] 12 U.S.C. 4802(a).

soundness and the public interest: (1) Any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions; and (2) the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[63] The Agencies invite comments that will further inform their consideration of RCDRIA.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[64] requires the OCC, Board, and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The Agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- Have the Agencies organized the material to inform your needs? If not, how could the Agencies present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Agencies incorporate to make the proposed rule easier to understand?

F. NCUA Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

G. NCUA Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[65]

Common Text of Proposed Uniform Rules (All Agencies)

Subpart A—Uniform Rules of Practice and Procedure

Sec.

____.1 [Reserved]
____.2 Rules of construction.
____.3 [Reserved]
____.4 Authority of the [Agency Head].
____.5 Authority of the administrative law judge.
____.6 Appearance and practice in adjudicatory proceedings.
____.7 Good faith certification.
____.8 Conflicts of interest.
____.9 *Ex parte* communications.
____.10 Filing of papers.
____.11 Service of papers.
____.12 Construction of time limits.
____.13 Change of time limits.
____.14 Witness fees and expenses.
____.15 Opportunity for informal settlement.
____.16 [AGENCY]'s right to conduct examination.
____.17 Collateral attacks on adjudicatory proceeding.
____.18 Commencement of proceeding and contents of notice.
____.19 Answer.
____.20 Amended pleadings.
____.21 Failure to appear.
____.22 Consolidation and severance of actions.
____.23 Motions.
____.24 Scope of document discovery.
____.25 Request for document discovery from parties.
____.26 Document subpoenas to nonparties.
____.27 Deposition of witness unavailable for hearing.
____.28 Interlocutory review.
____.29 Summary disposition.
____.30 Partial summary disposition.
____.31 Scheduling and prehearing conferences.
____.32 Prehearing submissions.
____.33 Public hearings.
____.34 Hearing subpoenas.
____.35 Conduct of hearings.
____.36 Evidence.
____.37 Post-hearing filings.
____.38 Recommended decision and filing of record.
____.39 Exceptions to recommended decision.
____.40 Review by the [Agency Head].
____.41 Stays pending judicial review.

Subpart A—Uniform Rules of Practice and Procedure

§ ____.1 [Reserved]

§ ____.2 Rules of construction.

For purposes of this part:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ ____.3 [Reserved]

§ ____.4 Authority of the [Agency Head].

The [Agency Head] may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the ALJ.

§ ____.5 Authority of the administrative law judge (ALJ).

(a) *General rule.* All proceedings governed by this part must be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The ALJ has all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The ALJ has all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas *duces tecum,* protective orders, and other orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § ____.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory

[63] 12 U.S.C. 4802.

[64] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

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

proceeding, provided that only the [Agency Head] has the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the [Agency Head] a recommended decision as provided herein;

(9) To recuse oneself by motion made by a party or on the ALJ's own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of an ALJ.

§ ____.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the [AGENCY] or an ALJ*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the [AGENCY] if such attorney is not currently suspended or debarred from practice before the [AGENCY].

(2) *By non-attorneys.* An individual may appear on the individual's own behalf.

(3) *Notice of appearance.* (i) Any individual acting on the individual's own behalf or as counsel on behalf of a party, including the [Agency Head], must file a notice of appearance with OFIA at or before the time that the individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. The notice of appearance must include:

(A) A written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (2) of this section and is authorized to represent the particular party; and

(B) A written acknowledgement that the individual has reviewed and will comply with the Uniform Rules and Local Rules in [agency specific reference].

(ii) By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel agrees and represents that the counsel is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, the counsel will, if required by the ALJ, continue to accept service until new counsel has filed a notice of appearance or until the represented party indicates that the party will proceed on a *pro se* basis.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ ____.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice must be signed by at least one counsel of record in the counsel's individual name and must state that counsel's mailing address, electronic mail address, and telephone number. A party who acts as the party's own counsel must sign that person's individual name and state that person's mailing address, electronic mail address, and telephone number on every filing or submission of record. Electronic signatures may be used to satisfy the signature requirements of this section.

(b) *Effect of signature.* (1) The signature of counsel or a party will constitute a certification: The counsel or party has read the filing or submission of record; to the best of the counsel's or party's knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the ALJ will strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of the counsel's or party's knowledge, information, and belief formed after reasonable inquiry, the counsel's or party's statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ ____.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person may appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The ALJ may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § ____.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ ____.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the [AGENCY] (including such person's counsel); and

(ii) The ALJ handling that proceeding, the [Agency Head], or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the [Agency Head] until the date that the [Agency Head] issues a final decision pursuant to § ____.40(c):

(1) An interested person outside the [AGENCY] must not make or knowingly cause to be made an *ex parte* communication to the [Agency Head], the ALJ, or a decisional employee; and

(2) The [Agency Head], ALJ, or decisional employee may not make or knowingly cause to be made to any interested person outside the [AGENCY] any *ex parte* communication.

(c) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by the ALJ, the [Agency Head] or any other person identified in paragraph (a) of this section, that person will cause all such written communications (or, if the

communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding may, within ten days of service of the *ex parte* communication, file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The ALJ or the [Agency Head] then determines whether any action should be taken concerning the *ex parte* communication in accordance with paragraph (d) of this section.

(d) *Sanctions.* Any party or counsel to a party who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the [Agency Head] or the ALJ including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

(e) *Separation of functions*—(1) *In general.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the ALJ may not:

(i) Consult a person or party on a fact in issue unless on notice and opportunity for all parties to participate; or

(ii) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the [AGENCY].

(2) *Decision process.* An employee or agent engaged in the performance of investigative or prosecuting functions for the [AGENCY] in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § ____.40, except as witness or counsel in administrative or judicial proceedings.

§ ____.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ ____.25 and ____.26, must be filed with OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the [Agency Head] or the ALJ, filing may be accomplished by:

(1) Electronic mail or other electronic means designated by the [Agency Head] or the ALJ;

(2) Personal service;

(3) Delivering the papers to a same day courier service or overnight delivery service; or

(4) Mailing the papers by first class, registered, or certified mail.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, mailing address, electronic mail address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on an 8½ × 11 inch page and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § ____.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the [AGENCY] and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

§ ____.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers must serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party must use one of the following methods of service:

(1) Electronic mail or other electronic means;

(2) Personal service;

(3) Delivering the papers by same day courier service or overnight delivery service; or

(4) Mailing the papers by first class, registered, or certified mail.

(c) *By the [Agency Head] or the ALJ.* (1) All papers required to be served by the [Agency Head] or the ALJ upon a party who has appeared in the proceeding in accordance with § ____.6 will be served by electronic mail or other electronic means designated by the [Agency Head] or ALJ.

(2) If a respondent has not appeared in the proceeding in accordance with § ____.6, the [Agency Head] or the ALJ will serve the respondent by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the respondent;

(iv) By registered or certified mail, delivery by a same day courier service, or by an overnight delivery service to the respondent's last known mailing address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to an individual a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail, delivery by a same day courier service, or by an overnight delivery service to the person's last known mailing address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service must be made on at least one branch or agency so involved.

§ ____.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten

days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of transmission by electronic mail or other electronic means, upon transmittal by the serving party;

(ii) In the case of overnight delivery service or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of personal service or same day courier delivery, upon actual service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the [Agency Head] or ALJ in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by electronic mail or other electronic means or by same day courier delivery, add one calendar day to the prescribed period;

(2) If service is made by overnight delivery service, add two calendar days to the prescribed period; or

(3) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period.

§ ____.13 Change of time limits.

Except as otherwise provided by law, the ALJ may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the [Agency Head] pursuant to § ____.38, the [Agency Head] may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party after notice and opportunity to respond is afforded all non-moving parties or on the [Agency Head]'s or the ALJ's own motion.

§ ____.14 Witness fees and expenses.

(a) *In general.* A witness, including an expert witness, who testifies at a deposition or hearing will be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, except as provided in paragraph (b) and unless otherwise waived.

(b) *Exception for testimony by a party.* In the case of testimony by a party, no witness fees or mileage need to be paid. The [AGENCY] will not be required to pay any fees to, or expenses of, any witness not subpoenaed by the [AGENCY].

(c) *Timing of payment.* Fees and mileage in accordance with this paragraph must be paid in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the [AGENCY] is the party requesting the subpoena.

§ ____.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. Any such offer or proposal may only be made to Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ ____.16 [AGENCY]'s right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the [AGENCY] to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the [AGENCY] to conduct or continue any form of investigation authorized by law.

§ ____.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding will continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart will be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ ____.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), a proceeding governed by this subpart is commenced by issuance of a notice by the [Agency Head].

(ii) The notice must be served by Enforcement Counsel upon the respondent and given to any other appropriate financial institution supervisory authority where required by law. Enforcement Counsel may serve the notice upon counsel for the respondent, provided that Enforcement Counsel has confirmed that counsel represents the respondent in the matter and will accept service of the notice on behalf of the respondent.

(iii) Enforcement Counsel must file the notice with OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the [Agency Head].

(b) *Contents of notice.* Notice pleading applies. The notice must provide:

(1) The legal authority for the proceeding and for the [AGENCY]'s jurisdiction over the proceeding;

(2) Matters of fact or law showing that the [AGENCY] is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing must be filed with OFIA.

§ ____.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent must file an answer as designated in the notice. In a civil money penalty proceeding, respondent must also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the respondent lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief, or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the ALJ will file with the [Agency Head] a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the [Agency Head] based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order of the [Agency Head] without further action by the ALJ.

§ ____.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the [Agency Head] or ALJ orders otherwise for good cause.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the ALJ may admit the evidence when admission is likely to assist in adjudicating the merits of the action and the objecting party fails to satisfy the ALJ that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The ALJ may grant a continuance to enable the objecting party to meet such evidence.

§ ____.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the ALJ will file with the [Agency Head] a recommended decision containing the findings and the relief sought in the notice.

§ ____.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the ALJ's own motion, the ALJ may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence, or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The ALJ may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the ALJ finds:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ ____.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the ALJ. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the ALJ directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the ALJ, except that following the filing of the recommended decision, motions must be filed with the [Agency Head].

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the ALJ or the [Agency Head], any party may file a written response to a motion. The ALJ will not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ ____.29 and ____.30.

§ ____.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Subject to the limitations set out in paragraphs (b), (c), and (d) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term *documents* includes writings, drawings, graphs, charts, photographs, recordings, electronically stored information, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party, into a reasonably usable form.

(2) Discovery by use of deposition is governed by [agency specific reference] of this part.

(3) Discovery by use of either interrogatories or requests for admission is not permitted.

(4) Any request to produce documents that calls for irrelevant material; or that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, or the time provided to respond in the request is inadequate.

(b) *Relevance.* A party may obtain document discovery regarding any non-privileged matter that has material relevance to the merits of the pending action.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, attorney work-product doctrine, bank examination privilege, law enforcement privilege, any

government's or government agency's deliberative process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All document discovery, including all responses to discovery requests, must be completed by the date set by the ALJ and no later than 30 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit are permitted, unless the ALJ finds on the record that good cause exists for waiving the requirements of this paragraph.

§ ____.25 Request for document discovery from parties.

(a) *Document requests.* (1) Any party may serve on any other party a request to produce and permit the requesting party or its representative to inspect or copy any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. In the case of a request for inspection, the responding party may produce copies of documents or of electronically stored information instead of permitting inspection.

(2) The request:

(i) Must describe with reasonable particularity each item or category of items to be inspected or produced; and

(ii) Must specify a reasonable time, place, and manner for the inspection or production.

(b) *Production or copying*—(1) *General.* Unless otherwise specified by the ALJ or agreed upon by the parties, the producing party must produce copies of documents as they are kept in the usual course of business or organized to correspond to the categories of the request, and electronically stored information must be produced in a form in which it is ordinarily maintained or in a reasonably usable form.

(2) *Costs.* The producing party must pay its own costs to respond to a discovery request, unless otherwise agreed by the parties.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within 20 days of being served with such request, file a motion in accordance with the provisions of § ____.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to must be specified. Any objections not made in accordance with this paragraph and § ____.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within ten days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, the producing party must reasonably identify all documents withheld on the grounds of privilege and must produce a statement of the basis for the assertion of privilege. When similar documents that are protected by attorney-client privilege, attorney work-product doctrine, bank examination privilege, law enforcement privilege, any government's or government agency's deliberative process privilege, or any other privileges of the Constitution, any applicable act of Congress, or the principles of common law, or are voluminous, these documents may be identified by category instead of by individual document. The ALJ retains discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § ____.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the document request may file a written response to a motion to compel within ten days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the ALJ will rule promptly on all motions filed pursuant to this section. If the ALJ determines that a discovery request, or any of its terms, calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, the ALJ may deny or modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production is not a basis for staying or continuing the proceeding, unless otherwise ordered by the ALJ. Notwithstanding any other provision in this part, the ALJ may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the ALJ its intention to file a timely motion for interlocutory review of the ALJ's order to produce the documents, and until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the ALJ issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena will not in any manner limit the sanctions that may be imposed by the ALJ against a party who fails to produce subpoenaed documents.

§ ____.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the ALJ for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party must specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party may apply for a document subpoena under this section only within the time period during which such party could serve a discovery request under § ____.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The ALJ will promptly issue any document subpoena requested pursuant to this section. If the ALJ determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, the ALJ may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena with the ALJ. The motion must be accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § ____.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the ALJ, which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the ALJ has not quashed or modified. A party's right to seek court enforcement of a document subpoena will in no way limit the sanctions that may be imposed by the ALJ on a party who induces a failure to comply with subpoenas issued under this section.

§ ____.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness's testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the ALJ for the issuance of a subpoena, including a subpoena *duces tecum,* requiring the attendance of the witness at a deposition. The ALJ may issue a deposition subpoena under this section upon showing:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time, manner, and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment, by remote means, or such other convenient place or manner, as the ALJ fixes.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the ALJ requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the ALJ orders otherwise, no deposition under this section may be taken on fewer than ten days' notice to the witness and all parties.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the ALJ to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn. By stipulation of the parties or by order of the ALJ, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the deponent. Each party must have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the ALJ for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition must certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section, or fails to comply with any order of the ALJ, which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena with which the subpoenaed party has not complied. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the ALJ on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ ____.28 Interlocutory review.

(a) *General rule.* The [Agency Head] may review a ruling of the ALJ prior to the certification of the record to the [Agency Head] only in accordance with the procedures set forth in this section and § ____.23.

(b) *Scope of review.* The [Agency Head] may exercise interlocutory review of a ruling of the ALJ if the [Agency Head] finds:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review must be filed by a party with the ALJ within ten days of the ruling and must otherwise comply with § ____.23. Any party may file a response to a request for interlocutory review in accordance with § ____.23(d). Upon the expiration of the time for filing all responses, the ALJ will refer the matter to the [Agency Head] for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the [Agency Head] under this section suspends or stays the proceeding unless otherwise ordered by the ALJ or the [Agency Head].

§ ____.29 Summary disposition.

(a) *In general.* The ALJ will recommend that the [Agency Head] issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that the party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the ALJ, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends supports the moving party's position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which the opposing party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the written request of any party or on the ALJ's own motion, the ALJ may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the ALJ will determine whether the moving party is entitled to summary disposition. If the ALJ determines that summary disposition is warranted, the ALJ will submit a recommended decision to that effect to the [Agency Head]. If the ALJ finds that no party is entitled to summary disposition, the ALJ will make a ruling denying the motion.

§ ____.30 Partial summary disposition.

If the ALJ determines that a party is entitled to summary disposition as to certain claims only, the ALJ will defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the ALJ has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ ____.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding, the ALJ will direct counsel for all parties to meet with the ALJ at a specified time and manner prior to the hearing for the purpose of scheduling the course and conduct of the proceeding. This meeting is called a ''scheduling conference.'' The schedule for the identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The ALJ may, in addition to the scheduling conference, on the ALJ's own motion or at the request of any party, direct counsel for the parties to confer with the ALJ at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The ALJ may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at the party's expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the ALJ will serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ ____.32 Prehearing submissions.

(a) *Party prehearing* submissions. Within the time set by the ALJ, but in no case later than 20 days before the start of the hearing, each party must file with the ALJ and serve on every other party:

(1) A prehearing statement that states:

(i) The party's position with respect to the legal issues presented,

(ii) The statutory and case law upon which the party relies, and

(iii) The facts that the party expects to prove at the hearing;

(2) A final list of witnesses to be called to testify at the hearing, including the name, mailing address, and electronic mail address of each witness and a short summary of the expected testimony of each witness, which need not identify the exhibits to be relied upon by each witness at the hearing;

(3) A list of the exhibits expected to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ ____.33 Public hearings.

(a) *General rule.* All hearings must be open to the public, unless the [Agency Head], in the [Agency Head]'s discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the [Agency Head] a request for a private hearing, and any party may file a reply to such a request. A party must serve on the ALJ a copy of any request or reply the party files with the [Agency Head]. The form of,

and procedure for, these requests and replies are governed by § ____.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in Enforcement Counsel's discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The ALJ will take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ ____.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the ALJ may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at the hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application must serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the ALJ.

(3) The ALJ will promptly issue any hearing subpoena requested pursuant to this section. If the ALJ determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, the ALJ may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart. Upon issuance by the ALJ, the party making the application must serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify the subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the ALJ which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to____.26(c).

§ ____.35 Conduct of hearings.

(a) *General rules.* (1) Hearings must be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel will present its case-in-chief first, unless otherwise ordered by the ALJ, or unless otherwise expressly specified by law or regulation. Enforcement Counsel will be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree, the ALJ will fix the order.

(3) *Examination of witnesses.* Only one counsel for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the ALJ may permit more than one counsel for the party presenting the witness to conduct the examination. A party may have one counsel conduct the direct examination and another counsel conduct re-direct examination of a witness, or may have one counsel conduct the cross examination of a witness and another counsel conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the ALJ directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The reporter will make the transcript available to any party upon payment by that party to the reporter of the cost of the transcript. The ALJ may order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the ALJ's own motion.

(c) *Electronic presentation.* Based on the circumstances of each hearing, the ALJ may direct the use of, or any party may use, an electronic presentation during the hearing. If the ALJ requires an electronic presentation during the hearing, each party will be responsible for their own presentation and related costs, unless the parties agree to another manner in which to allocate presentation responsibilities and costs.

§ ____.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the ALJ or the [Agency Head] must appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, must be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institutions regulatory agency or by a State regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the ALJ's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what the examining counsel expected to prove by the expected testimony of the witness either by representation of counsel or by direct questioning of the witness.

(3) The ALJ will retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the [Agency Head].

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the ALJ may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ ____.37 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the ALJ will serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the ALJ proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of this notice by the ALJ or within such longer period as may be ordered by the ALJ.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the ALJ any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The ALJ will not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ ____.38 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § ____.37(b), the ALJ will file with and certify to the [Agency Head], for decision, the record of the proceeding. The record must include the ALJ's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The ALJ will serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the ALJ files with and certifies to the [Agency Head] for final determination the record of the proceeding, the ALJ will furnish to the [Agency Head] a certified index of the entire record of the proceeding. The certified index must include, at a minimum, an entry for each paper, document or motion filed with the ALJ in the proceeding, the date of the filing, and the identity of the filer. The certified index must also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ ____.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § ____.38, a party may file with the [Agency Head] written exceptions to the ALJ's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the ALJ to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the [Agency Head] if the party taking exception had an opportunity to raise the same objection, issue, or argument before the ALJ and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the ALJ's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the ALJ's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ ____.40 Review by the [Agency Head].

(a) *Notice of submission to the [Agency Head].* When the [Agency Head] determines that the record in the proceeding is complete, the [Agency Head] will serve notice upon the parties that the proceeding has been submitted to the [Agency Head] for final decision.

(b) *Oral argument before the [Agency Head].* Upon the initiative of the [Agency Head] or on the written request

of any party filed with the [Agency Head] within the time for filing exceptions, the [Agency Head] may order and hear oral argument on the recommended findings, conclusions, decision, and order of the ALJ. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the [Agency Head]'s final decision. Oral argument before the [Agency Head] must be on the record.

(c) *[Agency Head]'s final decision.* (1) Decisional employees may advise and assist the [Agency Head] in the consideration and disposition of the case. The final decision of the [Agency Head] will be based upon review of the entire record of the proceeding, except that the [Agency Head] may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The [Agency Head] will render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the [Agency Head] orders that the action or any aspect thereof be remanded to the ALJ for further proceedings. Copies of the final decision and order of the [Agency Head] will be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the [Agency Head] or required by statute, upon any appropriate State or Federal supervisory authority.

§ ____.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the [Agency Head] may not, unless specifically ordered by the [Agency Head] or a reviewing court, operate as a stay of any order issued by the [Agency Head]. The [Agency Head] may, in the [Agency Head's discretion], and on such terms as the [Agency Head] finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for review of that order.

End of Common Rule Text

Proposed Adoption of the Uniform Rules

The agency specific adoptions of the amendments to the Common Rule text which appears at the end of the common preamble, as well as other amendments to agency rules, appear below.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, banking, Federal Reserve System, Investments, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Service of process, Women.

12 CFR Part 6

Federal Reserve System, Federal savings associations, National banks, Penalties.

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Federal savings associations, Investigations, National banks, Penalties, Securities.

12 CFR Part 108

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 109

Administrative practice and procedure, Penalties.

12 CFR Part 112

Administrative practice and procedure.

12 CFR Part 165

Administrative practice and procedure, Savings associations.

12 CFR Part 238

Administrative practice and procedure, Savings and loan holding companies, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Investigations, Securities.

12 CFR Part 263

Administrative practice and procedure, Investigations, Federal Reserve System.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties, Savings associations.

12 CFR Part 747

Administrative practice and procedure, Share insurance, Claims, Credit unions, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 93a, the OCC proposes to amend 12 CFR chapter I as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

§ 3.405 [Amended]

■ 2. Section 3.405 is amended by removing the phrase ''(12 CFR 19.0 through 19.21 for national banks and 12 CFR part 109 for Federal savings associations)'' and adding in its place the phrase ''(12 CFR part 19)''.

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 3. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93, 93(d), 93a, 164, 481, 504, 1464(w); 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108, 3110, 3909, and 4717; 15 U.S.C. 78*l*, 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330; and 42 U.S.C. 4012a.

■ 4. Add § 4.8 to subpart A to read as follows:

§ 4.8 Service of process upon the OCC or the Comptroller.

(a) *Scope.* Paragraphs (b), (c), and (d) of this section apply to service of process upon the OCC, the Comptroller acting in his official capacity, officers (officials who are not employees of the OCC, such as an ALJ) or employees of the OCC who are sued in their official capacity, and officers or employees of the OCC who are sued in an individual capacity for an act or omission occurring in connection with duties performed on the behalf of the OCC.

(b) *Actions in Federal courts.* Service of process for actions in Federal courts should be made upon the OCC, the Comptroller, or officers or employees of the OCC under the procedures set forth

in the Federal Rules of Civil Procedure governing the service of process upon the United States and its agencies, corporations, officers, or employees.

(c) *Actions in State courts.* Service of process for actions in State courts should be made upon the OCC, the Comptroller, or officers or employees of the OCC by sending copies of the summons and complaint by registered or certified mail, same day courier service, or overnight delivery service to the Chief Counsel, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. In these actions, parties also are encouraged to provide copies of the summons and complaint to the appropriate United States Attorney in accordance with the procedures set forth in Rule 4(i) of the Federal Rules of Civil Procedure.

(d) *Receipt of summons or complaint.* Only the Washington, DC headquarters office of the OCC is authorized to accept service of a summons or complaint. The OCC, the Comptroller, and officers or employees of the OCC should be served with a copy of the summons or complaint at the Washington, DC headquarters office in accordance with paragraph (b) or (c) of this section.

(e) *Service of process upon a national bank, Federal savings association, or Federal branch or agency of a foreign bank.* The OCC is not an agent for service of process upon a national bank, Federal savings association, or Federal branch or agency of a foreign bank. Parties seeking to serve a national bank, Federal savings association, or Federal branch or agency of a foreign bank must serve the summons or complaint upon the institution in accordance with the laws and procedures for the court in which the action has been filed.

PART 6—PROMPT CORRECTIVE ACTION

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

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

§ 6.3 [Amended]

■ 6. Section 6.3 is amended in paragraph (b)(3) by removing the phrase ''and with respect to national banks, subpart M of part 19 of this chapter, and with respect to Federal savings associations § 165.8 of this chapter'' and adding in its place the phrase ''and subpart M of part 19 of this chapter''.

§ 6.4 [Amended]

■ 7. Section 6.4 is amended in paragraphs (d)(1) and (2) by removing the phrase ''with respect to national banks and § 165.8 of this chapter with respect to Federal savings associations'' each time it appears.

§ 6.5 [Amended]

■ 8. Section 6.5 is amended in paragraphs (a)(1) and (2) and paragraph (b) by removing the phrase ''with respect to national banks, and §§ 6.4 and 165.8 of this chapter with respect to Federal savings associations'' each time it appears.

§ 6.6 [Amended]

■ 9. Section 6.6 is amended in paragraph (b) by removing the phrase ''with respect to national banks and subpart B of this part and § 165.9 of this chapter with respect to Federal savings associations''.

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 10. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93, 93a, 161, 164, 481, 504, 1462a, 1463(a), 1464; 1467(d), 1467a(r), 1817(j), 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108, 3110, 3349, 3909, 4717, and 5412(b)(2)(B); 15 U.S.C. 78*l,* 78o–4, 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, and 1639e; 28 U.S.C. 2461; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

Subpart A—Uniform Rules of Practice and Procedure

■ 11. Revise subpart A as set forth at the end of the common preamble.

■ 12. Section 19.1 is added to read as follows:

§ 19.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (''FDIA'') (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Office of the Comptroller of the Currency (''OCC'') should issue an order to approve or disapprove a person's proposed acquisition of an institution;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the OCC is the appropriate agency;

(e) Assessment of civil money penalties by the OCC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate agency for any violation of:

(1) Any provision of law referenced in 12 U.S.C. 93, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 93;

(2) Sections 22 and 23 of the Federal Reserve Act (''FRA''), or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(3) Section 106(b) of the Bank Holding Company Amendments of 1970, pursuant to 12 U.S.C. 1972(2)(F);

(4) Any provision of the Change in Bank Control Act of 1978 or any regulation or order issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Any provision of the International Lending Supervision Act of 1983 (''ILSA''), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 (''IBA''), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(7) Section 5211 of the Revised Statutes (12 U.S.C. 161), pursuant to 12 U.S.C. 164;

(8) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(9) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') (12 U.S.C. 3349), or any order or regulation issued thereunder;

(10) The terms of any final or temporary order issued under section 8 of the FDIA or any written agreement executed by the OCC or the former Office of Thrift Supervision (OTS), the terms of any condition imposed in writing by the OCC or the former OTS in connection with the grant of an application or request, certain unsafe or unsound practices, breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1818(i)(2);

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder;

(12) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(13) Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464(d), (s), and (v);

(14) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d); and

(15) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a(r);(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g));

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) for violations of the post-employment restrictions imposed by that section; and

(h) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

■ 13. Section 19.3 is added to read as follows:

§ 19.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary:

(a) *Administrative law judge (ALJ)* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Comptroller* means the Comptroller of the Currency or a person delegated to perform the functions of the Comptroller of the Currency.

(d) *Decisional employee* means any member of the Comptroller's or ALJ's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Comptroller or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(e) *Electronic signature* means electronically affixing the equivalent of a signature to an electronic document filed or transmitted electronically.

(f) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the OCC in an adjudicatory proceeding.

(g) *Final order* means an order issued by the Comptroller with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(h) Institution includes any national bank, Federal savings association, or Federal branch or agency of a foreign bank.

(i) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(j) *Local Rules* means those rules promulgated by the OCC in the subparts of this part excluding subpart A.

(k) *OCC* means the Office of the Comptroller of the Currency.

(l) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the OCC, the Board of Governors of the Federal Reserve System (''Board of Governors''), the Federal Deposit Insurance Corporation (''FDIC''), and the National Credit Union Administration (''NCUA'').

(m) *Party* means the OCC and any person named as a party in any notice.

(n) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (h) of this section.

(o) *Respondent* means any party other than the OCC.

(p) *Uniform Rules* means those rules in subpart A of this part that are common to the OCC, the Board of Governors, the FDIC, and the NCUA.

(q) *Violation* means any violation as that term is defined in section 3(v) of the FDIA (12 U.S.C. 1813(v).

Subpart B—Procedural Rules for OCC Adjudications

§ 19.100 [Amended]

■ 14. Section 19.100 is amended by:

■ a. Removing the phrase ''administrative law judge'' wherever it appears and adding in its place ''ALJ'';

■ b. Removing the phrase ''Hearing Clerk, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219'' and adding in its place the phrase ''OCC Hearing Clerk in a manner prescribed by § 19.10(b) and (c)'';

■ c. Removing the word ''and'' before ''any other papers required to be filed with the Comptroller'' in the second sentence; and

■ d. Adding before the period at the end of the second sentence the phrase ''; and any attachments or exhibits to such documents''.

■ 15. Section 19.101 is revised to read as follows:

§ 19.101 Delegation to OFIA.

Unless otherwise ordered by the Comptroller, an ALJ assigned to OFIA conducts administrative adjudications subject to subpart A of this part.

■ 16. Section 19.102 is added to read as follows:

§ 19.102 Civil money penalties.

A respondent must pay civil money penalties assessed pursuant to subpart A of this part within 60 days after the issuance of the notice of assessment unless the OCC requires a different time for payment. A respondent that has made a timely request for a hearing to challenge the assessment of the penalty is not required to pay the penalty until the OCC has issued a final order of assessment. In these instances, the respondent must pay the penalty within 60 days of service of the order unless the OCC requires a different time for payment.

Subpart C—Removals, Suspensions, and Prohibitions of an Institution-Affiliated Party When a Crime Is Charged or a Conviction Is Obtained

■ 17. The heading for subpart C is revised to read as set forth above.

■ 18. Section 19.110 is revised to read as follows:

§ 19.110 Scope and definitions.

(a) *Scope.* This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in the affairs of any depository institution pursuant to section 8(g) of the FDIA (12 U.S.C. 1818(g)) by a notice or order issued by the Comptroller.

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

(1) The term *petitioner* means an individual who has filed a petition for an informal hearing under this subpart.

(2) The term *depository institution* means any national bank, Federal savings association, or Federal branch or agency of a foreign bank.

(3) The term *OCC Supervisory Office* means the Senior Deputy Comptroller or Deputy Comptroller of the OCC department or office responsible for supervision of the depository institution or, in the case of an individual no longer affiliated with a particular depository institution, the Deputy Comptroller for Special Supervision.

■ 19. Section 19.111 is revised to read as follows:

§ 19.111 Suspension, removal, or prohibition of institution-affiliated party.

(a) *Issuance of notice or order.* The Comptroller may serve a notice of

suspension or prohibition or order of removal or prohibition pursuant to section 8(g) of the FDIA (12 U.S.C. 1818(g)) on an institution-affiliated party. The Comptroller will serve a copy of this notice or order on any depository institution that the subject of the notice or order is affiliated with at the time the OCC issues the notice or order. After service of the notice or order, the institution-affiliated party must immediately cease service to, or participation in the affairs of, that depository institution and, if so determined by the OCC, any other depository institution. The notice or order will indicate the basis for suspension, removal, or prohibition and will inform the institution-affiliated party of the right to request in writing, within 30 days from the date that the institution-affiliated party was served, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of any depository institution has not posed, does not pose, or is not likely to pose a threat to the interests of the depositors of, or has not threatened, does not threaten, or is not likely to threaten to impair public confidence in, any relevant depository institution. The Comptroller will serve the notice or order upon the institution-affiliated party and the related institution in the manner set forth in § 19.11(c).

(b) *Request for hearing*—(1) *Submission.* Unless instructed otherwise in writing by the Comptroller, an institution-affiliated party must send the written request for an informal hearing referenced in paragraph (a) of this section to the OCC Supervisory Office by certified mail, a same day courier service, an overnight delivery service, or by personal service with a signed receipt.

(2) *Content of request for a hearing.* The request filed under this section must state specifically the relief desired and the grounds on which that relief is based and must admit, deny, or state that the institution-affiliated party lacks sufficient information to admit or deny each allegation in the notice or order. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation denied; general denials are not permitted. When the institution-affiliated party denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation in the notice or order which is not denied is deemed admitted for purposes of the proceeding. The request must state with particularity how the institution-affiliated party intends to show that its continued service to or participation in the affairs of the institution would not pose a threat to the interests of the institution's depositors or impair public confidence in any institution.

(c) *Default.* If the institution-affiliated party fails to timely file a petition for a hearing pursuant to paragraph (b) of this section, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where oral argument has been waived pursuant to § 19.112(c) of this part, the notice will remain in effect until the information, indictment, or complaint is finally disposed of and the order will remain in effect until terminated by the OCC.

■ 20. Section 19.112 is revised to read as follows:

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the OCC Supervisory Office must notify the petitioner requesting the hearing and OCC Enforcement of the date, time, and place fixed for the hearing. The OCC will hold the hearing no later than 30 days from the date when the OCC receives the request for a hearing, unless the time is extended in response to a written request of the petitioner. The OCC Supervisory Office may extend the hearing date only for a specific period of time and must take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The OCC Supervisory Office must appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) may not have been involved in a prosecutorial or investigative role in the proceeding, a factually related proceeding, or the underlying enforcement action.

(c) *Waiver of oral hearing*—(1) *Petitioner.* When the petitioner requests a hearing, the petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions by serving on the OCC Supervisory Office and all parties a signed document waiving the statutory right to appear and make oral argument. The petitioner must present the written submissions to the presiding officer and serve the other parties not later than ten days prior to the date fixed for the hearing or within a shorter time period as the presiding officer may permit.

(2) *OCC.* The OCC may respond to the petitioner's submissions by presenting the presiding officer with a written response and by serving the other parties in the manner prescribed by § 19.11(c) not later than the date fixed for the hearing or within such other time period as the presiding officer may require.

(d) *Hearing procedures*—(1) *Conduct of hearing.* Hearings under this subpart are not subject to the provisions of subpart A of this part or the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer must determine all procedural issues that are governed by this subpart. The presiding officer also may permit witnesses, limit the number of witnesses, and impose time limitations as they deem reasonable. The informal hearing will not be governed by formal rules of evidence, including the Federal Rules of Evidence. The presiding officer must consider all oral presentations, when permitted, and all documents the presiding officer deems to be relevant and material to the proceeding and not unduly repetitious. The presiding officer may ask questions of any person participating in the hearing and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The OCC and the petitioner may present relevant written materials and oral argument at the hearing. The petitioner may appear at the hearing personally or through counsel. Except as permitted in paragraph (c) of this section, each party, including the OCC, must file a copy of any affidavit, memorandum, or other written material to be presented at the hearing with the presiding officer and must serve the other parties not later than ten days prior to the hearing or within such shorter time period as permitted by the presiding officer.

(ii) If the petitioner or the OCC desires to present oral testimony or witnesses at the hearing, they must file a written request with the presiding officer not later than ten days prior to the hearing, or within a shorter time period as required by the presiding officer. The written request must include the names of proposed witnesses, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. The presiding officer generally will not admit oral testimony or witnesses unless a specific and compelling need is demonstrated. Witnesses, if admitted, must be sworn. By stipulation of the parties or by order of the presiding officer, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the witness.

(iii) In deciding on any suspension or prohibition based on an indictment, information, or complaint, the presiding

officer may not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges that are outstanding. In deciding on any removal or prohibition with respect to a conviction or pre-trial diversion program, the presiding officer may not consider challenges to or efforts to impeach the validity of the conviction or the agreement to enter a pre-trial diversion program or other similar program. The presiding officer may consider facts in either situation, however, that show the nature of the events on which the criminal charges, conviction, or agreement to enter a pre-trial diversion program or other similar program was based.

(4) *Electronic presentation.* Based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If the presiding officer requires an electronic presentation during the hearing, each party will be responsible for their own presentation and related costs unless the parties agree to another manner by which to allocate presentation responsibilities and costs.

(5) *Record.* A transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the OCC to submit additional documents for the record. Thereafter, no further submissions may be accepted except for good cause shown.

■ 21. Section 19.113 is amended by:

■ a. Adding paragraph headings to paragraphs (a) and (b);

■ b. Adding a paragraph heading to, and revising the first sentence in, paragraph (c);

■ c. Adding a paragraph heading to, and adding the phrase ''or charges'' after the phrase ''or other disposition of the charge'' in, paragraph (d);

■ d. Adding a paragraph heading to paragraph (e); and

■ e. Adding a paragraph heading to, and removing the phrase ''No hearing need be granted'' and adding in its place the phrase ''The Comptroller is not required to grant a hearing'' in, the last sentence of paragraph (f).

The additions and revision read as follows:

§ 19.113 Recommended and final decisions.

(a) *Issuance of recommended decision.* * * *

(b) *Comments.* * * *

(c) *Issuance of final decision.* Within 60 days of the conclusion of the hearing or, if the petitioner has waived an oral hearing, within 60 days from the date fixed for the hearing, the Comptroller will notify the petitioner by registered mail, or electronic mail or other electronic means if the petitioner consents, whether the suspension or removal from office or prohibition from participation in any manner in the affairs of any depository institution will be affirmed, terminated, or modified. * * *

(d) *Other actions.* * * *

(e) *Expiration of order.* * * *

(f) *Petition for reconsideration.* * * *

■ 22. Revise subpart D to read as follows:

Subpart D—Actions Under the Federal Securities Laws

Sec.
19.120 Exemption hearings under section 12(h) of the Securities Exchange Act of 1934.
19.121 Disciplinary proceedings.
19.122 Civil money penalty authority under Federal securities laws.
19.123 Cease-and-desist authority.

Subpart D—Actions Under the Federal Securities Laws

§ 19.120 Exemption hearings under section 12(h) of the Securities Exchange Act of 1934.

(a) *Scope.* The rules in this section apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12(h) and (i) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78*l*(h) and (i)), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act (15 U.S.C. 78*l*(g), 78m or 78n), or whether to exempt from section 16 of the Exchange Act (15 U.S.C. 78p) any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this section are national banks and Federal savings associations whose securities are registered, or which may be subject to registration, pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78*l*(g)). The Comptroller may deny an application for exemption without a hearing.

(b) *Application for exemption.* An issuer or an individual (officer, director, or shareholder) may submit a written application for an exemption order to Bank Advisory, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons for the exemption, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. Bank Advisory will inform the applicant in writing whether a hearing will be held to consider the matter.

(c) *Newspaper notice.* Upon being informed that an application will be considered at a hearing, the applicant must publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: The name and title of any individual applicants; the type of exemption sought; the fact that a hearing will be held; and a statement that interested persons may submit to Bank Advisory, Office of the Comptroller of the Currency, Washington, DC 20219 within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant must promptly provide a copy of the notice to Bank Advisory and to the national bank's or Federal savings association's shareholders in the same manner as is customary for shareholder communications.

(d) *Informal hearing*—(1) *Conduct of proceeding.* The adjudicative provisions of the Administrative Procedure Act, formal rules of evidence, and subpart A of this part do not apply to hearings conducted under this section, except as provided in § 19.100.

(2) *Notice of hearing.* Following the comment period, the Comptroller will send a notice that fixes a date, time, and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(3) *Presiding officer.* The Comptroller will designate a presiding officer to conduct the hearing. The presiding officer must determine all procedural questions not governed by this section and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable. At the conclusion of the informal hearing, the presiding officer must issue a recommended decision to the Comptroller as to whether the exemption should be issued. The decision must include a summary of the facts and arguments of the parties.

(4) *Attendance.* Each applicant and any person who has requested an opportunity to be heard may attend the hearing with or without counsel. The hearing will be open to the public. In addition, each applicant and any other

hearing participant may introduce oral testimony through such witnesses as the presiding officer may permit.

(5) *Order of presentation.* (i) Each applicant may present an opening statement of a length decided by the presiding officer. Each of the hearing participants, or one among them selected with the approval of the presiding officer, may then present an opening statement. The opening statement should summarize concisely what each applicant and participant intends to show.

(ii) Each applicant will have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(iii) After the above presentations, each applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(6) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses must be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses must be sworn unless otherwise directed by the presiding officer. By stipulation of the parties or by order of the presiding officer, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the witness.

(7) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(8) *Electronic presentation.* Based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If the presiding officer requires an electronic presentation during the hearing, each party will be responsible for their own presentation and related costs unless the parties agree to another manner in which to allocate presentation responsibilities and costs.

(9) *Transcript.* The OCC will arrange a transcript of each proceeding with all expenses, including the furnishing of a copy to the presiding officer by electronic means or otherwise, paid by the applicant or applicants.

(e) *Decision of the Comptroller.* Following the conclusion of the hearing and the submission of the record and the presiding officer's recommended decision to the Comptroller for decision, the Comptroller will notify each applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted must be in the form of an order that specifies the type of exemption granted and its terms and conditions.

§ 19.121 Disciplinary proceedings.

(a) *Scope*—(1) *In general.* Except as provided in this section, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Exchange Act (15 U.S.C. 78o–4(c)(5), 78o–5(c)(2)(A), 78q–1(c)(3)(A), and 78q–1(c)(4)(C)), to take disciplinary action against the following:

(i) A bank that is a municipal securities dealer, any person associated with a bank that is a municipal securities dealer, or any person seeking to become associated with a bank that is a municipal securities dealer;

(ii) A bank that is a government securities broker or government securities dealer, any person associated with a bank that is a government securities broker or government securities dealer, or any person seeking to become associated with a government securities broker or government securities dealer; or

(iii) A bank that is a transfer agent, any person associated with a bank that is a transfer agent, or any person seeking to become associated with a bank that is a transfer agent.

(2) *Other actions.* In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the FDIA (12 U.S.C. 1818); sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act (15 U.S.C. 78o–4(c)(5), 78o–5(c)(2)(B), and 78q–1(d)(2)); and other sections of this part against the following:

(i) The parties listed in paragraph (a)(1) of this section; and

(ii) A bank that is a clearing agency.

(3) *Definitions.* As used in this section:

(i) The term *bank* means a national bank or Federal savings association, and, when referring to a government securities broker or government securities dealer, a Federal branch or agency of a foreign bank.

(ii) The terms *transfer agent, municipal securities dealer, government securities broker,* and *government securities dealer* have the same meaning as the terms in sections 3(a)(25), 3(a)(30), 3(a)(43), and 3(a)(44) of the Exchange Act (15 U.S.C. 78c(a)(25), 78c(a)(30), 78c(a)(43), and 78c(a)(44)), respectively.

(iii) The terms *person associated with a bank that is a municipal securities dealer* and *person associated with a municipal securities dealer* have the same meaning as *person associated with a municipal securities dealer* in section 3(a)(32) of the Exchange Act (15 U.S.C. 78c(a)(32));

(iv) The terms *person associated with a bank that is a government securities broker or government securities dealer* and *person associated with a government securities broker or government securities dealer* have the same meaning as *person associated with a government securities broker or government securities dealer* in section 3(a)(45) of the Exchange Act (15 U.S.C. 78c(a)(45)); and

(v) The terms *person associated with a bank that is a transfer agent* and *person associated with a transfer agent* have the same meaning as *person associated with a transfer agent* in section 3(a)(49) of the Exchange Act (15 U.S.C. 78c(a)(49)).

(4) *Preservation of authority.* Nothing in this section impairs the powers conferred on the Comptroller by other provisions of law.

(b) *Notice of charges and answer*—(1) *In general.* Proceedings are commenced when the Comptroller serves a notice of charges on a bank or associated person. The notice must indicate the type of disciplinary action being contemplated and the grounds therefor and fix a date, time, and place for hearing. The hearing must be set for a date at least 30 days after service of the notice. A respondent served with a notice of charges may file an answer as prescribed in § 19.19. Any respondent who fails to appear at a hearing personally or by a duly authorized representative is deemed to have consented to the issuance of a disciplinary order.

(2) *Public basis of proceedings; private hearings.* All proceedings under this section must be commenced, and the notice of charges must be filed, on a public basis unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), a request for a private hearing may be filed within 20 days of service of the notice.

(c) *Disciplinary orders*—(1) *Service of order; content.* In the event of consent, or if on the record filed by the ALJ, the Comptroller finds that any act or omission or violation specified in the notice of charges has been established, the Comptroller may serve on the bank or persons concerned a disciplinary order, as provided in the Exchange Act. The order may:

(i) Censure; limit the activities, functions, or operations of; or suspend or revoke the registration of a bank that is a municipal securities dealer;

(ii) Censure, suspend, or bar any person associated with a municipal securities dealer or seeking to become a person associated with a municipal securities dealer;

(iii) Censure; limit the activities, functions, or operations of; or suspend or bar a bank that is a government securities broker or government securities dealer;

(iv) Censure; limit the activities, functions, or operations of; or suspend or bar any person associated with or seeking to become a person associated with a government securities broker or government securities dealer;

(v) Deny registration to; limit the activities, functions, or operations of; or suspend or revoke the registration of a bank that is a transfer agent; or

(vi) Censure, limit the activities or functions of, or suspend or bar any person associated with a transfer agent or seeking to become a person associated with a transfer agent.

(2) *Effective date of order.* A disciplinary order is effective when served on the respondent or respondents involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

(d) *Applications for stay or review of disciplinary actions imposed by registered clearing agencies*—(1) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Exchange Act (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d–2) apply to applications by banks. References to the ''Commission'' are deemed to refer to the ''OCC.''

(2) *Reviews.* The regulations adopted by the SEC pursuant to section 19 of the Exchange Act (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d–3(a) through (f)) apply to applications by banks. References to the ''Commission'' are deemed to refer to the ''OCC.''

§ 19.122 Civil money penalty authority under Federal securities laws.

(a) *Scope.* Except as provided in this section, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in section 21B of the Exchange Act (15 U.S.C. 78u–2), in proceedings commenced pursuant to sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o–4, 78o–5, or 78q–1) for which the OCC is the appropriate regulatory agency under section 3(a)(34) of the Exchange Act (15 U.S.C. 78c(a)(34)), the Comptroller may impose a civil money penalty against the following:

(1) A bank that is a municipal securities dealer, any person associated with a bank that is a municipal securities dealer, or any person seeking to become associated with a bank that is a municipal securities dealer;

(2) A bank that is a government securities broker or government securities dealer, any person associated with a bank that is a government securities broker or government securities dealer, or any person seeking to become associated with a government securities broker or government securities dealer; or

(3) A bank that is a transfer agent, any person associated with a bank that is a transfer agent, or any person seeking to become associated with a bank that is a transfer agent.

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

(1) The term *bank* means a national bank or Federal savings association, and, when referring to a government securities broker or government securities dealer, a Federal branch or agency of a foreign bank.

(2) The terms *transfer agent, municipal securities dealer, government securities broker,* and *government securities dealer* have the same meaning as such terms in sections 3(a)(25), 3(a)(30), 3(a)(43), and 3(a)(44) of the Exchange Act (15 U.S.C. 78c(a)(25), 78c(a)(30), 78c(a)(43), and 78c(a)(44)), respectively.

(3) The term *person associated with a bank that is a municipal securities dealer* has the same meaning as *person associated with a municipal securities dealer* in section 3(a)(32) of the Exchange Act (15 U.S.C. 78c(a)(32));

(4) The term *person associated with a bank that is a government securities broker or government securities dealer* has the same meaning as *person associated with a government securities broker or government securities dealer* in section 3(a)(45) of the Exchange Act (15 U.S.C. 78c(a)(45)); and

(5) The term *person associated with a bank that is a transfer agent* has the same meaning as *person associated with a transfer agent* in section 3(a)(49) of the Exchange Act (15 U.S.C. 78c(a)(49)).

(c) *Public basis of proceedings; private hearings.* All proceedings under this section must be commenced, and the notice of assessment must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), any request for a private hearing may be filed within 20 days of service of the notice.

§ 19.123 Cease-and-desist authority.

(a) *Scope.* Except as provided in this section, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78*l*(i) and 78u–3), the Comptroller may initiate cease-and-desist proceedings against a national bank or Federal savings association for violations of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j–1(m), 78*l,* 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p); sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 as amended (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265); or regulations or rules issued thereunder.

(b) *Public basis of proceedings; private hearings.* All proceedings under this section must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), any request for a private hearing may be filed within 20 days of service of the notice.

Subparts E, F, and G [Removed and Reserved]

■ 23. Remove and reserve subparts E, F, and G.

Subpart H—Change in Bank Control

■ 24. Section 19.160 is revised to read as follows:

§ 19.160 Scope.

(a) *Scope.* This subpart governs the procedures for a hearing requested by a person who has filed a notice that has been disapproved by the OCC for a change in control of:

(1) An insured national bank or Federal savings association pursuant to

section 7(j) of the FDIA (12 U.S.C. 1817(j)) and 12 CFR 5.50; or

(2) An uninsured national bank pursuant to 12 CFR 5.50.

(b) *Applicability of subpart A.* Unless otherwise provided in this subpart, the rules in subpart A of this part set forth the procedures applicable to requests for OCC hearings under this subpart.

■ 25. Section 19.161 is amended by:

■ a. Revising the section heading;

■ b. Removing paragraph (a);

■ c. Redesignating paragraphs (b) through (e) as paragraphs (a) through (d), respectively;

■ d. Revising newly redesignated paragraph (a) introductory text;

■ e. Removing the word ''shall'' and adding in its place the word ''will'' in newly redesignated paragraph (b) introductory text; and

■ f. In newly redesignated paragraph (d):

■ i. Removing the phrase ''enforcement counsel'' in the second sentence and adding in its place the phrase ''Enforcement Counsel'' and removing the word ''shall'' and adding in its place the word ''will'' in the third sentence; and

■ ii. Removing the phrase ''administrative law judge'' in the third sentence and adding in its place the word ''ALJ''.

The revisions read as follows:

§ 19.161 Hearing process.

(a) *Hearing request.* Pursuant to 12 CFR 5.50(f)(6), following receipt of a notice of disapproval of a proposed acquisition of control of a national bank or Federal savings association, a filer may request a hearing by the OCC on the proposed acquisition. A hearing request must:

* * * * *

Subpart I—Discovery Depositions and Subpoenas

■ 26. Section 19.170 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing the phrase ''ten days'' and adding in its place the phrase ''20 days'' and removing the phrase ''administrative law judge'' and adding in its place the word ''ALJ'' in paragraph (c);

■ c. Revising the first sentence of paragraph (d);

■ d. Removing the phrase ''electronic sound'' and adding in its place the phrase ''electronic means, such as by sound or video'' in paragraph (e)(1)(i);

■ e. Removing the phrase ''administrative law judge'' and adding in its place the word ''ALJ'' in paragraph (e)(1)(iii); and

■ f. Removing the phrase ''the cost of the recording'' and adding in its place the phrase ''the cost of recording'' in paragraph (e)(2);

■ g. In paragraph (f) introductory text, removing the phrase ''administrative law judge shall grant such protective order'', and adding in its place the phrase ''ALJ may grant a protective order''; and

■ h. Revising the heading and removing the word ''shall'' and adding in its place the word ''must'' wherever it appears in paragraph (g).

The revisions read as follows:

§ 19.170 Discovery depositions.

(a) *In general.* In any proceeding instituted under or subject to the provisions of subpart A of this part, a party may take the deposition of a fact witness, an expert, or a hybrid fact-expert where there is need for the deposition. A fact witness is a person, including another party, who has direct knowledge of matters that are non-privileged and of material relevance to the proceeding. A hybrid fact-expert witness is a fact witness who will also provide relevant expert opinion testimony based on the witness's training and experience. The deposition of experts is limited to those experts who are expected to testify at the hearing.

(1) *Report.* A party must produce an expert report for any testifying expert or hybrid fact-expert witness before the witness's deposition. Unless otherwise provided by the ALJ, the party must produce this report at least 20 days prior to any deposition of the expert or hybrid fact-expert witness.

(2) *Limits on depositions.* Respondents, collectively, are limited to a combined total of five depositions from fact witnesses and hybrid fact-expert witnesses. Enforcement Counsel are limited to a combined total of five depositions from fact witnesses and hybrid fact-expert witnesses. A party is entitled to take a deposition of each expert witness designated by an opposing party.

(b) *Notice.* A party desiring to take a deposition must give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time, manner, and place for taking the deposition, and the name and address of the person to be deposed.

(1) *Location.* A deposition notice may require the witness to be deposed at any place within a State, territory, or possession of the United States or the District of Columbia in which that witness resides or has a regular place of employment, or such other convenient place as agreed by the noticing party and the witness.

(2) *Remote participation.* The parties may stipulate, or the ALJ may order, that a deposition be taken by telephone or other remote means.

* * * * *

(d) * * * The witness must be duly sworn. By stipulation of the parties or by order of the ALJ, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the deponent. Each party will have the right to examine the witness with respect to all matters that are non-privileged and of material relevance to the proceeding and of which the witness has factual, direct, and personal knowledge. * * *

* * * * *

(g) *Expenses.* * * *

§ 19.171 [Amended]

■ 27. Section 19.171 is amended:

■ a. In paragraph (a) by:

■ i. Removing the phrase ''administrative law judge shall'' and adding in its place the phrase ''ALJ may'';

■ ii. Removing the phrase ''under paragraph (a) of this section'' and adding in its place the phrase ''under § 19.170''; and

■ iii. Removing the phrase ''state or territory that is subject to the jurisdiction of the United States'' and adding in its place the phrase ''State, territory, or possession of the United States or the District of Columbia'';

■ b. By removing the phrase ''administrative law judge'' and adding in its place the phrase ''ALJ, unless the ALJ issues an order indicating the filing of proof of service is not required'' in paragraph (b)(2);

■ c. Adding the phrase '', or any party,'' in the first sentence after the phrase ''A person named in a subpoena'' and removing the word ''which'' in the second sentence and adding in its place the word ''that'' in paragraph (c); and

■ d. Removing the word ''shall'' and adding in its place the word ''must'' in paragraph (d).

Subpart J—Formal Investigations

■ 28. Section 19.180 is revised to read as follows:

§ 19.180 Scope.

This subpart and § 19.8 apply to formal investigations initiated by order of the Comptroller and pertain to the exercise of powers specified in section 5240 of the Revised Statutes of the United States (12 U.S.C. 481); section 5(d)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(1)(B)); sections 7(j)(15), 8(n), and 10(c) of the FDIA (12

U.S.C. 1817(j)(15), 1818(n), and 1820(c)); sections 4(b) and 13(a) and (b) of the International Banking Act of 1978 (12 U.S.C. 3102(b) and 3108(a) and (b)); and section 21 of the Exchange Act (15 U.S.C. 78u). This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of national banks, Federal savings associations, Federal branches and agencies, and their affiliates.

■ 29. Section 19.181 is revised to read as follows:

§ 19.181 Confidentiality of formal investigations.

The entire record of any formal investigative proceeding, including the resolution or order of the Comptroller authorizing or terminating the proceeding; all subpoenas issued by the OCC during the investigation; and all information, documents, and transcripts obtained by the OCC in the course of a formal investigation, are confidential and may be disclosed only in accordance with the provisions of part 4 of this chapter or pursuant to OCC discovery obligations under subpart A of this part.

■ 30. Section 19.182 is revised to read as follows:

§ 19.182 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller. The order must designate the person or persons empowered by the Comptroller to conduct the investigation. These persons are authorized, among other things, to administer oaths and affirmations, to take or cause to be taken testimony under oath, and to issue or modify subpoenas, including subpoenas *duces tecum,* as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, withdraw, or terminate the order at any stage of the proceedings.

■ 31. Section 19.183 is revised to read as follows:

§ 19.183 Rights of witnesses.

(a) *Right to be shown order.* Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation must, on request, be shown the order initiating the investigation. These persons may not retain copies of the order without first receiving written approval of the OCC.

(b) *Right to counsel.* Any person who, in a formal investigation, is compelled to appear and testify, or who appears and testifies by request or permission of the OCC, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel means the right of a person testifying to have an attorney present at all times while testifying and to have the attorney—

(1) Advise the person before, during, and after the conclusion of testimony;

(2) Question the person, on the record, briefly at the conclusion of testimony for the purpose of clarifying any of the answers given; and

(3) Make summary notes during the testimony solely for use in representing the person.

(c) *Exclusion from proceedings.* Any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other person at the discretion of the OCC or the OCC's designated representatives. Neither attorney(s) for the institution(s) affiliated with the testifying person nor attorneys for any other interested persons have any right to be present during the testimony of any person not personally represented by such attorney.

(d) *Right to inspect testimony transcript.* Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the OCC or the OCC's designated representatives conducting the proceedings determine that the contents should not be disclosed.

■ 32. Section 19.184 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 19.184 Service of subpoena and payment of witness expenses.

* * * * *

(b) *Expenses.* The fees and expenses specified in § 19.14 apply to a witness who is subpoenaed to testify pursuant to this subpart.

(c) *Area of service.* Subpoenas issued in connection with a formal investigation proceeding that require the attendance and testimony of witnesses or the production of documents, including electronically stored information, may be served on any person or entity within any State, territory, or possession of the United States or the District of Columbia, or as otherwise provided by law. Foreign nationals are subject to such subpoenas if service is made upon a duly authorized agent located in the United States or in accordance with international requirements for service of subpoenas.

■ 33. Section 19.185 is added to read as follows:

§ 19.185 Dilatory, obstructionist, or insubordinate conduct.

Any OCC designated representative conducting an investigative proceeding will report to the Comptroller any instances where any person has engaged in dilatory, obstructionist, or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

§ 19.190 [Amended]

■ 34. Section 19.190 is amended:

■ a. In the second sentence by:

■ i. Removing the phrase ''administrative law judge'' and adding in its place the word ''ALJ''; and

■ ii. Removing the phrase ''subparts C and D of this part'' and adding in its place the phrase ''subpart C of this part and § 19.120''; and

■ b. In the third sentence, by removing the phrase ''censure, suspension or debarment'' and adding in its place the phrase ''censure, suspension, or debarment''.

§ 19.191 [Amended]

■ 35. Section 19.191 is amended by:

■ a. In the introductory text, removing the word ''shall'';

■ b. In paragraph (a):

■ i. Adding the phrase ''written or oral'' before the phrase ''presentations to the OCC'' and adding a coma after the word ''privileges'' in the first sentence;

■ ii. Removing the word ''which'' and adding in its place the word ''that'' in the second sentence; and

■ iii. Removing the word ''bank'' and adding in its place the phrase ''national bank, Federal savings association, or Federal branch or agency of a foreign bank'' in the last sentence;

■ c. In paragraph (b), removing the phrase ''territory, commonwealth, of the United States'' and adding in its place the phrase ''territory, or commonwealth of the United States'' and

■ d. In paragraph (c), adding the word ''or'' before ''commonwealth'' and removing the comma after the phrase ''of the United States''.

■ 36. Section 19.192 is amended by:

■ a. Revising the paragraph (a) heading;

■ b. Removing the phrase ''his or her'' and adding in its place the word

''their'', removing the phrase ''administrative law judge'' and adding in its place the word ''ALJ'', and removing the word ''shall'' and adding in its place the word ''will'' in paragraph (c)(1);
■ c. Removing the phrase ''administrative law judge and adding in its place the word ''ALJ'' in paragraph (c)(2); and
■ d. In paragraph (d), removing the phrase ''Nothing in this section shall be read as precluding the administrative law judge'' and adding in its place the phrase ''This section does not preclude the ALJ''.

The revision reads as follows:

§ 19.192 Sanctions relating to conduct in an adjudicatory proceeding.

(a) *In general.* * * *

* * * * *

■ 37. Section 19.193 is amended by:
■ a. Revising the section heading; and
■ b. Removing the phrase ''such an individual from practice before the OCC if he or she'' and adding in its place the phrase ''an individual from practice before the OCC if the individual'' in the first sentence.

The revision reads as follows:

§ 19.193 Censure, suspension, or debarment.

* * * * *

§ 19.194 [Amended]

■ 38. Section 19.194 is amended by:
■ a. Removing the phrase ''who is qualified to practice as an attorney and is'' in paragraph (a); and
■ b. Removing the phrase ''who is qualified to practice as a certified public accountant or public accountant and is'' in paragraph (b).

§ 19.195 [Amended]

■ 39. Section 19.195 is amended:
■ a. In the introductory text, by adding a comma after the word ''judgment'';
■ b. In paragraph (a), by:
■ i. Removing the word ''which'' and adding in its place the word ''that''; and
■ ii. Removing the phrase ''he or she'' and adding in its place the word ''they'';
■ iii. Removing the period at the end of the paragraph and adding in its place a semi-colon; and
■ c. By removing the period at the end of paragraph (b) and adding in its place ''; or'';

§ 19.196 [Amended]

■ 40. Section 19.196 is amended:
■ a. In paragraph (c) by:
■ i. Adding a comma after the word ''duress'';
■ ii. Removing the comma after the word ''coercion'' and adding a semicolon in its place; and
■ iii. Adding a semi-colon after the word ''advantage'';
■ b. In paragraph (d), by removing the comma after the phrase ''of the United States'' and removing the phrase ''in matters relating to the supervisory responsibilities of the OCC'';
■ c. In paragraph (g) by adding a comma after the word ''debarment'' and adding the word ''former'' before ''OTS''; and
■ d. In paragraph (h), by removing the phrase ''Willful violation of'' and adding in its place the phrase ''Willfully violating''.

§ 19.197 [Amended]

■ 41. Section 19.197 is amended by:
■ a. Adding a comma after the word ''suspension'' and removing the citation ''§ 19.192'' and adding in its place the phrase ''this subpart'' in paragraph (a);
■ b. Removing the phrase ''or the Comptroller's delegate'' in paragraph (b); and
■ c. Adding a comma after the word ''suspension'' in the first sentence, removing the word ''which'' wherever it appears in the second and third sentences and adding in its place the word ''that'', and removing the phrase ''or the Comptroller's delegate'' in paragraph (c).
■ 42. Section 19.198 is amended:
■ a. In paragraph (a), in the first sentence, by;
■ i. Adding a comma after the word ''debarment'' the first time it appears;
■ ii. Removing the phrase ''proceeding for debarment'' and adding in its place the phrase ''proceeding for censure, debarment,'';
■ b. In paragraph (b), by:
■ i. Revising the paragraph heading; and
■ ii. Adding the phrase ''or debarment'' before the phrase ''from practice'' in the first sentence.

The revision reads as follows:

§ 19.198 Conferences.

* * * * *

(b) *Voluntary suspension or debarment.* * * *

§ 19.199 [Amended]

■ 43. Section 19.199 is amended by:
■ a. Removing the phrase ''administrative law judge'' wherever it appears and adding in its place the word ''ALJ'';
■ b. Removing the phrase ''or the Comptroller's delegate'';
■ c. Removing the word ''shall'' wherever it appears and adding in its place the word ''will'';
■ d. Removing the word ''which'' and adding in its place the word ''that'';
■ e. Removing the phrase ''the Comptroller on his or her own initiative, or'' and adding the phrase ''the Comptroller, on the Comptroller's initiative or''
■ f. Adding a comma after the phrase ''decision to the Comptroller''; and
■ g. Adding a comma after the word ''debar'' in the last sentence.
■ 44. Section 19.200 is amended by:
■ a. Revising the section heading;
■ b. In paragraph (a), adding the phrase ''pursuant to § 19.201'' at the end; and
■ c. In paragraph (d),:
■ i. Removing the word ''shall'' wherever it appears and adding in its place the word ''will''; and
■ ii. Removing the phrase ''or the Comptroller's delegate''.

The revision reads as follows:

§ 19.200 Effect of debarment, suspension, or censure.

* * * * *

§ 19.201 [Amended]

■ 45. Section 19.201 is amended in the last sentence by:
■ a. Removing the phrase ''shall be'' and adding in its place the word ''is''; and
■ b. Removing the phrase ''in his or her'' and adding in its place the phrase ''at the Comptroller's''.
■ 46. Subpart L is revised to read as follows:

Subpart L—Equal Access to Justice Act

Sec.
19.205 Authority and scope; waiver.
19.206 Definitions.
19.207 Application requirements.
19.208 Net worth exhibit.
19.209 Documentation of fees and expenses.
19.210 Filing and service of documents.
19.211 Answer to application.
19.212 Reply.
19.213 Settlement.
19.214 Further proceedings.
19.215 Decision.
19.216 Agency review.
19.217 Judicial review.
19.218 Stay of decision concerning award.
19.219 Payment of award.

Subpart L—Equal Access to Justice Act

§ 19.205 Authority and scope; waiver.

(a) *In general.* This subpart implements section 203 of the Equal Access to Justice Act (EAJA) (5 U.S.C. 504). EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities that are parties in certain administrative proceedings (adversary adjudications) before agencies of the Government of the United States. An eligible party may receive an award when it prevails over an agency unless the agency's position was substantially justified or special circumstances make an award unjust. However, no presumption under this subpart arises that the agency's position

was not substantially justified because the agency did not prevail.

(b) *Scope.* The types of adversary adjudications covered by this subpart are those proceedings listed in §§ 19.1, 19.110, 19.120, 19.190. 19.230, and 19.241.

(c) *Waiver.* After reasonable notice to the parties, the presiding officer or OCC may waive, for good cause shown, any provision contained in this subpart as long as the waiver is consistent with the terms and purpose of the EAJA.

§ 19.206 Definitions.

For purposes of this subpart:

(a) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the OCC is represented by Enforcement Counsel.

(b) *Final disposition* means the date on which a decision or order disposing of the merits of a proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable both within the OCC and to the courts.

(c) *Party* means a party, as defined in 5 U.S.C. 551(3), that is:

(1) An individual whose net worth did not exceed $2,000,000 at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, may be a party regardless of the net worth of the organization or cooperative association. The net worth and number of employees of the applicant and any of its affiliates must be aggregated when determining the applicability of this definition.

(d) *Position of the OCC* means, in addition to the position taken by the OCC in the adversary adjudication, the action or failure to act by the OCC upon which the adversary adjudication is based, except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.

(e) *Presiding officer* means the official, whether the official is designated as an ALJ or otherwise, that presided over the adversary adjudication or the official that presides over an EAJA proceeding.

§ 19.207 Application requirements.

(a) *Timing of application.* A party seeking an award under this subpart must file an application with the OCC within 30 days after the OCC's final disposition of the adversary adjudication.

(b) *Contents of application.* An application for an award of fees and expenses under this section must:

(1) Identify the applicant and the proceeding for which an award is sought;

(2) Show that the applicant has prevailed and identify the position of the OCC that the applicant alleges was not substantially justified;

(3) State the basis for the applicant's belief that the OCC position was not substantially justified;

(4) Unless the applicant is an individual, state the number of employees of the applicant and describe briefly the type and purpose of its organization or business;

(5) Show that the applicant meets the definition of ''party'' in § 19.206(e), including documentation of its net worth pursuant to § 19.208, if applicable;

(6) State the amount of fees and expenses for which an award is sought, as documented pursuant to § 19.209;

(7) Be signed by the applicant if the applicant is an individual or by an authorized officer or attorney of the applicant;

(8) Any other matter the applicant wishes the OCC to consider in determining whether and in what amount an award should be made; and

(9) Contain or be accompanied by a written verification under penalty of perjury that the information provided in the application is true and correct.

(c) *Referral of application.* Upon receipt of an EAJA application, the OCC will, if feasible, refer the matter to the official who heard the underlying adversary adjudication.

§ 19.208 Net worth exhibit.

(a) *Required information.* Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and, where appropriate, any of its affiliates at the time the adversary adjudication was initiated. Except as otherwise provided herein, this exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. A presiding officer may require an applicant to file additional information to determine its eligibility for an award.

(1) Unaudited financial statements are acceptable for individual applicants as long as the statement provides a reliable basis for evaluation, unless the presiding officer or the OCC otherwise requires. Financial statements or reports filed with or reported to a Federal or State agency before the initiation of the adversary adjudication for other purposes and accurate as of a date not more than three months prior to the initiation of the proceeding are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the presiding officer or the OCC otherwise requires.

(2) In the case of applicants or affiliates that are not banks or savings associations, net worth will be considered for the purposes of this subpart to be the excess of total assets over total liabilities as of the date the underlying proceeding was initiated.

(3) If the applicant or any of its affiliates is a bank or a savings association, the portion of the statement of net worth that relates to the bank or the savings association must consist of a copy of the bank's or savings association's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth will be considered for the purposes of this subpart to be the total equity capital as reported, in conformity with applicable instructions and guidelines, on the bank's or the savings association's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(b) *Confidentiality of net worth submissions.* Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may request that the documents be filed under seal or otherwise be treated as confidential.

§ 19.209 Documentation of fees and expenses.

The application must be accompanied by adequate documentation of the fees and expenses incurred after initiation of the adversary adjudication, including the cost of any study, analysis, report, test, or project. An application seeking an increase in fees to account for inflation pursuant to § 19.215(d)(1)(i)

also must include adequate documentation of the change in the consumer price index for the attorney or agent's locality. The applicant must submit a separate itemized statement for each professional firm or individual whose services are covered by the application showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.

§ 19.210 Filing and service of documents.

Any application for an award, or any accompanying documentation related to an application, must be filed and served on all parties to the proceeding in accordance with § 19.11, except as provided in § 19.208(b) for confidential financial information.

§ 19.211 Answer to application.

(a) *Filing of answer.* Except as provided in § 19.213, Enforcement Counsel may file an answer to an application within 30 days after service of the application. Unless Enforcement Counsel requests an extension of time for filing or files a statement of intent to negotiate a settlement under § 19.213, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) *Content of answer.* The answer must explain in detail any objections to the award requested and identify the facts relied on in support of the Enforcement Counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, Enforcement Counsel must include with the answer either supporting affidavits or a request for further proceedings under § 19.214.

§ 19.212 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant must include with the reply either supporting affidavits or a request for further proceedings under § 19.214.

§ 19.213 Settlement.

The applicant and Enforcement Counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with § 19.15. If a prevailing party and Enforcement Counsel agree on a proposed settlement of an award before an application has been filed, the application must be filed with the proposed settlement. If a proposed settlement of an underlying proceeding provides that each side must bear its own expenses and the settlement is accepted, no application may be filed. If, after an application is filed under § 19.211, Enforcement Counsel and the applicant believe that the issues in the application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement will extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by Enforcement Counsel and the applicant.

§ 19.214 Further proceedings.

(a) *Process for requesting further proceedings or additional information.* At the request of either the applicant or Enforcement Counsel, or on the presiding officer's own initiative, the presiding officer may, if necessary for a full and fair decision on the application, order the filing of additional written submissions; hold an informal conference or oral argument; or allow for discovery or hold an evidentiary hearing with respect to issues other than whether the OCC's position was substantially justified (such as those involving the applicant's eligibility or substantiation of fees or expenses). Any written submissions must be made, oral argument held, discovery conducted, and evidentiary hearing held as promptly as possible so as not to delay a decision on the application for fees.

(b) *Requirement to identify additional information sought and reason for requesting additional proceedings.* A request for further proceedings under this section must specifically identify the information sought or the disputed issues and must explain why the additional proceedings are necessary to resolve the issues.

§ 19.215 Decision.

(a) *Basis for decision.* The presiding officer must determine whether the position of the OCC was substantially justified on the basis of the administrative record as a whole of the adversary adjudication for which fees and other expenses are sought.

(b) *Timing of decision.* The presiding officer in a proceeding under this subpart will issue a recommended decision, in writing, on the application within 90 days after the time for filing a reply or when further proceedings are held within 90 days after completion of proceedings.

(c) *Contents of decision.* The decision on the application must include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and, if applicable, an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision also must include, if applicable, findings on whether Enforcement Counsel's or the OCC's position was substantially justified, whether the applicant unduly and unreasonably protracted the adversary adjudication, or whether special circumstances make an award unjust.

(d) *Awards*—(1) *In general.* Awards under this subpart may include the reasonable expenses of expert witnesses; the reasonable cost of any study, analysis, report, test, or project; and reasonable attorney or agent fees. The applicant must have incurred these expenses, costs, and fees after initiation of the adversary adjudication subject to the EAJA application. The presiding officer will base awards on prevailing market rates for the kind and quality of the services furnished, even if the services were provided without charge or at reduced rate to the applicant, except that:

(i) No award for the fee of an attorney or agent under this subpart may exceed the hourly rate specified in 5 U.S.C. 504(b)(1)(A) except to account for inflation since the last update of the statute's maximum award upon the request of the applicant as documented in the application pursuant to § 19.209 or if a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee; and

(ii) No award to compensate an expert witness may exceed the highest rate at which the OCC pays expert witnesses.

(2) *Award for fees of an attorney, agent, or expert witness.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness the presiding officer should consider:

(i) If in private practice, the attorney's, agent's, or witness's customary fee for similar services;

(ii) If an employee of the applicant, the fully allocated cost of the attorney's, agent's, or witness's services;

(iii) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily perform services;

(iv) The time actually spent in the representation of the applicant;

(v) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(vi) Any other factors that may bear on the value of the services provided.

(3) *Awards for costs of a study, analysis, report, test, project, or similar matter.* The presiding officer may award the reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the applicant to the extent that the charge for the service does not exceed the prevailing rate for similar services and the presiding officer finds that the study or other matter was necessary for preparation of the applicant's case.

(4) *Reduction or denial of an award.* A presiding officer may reduce the amount to be awarded, or deny any award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy or if special circumstances make the award sought unjust.

(e) *Final agency decision.* The Comptroller will issue a final decision on the application or remand the application to the presiding officer for further proceedings in accordance with § 19.40.

§ 19.216 Agency review.

Either the applicant or Enforcement Counsel may seek review of the presiding officer's decision on the fee application, in accordance with § 19.39.

§ 19.217 Judicial review.

An applicant may seek judicial review of final agency decisions on awards made under this section as provided in 5 U.S.C. 504(c)(2).

§ 19.218 Stay of decision concerning award.

Any proceedings on an application for fees under this subpart will be automatically stayed until the OCC's final disposition of the decision on which the application is based and either the time period for seeking judicial review expires, or if review has been sought, until final disposition is made by a court and no further judicial review is available.

§ 19.219 Payment of award.

(a) *Requirement to submit final decision.* An applicant seeking payment of an award must submit to the OCC's Litigation Group a copy of the OCC's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Applicants should send the submissions to: Office of the Comptroller of the Currency, 400 7th St. SW, Washington, DC 20219, Attention: Director, Litigation Group.

(b) *Time frame for award payment.* The OCC will pay the amount awarded to the applicant within 90 days.

Subpart M—Procedures for Reclassifying an Insured Depository Institution Based on Criteria Other Than Capital Under Prompt Corrective Action

■ 47. The heading for subpart M is revised to read as set forth above.

■ 48. Section 19.220 is revised to read as follows:

§ 19.220 Scope.

This subpart applies to the procedures afforded to any insured depository institution that has been reclassified to a lower capital category by a notice or order issued by the OCC pursuant to section 38 of the FDIA (12 U.S.C. 1831o) and 12 CFR part 6 (prompt corrective action). For purposes of this subpart, *insured depository institution* means an insured national bank, an insured Federal savings association, an insured Federal savings bank, or an insured Federal branch of a foreign bank.

■ 49. Section 19.221 is revised to read as follows:

§ 19.221 Reclassification of an insured depository institution based on unsafe or unsound condition or practice.

(a) *Issuance of notice of proposed reclassification*—(1) *Grounds for reclassification.* (i) Pursuant to § 6.4 of this chapter, the OCC may reclassify a well capitalized insured depository institution as adequately capitalized or subject an adequately capitalized or undercapitalized insured depository institution to the supervisory actions applicable to the next lower capital category if:

(A) The OCC determines that the insured depository institution is in an unsafe or unsound condition; or

(B) The OCC deems the insured depository institution to be engaging in an unsafe or unsound practice and not to have corrected the deficiency.

(ii) Any action pursuant to this paragraph (a)(1) hereinafter is referred to as ''reclassification.''

(2) *Prior notice to institution.* Prior to taking action pursuant to § 6.4 of this chapter, the OCC will issue and serve on the insured depository institution a written notice of the OCC's intention to reclassify the insured depository institution.

(b) *Contents of notice.* A notice of intention to reclassify an insured depository institution based on unsafe or unsound condition will include:

(1) A statement of the insured depository institution's capital measures and capital levels and the category to which the insured depository institution would be reclassified;

(2) The reasons for reclassification of the insured depository institution; and

(3) The date by which the insured depository institution subject to the notice of reclassification may file with the OCC a written response to the proposed reclassification and a request for a hearing, which must be at least 14 calendar days from the date of service of the notice unless the OCC determines that a shorter period is appropriate in light of the financial condition of the insured depository institution or other relevant circumstances.

(c) *Response to notice of proposed reclassification.* An insured depository institution may file a written response to a notice of proposed reclassification within the time period set by the OCC. The response should include:

(1) An explanation of why the insured depository institution is not in unsafe or unsound condition or otherwise should not be reclassified;

(2) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the insured depository institution or company regarding the reclassification.

(d) *Failure to file response.* Failure by an insured depository institution to file, within the specified time period, a written response with the OCC to a notice of proposed reclassification will constitute a waiver of the opportunity to respond and will constitute consent to the reclassification.

(e) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the OCC under this section. If the insured depository institution desires to present oral testimony or witnesses at the hearing, the insured depository institution must include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses must specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing will constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses will constitute a waiver of any right to present oral testimony or witnesses.

(f) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the

OCC will issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the OCC allows further time at the request of the insured depository institution. The hearing will be held in Washington, DC or at such other place as may be designated by the OCC before a presiding officer(s) designated by the OCC to conduct the hearing.

(g) *Hearing procedures.* (1) The insured depository institution has the right to introduce relevant written materials and to present oral argument at the hearing. The insured depository institution may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules apply to an informal hearing under this section unless the OCC orders that such procedures will apply.

(2) The informal hearing will be recorded and a transcript furnished to the insured depository institution upon request and payment of the cost thereof. Witnesses need not be sworn unless specifically requested by a party or the presiding officer(s). If so requested, and by stipulation of the parties or by order of the presiding officer, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the witness. The presiding officer(s) may ask questions of any witness.

(3) Based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If the presiding officer requires an electronic presentation during the hearing, each party will be responsible for its own presentation and related costs unless the parties agree to another manner by which to allocate presentation responsibilities and costs.

(4) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(h) *Recommendation of presiding officer(s).* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) will make a recommendation to the OCC on the reclassification.

(i) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OCC will decide whether to reclassify the insured depository institution and notify the insured depository institution of the OCC's decision.

§ 19.222 [Amended]

■ 50. Section 19.222 is amended by:
■ a. Removing the word ''bank'' in the first and second sentences and adding in its place the phrase ''insured depository institution''; and
■ b. Removing the word ''shall'' in the second sentence and adding in its place the word ''will''.

Subpart N—Order to Dismiss a Director or Senior Executive Officer Under Prompt Corrective Action

■ 51. The heading for subpart N is revised to read as set forth above.
■ 52. Section 19.230 is amended by:
■ a. Removing the phrase ''12 U.S.C. 1831o and part 6 of this chapter'' and adding in its place the phrase ''section 38 of the FDIA (12 U.S.C. 1831o) and 12 CFR part 6 (prompt corrective action)''; and
■ b. Adding a second sentence.

The addition reads as follows:

§ 19.230 Scope.

* * * For purposes of this subpart, *insured depository institution* means an insured national bank, an insured Federal savings association, an insured Federal savings bank, or an insured Federal branch of a foreign bank.

■ 53. Section 19.231 is revised to read as follows:

§ 19.231 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the OCC issues and serves a directive on an insured depository institution pursuant to subpart B of 12 CFR part 6 requiring the insured depository institution to dismiss from office any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDIA, the OCC will also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive*—(1) *Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The Respondent must file this request for reinstatement within 10 calendar days of the receipt of the OCC directive, unless further time is allowed by the OCC at the request of the Respondent. Failure by the Respondent to file a written request for reinstatement with the OCC within the specified time period will constitute a waiver of the opportunity to respond and will constitute consent to the dismissal.

(2) *Contents of request; informal hearing.* The request for reinstatement must include reasons why the Respondent should be reinstated and may include a request for an informal hearing before the OCC or its designee under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent must include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses must specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing will constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses will constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the OCC, the dismissal will remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring an insured depository institution to dismiss from office any director or senior executive officer, the OCC will issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the OCC allows further time at the request of the Respondent. The hearing will be held in Washington, DC, or at such other place as may be designated by the OCC, before a presiding officer(s) designated by the OCC to conduct the hearing.

(d) *Hearing procedures*—(1) *Role of respondent.* A Respondent may appear at the hearing personally or through counsel. A Respondent has the right to introduce relevant written materials and to present oral argument at the hearing.

(2) *Application of Administrative Procedure Act and Uniform Rules.* Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules apply to an informal hearing under this section unless the OCC orders that such procedures will apply.

(3) *Electronic presentation.* Based on the circumstances of each hearing, the presiding officer may direct the use of, or any party may elect to use, an electronic presentation during the hearing. If the presiding officer requires

an electronic presentation during the hearing, each party will be responsible for its own presentation and related costs unless the parties agree to another manner in which to allocate presentation responsibilities and costs.

(4) *Recordings; transcript.* The informal hearing will be recorded and a transcript furnished to the Respondent upon request and payment of the cost thereof.

(5) *Witnesses.* A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the OCC or the presiding officer(s). Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). If so requested, and by stipulation of the parties or by order of the presiding officer, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the witness. The presiding officer(s) may ask questions of any witness.

(6) *Continuance.* The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent bears the burden of demonstrating that their continued employment by or service with the insured depository institution would materially strengthen the insured depository institution's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the insured depository institution's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the insured depository institution based on supervisory criteria other than capital, pursuant to section 38(g) of the FDIA.

(f) *Recommendation of presiding officer.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) will make a recommendation to the OCC concerning the Respondent's request for reinstatement with the insured depository institution.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the OCC will grant or deny the request for reinstatement and notify the Respondent of the OCC's decision. If the OCC denies the request for reinstatement, the OCC will set forth in the notification the reasons for the OCC's action.

Subpart O—Civil Money Penalty Inflation Adjustments

■ 54. The heading for subpart O is revised to read as set forth above.

§ 19.240 [Amended]

■ 55. Section 19.240 is amended in paragraph (a) by removing the phrase ''inflation adjustment is calculated by'' and adding in its place the phrase ''OCC calculates the inflation adjustment by''.

■ 56. Subpart Q is added to read as follows:

Subpart Q—Forfeiture of Franchise for Money Laundering or Cash Transaction Reporting Offenses

Sec.

19.250 Scope.
19. 251 Notice and hearing.
19.252 Presiding officer.
19.253 Grounds for termination.
19.254 Judicial review.

Subpart Q—Forfeiture of Franchise for Money Laundering or Cash Transaction Reporting Offenses

§ 19.250 Scope.

Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to 12 U.S.C. 93(d) or 12 U.S.C. 1464(w), as applicable, to terminate all rights, privileges, and franchises of a national bank, Federal savings association, or Federal branch or agency convicted of a criminal offense under 18 U.S.C. 1956 or 1957 or 31 U.S.C. 5322 or 5324.

§ 19.251 Notice and hearing.

(a) *In general.* After receiving written notification from the Attorney General of the United States of a conviction of a criminal offense under 18 U.S.C. 1956 or 1957 or 31 U.S.C. 5322 or 5324, the Comptroller will:

(1) Issue to the national bank, Federal savings association, or Federal branch or agency a written notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the national bank, Federal savings association, or Federal branch or agency pursuant to section 12 U.S.C. 93(d) or 12 U.S.C. 1464(w); and

(2) Schedule a pretermination hearing.

(b) *Contents of notice.* The notice issued pursuant to paragraph (a)(1) of this section must set forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) The basis of termination pursuant to the factors listed in § 19.253;

(3) A proposed order or prayer for an order of termination;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as established by the presiding officer;

(6) That the answer must be filed with the OCC.

(c) *Failure to file an answer.* Unless the national bank, Federal savings association, or Federal branch or agency files an answer within the time specified in the notice, it will be deemed to have consented to termination of its rights, privileges and franchises and the Comptroller may order the termination of such rights, privileges, and franchises.

(d) *Service.* The OCC will serve the notice upon the national bank, Federal savings association, or Federal branch or agency in the manner set forth in § 19.11(c).

§ 19.252 Presiding officer.

(a) *Appointment.* The Comptroller will designate a presiding officer to conduct the pretermination hearing under this subpart.

(b) *Powers.* The presiding officer has the same powers set forth in 12 CFR 19.5, including the discretion necessary to conduct the pretermination hearing in a manner that avoids unnecessary delay. In addition, the presiding officer may limit the use of discovery and limit opportunities to file written memoranda, briefs, affidavits, or other materials or documents to avoid relitigation of facts already stipulated to by the parties; conceded to by the national bank, Federal savings association, or Federal branch or Federal agency; or otherwise already firmly established by the underlying criminal conviction.

§ 19.253 Grounds for termination.

In determining whether to terminate a franchise, the Comptroller will take into account the following factors:

(a) The extent to which directors or senior executive officers of the national bank, Federal savings association, or Federal branch or agency knew of, or were involved in, the commission of the money laundering offense of which the national bank, Federal savings association, or Federal branch or agency was found guilty;

(b) The extent to which the offense occurred despite the existence of policies and procedures within the national bank, Federal savings association, or Federal branch or Federal agency which were designed to prevent the occurrence of the offense;

(c) The extent to which the national bank, Federal savings association, or Federal branch or agency has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the national bank, Federal savings association, or Federal branch or agency was found guilty;

(d) The extent to which the national bank, Federal savings association, or Federal branch or agency has implemented additional internal controls (since the commission of the offense of which the national bank, Federal savings association, or Federal branch or agency was found guilty) to prevent the occurrence of any money laundering offense; and

(e) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

§ 19.254 Judicial review.

Any national bank, Federal savings association, or Federal branch or agency of a foreign bank whose rights, privileges and franchises have been terminated by order of the Comptroller under this part has the right of judicial review of such order pursuant to 12 U.S.C. 1818(h).

■ 57. Subpart R, consisting of § 19.260, is added to read as follows:

Subpart R—Effective Date

§ 19.260 Effective date.

Subparts A through E and H, I, J, L, M, N, P, and Q of this part will apply to adjudicatory proceedings initiated on or after [EFFECTIVE DATE OF FINAL RULE]. Actions filed and in process before the effective date will continue to be governed by the Rules of Practice and Procedure for national banks, Federal savings associations, and Federal branches and agencies that were in place prior to [EFFECTIVE DATE OF FINAL RULE].

PART 108—[REMOVED]

■ 58. Part 108 is removed.

PART 109—[REMOVED]

■ 59. Part 109 is removed.

PART 112—[REMOVED]

■ 60. Part 112 is removed.

PART 165—[REMOVED]

■ 61. Part 165 is removed.

Board of Governors of the Federal Reserve System

Authority and Issuance

For the reasons stated in the preamble, the Board proposes to amend parts 238 and 263 in title 12 of the Code of Federal Regulations as follows:

PART 238—SAVINGS AND LOAN HOLDING COMPANIES

■ 62. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972, 15 U.S.C. 78*l*.

Subpart L—[Removed and Reserved]

■ 63. Remove and reserve subpart L, consisting of §§ 238.111 through 238.117.

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 64. The authority citation for part 263 is revised as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717, 5323, 5362, 5365, 5463, 5464, 5466, 5467; 15 U.S.C. 21, 78l(i), 78o–4, 78o–5, 78u–2; 1639e(K); 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

Subpart A—Uniform Rules of Practice and Procedure

■ 65. Revise subpart A as set forth at the end of the common preamble.

■ 66. Section 263.1 is added to read as follows:

§ 263.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (''FDIA'') (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Board of Governors of the Federal Reserve System (''Board'') should issue an order to approve or disapprove a person's proposed acquisition of a state member bank, bank holding company, or savings and loan holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the Board is the appropriate agency;

(e) Assessment of civil money penalties by the Board against institutions, institution-affiliated parties, and certain other persons for which the Board is the appropriate agency for any violation of:

(1) Any provision of the Bank Holding Company Act of 1956, as amended (''BHC Act''), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 1847(b) and (*d*);

(2) Sections 19, 22, 23, 23A and 23B of the Federal Reserve Act (''FRA''), or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(3) Section 9 of the FRA pursuant to 12 U.S.C. 324;

(4) Section 106(b) of the Bank Holding Company Act Amendments of 1970 and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(5) Any provision of the Change in Bank Control Act of 1978, as amended, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(6) Any provision of the International Lending Supervision Act of 1983 (''ILSA'') or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(7) Any provision of the International Banking Act of 1978 (''IBA'') or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(8) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(9) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder;

(10) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the Board or the former Office of Thrift Supervision (''OTS''), the terms of any condition imposed in writing by the Board or the former OTS in connection with the grant of an application or request, and certain unsafe or unsound practices or breaches of fiduciary duty or law or regulation pursuant to 12 U.S.C. 1818(i)(2);

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder;

(12) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(13) Section 5 of the Home Owners' Loan Act (''HOLA'') or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464(d), (s) and (v);

(14) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d); and

(15) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a(i) and (r);

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g));

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) for violations of the post-employment restrictions imposed by that section; and

(h) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

■ 67. Section 263.3 is added to read as follows:

§ 263.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* (ALJ) means one who presides at an administrative hearing under authority set forth at *5 U.S.C. 556*.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the Board's or ALJ's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the ALJ, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Electronic signature* means electronically affixing the equivalent of a signature to an electronic document filed or transmitted electronically.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Board in an adjudicatory proceeding.

(f) *Final order* means an order issued by the Board with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHC Act (12 U.S.C. 1841 *et seq.*);

(3) Any organization organized and operated under section 25A of the FRA (12 U.S.C. 611 *et seq.*) or operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(4) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof;

(5) Any branch or agency as those terms are defined in section 1(b) of the IBA (12 U.S.C. 3101(1), (3), (5), (6));

(6) Any savings and loan holding company or any subsidiary (other than a depository institution) of a savings and loan holding company as those terms are defined in the HOLA (12 U.S.C. 1461 *et seq.*);

(7) Any U.S. or foreign nonbank financial company that the Financial Stability Oversight Council (''FSOC'') requires the Board to supervise under section 113 of the Dodd-Frank Act (12 U.S.C. 5323(a)(1), (b)(1)), or any subsidiary (other than a bank) thereof;

(8) Any financial market utility or financial institution conducting payment, clearing, or settlement activities that FSOC designates as systematically important under section 804 of the Dodd-Frank Act (12 U.S.C. 5463); and

(9) Any other entity subject to the supervision of the Board.

(h) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (*12 U.S.C. 1813(u)*).

(i) *Local Rules* means those rules promulgated by the Board in this part other than subpart A.

(j) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the Board, the Office of Comptroller of the Currency (the *OCC*), the Federal Deposit Insurance Corporation (the *FDIC*), and the National Credit Union Administration (the *NCUA*).

(k) *Party* means the Board and any person named as a party in any notice.

(l) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (g) of this section.

(m) *Respondent* means any party other than the Board.

(n) *Uniform Rules* means those rules in subpart A of this part that are common to the Board, the OCC, the FDIC, and the NCUA.

(o) Violation means any violation as that term is defined in section 3(v) of the FDIA (12 U.S.C. 1813(v)).

Subpart B—Board Local Rules Supplementing the Uniform Rules

§ 263.50 [Amended]

■ 68. Section 263.50 is amended:

■ a. By removing ''§ 263.50(b) of this subpart'' and adding in its place ''paragraph (b) of this section'' in paragraph (a); and

■ b. By removing ''shall'' and adding in its place the word ''will'' in paragraph (b) introductory text.

§ 263.51 [Amended]

■ 69. Section 263.51 is amended by removing ''§ 263.3(f) of'' and adding ''of this part'' after ''subpart A'' in its place in paragraph (c).

■ 70. Section 263.52 is amended by:

■ a. Removing ''shall'' and adding in its place ''must''; and

■ b. Adding a second sentence.

The addition reads as follows:

§ 263.52 Address for filing.

* * * All papers to be filed with the Board electronically must be sent to: *OSEC-Litigation@frb.gov*.

■ 71. Section 263.53 is amended by:

■ a. Removing ''shall'' and adding in its place ''will'' in the first sentence in paragraph (a);

■ b. Removing ''administrative law judge'' and adding in its place ''ALJ'' in the first sentence of paragraph (b).

■ c. Adding in the second sentence of paragraph (b) '', the manner (*e.g.,* remote means, in person),'' after ''and the address of the place''; and in the last sentence of paragraph (b) removing ''shall'' and adding in its place ''must'';

■ d. Revising paragraph (c);

■ e. Removing ''shall'' and adding in its place ''must'' in the last sentence of paragraph (d);

■ f. Removing ''shall'' and adding in its place ''must'' in paragraph (e);

■ g. Revising paragraph (f); and

■ h. Removing ''administrative law judge'' and adding in its place ''ALJ'' in the first sentence of paragraph (g).

The revisions read as follows:

§ 263.53 Discovery depositions.

* * * * *

(c) *Issuance of subpoena.* The ALJ must issue the requested deposition subpoena or subpoena *duces tecum* upon a finding that the application satisfies the requirements of this section

and of § 263.24. If the ALJ determines that the taking of the deposition or its proposed location or manner is, in whole or in part, unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, the ALJ may deny the application or may grant it upon such conditions as justice may require. The party obtaining the deposition subpoena or subpoena *duces tecum* will be responsible for serving it on the deponent and all parties to the proceeding in accordance with § 263.11. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment, by remote means, or such other convenient place or manner, as the ALJ fixes.

* * * * *

(f) *Conduct of the deposition.* The deponent must be duly sworn. By stipulation of the parties or order by the ALJ, a court reporter or other person authorized to administer an oath may administer the oath remotely, without being in the physical presence of the deponent. Each party may examine the deponent with respect to all non-privileged, relevant and material matters. Objections to questions or evidence must be in the short form, stating the ground for the objection. Failure to object to questions or evidence will not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The discovery deposition must be transcribed or otherwise recorded as agreed among the parties.

* * * * *

§ 263.54 [Amended]

■ 72. Section 263.54 is amended by removing ''shall'' and adding in its place ''must'' and removing ''administrative law judge'' and adding in its place ''ALJ''.

■ 73. Section 263.55 is revised to read as follows:

§ 263.55 Board as Presiding Officer.

The Board may, in its discretion, designate itself, one or more of its members, or an authorized officer, to act as presiding officer in a formal hearing. In such a proceeding, the authority of Board or its designee will include all the authority provided to an ALJ under these rules. Proposed findings and conclusions, briefs, and other submissions by the parties permitted in subpart A must be filed with the Secretary for consideration by the Board. Sections 263.38 and 263.39 of subpart A will not apply to proceedings conducted under this section.

§ 263.56 [Amended]

■ 74. Section 263.56 is amended by removing ''shall'' wherever it appears and adding in its place ''will''.

■ 75. Section 263.57 is added to read as follows:

§ 263.57 Sanctions relating to conduct in an adjudicatory proceeding.

(a) *General rule.* The ALJ may impose sanctions when any party or person in an adjudicatory proceeding under this part has failed to comply with an applicable statute, regulation, or order, and that failure to comply:

(1) Constitutes contemptuous conduct;

(2) Materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from:

(i) Contesting specific issues or findings;

(ii) Offering certain evidence or challenging or contesting certain evidence offered by another party; or

(iii) Making a late filing or conditioning a late filing on any terms that are just;

(4) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act; and

(5) Excluding or suspending a party or person from the adjudicatory proceeding.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on the ALJ's own motion, the ALJ may impose sanctions in accordance with this section. The ALJ must submit to the Board for final ruling the sanction of entering a final order determining the case on the merits.

(2) No sanction authorized by this section, other than refusal to accept late filings, must be imposed without prior notice to all parties and an opportunity for any party or person against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the ALJ directs. The ALJ may limit the opportunity to be heard to an opportunity of a party or person to respond orally immediately after the act or inaction covered by this section is noted by the ALJ.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, are subject to interlocutory review in the same manner as any other ruling by the ALJ.

(d) *Section not exclusive.* Nothing in this section precludes the ALJ or the Board from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

■ 76. Subpart K is added to read as follows:

Subpart K—Formal Investigative Proceedings

Sec.
263.450 Scope.
263.451 Definitions.
263.452 Conduct of a formal investigative proceeding.
263.453 Powers of the designated representative.
263.454 Confidentiality of proceedings.
263.455 Transcripts.
263.456 Rights of witnesses.
263.457 Subpoenas.

Subpart K—Formal Investigative Proceedings

§ 263.450 Scope.

(a) The procedures of this subpart must be followed when a formal investigation is instituted and conducted pursuant to: section 8(n) of the FDIA (12 U.S.C. 1818(n)); section 10(c) of the FDIA (12 U.S.C. 1820(c)); section 7(j)(15) of the FDIA (12 U.S.C. 1817(j)(15)); section 5(f) of the Bank Holding Company Act (12 U.S.C. 1844(f)); sections 10(b)(4) and 10(g)(2) of HOLA (12 U.S.C. 1464(b)(4) and 1467a(g)(2)); or section 162 of the Dodd-Frank Act (12 U.S.C. 5362).

(b) Nothing in this subpart prohibits the Board from conducting informal investigations or obtaining information by any means other than a subpoena issued pursuant to this subpart.

(c) This subpart does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in part 262 of this chapter and subpart A of this part.

§ 263.451 Definitions.

As used in this subpart:

(a) *Formal investigative proceeding* means an investigation conducted pursuant to an order of investigation as provided in § 263.452(a).

(b) *Designated representative* means the person or persons empowered by the Board or by the General Counsel or his or her designees in accordance with 12 CFR 265.6 to conduct a formal investigative proceeding.

§ 263.452 Conduct of a formal investigative proceeding.

(a) A formal investigative proceeding may be initiated upon issuance of an order of investigation by the Board or by the General Counsel or his or her designees in accordance with 12 CFR 265.6. The order of investigation must indicate the purpose of the formal investigative proceeding and designate the Board's representatives to direct the conduct of the investigation.

(b) Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding may, upon request, inspect a copy of the order of investigation at a time and place that the Board's designated representative determines to be appropriate. Any person who is compelled or requested to furnish documentary evidence or testimony in a formal investigative proceeding may not refuse to comply with a subpoena on the grounds that the order of investigation was not made available in advance of the date of production or testimony set forth in a subpoena.

(c) Copies of an order of investigation may not be produced to or retained by any person except with the express written approval of the Board officer supervising the investigation. The Board may provide a copy of an order of investigation, in whole or in part, if the Board officer concludes, in the officer's discretion, that disclosure of the order of investigation would not infringe upon the privacy of persons involved in the investigation or impede the conduct of the investigation.

§ 263.453 Powers of the designated representative.

The designated representative conducting the formal investigative proceeding will have the power to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas *ad testificandum* and subpoenas *duces tecum* and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the witness or company subpoenaed resides or conducts business, or such other judicial district provided by law.

§ 263.454 Confidentiality of proceedings.

Formal investigative proceedings conducted pursuant to this subpart are confidential and, unless otherwise ordered or permitted by the Board, or required by law, the entire record of any formal investigative proceeding, including the order of investigation authorizing the proceeding, the transcripts of such proceeding, and all documents and information obtained by the designated representative(s) during the course of the formal investigative proceeding will be confidential. If the Board issues a notice of charges or otherwise initiates an administrative (adjudicatory) hearing, disclosure of documents and information obtained by the Board's designated representative(s) during the course of the formal investigative proceeding will be governed by the Uniform Rules and the Board Local Rules Supplementing the Uniform Rules (subparts A and B of this part).

§ 263.455 Transcripts.

(a) Transcripts of testimony, if any, must be recorded by an official reporter, or by any other person or means designated by the designated representative conducting the investigation.

(b) Transcripts will be treated as confidential and must not be disclosed to any party except as provided in this subpart or as otherwise ordered or permitted by the Board, or required by law or regulation.

§ 263.456 Rights of witnesses.

(a) Any witness in a formal investigative proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney must be a member in good standing of the bar of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice before the Board in accordance with any provision of this part, including paragraph (a)(4) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of the witness's testimony and may briefly question the witness, on the record, at the conclusion of the witness's testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for the attorney's use in representing the witness. Neither the attorney nor witness may retain copies of exhibits used or introduced in the course of a witness's testimony.

(3) All witnesses must be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be present during the taking of testimony of any other witness called in such formal investigative proceeding. Attorneys for any other interested persons or entities will not, unless permitted in the discretion of the designated representative, have a right to be present during the testimony of any witness not personally being represented by such attorneys.

(4) The Board, for good cause, may exclude a particular attorney from further participation in any formal investigative proceeding in which the Board has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The designated representative conducting the formal investigative proceeding may report to the Board instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Board may take such action as the circumstances warrant, including suspending any attorney representing a witness from further participation in the investigative proceeding, based upon a written record evidencing the conduct of the attorney in the formal investigative proceeding or such other or additional written or oral presentation as the Board may permit or direct.

(b) A witness may inspect the transcript of the witness's own testimony, without retaining a copy thereof, for the purpose of making non-substantive corrections to the transcript at a time and place that the designated representative determines to be appropriate in consideration of all relevant factors, including the convenience of the witness.

(c) A witness may, solely for the use of the witness and the witness's attorney, obtain a copy of the transcript of the witness's testimony, provided that the witness submits a written request for the transcript and the witness requesting a copy of the witness's testimony bears the cost thereof. However, the Board officer supervising the formal investigative proceeding may deny such a request if, in the officer's discretion, the provision of the transcript may infringe the privacy of third persons involved in the investigation, or impede or interfere with the conduct of any investigation. If the Board issues a notice of charges or otherwise initiates an administrative (adjudicatory) hearing, disclosure of formal investigative transcripts obtained by the Board's designated representative(s) during the course of the formal investigative proceeding will be governed by the Uniform Rules and the Board Local Rules Supplementing the Uniform Rules (subparts A and B of this part).

§ 263.457 Subpoenas.

(a) *Service.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent which, in the case of a corporation or other association, is delivery to an officer, director, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail or by an express delivery service addressed to the person's or authorized agent's last known address; or

(5) In such other manner as is reasonably calculated to give actual notice.

(b) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing or testimony is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service must be made on at least one branch or agency so involved. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States or such other means permissible by law.

(c) *Witness fees and mileage.* Witnesses summoned in any proceeding under this subpart must be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the Board by any of its designated representatives.

FEDERAL DEPOSIT INSURANCE CORPORATION

For the reasons set out in the joint preamble, the FDIC proposes to amend 12 CFR part 308 as follows.

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 77. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

Subpart A—Uniform Rules of Practice and Procedure

■ 78. Revise subpart A as set forth at the end of the common preamble.

■ 79. Section 308.1 is added to read as follows:

§ 308.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Federal Deposit Insurance Corporation (FDIC) should issue an order to approve or disapprove a person's proposed acquisition of an institution;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the FDIC is the appropriate agency;

(e) Assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate agency for any violation of:

(1) Sections 22(h) and 23 of the Federal Reserve Act (FRA), or any implementing regulation, and certain unsafe or unsound practices or breaches of fiduciary duty under 12 U.S.C. 1828(j) or 12 U.S.C. 1468;

(2) Section 106(b) of the Bank Holding Company Act Amendments of 1970 (BHCA Amendments of 1970), and certain unsafe or unsound practices or breaches of fiduciary duty under 12 U.S.C. 1972(2)(F);

(3) Any provision of the Change in Bank Control Act of 1978, as amended (CBCA), or any implementing regulation or order issued, and certain unsafe or unsound practices, or breaches of fiduciary duty under 12 U.S.C. 1817(j)(16);

(4) Section 7(a)(1) of the FDIA under 12 U.S.C. 1817(a)(1);

(5) Any provision of the International Lending Supervision Act of 1983 (ILSA), or any rule, regulation or order issued under 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 (IBA), or any rule, regulation or order issued under 12 U.S.C. 3108;

(7) Certain provisions of the Exchange Act under section 21B of the Exchange Act (15 U.S.C. 78u–2);

(8) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3349), or any order or regulation issued under;

(9) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC, or the former Office of Thrift Supervision (OTS), the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided under 12 U.S.C. 1818(i)(2);

(10) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued under; and

(11) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued under;

(12) Certain provisions of Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued under 12 U.S.C. 1464(d)(1), (5)–(8), (s), and (v);

(13) Section 9 of the HOLA or any regulation or order issued under 12 U.S.C. 1467(d); and

(14) Section 10 of HOLA under 12 U.S.C. 1467a(a)(2)(D), (g), (i)(2)–(4) and (r).

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g));

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties for violations of the post-

employment restrictions under that subsection; and

(h) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

■ 80. Section 308.3 is added to read as follows:

§ 308.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* (ALJ) means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Administrative Officer* means an inferior officer of the Federal Deposit Insurance Corporation (FDIC), duly appointed by the Board of Directors of the FDIC to serve as the Board's designee to hear certain motions or requests in an adjudicatory proceeding and to be the official custodian of the record for the FDIC.

(c) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(d) *Assistant Administrative Officer* means an inferior officer of the FDIC, duly appointed by the Board of Directors of the FDIC to serve as the Board's designee to hear certain motions or requests in an adjudicatory proceeding upon the designation or unavailability of the Administrative Officer.

(e) *Board of Directors* or *Board* means the Board of Directors of the FDIC or its designee.

(f) *Decisional employee* means any member of the FDIC's or ALJ's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Board of Directors, ALJ or the Administrative Officer, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(g) *Designee* of the Board of Directors means officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors.

(h) *Electronic signature* means affixing the equivalent of a signature to an electronic document filed or transmitted electronically.

(i) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the FDIC in an adjudicatory proceeding.

(j) *FDIC* means the Federal Deposit Insurance Corporation.

(k) *Final order* means an order issued by the FDIC with or without the consent of the affected institution or the institution-affiliated party that has become final, without regard to the pendency of any petition for reconsideration or review.

(l) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHCA (12 U.S.C. 1841 *et seq.*);

(3) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467a(a));

(4) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(5) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(6) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(m) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u).

(n) *Local Rules* means those rules promulgated by the FDIC in those subparts of this part other than subpart A.

(o) *Office of Financial Institution Adjudication* (OFIA) means the executive body charged with overseeing the administration of administrative enforcement proceedings of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve Board (Board of Governors), the FDIC, and the National Credit Union Administration (NCUA).

(p) *Party* means the FDIC and any person named as a party in any notice.

(q) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in this section.

(r) *Respondent* means any party other than the FDIC.

(s) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions set forth at § 308.1, and as specified in subparts B through P of this part.

(v) *Violation* means any violation as that term is defined in section 3(v) of the FDIA (12 U.S.C. 1813(v)).

Subpart B—General Rules of Procedure

§ 308.101 [Amended]

■ 81. Section 308.101 is amended by:

■ a. Removing the word ''shall'' wherever it appears and adding ''will'' in its place in paragraphs (b) and (c); and

■ b. Removing the phrase, ''section 15(c)(4) of the Exchange Act (15 U.S.C. 78o(c)(4)'' and adding ''15 U.S.C. 78o(c)(4)'' in its place in paragraph (d).

■ 82. Section 308.102 is amended by:

■ a. Removing the phrase ''administrative law judge'' and adding ''ALJ'' in its place wherever it appears in paragraph (b)(1); and

■ b. Revising paragraph (b)(2).

The revision reads as follows:

§ 308.102 Authority of Board of Directors and Administrative Officer.

* * * * *

(b) * * *

(2) Pursuant to authority delegated by the Board of Directors, the Administrative Officer and Assistant Administrative Officer, upon the advice and recommendation of the Deputy General Counsel for Litigation or, in the Deputy General Counsel's absence, the Assistant General Counsel for General Litigation, may issue rulings in proceedings under these sections of the FDIA 12 U.S.C. 1817(j), 1818 1828(j), 1829, 1831i, and 1831*o* concerning:

(i) Denials of requests for private hearing;

(ii) Interlocutory appeals;

(iii) Stays pending judicial review;

(iv) Reopenings of the record and/or remands of the record to the ALJ;

(v) Supplementation of the evidence in the record;

(vi) All remands from the courts of appeals not involving substantive issues;

(vii) Extensions of stays of orders terminating deposit insurance; and

(viii) All matters, including final decisions, in proceedings under 12 U.S.C. 1818(g).

■ 83. Section 308.103 is revised to read as follows:

§ 308.103 Assignment of Administrative Law Judge (ALJ).

(a) *Assignment.* Unless otherwise directed by the Board of Directors or as otherwise provided in the Local Rules, a hearing within the scope of this part must be held before an ALJ of the Office of Financial Institution Adjudication (OFIA).

(b) *Procedures.* Upon receiving a copy of the notice under § 308.18(a) from Enforcement Counsel, OFIA must assign an ALJ to the matter and advise the

parties, in writing, of the ALJ assignment.

■ 84. Section 308.104 is amended by:

■ a. Revising paragraph (a); and

■ b. Removing the phrase ''administrative law judge'' and adding ''ALJ'' in its place wherever it appears in paragraph (b).

The revision reads as follows:

§ 308.104 Filings with the Board of Directors.

(a) *General rule.* All materials required to be filed with or referred to the Board of Directors in any proceedings under this part must be filed with the Administrative Officer in a manner specified in § 308.10(b). The Administrative Officer's address is: Federal Deposit Insurance Corporation, Attn: Administrative Officer, 550 17th Street NW, Washington, DC 20429. Electronic copies of all pleadings must be sent to *ESSEnforcementActionDocket@fdic.gov* with the docket number clearly identified.

* * * * *

§ 308.105 [Amended]

■ 85. Section 308.105 is amended by:

■ a. Removing the phrase ''administrative law judge'' and adding ''ALJ'' in its place in the first sentence; and

■ b. Removing the phrase ''As the official custodian, the'' and adding in its place ''The'' in the second sentence; and

■ c. Removing the word ''shall'' in the second sentence and adding ''will'' in its place in the second sentence.

§ 308.106 [Amended]

■ 86. Section 308.106 is revised to read as follows:

§ 308.106 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than 15 days before the hearing is to commence, on the motion of any party or on the ALJ's own motion, the ALJ may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the ALJ will not require such a format if that format would violate the objecting party's right under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order will provide that each party must, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order must also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the ALJ will require that it be filed within the time period for commencement of the hearing, and the hearing will be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, must be submitted and the oral portion of the hearing begun within 30 days of the date set for filing written direct testimony.

(3) The ALJ will direct, unless good cause requires otherwise, that—

(i) All parties must simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section; and

(ii) All parties must simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the matter required under this section will be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

■ 87. Section 308.107 is revised to read as follows:

§ 308.107 Supplemental discovery rules.

(a) *Scope of discovery.* Subject to the limitations set out in § 308.24, a party may obtain discovery regarding any non-privileged matter that has material relevance to the merits of the pending action, and is proportional to the needs of the action, considering the importance of the issues at stake in the action, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Parties may obtain discovery only through the production of documents and depositions, as set forth in the Uniform Rules and the Local Rules.

(b) *Joint Discovery Plan.* Within the time period set by the ALJ and prior to serving any discovery requests, the parties must meet and confer to consider the discovery needed to support their claims and defenses and discuss any issues about preserving discoverable information.

(1) At the meet and confer, the parties must use reasonable efforts to develop a Joint Discovery Plan that should contain the following elements:

(i) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to, or focused on, particular issues;

(ii) Any issues about disclosure, discovery, or preservation of ESI, including the form or forms in which it should be produced;

(iii) Provisions regarding any anticipated discovery of nonparties;

(iv) Whether depositions are anticipated and the appropriate limits on the taking of such depositions, consistent with paragraph (e)(1) of this section, including the maximum number of depositions to be allowed;

(v) The anticipated timing of the production of any document identifying and describing privileged documents that a party intends to redact or withhold from production; and

(vi) Provisions regarding any inadvertent disclosure of privileged information.

(2) The Joint Discovery Plan must comply with the provisions of this section and § 308.24.

(3) The parties must submit their proposed Joint Discovery Plan to the ALJ for review, modification, and/or approval. In the event the parties cannot agree to some or all of the provisions, the parties must file their respective proposals with the ALJ for resolution. After review, the ALJ must issue an approved Joint Discovery Plan, which must include any modifications made by the ALJ.

(c) *Document and electronically stored information (ESI) discovery*—(1) *Scope of document discovery.* Parties to proceedings set forth at § 308.1 of the Uniform Rules and as provided in the Local Rules may obtain discovery through the production of documents and ESI.

(2) *Depositions to determine completeness of document production.* Any counsel is permitted to depose a person producing documents or ESI pursuant to a document subpoena on the strictly limited topics of the identification of documents and ESI produced by that person, and a reasonable examination to determine

whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents and ESI.

(3) *Specific limitations on ESI discovery.* A party need not provide discovery of ESI from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the ALJ may nonetheless order discovery from such sources if the requesting party shows good cause. The ALJ may specify conditions for the discovery.

(4) *Request for production.* Consistent with the Joint Discovery Plan, a party may serve on any other party a request to produce documents, and permit the requesting party or its representative to inspect, copy, test, or sample documents in the responding party's possession, custody, or control.

(5) *Privilege.* Consistent with § 308.25(e) and the Joint Discovery Plan, and prior to the close of the discovery period set by the ALJ, the producing party must reasonably identify all documents withheld or redacted on the grounds of privilege and must produce a statement of the basis for the assertion of privilege.

(6) *Document subpoenas to nonparties.* (i) The provisions of § 308.26 apply to document subpoenas to nonparties. Any requests for nonparty subpoenas must comply with § 308.24(b) and the Joint Discovery Plan.

(ii) If the ALJ determines that the application does not set forth a valid basis for the issuance of the subpoena, or that it does not otherwise comply with § 308.24(b) or the Joint Discovery Plan, the ALJ may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules and the Local Rules.

(d) *Expert witness disclosures.* (1) When expert witness disclosures are required, the disclosures must include: Name, mailing address, and electronic mail address of each expert witness:

(i) If the expert is one retained or specially employed to provide expert testimony in the matter, or one whose duties as the party's employee regularly involve giving expert testimony, the witness must provide a written report in compliance with paragraph (d)(2)(i) of this section.

(ii) If the expert is an employee of a party who does not regularly provide expert testimony, including a commissioned bank examiner employed by the FDIC, the witness must provide written disclosures in compliance with paragraph (d)(2)(ii) of this section.

(2) *Disclosure of expert testimony*—(i) *Witnesses* who *must provide written report.* Unless otherwise stipulated or ordered by the ALJ, experts described in paragraph (d)(1)(i) of this section must prepare a signed expert report that contains:

(A) A complete statement of all opinions the witness will express and the basis and reasons for them;

(B) The facts or data considered by the witness in forming the opinions;

(C) Any exhibits that will be used to summarize or support the opinions;

(D) The witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(F) A statement of the compensation to be paid for the study and testimony in the case.

(ii) *Witnesses who provide written disclosures instead of a written report.* Unless otherwise stipulated or ordered by the ALJ, expert witnesses described in paragraph (d)(1)(ii) of this section are not required to provide a written report, but must provide written disclosures that state:

(A) The subject matter on which the witness is expected to present evidence; and

(B) A summary of the facts and opinions to which the witness is expected to testify.

(e) *Depositions*—(1) *In general.* In addition to paragraph (c)(2) of this section, and subject to the provisions of § 308.24 and paragraph (a) of this section, a party may take depositions of individuals with direct knowledge of facts relevant to the proceeding and individuals designated as an expert under paragraph (d)(1) of this section, where the evidence sought cannot be obtained from some other source that is more convenient, less burdensome, or less expensive. Absent exceptional circumstances, depositions will only be permitted of individuals expected to testify at the hearing, including experts.

(i) *Limits on depositions.* Unless otherwise stipulated by the parties, depositions are only permitted to the extent ordered by the ALJ upon a showing of good cause.

(ii) *Privileged matters.* Privileged matters are not discoverable by deposition. Privileges include those set forth in § 308.24(c).

(iii) *Report.* A party must produce any disclosure required by paragraph (d)(2) of this section before the deposition of the witness required to provide such disclosure. Unless otherwise provided by the ALJ, the party must produce this report at least 20 days prior to any deposition of the witness.

(2) *Notice.* A party desiring to take a deposition must give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time, manner, and place for taking the deposition, and the name and address of the person to be deposed.

(i) *Location.* A deposition notice may require the witness to be deposed at any place within a State, territory, or possession of the United States or the District of Columbia in which that witness resides or has a regular place of employment, or such other convenient place as agreed by the parties and the witness.

(ii) *Remote participation.* The parties may stipulate, or the ALJ may order, that a deposition be taken by telephone or other remote means.

(iii) *Deposition subpoenas.* A deponent's attendance may be compelled by subpoena.

(A) *Issuance.* At the request of a party, the ALJ will issue a subpoena requiring the attendance of a witness at a deposition under this paragraph (e) unless the ALJ determines that the requested subpoena is outside the scope of paragraph (e)(1) of this section.

(B) *Service.* The party requesting the subpoena must serve it on the person named therein, or on that person's counsel, by any of the methods identified in § 308.11(d). The party serving the subpoena must file proof of service with the ALJ, unless the ALJ issues an order indicating the filing of proof of service is not required.

(C) *Objection to deposition subpoena.* A motion to modify or quash a deposition subpoena must be in accordance with the procedures of § 308.27(b).

(D) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena must be in accordance with the procedures of § 308.27(c)(2) and (d).

(3) *Time for taking depositions.* A party may take depositions at any time after the issuance of the approved Joint Discovery Plan, but no later than 20 days before the scheduled hearing date, except with permission of the ALJ for good cause shown.

(4) *Conduct of the deposition.* The witness must be duly sworn. By stipulation of the parties or by order of the ALJ, a court reporter or other person authorized to administer an oath may administer the oath remotely without being in the physical presence of the deponent. Unless the parties otherwise

agree, all objections to questions or exhibits must be in short form and must state the grounds for the objection. Failure to object to questions or exhibits is not a waiver except when the grounds for the objection might have been avoided if the objection had been timely presented.

(5) *Duration.* Unless otherwise stipulated by the parties or ordered by the ALJ, a deposition is limited to 1 day of 7 hours. The ALJ may, when it is consistent with § 308.24 and paragraph (a) of this section, order additional time if it is necessary to fairly examine the witness, including when any person or circumstance has impeded the examination.

(6) *Recording the testimony*—(i) *Generally.* The party taking the deposition must have a certified court reporter record the witness's testimony:

(A) By stenotype machine or electronic means, such as by sound or video recording device;

(B) Upon agreement of the parties, by any other method; or

(C) For good cause and with leave of the ALJ, by any other method.

(ii) *Cost.* The party taking the deposition must bear the cost of recording and transcribing the witness's testimony.

(iii) *Transcript.* The court reporter must provide a transcript of the witness's testimony to the party taking the deposition and must make a copy of the transcript available to each party upon payment by that party of the cost of the copy. The transcript must be subscribed or certified in accordance with § 308.27(c)(3).

(f) *Discovery motions*—(1) *Motions to limit discovery.* In addition to § 308.25(d), upon a motion by a party or on the ALJ's own motion, the ALJ must limit the frequency or extent of discovery otherwise allowed by these rules if the ALJ determines that:

(i) The discovery sought is unreasonably cumulative or duplicative or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) Involves privileged, irrelevant, or immaterial matters;

(iii) The party seeking discovery has already had ample opportunity to obtain the information by discovery in the action; or

(iv) The proposed discovery is outside the scope of this section or § 308.24.

(2) *Motions to terminate depositions.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. Upon such a motion, the ALJ may order that the deposition be terminated or may limit its scope and manner. If terminated, the deposition may be resumed only by order of the ALJ.

(3) *Motions to compel discovery.* The provisions of § 308.25(f) apply to any motion to compel discovery.

NATIONAL CREDIT UNION ADMINISTRATION

For the reasons set out in the joint preamble, the NCUA proposes to amend 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 88. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; Pub. L. 114–74.

Subpart A—Uniform Rules of Practice and Procedure

■ 89. Revise subpart A as set forth at the end of the common preamble.

■ 90. Section 747.1 is added to read as follows:

§ 747.1 Scope.

This subpart prescribes uniform rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 206(e) of the Act (12 U.S.C. 1786(e));

(b) Removal and prohibition proceedings under section 206(g) of the Act (12 U.S.C. 1786(g));

(c) Assessment of civil money penalties by the NCUA Board against institutions and institution-affiliated parties for any violation of:

(1) Section 202 of the Act (12 U.S.C. 1782);

(2) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder;

(3) The terms of any final or temporary order issued under section 206 of the Act or any written agreement executed by the National Credit Union Administration (''NCUA''), any condition imposed in writing by the NCUA in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1786(k); and

(4) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder;

(d) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(e) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in subparts B through J of this part.

■ 91. Section 747.3 is added to read as follows:

§ 747.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary:

(a) *Administrative Law Judge (ALJ)* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the NCUA Board's or ALJ's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the NCUA Board or the ALJ, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Electronic signature* means affixing the equivalent of a signature to an electronic document filed or transmitted electronically.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the NCUA in an adjudicatory proceeding.

(f) *Final order* means an order issued by the NCUA with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes:

(1) Any Federal credit union as that term is defined in section 101(1) of the Act (12 U.S.C. 1752(1)); and

(2) Any insured State-chartered credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C. 1752(7)).

(h) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 206(r) of the Act (12 U.S.C. 1786(r)).

(i) *Local Rules* means those rules promulgated by the NCUA in subparts B through I of this part.

(j) *NCUA* means the National Credit Union Administration.

(k) *NCUA Board* means the National Credit Union Administration Board or a person delegated to perform the functions of the NCUA Board.

(l) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the NCUA, the Board of Governors of the Federal Reserve System (''Board of Governors''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of the Comptroller of the Currency (''OCC'').

(m) *Party* means the NCUA and any person named as a party in any notice.

(n) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (g) of this section.

(o) *Respondent* means any party other than the NCUA.

(p) *Uniform Rules* means those rules in subpart A of this part that are common to the NCUA, the Board, the FDIC, and the OCC.

(q) *Violation* means any violation as that term is defined in section 3(v) of the Federal Deposit Insurance Act (12 U.S.C. 1813(v)).

§ 747.18 [Amended]

■ 92. Section 747.18 is amended by removing ''Except for change-in-control proceedings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), a'' and adding in its place ''A'' in paragraph (a)(1)(i) and removing and reserving paragraph (a)(2).

§ 747.33 [Amended]

■ 93. Section 747.33 is amended by removing ''or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order'' in the second sentence in paragraph (a).

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 21, 2021.

James P. Sheesley,

Assistant Executive Secretary.

By order of the Board of the National Credit Union Administration.

Dated at Alexandria, VA, this 21st day of October, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board, National Credit Union Administration.

Editorial Note: This document was received for publication by the Office of the Federal Register on February 28, 2022.

[FR Doc. 2022–04454 Filed 4–12–22; 8:45 am]

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FEDERAL REGISTER

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No. 71 April 13, 2022

Part III

The President

Proclamation 10365—Black Maternal Health Week, 2022

Proclamation 10366—Pan American Day and Pan American Week, 2022

Proclamation 10367—National Former Prisoner of War Recognition Day, 2022

Federal Register
Vol. 87, No. 71
Wednesday, April 13, 2022

Presidential Documents

Title 3—

The President

Proclamation 10365 of April 8, 2022

Black Maternal Health Week, 2022

By the President of the United States of America

A Proclamation

Pregnancy and childbirth should be a dignified, safe, and joyful experience for all. For far too many mothers, however, complications related to pregnancy, childbirth, and postpartum can lead to devastating health outcomes—including hundreds of deaths each year. This maternal health crisis is particularly devastating for Black women, who are more than three times as likely to die from pregnancy-related complications as white women, regardless of their income or education. During Black Maternal Health Week, we renew our commitment to addressing the crisis of Black maternal mortality and morbidity across the country.

The Biden-Harris Administration remains fully committed to ameliorating these unacceptable disparities and building a health care system that is equitable and safe for Black families. The inequities that Black mothers face are not isolated incidents but, rather, the byproduct of systemic racism in our society that has festered for far too long. To root it out, and improve health outcomes, we must address a broad range of areas where unequal access persists along racial lines—including access to health care, adequate nutrition and housing, toxin-free environments, high-paying job sectors that provide paid leave, and workplaces free from harassment and discrimination.

That is why the American Rescue Plan gives States the opportunity to provide 12 months of extended postpartum coverage to pregnant people enrolled in Medicaid and the Children's Health Insurance Program. It is also why I signed the Protecting Moms Who Served Act—part of the Black Maternal Health ''Momnibus'' Act that Vice President Harris introduced in the Senate—to address the maternal challenges that women veterans face. It is why Vice President Harris hosted the first-ever White House Maternal Day of Action Summit and announced a nationwide call to action to reduce maternal mortality and morbidity.

To improve perinatal health outcomes and maternal health equity, the Centers for Medicare & Medicaid Services intends to propose the first-ever hospital quality designation specifically focused on maternity care. In addition, the Substance Abuse and Mental Health Services Administration recently accepted applications for the Services Grant Program for Residential Treatment for Pregnant and Postpartum Women—a program that provides pregnant and postpartum women and their children with comprehensive substance use treatment and recovery support services across residential and outpatient settings. This year, the program will also extend services to fathers, partners, and other family members.

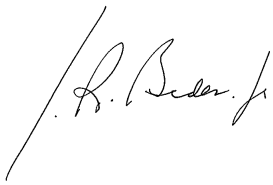
In the year ahead, we must build on this work by further expanding access to maternal care, lowering health care costs, and making new investments to drive down mortality and improve maternal health. We are going to expand and diversify the maternal health workforce, improve maternal mental health treatment, bolster community-based programs, train providers, enhance research, and ensure that maternal care is better coordinated. This is more than just the right thing to do—it is also a strategic imperative that makes all of us healthier and all of us stronger. When women—regardless of race—do not receive the health care they need and deserve, it threatens

the strength and stability of our families, our communities, and our entire Nation.

It is on all of us to ensure that no person's race ever determines their health outcomes and that every person preparing to give birth is treated with dignity, safety, and respect in our health care system. During Black Maternal Health Week, we refocus on that effort and celebrate America's extraordinary maternal health care workforce—including doulas and midwives, who offer crucial support for our Nation's mothers throughout pregnancy, childbirth, and postpartum and whose work is essential to the health and well-being of all of our mothers and children.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 11 through April 17, 2022, as Black Maternal Health Week. I call upon all Americans to raise awareness of the state of Black maternal health in the United States by understanding the consequences of systemic discrimination, recognizing the scope of this problem and the need for urgent solutions, amplifying the voices and experiences of Black women, families, and communities, and committing to building a world in which Black women do not have to fear for their safety, their well-being, their dignity, or their lives before, during, and after pregnancy.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Presidential Documents

Proclamation 10366 of April 8, 2022

Pan American Day and Pan American Week, 2022

By the President of the United States of America

A Proclamation

On April 14, 1890, 18 nations of this hemisphere came together to form the International Union of American Republics—the oldest regional international organization in the world and the precursor to the modern-day Organization of American States. Today, the Organization of American States consists of 35 independent States from North America, Central America, South America, and the Caribbean and is dedicated to the principles of advancing peace, prosperity, and democracy throughout the Western Hemisphere. On Pan American Day and during Pan American Week, we recognize the strength of this regional community and celebrate our unity and shared values.

This year, as the United States prepares to host the Ninth Summit of the Americas—my Administration reaffirms our commitment to collectively addressing the challenges and opportunities we share with our regional neighbors. The theme of this year's summit, ''Building a Sustainable, Resilient, and Equitable Future'' focuses on working together with our partners to produce better outcomes and strengthen our ability to respond to critical issues that affect all our nations. We need to emerge from the pandemic and bolster global health security, build strong and inclusive democracies, advance a joint approach to regional migration management, ensure humanitarian protection, and root out the corruption that reduces our ability to make progress. We will seize opportunities to address the climate crisis and accelerate the green energy transition. We will foster a transformation that will expand access to digital technologies, support independent media and civil society organizations, and ensure that economic growth is equitable and inclusive.

My Administration's Build Back Better World initiative will play an important role in the Pan American region's recovery from the economic impact of the pandemic, promoting the highest labor, environmental, social, and technical standards. In addition, our Call to Action, a public-private partnership supporting long-term development in Central America, will continue to generate private sector interest and build upon its $1.2 billion investment in the region.

It is in our economic and national security interest and the entire Pan American region for our nations to advance a secure, economically prosperous, healthy, and democratic hemisphere for all our people. We can reach that future if we unite around principled and democratic leadership, anchored in the rule of law. The people throughout the region want governments that are accountable to voters and deliver real benefits including jobs, education, security, equal opportunity, and fundamental human and political rights. Support for democracy and respect for human rights is at the heart of all of the United States' engagement with our neighbors throughout the Americas. Twenty years after approval of the Inter-American Democratic Charter—affirming a collective commitment to strengthen democracy in the region—there is more work to do to fortify democratic institutions and prevent democratic backsliding in this hemisphere.

We will continue to build on the commitments made at the 2021 Summit for Democracy, in which 26 governments in the Western Hemisphere participated, to forge a more inclusive and democratic future. We will work with hemispheric leaders—incorporating the recommendations of diverse voices from youth, marginalized communities, the private sector, independent media, and civil society—to fulfill our commitments and drive our momentum forward.

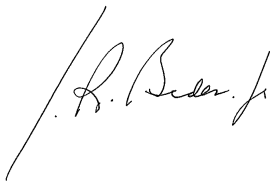
This is the time to take bold collective action to address our shared challenges. Climate change, the pandemic, repression, corruption, and democratic backsliding have created migration and refugee flows unequaled in the modern history of the region. This is bigger than any one country and any one border. Coordinated regional efforts are essential to respond to urgent humanitarian needs, provide legal alternatives to irregular migration, address root causes, counter corruption, and crack down on human smuggling networks that exploit the most vulnerable. As we approach the Summit of the Americas, our goal is to chart a new regional approach to improve how we jointly manage migration across the region for the coming decade.

My Administration will continue to work tirelessly to address these and other challenges, and to achieve our shared goals in the Pan American region.

During this Pan American Day and Pan American Week, we celebrate our close ties and shared values with the region, and we come together in the spirit of unity and optimism for a resilient, sustainable, and equitable future for all people of the Americas.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2022, as Pan American Day and April 10 through April 16, 2022, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of the other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Filed 4–12–22; 11:15 am]

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Presidential Documents

Proclamation 10367 of April 8, 2022

National Former Prisoner of War Recognition Day, 2022

By the President of the United States of America

A Proclamation

On April 9, 1942, tens of thousands of American and Filipino prisoners of war began what would become known to history as the Bataan Death March. Thousands died during the march, but the indomitable spirit of those prisoners was never broken. Eighty years later, our Nation continues to honor their courage and recognize the more than half a million service members who sacrificed their own freedom as prisoners of war to ensure that our Nation and the values of freedom and democracy always prevail.

Former prisoners of war stand among the bravest of our Nation. They fought valiantly and served with honor—and under often agonizing conditions as prisoners, they demonstrated incredible personal courage, love of country, and devotion to duty. Through their extraordinary sacrifices and selflessness, they helped ensure freedom for millions of people. They are heroes.

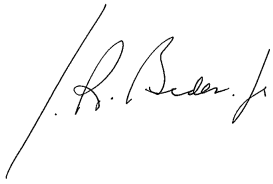
I join all Americans in expressing our deepest gratitude to every service member who has endured being a prisoner of war and to their families, caregivers, and survivors. Their service—knowing all the risk and danger it could bring—is a credit to their character and to our Nation. On this day and every day, we remember the hardships of captivity they survived in service to our Nation. We also remember all the brave women and men who died as prisoners in foreign lands during our Nation's past wars, and we grieve with those at home who prayed for their loved ones' return. Their faith, love of family, and devotion to our Nation inspire us all, and we will always remember their sacrifices.

Today, our brave men and women in uniform carry on the rich legacy of our former prisoners of war—unrelenting in battle, unwavering in loyalty, unmatched in decency, and prepared to make the ultimate sacrifice on behalf of our Nation.

May God bless our former prisoners of war and their families, and may God protect our troops.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2022, as National Former Prisoner of War Recognition Day. I call upon Americans to observe this day by honoring the service and sacrifice of all former prisoners of war as our Nation expresses its eternal gratitude for their sacrifice. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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